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# The Reclamation Reform Act— P.E.S.T. or Pesticide

Charles V. Moore

Anyone familiar with the evolution of institutions will agree that bit by bit regulations can be modified, changed, or adjusted in implementation and enforcement so that, though the shell of the original house may remain, so many walls have been moved and additions added that all that remains in fact is the name. Functionally it performs a different service to a different clientele.

The intent of the drafters of the original 1902 Reclamation Act was, in a few words, "land for the landless, homes for the homeless." Even the Omnibus Adjustments Act of 1926 did not significantly change the intent of the original law.

The objectives of this paper are to (1) describe the principal actors in the Reclamation game in recent years and identify some of their goals and objectives; (2) set the stage for analyzing recent changes in Reclamation legislation in terms of political economic-seeking transfers (PESTs); (3) highlight major changes offered and finally adopted in the 1982 Reclamation Reform Act, and (4) offer a prognosis with respect to the impact of this new law on western irrigated agriculture.

## *Historical Developments*

The Reclamation program has traditionally had three important and orga-

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nized support groups. First, the National Water Resource Association which over the years has supported, in principle, expansion of Reclamation development although never deeply involved in tinkering with the institutions, rules, and regulations except to the extent they would impede continued project expansion. Membership was weighted heavily towards engineers, contractors, and firms who sold things for construction and irrigation.

Second, there existed an amorphous group of Western Congressmen centered in the House Committee on Interior and Insular Affairs. This group was also pro-development and responsive to the wishes and desires of their electorate to whom they could provide construction projects, subsidized water, and low cost hydroelectric power. The third group consisted of administrators of the U.S. Department of the Interior. Charged with implementing the basic law over the years, this group was generally sympathetic to local groups interested in easing the pinch caused by the rules on the size of farms and the ownership of land within Federal projects. One of the best examples was the Interior Solicitor's Opinion of February 1933, exempting the Imperial Irrigation District from the 160 acre limit to ownership. (See Ogden for a chronology of these events.)

Not until the 1970s was a group formed to challenge this "iron triangle." National Land for People, a small group representing farm workers and small farmers in California, entered not in an attempt to stop the irrigation development process, but rather to redistribute the benefits of

development. National Land for People brought suit in Federal Court seeking to require the Department of the Interior to codify its rule making procedure to hold public hearings on any proposed rules and regulations.

The impetus of this action was the 500,000 acre Westlands Water District of California, the largest district in the Bureau's system. Lands in the district had been developed prior to the project using ground water that was being heavily overdrafted. Ownership of land in the district was highly concentrated with one corporation holding over 100,000 acres. Although much of the land had been placed under recordable contract to be sold in 160 acre units, National Land for People was disturbed by what it considered "sweetheart" sales and leasebacks, which it asserted were evasions of the intent of the 1902 Act and prevented people it represented from purchasing these lands and from sharing in the benefits of the subsidized water.

In August 1976 the Federal District Court ruled for National Land for People and instructed the Secretary of Interior to prepare Rules and Regulations and hold public hearings (Ogden, page 126).

The then Secretary of the Interior, Cecil Andrus, published the Proposed Rules and Regulations one year later. Negative reaction to the regulations from existing landowners triggered several local and one regional organization in opposition. Examples are California Westside Farmers, Imperial Valley Farmers for Fairness, and Western Water and Land Alliance.

Thus, the cast of actors in this drama is complete. On one side is a small group of farm workers and small farmers with fragmented outside support but with a sympathetic Secretary of the Interior. On the other side are several local and regional organizations with memberships dominated by large landowners and operators with support from existing farm organizations such as state farm bureaus.

With this information we can identify those proposals that were opposed by the large landowners and the political steps taken to modify these regulations.

The Proposed Rules and Regulations restated the residency requirement that landowners must live on or near their land. This would have eliminated the absentee landlord and greatly reduced the amount of land available for rent within a project. The proposal also allowed a doubling of the ownership limit to 320 acres, but owners had to be 18 years or older, which would have eliminated a common practice of placing ownership of land in the names of minor children. The item in the proposed regulation, second only to the residency requirement in generating heated debate; was that for the first time an acreage limit was to be placed on the size of farm operating units as well as on the size of land ownership. Thus, under the proposed new rules, owned land plus leased land could not exceed 960 acres. The August 1977 rules proposed to eliminate "sweetheart" sales by requiring all lands in excess of the ownership limit to be sold by lottery at a price equal to the current appraised value of the land as if the project had not been built.

