

# UC Irvine

## UC Irvine Electronic Theses and Dissertations

### Title

(Un)Natural Law: Environmental Governance in the Owens Valley, California

### Permalink

<https://escholarship.org/uc/item/89v227q1>

### Author

Bertenthal, Alyse

### Publication Date

2018

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA,  
IRVINE

(Un)Natural Law: Environmental Governance in the Owens Valley, California

DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

Alyse Bertenthal

Dissertation Committee:  
Professor Mona Lynch, Chair  
Professor Susan Coutin  
Associate Professor Rachel O'Toole

2018





## **DEDICATION**

To Jay

## TABLE OF CONTENTS

	Page
LIST OF FIGURES	iv
ACKNOWLEDGMENTS	v
CURRICULUM VITAE	viii
ABSTRACT OF THE DISSERTATION	ix
INTRODUCTION: “HERE IT IS, TAKE IT!”	1
I. “There it is, Take it!”: Putting the Owens Valley in Context	9
II. Situating Environmental Governance	15
A. Environmental governance as a socio-political concern	15
B. Governance in law and society scholarship	18
1. Governmentality	19
2. New governance	21
C. A socio-legal approach to environmental governance	23
III. Observing and Making Environments: Research Design and Methods	28
IV. Curious Combinations: Chapter Outline	36
CHAPTER ONE: A TIMELINE OF OWENS VALLEY LEGAL HISTORY	39
CHAPTER TWO: MUNICIPAL POWER AND THE RURAL “NON-PLACE”	47
I. Water + Land = People: LADWP’s Public Relations Campaign	48
A. Defining the public good in Los Angeles	49
B. The power of the non-place	50
C. Utopia is a watering-hole	55
II. An “Invincible Reality”: The Owens Valley People	59
A. Reclaiming relations	59
B. Performing community	64
III. Publics in Place	68
CHAPTER THREE: THE QUEST FOR CONTAINMENT	70
I. From Ownership to Access	74
II. The Land Exchange	78
A. The Owens Valley “Indian Problem”	81
B. “A Sad Picture”: Indian welfare in the Owens Valley	84
C. Competition and collaboration: Allocating responsibility	86
D. Preventing “contamination”: A justification for removal	90
E. The “self-styled” Indian committee: Claiming representation	93
F. The “Giant and the Waterbaby”	96
III. Paiute-Shoshone Indians of the Bishop Community v. City of Los Angeles	98
IV. “Fix the Pipe”	100

CHAPTER FOUR: REGULATORY FUTUROLOGY	105
I. Owens Lake: “A Place That’s Subject to Change in a Great Big Hurry”	108
II. The California Environmental Quality Act	117
A. Existing conditions	120
B. Pasts, presents, and futures	122
C. Legal tenses	124
III. The HWG	126
A. Value acres	132
B. Establishing a baseline	136
IV. A Future-Future for Owens Lake?	143
CHAPTER FIVE: SUMMARY AND CONCLUSIONS	145
BIBLIOGRAPHY	149

## LIST OF FIGURES

		Page
Figure 1	The Los Angeles Aqueduct	2
Figure 2	Survey response cards	4-5
Figure 3	An Owens Valley vista	10
Figure 4	A car parked in the Owens Valley	12
Figure 5	July 4th on Main Street	30
Figure 6	Protests in the Owens Valley	31
Figure 7	On a hike	33
Figure 8	Water gushing from the Aqueduct	41
Figure 9	Photo of Palisades Glacier	52
Figure 10	Jawbone Siphon Section	54
Figure 11	Mules nearing the end of the March	65
Figure 12	Walking Water	67
Figure 13	Owens Lake, 2016	106
Figure 14	Undated photo of Owens Lake	109
Figure 15	Dust storm on Owens Lake	111
Figure 16	Owens Lake “Master Project” brochure	116
Figure 17	LADWP Headquarters in Bishop	128
Figure 18	Experimenting with dust control	133

## ACKNOWLEDGMENTS

This is the section I have most looked forward to writing, for it's a rare opportunity to thank all the people who have offered me support, encouragement, and advice over the many years that this project has unfolded. As it turns out, this is also the hardest section to write, for it is impossible to put into words the gratitude I feel toward all of those who have come with me as I began, endured, and accomplished this project. What follows is an incomplete attempt to acknowledge the many contributions to this dissertation and to me.

Trained first as a lawyer, I chose to pursue sociolegal studies because I believe that we can best understand and implement law through the tools and insights provided by multiple disciplines. In navigating the benefits and challenges of interdisciplinary work, I have been fortunate to find dedicated mentors, including, especially, my dissertation committee. As a teacher and member of my committee, Susan Coutin helped me to understand ethnography as "a way of seeing." I have benefited not only from her teaching and review of my work, but also from the many collaborative initiatives – both formal and informal – that she developed to bring people together to think about and practice ethnographic research. Rachel O'Toole has repeatedly shown the generosity and open-mindedness required for reading and critiquing interdisciplinary work: She helped me to hone my historical research and narrative without requiring that I become a historian. Whether through meetings or emails, Rachel effuses warmth and encouragement, delivering essential guidance along with a sustaining "abrazo." As my graduate adviser and Committee Chair, Mona Lynch has guided me through graduate school: offering me years of support, and creating opportunities to develop my scholarship, collaborate, and pursue new ideas. In ways so subtle that I hardly ever notice, Mona manages to achieve a remarkable equilibrium between allowing independence and providing necessary critique and advice. She serves as a model adviser, as well as a model for creative, insightful, and socially meaningful scholarship.