Before Interior had completed its public hearings on the Proposed Rules and Regulations, a group of landowners filed suit in Federal District Court asking that Secretary Andrus be enjoined from implementing the final rules and regulations until an Environmental Impact Statement (EIS) had been completed. Assertions were made that small farms would increase soil erosion, fill lakes and rivers with pesticides, cause thousands of acres to be abandoned, allow urban sprawl to take over existing farm lands, and above all, raise the cost of food significantly. Interior did not fight this suit and the court granted the injunction and ordered the preparation of the EIS.

The court order achieved two significant goals for the landowners: (1) it de-

layed implementation while also allowing existing landowners to continue operations for at least two more years; and (2) more importantly it provided time to attempt a shift of the rule-making process from the Executive Branch to the Legislative Branch.

### PESTs

In his paper, "Political Economic Markets: PERTs and PESTs in Food and Agriculture," Rausser defined PESTs as political, economic-seeking transfers. Citing Madison's *Federalist Paper*, No. 10, Rausser argued that the system of checks and balances built into our Federal system, "... makes it costly for any interest group, majority or minority, to use the political system to redistribute wealth and income in their favor." However, because the process is costly, does not mean that an investment in PEST activities is not worthwhile to an individual or special interest group.

PEST activities generally center around lobbying of policy makers and their staffs in both the Legislative and Executive Branches of government, although they may include use of the courts to resolve differences and to delay actions. This activity can indeed become expensive if we can believe the rumors that a first class lobbyist in Washington, D.C. receives up to \$10,000 per month plus expenses. Directly related to legislative lobbying, and in a limited way a necessary condition, is access to elected officials through Political Action Committee (PAC) contributions to election campaigns.

Before entering the political-economic market in order to seek an increased income stream, lump sum transfer, or protection of property rights in an asset representing a future income stream, the special interest group must make the same calculation of expected return on investment as for any other financial decision. However, the probability distribution of

costs and benefits no doubt has a greater variance than those associated with more traditional investment opportunities. These distributions are also probably not normally distributed, but this would vary from case to case depending on the level of the countervailing forces competing in the market.

One element of uncertainty in the political-economic market is the possibility that election results may change the faces and philosophies of the policy makers who have been the targets of previous lobbying efforts. In the case of the 1980 general election, the change in administration did just that. The chairmanship of the concerned senate committee changed, and new faces appeared on the committee. A new Secretary of the Interior was appointed, and he brought with him a new set of assistant secretaries and agency heads with new philosophies.

PEST activities probably attain their greatest leverage during an election campaign. Political support, both monetary and nonmonetary, can be used at this time either to elect more favorable representation or to gain improved access to existing representatives.

Common Cause, a nonprofit national organization, tabulates contributions made by Political Action Committees (PACs) to election campaigns. This organization has classified 132 PACs registered with the Federal Election Commission as agriculturally related. PACs representing land and water resource based groups in the 17 Western states, a total of 34, were classed as having an interest in Reclamation reform legislation. Those ranged from J. G. Boswell Company Employees' PAC to the National Association of Wheat Growers' PAC.

Results of this tabulation provide some interesting insights into the PEST game. The 34 selected PACs contributed \$566,515 during the period January 1, 1981, through November 22, 1982, an average of \$16,662 per PAC. Not all of these

funds were directly related to the Reclamation Reform Act, and contributions were made to 308 candidates for an average of \$1,839 per candidate. Most of the PACs had a California orientation, and not surprisingly, \$265,000 or 46 per cent went to candidates in California.

Getting down to specific details related to the reform legislation, members of the House-Senate Conference Committee received \$82,225. The five congressmen representing the San Joaquin Valley of California, two of whom were also members of the Conference Committee, received \$91,150. One interesting sidelight was that Pete Wilson, the successful candidate for Senator from California running against Jerry Brown, received the largest amount of contributions, \$73,100. Jerry Brown received zero dollars.

#### *1982 Act, PL 97-293*

On October 12, 1982, President Reagan signed into law the Reclamation Reform Act. Table 1 is an attempt to depict the evolution of this law over a five-year period and through two administrations. The Andrus proposal contained most of the elements in the original proposed rules and regulations. However, after public hearings Secretary Andrus modified his stance on the disposition of excess land to allow land to be sold to family members, adjoining neighbors, and longtime tenants but added the requirement that eligible owners must be 18 years or older.

Major changes over the 1902 Act, as amended, included a doubling of the acreage limit per owner to 320 acres. The limit on total farm size of 960 acres owned plus leased land was probably the most significant change. Another change was the restatement of the residency requirement followed by the lottery requirement for the sale of excess lands. To close a loophole created by the 1926 Omnibus Act, a provision was included requiring cross-district compliance. This provision

prohibits land ownership in more than one district if the sum of the acreages exceeds the limitation.

The Draft EIS published by the Department of the Interior contained an analysis of the proposed rules and regulations and of a limited number of alternatives. At the suggestion of the Economic Research Service, USDA, which was collaborating in the EIS, full-cost pricing of water was considered.

The first session of the 97th Congress addressed the reclamation reform issue and bills were passed out of committee in both houses; however, little or no agreement could be reached and these bills died at the end of the session.

Under a new administration and a reorganized Senate, both of which were more sympathetic to the point of view of the landowners, bills were passed in both houses and sent to a conference committee to resolve differences. Provisions of each bill and the final result are presented in Table 1.

Prior to action by the conference committee the farm press reported satisfaction on the part of the landowners and results of their PEST activities during and after the 1981 elections. Lobbyists were most pleased with the Senate bill that contained the most liberal limitations for both individuals and large corporations and the lowest interest rates for calculating the full-cost price for water.

As indicated in Table 1, the final bill followed the House bill more closely than the Senate version, no doubt to the disappointment of the PACs who had contributed so generously to the 1980 election and to the lobbying efforts of their representatives.

The net effect of PEST activities can best be shown by comparing the final bill with the Andrus bill offered four years earlier. The ownership limit was tripled, both the lottery and residency requirement were eliminated, and Corps of Engineers' projects were exempted from the

**TABLE 1. Reclamation Reform: Comparison of Proposed and Final Legislation.**

Topic	Andrus <sup>a</sup>	House	Senate	Final
Acreage Limit per Owner	320 acres	960	1,280	960 <sup>b</sup>
Total Farm Limit	960 acres	960 ac. + full cost	1,280 ac. + full cost	960 ac. + full cost
Age Limit	18 years	none	none	none
Large Corporations	480 acres	160 ac. + full cost	640 ac. + full cost	320 ac. + full cost
Sale by Lottery	Yes	No	No	No
Antispeculation	15 years	10 years	10 years	10 years
Full Cost Water Price	No	Yes	Yes	Yes
Interest Rate	NA	Min. 5%, T. bill rate	No min. ave. long term bonds	Min. 7.5% ave. long term bonds
Project Exemptions	Statutory	Statutory, Corps Proj.	Statutory, Corps Proj.	Statutory, Corps Proj.
Residency Required	Yes	No	No	No
Cross-District Compliance	Yes	Yes	Yes	Yes

<sup>a</sup> Presented to Senate Committee on Energy and Natural Resources, April 13, 1978.

<sup>b</sup> Individual under P.L. 97-293 is defined as any natural person, including his or her spouse and including other dependents thereof (i.e., a family).

law. This last item was of special interest to a single PAC representing a single farming corporation.

Special mention should be made of the full-cost pricing provision that appeared in both the House and Senate versions. This provision was supported by liberals and conservatives but for different reasons. Conservatives, at least those from outside the West, saw this provision as a means of increasing Federal revenues to reduce the budget deficit. Liberals, especially from the West, viewed this provision as a method of encouraging water conservation in Federal projects. As economists we are aware of the importance of the interest rate in determining costs. The final bill, although a compromise, raises the cost of water for lands exceeding the 960 acre limit above the cost obtained if the Senate formula is applied. The impacts will be discussed in a later section.

#### *Rules and Regulations—1983 Act*

Department of the Interior, Bureau of Reclamation, is required to develop rules

and regulations to implement legislation passed by Congress. PEST activities need not cease with final passage of a bill and its signing into law. On May 3, 1983, a new set of rules and regulations was published (Federal Register). One feature attracted considerable attention. Individuals and districts wishing to take advantage of acreage limits under the 1983 Act are required to amend their contracts with the Bureau. Districts failing to amend contracts will come under a very strict interpretation of the old law, i.e., water for 320 acres owned by a husband and wife and full-cost pricing on any leased land after April 1987. This will place operators of large leased acreages in a bind and undoubtedly will be tested in the courts.