I have benefited from the support and mentorship of many others outside my dissertation committee. Keith Murphy continued my education in ethnography, and cultivated an enduring appreciation for the tools of linguistic anthropology in uncovering and deciphering meanings in the world. More than that, Keith offered much-needed perspective on the academic enterprise, and helped to calibrate my expectations to ensure that they remain sufficiently, but not impossibly, high. Simon Cole offered interesting research opportunities and encouraged imaginative thinking and writing at times when the tedium of dissertation research and writing threatened to shut down my imagination altogether. Carroll Seron suggested input at the early stages of this project, and encouraged me to always be conscious of how I define and describe law. Catherine Fisk has been both a mentor and adviser on earlier projects, as well as future plans. She once told me that one of the joys of interdisciplinary scholarship is that "it doesn't matter what you do, only that you do it well"; that advice has become a mantra for why I pursue interdisciplinary work, and how I hope to accomplish it in the future. Keramet Reiter – first faculty, then carpool buddy, and now dear friend – provided ample opportunities to brainstorm, vent, and escape.

Close friends and collaborative working groups deflected loneliness and offered encouragement and inspiration. Véronique Fortin, who lives too far away but remains very close, is always a source of comfort and strength; she is an empathetic listener, unfailingly generous in sharing ideas and resources, and continues to inspire me through her commitment to family, friends, work, and communities. Along with Véronique, Sean Mallin and Josh Clark became my conference family – our shared rentals were the locus for both fun and productive conversations – and they remain friends, as well as de facto advisers. Jessica Cooper asks brilliant questions and I benefited from many of those inquiries as I have refined and rewritten my dissertation chapters; she’s also a brilliant friend whose calls, emails, visits, and gifts, entertained and sustained me through fieldwork and beyond. The Ethnography Lab (Josh Clark, Susan Coutin, Véronique Fortin, Justin Perez, and Daina Sanchez) provided an early forum for working out research ideas and approaches, as well the opportunity to reflect on different ways of conducting ethnographic research. The Microsemi/Peterson Fellows (Nate Coben, Jenn Henry, and Sheiba Kaufman) provided a year of intellectual collaboration, and friendship beyond that year; their intellect, insightfulness, and generous reading of my work reaffirms my faith in the value of interdisciplinary partnerships. Cheryl Deutsch, Georgia Hartman, Leah Zani, and Anna Zogas introduced me to the usefulness of writing groups, and offered the opportunity to see what a dissertation might be even when mine was a long way from becoming anything. Emily Brooks and Sayd Randle “sent in the drones” during this last year and I continue to benefit from their close readings, tremendous knowledge about California and the American West, and senses of humor.

I am indebted to all those people in the Owens Valley who welcomed me into their community, and assisted me with this project. The individuals are too numerous to mention here, but there are some to whom I owe a special thanks: Kathy Bancroft was a seemingly inexhaustible source of observations and stories, and was a favorite dinner partner; Bill Helmer kept me hiking and asked hard questions that continue to inspire my research; Kammi Foote connected me with her vast network and engaged and challenged me through many enjoyable conversations and outings; Jon Klusmire and Roberta Harlan provided invaluable assistance at the Eastern California Museum; Nancy Masters and Mary Roper were an unwavering source of support, and made research and life easier by enfolding me into their families and the Independence community; and David and Gayle Woodruff inspired and educated me with their love and knowledge of the Owens Valley, and, together with Hanaupah, were a generous, hospitable, and loving adopted family.

I am grateful for funding received from the American Council for Learned Societies and Andrew W. Mellon Foundation; the John Randolph Haynes and Dora Haynes Foundation; the National Science Foundation Division of Anthropology and Division of Law and Social Sciences; the Center for Law, Society and Culture at UC Irvine; and UC Irvine’s Department of Criminology, Law and Society.

I especially wish to thank my family for all the love and support they have given me over the course of this project, and, of course, extending well beyond it. My parents, Meryl and Bennett Bertenthal, were a source of emotional and intellectual support; my sister, Melissa, patiently endured too many conversations about this research.

I will always appreciate Rona, whose smile was a far better reward than I ever could have devised for meeting my daily writing quota; and the best consolation I could ask for when I failed to do so. She makes life outside of the office a true joy. And, Jay, who first introduced me to the Owens Valley and whose passion for and curiosity about the place inspired my own interest there. This project is just one of the many adventures we have gone on together, and he has endured it with remarkable patience, humor, and adaptability. His response to the challenges presented by this dissertation, as with so many of the projects I pursue, is wholehearted support and a commitment to “make it work.” We did make this work, and the work that resulted is thus dedicated to him.



## CURRICULUM VITAE

### Alyse Bertenthal

- 1998        B.A. in Literature, *with distinction*, Yale University
- 2003        J.D., The University of Chicago
- 2018        Ph.D. in Criminology, Law and Society, University of California, Irvine

## PUBLICATIONS

“Science, Technology, Society, and Law,” *Annual Review of Law and Social Science* (2018)  
(with Simon Cole).

“The ‘Right Paper’: Developing Legal Literacy Through Legal Self-Help.” *Law & Social Inquiry*  
Vol. 42.4: 963-989 (2017).

“Speaking of Justice: Encounters in a Legal Self-Help Clinic.” *PoLAR: Political and Legal Anthropology Review* Vol. 39.2: 261-75

“The Calculus of the Record: Criminal History in the Making of U.S. Federal Sentencing Guidelines.” *Theoretical Criminology* Vol. 20.2: 145-64 (2015) (with Mona Lynch).

“Equal Educational Opportunities: Title IX and Indian Tribal Schools,” *University of Chicago Law Review*, Vol. 69.3: 1271-91 (2003).