A second provision, one that has received less attention but has implications for beginning or entering farmers, is the anti-speculation provision. If a landowner fails to sell excess land under recordable contract in the time allowed, the Secretary of the Interior will sell the land by auction. Any surplus revenues from the sale of the excess land over the appraised

**TABLE 2. Water Supply Per Acre Delivered to Farm Headgate and Estimated Subsidized and Full-Cost Rates.**

District	Average Supply 1972-1976	Current Charges Converted to Acre-Foot Rate (Subsidized) 1978	E.I.S. Estimated Full-Cost Rate 1978	Preliminary Rules & Regs. Per Acre-Foot Full Cost 1983	Estimated Maximum <sup>c</sup> Ability to Pay 1978
	... acre-feet per acre ...	Dollars			
Black Canyon	5.20	1.41	15.77	—	—
Coachella	6.31	7.00	26.27	13.40	9.00
Columbia Basin East	4.19	4.19	41.16	14.05	21.00
Farwell	1.20	10.50	135.50	50.50	66.00
Glenn-Colusa	0.71 <sup>a</sup> (5.88) <sup>b</sup>	1.46	17.85	7.85	9.00
Goleta	1.84	59.24	263.12	—	—
Goshen	2.10	4.22	22.96	—	—
Grand Valley	5.40	1.18	31.10	—	—
Altus-Lugert	0.52	18.58	143.19	78.44	0
Milk River	0.80	7.79	119.13	14.00	32.00
Moon Lake	1.13	1.75	7.04	—	—
Oroville-Tonasket	4.40	11.47	21.33	—	—
Truckee-Carson	3.38	2.19	33.46	3.00	75.00
Welton-Mohawk	6.96	4.80	29.58	11.42	32.00
Westlands	2.54	15.80	67.56	40.90	36.00

<sup>a</sup> Federal water delivery per acre.

<sup>b</sup> Total water delivery per acre.

<sup>c</sup> Source: [USDI, 1981], water price where net farm income equals zero using excess land value.

value will be credited to the Reclamation Fund. This approach is appealing from the point of view that selling the land at market value captures the economic rent attributable to the project once and for all, precluding future supervision costs to prohibit speculation. The disadvantage lies with the potential entrant wishing to buy land at the lower appraised excess land value. This new procedure will certainly increase the barriers to entry into farming and thwart one of the objectives of the 1902 Act.

Based on the 1982 Act, the Bureau is required to calculate the full cost of water for all contractors and districts with lands in farms in excess of 960 acres. Table 2 reports three water costs at the farm headgate: the 1978 subsidized rate; the 1978 estimate of full cost published in the Draft EIS; and my estimate of the full cost at the farm headgate using Bureau preliminary data developed with the formula

prescribed in the 1982 Act. The major difference between the estimated full cost calculated for the Draft EIS and the preliminary full cost under the 1982 Act is that unpaid interest prior to the 1982 Act is forgiven. The Draft EIS charged for interest from commencement of the project. The difference between the two costs estimates decrease for the newer projects.

### Prognosis

There used to be a saying around the West that, "If you can't find a loophole in the Reclamation Law, you should find a new lawyer." It is not clear from a reading of both the new law and the proposed rules and regulations just how much latitude there is for landowners and operators to maneuver. I foresee enforcement problems in two areas. First, is under the heading of trusts. For example, lands placed in

trust for a minor child do not count against the entitlement of a trustee who may also be a landowner receiving project water. Second is in the area of the management-service companies that operate as professional managers, except that risk bearing is negotiable. These firms supply all machinery, labor, and other inputs and charge on a custom-rate basis.

Fifteen of the original 18 case study districts used in the EIS are still covered by Reclamation acreage limitations. Seven or almost half of these districts had no farm operations over 960 acres; thus there would be no impact on these districts under the new regulations (Table 3). When Westlands Water District is excluded from the impacted districts, the remaining seven districts report only 83 farms (with 132,258 acres of land) in excess of the 960 acre limit. Keep in mind however, that only 39,000 acres of these lands will be subject to full-cost pricing.

As usual, Westlands becomes a special case. In the 1978 land tenure survey, Westlands reported 133 farms operating a total of 475,111 acres (an average of 3,572 per farm) in excess of the 960 acre limit. About 350,000 acres would be subject to full-cost pricing.

The question to ask our crystal ball is how many of these farms in excess of 960 acres will be willing to pay the full-cost price for irrigation water in order to continue operating? The answer must come in three parts. First, what is the full-cost water rate in those districts reporting farms in excess of the 960 acre limit? Second, will the affected farm operators treat the full-cost price on lands over the limit as the marginal cost of water, or will they simply blend the two water costs and treat it, although irrationally, as a weighted average cost? Third, will the increased costs to large farms allow farms of less than 960 acres to bid away lease holds from these large operations? Table 2 reports the estimated full costs and the subsidized costs for water in those case study districts with

land in farms over 960 acres. These rates can be compared with the estimated maximum ability to pay calculations from the same study and reasonable guesses can be made on the resulting farm size distribution. Only one district (Altus-Lugert in Oklahoma) of the 8 districts with farms in excess of the 960 limit will probably find the full-cost price creating an economic limit to farm size. Farm operators in the remaining seven districts, including Westlands, will probably opt to pay the higher costs.

Westwide, a generalization can be made about the future rate of change in farm sizes. For over 75 years there has been no limit on farm size in Reclamation districts because of unlimited leasing. One would guess that the trend in farm size in these districts will continue to follow the trend for all irrigated farms for the next decade or so, and that the 1982 Reclamation Act will have little or no effect on farm size.

### *Lessons Learned*

PEST activities are analogous to a highly competitive market with firms or a consortia of firms attempting to capture an increased share of that market—a zero sum game.

What did each side gain or lose in this contest? What return did each get for its investment? Whether one starts with the original 1902 Act or from Secretary Andrus' proposed legislation, the large landowner group certainly moved to a higher utility function. The large farm consortium got rid of the residency requirement and the sale by lottery, and the ownership limit was tripled. The large corporate ownership limit was doubled, and most important to one or two very large operators, Corps of Engineers' projects were made exempt. Depending on how clever their attorneys are in finding loopholes (such as nondependent cousins, aunts, or uncles, and trusted employees who can hold land in trusts) the very large opera-

**TABLE 3. Acreage in Farm Operations—15 Case Study Districts, 1978.**

District	State	960 Acres or Less			961-1,280 Acres			1,281-1,920 Acres			1,921 Acres +			Greater Than 960 Acres			
		No.	%	Acres	No.	%	Acres	No.	%	Acres	No.	%	Acres	No.	%	Acres	
Black Canyon	ID	489	100	48,199	—	—	—	—	—	—	—	—	—	—	—	—	
Coachella	CA	269	94	31,838	4	1	3,919	7	8	3	12,256	21	4	1	11,262	19	
East Columbia Basin	WA	481	97	104,000	7	1	8,041	6	6	1	11,694	9	—	—	—	16	
Farwell <sup>a</sup>	NB	286	100	59,438	—	—	—	—	—	—	—	—	—	—	—	13	
Glenn-Colusa	CA	495	96	105,801	11	2	11,570	8	4	1	6,800	5	7	1	16,906	12	
Goleta	CA	92	100	10,565	—	—	—	—	—	—	—	—	—	—	—	—	
Goshan	WY	240	100	47,706	—	—	—	—	—	—	—	—	—	—	—	—	
Grand Valley	CO	151	100	20,651	—	—	—	—	—	—	—	—	—	—	—	—	
Altus-Lugert	OK	145	94	30,084	5	3	4,632	11	4	3	9,208	21	—	—	—	9	
Malta	MT	170	97	31,535	6	3	6,327	17	—	—	—	—	—	—	—	6	
Moon Lake	UT	300	100	58,020	—	—	—	—	—	—	—	—	—	—	—	—	
Oroville-Tonasket	WA	349	100	8,872	—	—	—	—	—	—	—	—	—	—	—	—	
Truckee-Carson	NE	277	99	41,166	5	2	8,209	17	—	—	—	—	—	—	—	5	
Wellton-Mohawk	AZ	164	94	37,129	8	5	8,938	15	4	2	12,496	21	—	—	—	12	
Westlands	CA	168	55	74,806	14	24	27,948	5	44	15	69,044	13	65	22	378,119	69	
TOTAL		4,262		745,278													216
Total acreage affected by full cost price provision														607,369	386,809		

<sup>a</sup> Has one farm in excess of 960 but combined with next size class to avoid disclosure. Source: [USDI, 1981].

tors may or may not be worse off under the limitation on total farm size under the new law. This provision really only affects one water district, Westlands in California, because the other districts with very large farms were exempted either by administrative rule, the new law, or, as in the case of Imperial Irrigation District, the courts.

I think we must judge the gains and losses of the small farm, farm worker group represented by National Land for People in terms of the amount of land available for lease or purchase, and thus, a relative change in raising or lowering the barriers to entry in farming. It appears they are worse off now than they would have been under the sympathetic legislation proposed by Secretary Andrus. They are probably no better nor worse off than they were under the original 1902 Act as it was being enforced by USBR.

What lessons can be learned? Allegorically, I recall the year when hornets built a nest outside our kitchen door. My father advised me that if I felt the necessity to poke a stick into that hornet's nest to do so only if I had a very long stick and was wearing track shoes. Even without this equipment I felt the need to poke that nest. Fleet of foot as I thought I was, those hornets were even swifter. I gained nothing from my adventure except several painful stings and the knowledge that hornets' nests, regardless of how enticing, are better off left alone.

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