## **ABSTRACT OF THE DISSERTATION**

(Un)Natural Law: Environmental Governance in the Owens Valley, California

By

Alyse Bertenthal

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2018

Professor Mona Lynch, Chair

This dissertation examines the emergent forms and techniques of environmental governance as they unfold in the Owens Valley, California. Drawing from ethnographic and historical research, the dissertation asks how law addresses issues of conservation and sustainability, and also how interlocking human and natural communities are to be organized and controlled. Bringing together studies of governance with sociolegal studies, the dissertation goes beyond the boundaries of a single discipline to present a wide array of possibilities for understanding law's conceptualization, interpretation, and practice. Three substantive chapters trace the confluence of environmental law, environmental conflict, and the environment-centered perspectives, practices, and promises prevalent in everyday life. Examining the interstices and intersections between these reveals the ways in which law shapes not only the processes and power of regulation, but also the very subject of that regulation: the environment itself. By uncovering those processes, this dissertation challenges the pervasive idea that governance over the environment can be disentangled from governance over people and things. The dissertation thus offers new insights into doctrinal and policy disputes in environmental law and proposes a

significant alternative to the hyper-technical, formalistic, and economic approaches that dominate the study of environmental regulation.

## INTRODUCTION: “HERE, TAKE IT”

“Here, take it,” Warren Allsup said, as he thrust a cardboard box in my hands. We were sitting in his living room, which occupied much of the first floor of a large house situated on the corner of a residential street in Bishop. The sun was already dipping behind the Sierra Nevada Mountains, and the room had a dusky glow even though it was only 3pm. Allsup was a former County Supervisor in California’s County of Inyo, where the City of Bishop was located, and he had just been telling me about the contentious history of the Inyo/LA Water Agreement.

More than 100 years ago, the City of Los Angeles completed an aqueduct, which stretched 233 miles from the Owens Valley to L.A. Widely recognized as “an engineering marvel” (e.g., Wheeler, 2002), the Aqueduct was derided as a destructor and hailed as a savior, as reflected in these dueling headlines, published soon after construction began: “Los Angeles Plots Destruction, Would Take Owens River, Lay Lands Waste, Ruin People, Homes, and Communities” (*Inyo County Register*, Aug. 5, 1905); “Titanic Project to Give City a River” (*Los Angeles Daily Times*, July 29, 1905). LA’s aqueduct has a capacity of 480 cubic feet per second, and over the past hundred years, it has channeled billions of gallons of water to Los Angeles every year, at times making up more than 80 percent of the city’s municipal water supply (Thomas, 1930). In 1970, Los Angeles completed and began operating a second aqueduct, with a capacity of 300 cubic feet per second (Erie and Joassart-Marcelli, 1999). The Valley’s rivers, lakes, and reservoirs had insufficient water to supply both aqueducts, and the City began pumping groundwater to supplement the flows.



*The Los Angeles Aqueduct.*

In 1972, Inyo County filed a lawsuit against the City, aiming to shut down the second aqueduct and related pumping operations. The litigation dragged on for more than a decade. In 1980, Inyo County voters passed a groundwater ordinance to manage groundwater pumping in the Valley. Los Angeles sued the County, and a court enjoined enforcement of the ordinance in 1981. In 1983, Los Angeles and Inyo County began negotiating a groundwater management plan, which would presumably offer a compromise between supplying the water that Los Angeles wanted and maintaining water levels in the Valley's aquifers.

This is the Water Agreement that Allsup described to me, as I sat on his couch more than thirty years after the fact. It took a very long time to negotiate the agreement, Allsup told me, and it was presented to the Inyo County Board of Supervisors for approval in 1990, soon after he

had been elected County Supervisor. Allsup had wanted approval of the agreement to be subject to a county-wide vote; the other four Supervisors rejected his proposal. In 1991, a few weeks before the Board of Supervisors would vote on the Agreement, Allsup sent a letter to his constituents. Allsup wrote that he had spent a lot of time studying the Agreement and Environmental Impact Report that preceded it, and he was in favor of signing the Agreement: “As a game warden, I spent 20 years protecting the wildlife and environment of the Owens Valley and I believe this Agreement will restore and protect this valley we love.” Allsup also noted in his letter that some people opposed the Agreement and would like to return to court to appeal a decision regarding the Inyo County Groundwater Ordinance, but he thought that such action would be foolhardy:

DWP took this ordinance to court because it violated their water rights. DWP won the case. Since Inyo County lost, it is my belief that we would not stand to a good chance to win an appeal.... If we lost an appeal, DWP could pump all the water they needed without worrying about the environment.

Regardless of his personal beliefs, Allsup remained committed to the idea that the people should have final say on this matter that affected them, and that would affect their families for generations to come. He enclosed with his letter a self-stamped postcard, and asked his constituents to return that postcard with their vote. He promised that “whatever decision is made by the citizens of the 1st Supervisorial District will determine how I vote on the Water Agreement Oct. 15, 1991.”

He received hundreds of responses, and these postcards filled the small cardboard box he handed to me. As the following exemplars indicate, Allsup’s experiment with direct democracy produced drastically different reactions, including those who rejected his efforts altogether:<sup>1</sup>

---

<sup>1</sup> These cards are reproduced exactly, with exception of the fourth card. On that card, I covered part of the signature line to preserve the writer’s anonymity.

## WATER AGREEMENT SURVEY

YES

NO

Comments:

MY VOTE IS AS ~~VAGUE~~ <sup>VAGUE</sup> AS  
<sub>(OOPS)</sub>  
THE WATER AGREEMENT! THE  
AGREEMENT IS A PIECE OF  
SHIT, BUT ITS THE ONLY  
PIECE OF SHIT WE HAVE.

Initials only

De

303

## WATER AGREEMENT SURVEY

YES

NO

Comments:

NO MORE INTEGRATION  
PLEASE

Initials only

DR

490

### WATER AGREEMENT SURVEY

YES

NO

Comments: <sup>FOR</sup> FIGHT LOS ANGELES TAKING OWEN'S VALLEY WATER. THE VALLEY IS DYING FROM OWEN'S LAKE UP TO BISHOP. GO TO HIGHEST COURT AND 1990 ENVIRONMENTALIST FEELINGS WILL PREVAIL AND END L.A. KILLING OF OWEN'S VALLEY. LET VALLEY PEOPLE VOTE, IT HASN'T BEEN ALLOWED TO HAPPENED FROM 1ST DAY L.A. DECIDE TO TAKE OUR WATER.

*Initials only*  
1581

### WATER AGREEMENT SURVEY

YES

NO

Comments: It's amazing to me that the supervisors always turn a deaf ear to the people that are "old-timers" to this valley. You've been sold a "bill of goods" and it will, no doubt, put your names down in history. But, you may end up disappointed in what "history" eventually says about you! Does it ever bother you that both the DWP and the "old-timers" are laughing at you?

1277

*Ma* *Initials only*



Talking to me about this process, Allsup confessed his amazement that so many people took the time to respond to his solicitation. Reading these cards decades later, I, too, am amazed; though more by the content of the cards than by the fact they were written at all. It's not hard to imagine these notes reconfigured as micro-blogs and tweets: raw emotion and powerful argumentation enumerated in a few lines of text. Even more striking than the form of these comments, however, are the sentiments that shape them: expressions of fear, anger, mistrust, rebellion, resignation, and uncertainty dominate the notes. We can read these emotions as indicators not only of individual passions surrounding the issues of the second aqueduct and the right to vote on it, but also as "aspect[s] of cultural meaning" (Lutz and White, 1986:408), providing a glimpse into larger questions about how decisions are made with respect to the environment, and how interventions and restrictions transform environment-related incentives, knowledge, institutions, and behavior.

I refer to these processes and effects as governance (see Lemos and Agrawal 2006). Although scholars have examined governance practices in relation to a range of environmental issues and conflicts, few have looked closely at the particular role of law in environmental governance. By examining the sometimes hidden role of law in environmental conflict and policy, I aim to put studies of environmental law and policy in closer dialogue with law and society studies, and also to complicate the Anthropocene narrative that has taken hold in both popular and academic imaginaries. That narrative tells us that humans have exerted a growing influence on the environment, drastically reshaping Earth's geology, biodiversity, and overall systems. There exist many accounts of the drivers, as well as implications, of such actions; yet law largely has been neglected. In those instances where law has been discussed, it has been suggested that it functions solely as a corrective, tackling externalities such as pollution, rather

than as a contributor to the transactions and processes that have given rise to the environment we see and know today.

Academics – as well as the policymakers, scientists, and stakeholders caught up in struggles over the environment – are interested in the law and how it operates, the technical details of interpretations of relevant rules and regulations proscribing potential action. They may also be interested in what these instruments reveal about legal structures and norms, such as the proper allocation of authority between courts and legislatures or how specific instruments put those rules into effect. While these applications matter a great deal, they do little to explain the existence and persistence, of environmental conflicts; and fail to explain how law shapes the ways in which such conflicts are defined and resolved. Regulators do not simply encounter the environment fully formed, waiting to be classified, managed, and administered. Regulation, in other words, does not merely implicate the world and things around us; it actively constitutes that which we call the environment. The environment – and nature, too – is as much a legal category as it is a scientific or cultural one.

Legal technologies (such as jurisdiction, sovereignty, property) and legal forms (such as public utilities, stakeholder interest groups, and statutory guidelines) all have a role to play in the development of the environment (Viñuales, 2016). Indeed, this study's examination of environmental governance reveals the ways in which law shapes not only the processes and power of regulation, but also the very subject of that regulation: the environment itself. This study sets environmental governance in plain view, and offers an account of the environment as something forged through legal and administrative practice. To uncover those processes is to confront law's own tendency to authorize the environment as something pre-given and distinct;

to challenge, in short, the pervasive idea that governance over the environment can be disentangled from governance over people and things.

The title of this dissertation, “(Un)Natural Law” deliberately reflects the ambiguous, and often shifting, power of law in relation to the environment. Determining what is “natural” or “unnatural” underlies much of environmental policy; so, too, it drives governance over the environment. Yet it is precisely owing to law that the slippage between these categories becomes so fluid, rendering illusory the idea that distinct differences between nature and culture, social and environmental controls, can be asserted and maintained. Recurring themes of exclusion and inclusion, injustice and legal responsibility, fear of despoliation – even extermination – mark, in different ways, the very public debates about environmental governance, both within the Owens Valley, and at a regional level. I have examined these themes through both individual stories and in terms of patterns of environmental governance over time. The chapters of this dissertation are united by a concern with how the events, histories, and practices described therein explicitly and implicitly raise issues of law, governance, and the environment. This convergence of interests is especially marked in a region of the country that has one of the most well-known and enduring conflicts over water, during a time when the specter of persistent drought, rationed resources, and polarizing politics has become increasingly solidified. For that very reason, stories told about and within the Owens Valley provide a focus for examining more pervasive anxiety about environmental ruin, and the perceived legal relations (or lack thereof) between nature and culture.

Beyond exploring the specifics of the Owens Valley conflicts, the following chapters lay out a handful of related theoretical questions that will be explored along the way: How do people and things vie for recognition and responsibility in governance over the environment? Who

counts as the “public” and what gets defined as the “public interest” in these matters? How are governments asserting control over the process, and with what effects? Where, and how, does law show up in environmental conflicts, and does it operate differently here than in other kinds of disputes? How are legal claims used in conjunction with economic, scientific, or moral claims? What are the social conditions in which legal rules and regulations can actually influence action?

Before pursuing these questions, a fuller discussion of the context and theoretical and methodological framings of this study will be necessary. In what follows, I provide a brief overview of the Owens Valley and its significance as a case study. I elaborate on the existing social scientific literature on environmental governance, and specify my theoretical and substantive contributions to the study of environmental conflict and environmental governance. I then offer an overview of my study design and research methods, and conclude with an outline of my narrative approach and the chapters that comprise this dissertation.

## **I. “There It Is, Take It!”: Putting the Owens Valley in Context**

Although the processes I examine are not unique to the Owens Valley, that locale provides an especially rich field for understanding the dynamism and complexity of environmental governance. The Valley is located in Inyo County, which is the second largest county in California in terms of land mass and the second smallest in terms of total population. Wedged between the Sierra Nevada Mountains to the West and the White and Inyo Mountains to the East, the Valley extends more than 100 miles north to south. Most of Inyo County’s population lives in the Valley, clustered in small towns and cities – Lone Pine (pop. 2,035), Independence (pop. 669), Big Pine (pop. 1,756), and Bishop (pop. 3,879) – or on one of the five

federal Indian Reservations.<sup>2</sup> Along with descendants of Native Americans and settlers are scores of new arrivals: full or part-time retirees and vacation homeowners; a revolving cast of engineers, scientists, and surveyors working on various projects; federal employees who staff visitor centers and patrol federal lands; and thousands of tourists streaming through to hike, climb, ski, bike, drive, shop, and eat.



*An Owens Valley vista, 2016.*

It is difficult to describe the Valley’s landscape – the miles of desert sagebrush beneath snow-capped peaks; the gurgling brooks lined with cottonwood trees; the palette of desert colors reflected under a shifting sun – without lapsing into overwrought descriptions or cliché. “Bold,” “awesome,” and “majestic” are the adjectives most frequently used to describe this picturesque

---

<sup>2</sup> Population statistics provided by Suburban Stats based on data from the United States Census Bureau for the years 2010-2015, available online <https://suburbanstats.org/population/california/how-many-people-live-in-lone-pine>.

part of the County: a place that captivates residents and visitors alike, casting – as one local author put it – “a spell of the land over all the men who had in any degree given themselves to it.” (Austin, 1932:270).

The Valley’s opposition to the Los Angeles Aqueduct spawned a series of events referred to as California’s “little civil war” (Kahrl, 1983). There have been extended battles over water and also a wide range of conflicts occasioned by exploration and settlement, the massacre and dispossession of Native Americans, fitful attempts to establish local government and jumpstart the economy, mining claims and strikes, the Japanese internment at Manzanar, federal land management, and environmental claims-making and litigation implicating a variety of lands and resources. For residents, the remarkable landscape is not just a setting for the relationships, conflicts, and compromises that compromise daily life; that landscape also serves a performance of life, a visible archive of significant events and identities (Ewan, 2000).

Reading this “archive” offers a case study of so-called American imperialism at work, and brings to the fore an ideology of occupation and dispossession that forces us to confront a specificity of power not often explored in the context of non-indigenous relations in the First World. This ideology is noteworthy not so much for its explanatory potential as for its communicative power: despite significant disconnects with the more familiar colonial narrative, it has emerged in the Owens Valley as an important means for building coherence into immediate experiences of people, places, and things; and, also, as a force in shaping those experiences. Although this narrative appears in a variety of forms, the storyline coheres to a surprising degree, with a basic plot that goes something like this: The big city took what it wanted and left the Owens Valley in the dust – an ecological and cultural desert.



*A car parked in the Owens Valley, 2016.*

The narrative of colonization has taken on almost mythical status, with the Owens Valley often referenced as a potent symbol for both advocates and opponents of resource development in the United States, and held up again and again as exemplary of the politics of resource reallocation and the difficulties faced by resource markets in America (Kahrl, 1983; Libecap, 2007; Madrigal, 2014). Indeed, the Owens Valley has been torn asunder by territorial conflicts – “raped,” as some narrators have put it, by governments and corporations whose attitude toward the resource-rich region was famously captured in a 1913 speech by LADWP’s Supervisor, William Mulholland: “There it is, take it” (Mulholland, 2000:246).

This narrative of taking has several parts. There were the takings that happened in the mid-1800s, when settlers moved into California, displacing the Native Americans who lived there, and fundamentally altering the Owens Valley landscape. Alan Bacock, a member of the Big Pine Tribe and Water Program Coordinator for the tribe, offered this description of those momentous shifts:

There was a vast water resource in the Sierra Nevada mountains; the runoff came down and my people were able to use that water for their benefit. Then in the 1860s settlers from other areas started coming in and saw the potential in the valley for ranching and other things. They built fences and owned the land; that really changed the valley, at least from my ancestors’ perspective, who had no ownership of land or water. As people came into the valley, they didn’t see fences or ownership so they didn’t think land was being used to its full potential.



The canals my ancestors built began to be used for delivering water for ranching purposes. That was the start of water being stolen (quoted in Stringfellow, 2014).

Later, the City of Los Angeles came, and, as Bacoock suggested, “saw the same thing the ranchers saw: an abundance of water they could use.” They figured out who owned water rights in the Valley and, in 1905, began purchasing land, posing as ranchers, farmers, and, in some cases, federal government officials. Because in California, water rights are appurtenant to the land, Los Angeles soon owned much of the water in the Valley, and once construction of the first aqueduct was completed, engineers began sending billions of gallons of water down the aqueduct to the City.

“The Owens Valley story has something for everyone,” observed William Kahrl, the historian whose book *Water and Power* (1982) remains the iconic history of the Los Angeles Aqueduct:

Who do you dislike? Big government, rich people, media, environmentalists, people who don't like environmentalists? All of these are part of the story, and all of them are related to issues that are really fundamental to the way we organize ourselves as a society. And no matter which side you take on those issues, there's something substantive here for you to chew on (quoted in Stringfellow, 2014).

I do not dwell on the part of the story involving the Aqueduct, for there exist already many excellent studies of the subject and its continued influence on California and national water policy (see e.g., Chalfant, 1922; Nadeau, 1950; Ostrom, 1953; Kahrl, 1982; Hoffman, 1981; Walton, 1992; Davis, 1994; Mulholland, 2002; Piper, 2006; for a comprehensive bibliography, see Lehrman, 2012). What I want to highlight now is the import of that history to the story of environmental governance I'm trying to tell here. First, it shaped the Valley's particular orientation to environmental conflict, for it immediately defined the struggle “not on what constituted a resource, but rather on who controlled it and how best to use it” (Cassuto, 2001:37). “It's called the Department of Water and *Power*,” was a joke that I heard many times in the



Owens Valley, as residents poked fun at the dynamics of power and subjugation they saw in the interactions between LADWP and Valley residents.

Second, and relatedly, the Aqueduct history has become a touchstone for contemporary environmental conflicts in the Valley, generating not simply a past, but, as Michel-Rolph Trouillot (1995:15) puts it, a “position” from which to view the present. Perspectives on present, and even future, environmental governance, are indelibly tainted by what has come before. “LA always says is cheaper for us to go to court than to give up water,” Harry Williams, a member of the Bishop Paiute-Shoshone Tribe said, by way of explaining why he didn’t want to negotiate with the city. “That’s the culture in Los Angeles... They call themselves the City of Angels. I guess that’s a lie; you might as well just change it. Los Diablos is what I call them. It’s fitting.”

The palpable presence of the Aqueduct story in every public meeting and private conference convened to discuss allocation and management of land and resources summons that history, co-opting it as a means of influencing and transforming decision-making. For some, any negotiation with Los Angeles is a non-starter because they believe the city has no claim on resources in the first place; for others, Los Angeles is an undeniable reality, but one which can never be trusted and must be restrained in all possible ways; for still others, the hope is to create a society in which no future aqueducts can survive. “Remember the Aqueduct!” thus resonates with a force comparable to the saying, “Remember the Alamo!” It also, as one resident told me, “makes it feel like we’re living Groundhog Day”; meaning that, like the weatherman in the 1993 film classic by that same name, she felt as though she were caught in a time loop, repeating the same events over and over.

The history of the Owens Valley, of course, continues to be written, as stakeholders and policymakers spar not only over surface water and groundwater, but also proposed solar and

wind farms, development of vehicle trails through national forests, and pollution mitigation. I explore the trajectories of some of these disputes in greater detail in subsequent chapters. I mention them here, however, to show that the resource disputes in the Owens Valley did not begin and end with the Aqueduct. Nonetheless, that story has exerted an outsize influence on all that comes after it – including, even, interpretations of what came before it. The legacy of that story is significant, too, because in attempting to resolve the issues related to the Aqueduct, the Owens Valley pursued several legal paths and adopted a variety of legal instruments. These provide a structure for contemporary environmental disputes. To extend the positionality metaphor: these past legal constructs provide a scaffold upon which we – and especially those living in the Owens Valley – will perch to view the present. Detailing this legal history deserves many more pages than I can dedicate here. Instead, in Chapter Two, I provide a timeline, which summarizes the key events, and pertinent legal actions and agreements.

## **II. Situating Environmental Governance**

This section introduces the concept of environmental governance, situating it in the relevant literatures. As I elaborate below, sociolegal scholars have paid relatively little attention to the issue of the environment, focusing most of their attention on the problems presented by the intersection of legal and social worlds. This dissertation helps to bridge the perceived divide between social and environmental worlds, bringing together the study of law, society, and the environment. First, however, it's necessary to clarify what I mean by environmental governance.

### *A. Environmental governance as a socio-political concern*

Mirroring shifts within the political and social sciences more broadly, governance has become one of the key themes in the study of environmental politics (Bulkeley and Mol, 2003:877). As an organizing framework, environmental governance engages with the set of

regulatory processes, mechanisms and organizations through which institutions and actors influence environmental actions and outcomes (Lemos and Agrawal, 2006). Studies of environmental governance focus on the definition of issues, the formation of policies to mitigate undesirable consequences, and the recruitment and organization of stakeholders (Bulkeley and Mol, 2003). While governance theory traditionally has been “concerned with the steering actions of political figures as they deliberately attempt to shape socio-economic structures and processes” (Mayntz, 2003), a growing body of work on governance in general, and environmental governance in particular, indicates a more expansive understanding of the concept (Stoker, 1998) as a signifier of “a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed” (Rhodes, 1996:652-53). Understood in this broader sense, environmental governance is pluralistic, evolutionary, relational, and situational; it does not rest solely on the actions and effects of political institutions and actors. Instead, it points to the creation of both a structure and a practice established by a network of institutions and actors within, and also beyond, government (Stoker, 1998:18).

A telling example of an environmental governance study along these lines is Arun Agrawal’s (2005) research into how environmental practices and identities took hold and changed form in the northern India state of Kumoan. To better understand changes in conservation efforts, Agrawal draws from historical research and also ethnographic research among nearly forty villages in the Kumoan region. Relying on Foucault’s ideas about government and subject formation, Agrawal argues that changes in the form of state governance – most notably, the decentralization of the state and the devolution of governing power to localities – have significant impact on perceptions of the environment and on individual and

communal motivations to protect environmental resources, such as forests. Agrawal examined the process of creating environmental subjects – that is, how people come to define themselves in relation to the environment and apply technologies in furtherance of that environment – and suggested that the process of environmental subject formation is crucially linked to participation and practice (Agrawal et al., 2005). By tracing the practices and processes that undergird particular approaches to the environment, Agrawal (2005:230) makes a powerful case that governing the environment is “closely tied to the government of humans,” and that we achieve considerable insight into environmental governance by moving beyond questions of politics to better understand the connections among power, knowledges, institutions, and subjectivities.

Most scholarship on environmental governance reflects similar concern with the themes of power and the technologies of government. This is especially apparent in the strand of research known as political ecology, which examines how environmental knowledges, images, and representations are distributed and enacted within local communities to fuel different ways of managing and changing the environment (Peet and Watts, 2004). Some scholars, however, write explicitly against this, embracing theories of contra-governmentality (Luke, 1996), to elucidate how the complexities of cultural difference and intercultural encounter, as well as individual and collective agency propel environmental governance beyond the dichotomy of power and subjectivity (Cepek, 2011, Macnaghten, 2003). In his study of environmental conservation in Amazonia Ecuador, Michael Cepek (2011) takes issue with the Foucauldian framework that dominates studies of environmental governance. He draws from more than ten years of ethnographic research within a community in northeastern Ecuador and with scientists and administrators of a NGO that focuses specifically on conservation efforts in South American Amazonian regions. He suggests that environmental subjectivities are not always – and not even

primarily – the result of governmental projects. Instead, approaches to science and conservation emerge out of a community’s “sociocultural subtleties of discourse, practices, and politics” (512). Cepek cautions against an analysis that focuses primarily on governmental rationalities, rather than internal community logics and needs, suggesting that privileging government over culture commits both intellectual and ethical errors by depriving the people we study of significant agency. Further, to achieve such understanding, Cepek champions “immersed and open-minded ethnography” as “essential” to investigation of people’s understandings and relations to the environment (512).

In the following section, I explore how law and society studies engage with governance, as well as how those studies incorporate the critiques cited by scholars such as Luke and Cepek.

#### *B. Governance in law and society scholarship*

“What is law?” asks the legal philosopher H.L.A. Hart (2012 [1961]) by way of introduction to his influential treatise, *The Concept of Law*. Of course, this question is central in law and society scholarship, too. For decades, scholars have struggled to give shape to their subject of study, while avoiding the pitfalls of an overly narrow or overly broad definition. Law has been variously defined as, among other things: a “semi-autonomous social field” (Moore, 1973); an “autopoietic system” (Teubner, 1993); “social control [backed by] the force of politically organized society” (Radcliffe-Brown, 1935); the “union of primary and secondary rules” (Hart, 2012 [1961]); a “language” (Mertz, 2007); a “delicately knitted lace” (Latour, 2010); and a “white dog” (Dayan, 2011). Regardless of the specific definition, Hart explains, law must be understood through another question: “How do law and legal obligation differ from, and how are they related to, orders backed by threats?” (7). By defining law as a question within

a question, Hart reminds us, law bears a complex, not readily reducible, relationship to the practice of governance and to the power that propels government.

Law and society scholarship is directed, in no small part, to uncovering and analyzing these relationships. Such concern manifests in studies of disputing, legal mobilization and social movements, organizations and institutions, and crime and punishment. In this section, I provide a brief overview of studies of governance within law and society scholarship. My aim here is not to provide a comprehensive account of such work, but, rather, to offer to the reader a general sketch of the contours of that work, with particular attention to the theories that inform it: governmentality and new governance. Such descriptions will allow the reader to form a picture of existing work, and thus also to see more clearly how bringing in the environment adds depth and contrast to that picture. As will soon become clear, law and society scholars have not devoted much attention to the study of environmental governance. As the intersections between law and society and the environment unfold throughout this dissertation, I hope also to flesh out a socio-legal approach to environmental governance: one that builds on and expands existing law and society work on governance.

### 1. *Governmentality*

The focus on the social power of law appears most explicitly in work that examines techniques of power and knowledge within legal and social systems; in particular, in an expanding body of scholarship that has imported Michel Foucault's concept of governmentality into sociolegal explorations of social control and state regulation (Rose et al., 2006).

Governmentality, according to Foucault in a 1978 lecture, is a *mélange* of "the institutions, procedures, analyses and reflections, the calculations and tactics, that allow the exercise of this very specific albeit complex form of power..." (Foucault 1979, 20). Or, as he put it in a later

summary of that lecture, governmentality should be “understood in the broad sense of techniques and procedures for directing human behavior. Government of children, government of souls and consciences, government of a household, of a state, or of oneself” (Foucault 1997).

As in governance studies more broadly, “specters” of Foucault haunt law and society scholarship, especially in discussions of social control and state regulation, and in the increasingly fashionable law and geography and law and space literatures (Valverde, 2010:47). Sociolegal scholars have applied Foucault’s governmentality framework to a wide range of empirical and theoretical work, including: studies of insurance and actuarial practices (Garland, 1997), ruminations on risk and risk-management practices (O’Malley, 1996), and studies of crime and punishment (Harcourt, 2011).

Mariana Valverde deserves much credit for bringing governmentality studies into the law and society field. She has accomplished this through numerous review essays and articles, which import clear, concise explanations of Foucault’s work to suggest ways it might benefit sociolegal studies of modern states and governance regimes (Rose et al., 2006, Rose and Valverde, 1998, Valverde, 2007, Valverde, 2009, Valverde, 2010). In much of this work, Valverde urges – both implicitly and explicitly – sociolegal scholars to reorient their research from studies of law’s effects to more thorough analysis of law’s techniques. By techniques, she means the modes and rationalities through which law operates, including, for example, by sorting people and things between jurisdictions. In her article, “Jurisdiction and Scale,” Valverde (2009) focuses on the legal mechanism of jurisdiction as a particularly fruitful tool for understanding governance. Jurisdiction, she argues, does more than organize “the where and who of governance. Jurisdiction also differentiates and organizes the ‘what’ of governance – and, most importantly because of its relative invisibility, the ‘how’ of governance (144). By urging a conceptualization

of jurisdiction as the “governance of legal governance” (145), Valverde points to not only the need to consider governance on a meta-level, but also the necessity of attending to the “how” of governance, as much as, or even more than, the who and what of governance.

## 2. *New governance*

In addition to the Foucauldian-inspired work on governmentality, another strain of scholarship finds inspiration in the new governance theory. Broadly speaking, “new governance” refers to a model of “governing without government” (Rhodes, 1996); that is, where private actors and organizations take on much of the work of regulation, whether through self-regulation or private law, such as contracts, internal grievance procedures, or institutional standards. In their article examining law and new governance in the European Union, Joanne Scott and David Trubek (Scott and Trubek, 2002:5-6) outline the following characteristics of new governance: participation and power sharing, multi-level integration, diversity and decentralization, deliberation, flexibility and revisability, and experimentation and knowledge creation. In other words, the new governance label captures a practice in which stakeholders and citizens take on the regulatory work previously performed by the state.

Understood as a form of regulation, new governance focuses especially on the ways that government and the private sector can successfully operate together, and marks a distinct departure from traditional command-and-control regulation whereby the government alone imposes and enforces law on private actors (Lobel, 2012). While some forms of new governance describe situations where the state is removed entirely, most models of new governance acknowledge the state’s continuing role in governing. The governance is “new,” however, because it fundamentally alters the role that the state plays in regulating people and things. As David Levi-Faur (Levi-Faur, 2012:3) explains, new governance results in



a hybridization of the modes of control that allow the production of fragmented and multidimensional order *within* the state, *by* the state, *without* the state, and *beyond* the state. The plurality of the modes of control reflect and reshape new ways of making politics, new understandings of institutions of the state and beyond the state and allow us to explore new ways for the control of risks, empowering citizens and promoting new and experimentalist forms of democratic decision-making.

Within legal scholarship, new governance studies comprise a “vast, complex, rapidly growing, and exciting literature” (Karkkainen, 2004:497). The interest in new governance has taken hold as part of a larger movement urging a re-thinking of governmental approaches to public problems. At the “heart of this revolution” is not only a re-thinking of the forms of government, but also a reconsideration of the tools and instruments used by governments, including, especially, law (Salamon, 2000:1612). Scholars import new governance theory to examine, among other things, securities regulation (Ford, 2010), changes in EU governing structures (Hix, 1998), the evolving roles of local government (Shah and Shah, 2009), and workplace safety (Lobel, 2005).

While recognizing new governance theory as both useful and popular, legal scholar Bradley Karkkainen (2004) argues that a variation of new governance must be applied in contexts where ecosystems are the subjects of regulation. This is because, unlike the individual or community resources that preoccupy most legal scholars of regulation, ecosystems vary greatly in terms of scale, dynamism, and the capacity for learning through adaptation. Karkkainen proposes instead a “collaborative ecosystem governance model,” which “explicitly grapples with questions of scale and complexity in ecosystem management, emphasizing locally (or regionally) tailored solutions within broader structures of public accountability, and recognizing the need for experimentation and dynamic adjustment in response to new learning” (3).

Empirical and socio-legal studies of new governance models remain remarkably sparse. Some scholars have imported ideas of new governance into explorations of law and governance, most recently in studies of regulation (D. Trubek and Zeitlin, 2003; L. Trubek et al., 2008) and in implementation of rule and law in the European Union (De Burca, 2003; D. Trubek and L. Trubek, 2005). Yet governance theory and research have yet to take hold in sociolegal scholarship; to the extent such ideas have been adopted, we might find them primarily in studies in the European context. Although new governance theory remains undeveloped, the explorations of new governance theory holds promise for law and society scholars because – by emphasizing the application of “law in a way that is sensitive to the particular context and nature of a social problem” (Lobel, 2004:501) – it echoes the very themes of law-in-action and law-in-social-context that drive much of the law and society scholarship.

*C. A socio-legal approach to environmental governance*

Despite the wide-ranging interest in the relationships between law and governance, the law and society field has little to say about environmental governance, or, indeed, about the environment at all. More than two decades ago, the legal scholar, Bridget Hutter edited a collection of essays assembled under the title *A Reader in Environmental Law* (1999). Although many similar readers, operating under similarly general, titles exist, Hutter’s collection stands alone as the only collection of legal scholarship that takes a “distinctively socio-legal focus” to environmental law. By “socio-legal,” Hutter clarifies, she means “law in context, most especially law in context” (3). This approach to environmental law, she notes, has grown along with a “‘greening’ of academic interest” in general. However, “noticeable and large gaps” exist (37). Hutter identifies several such gaps: in historical work, in the use of environmental law in civil cases, in international contexts, and in the mechanisms of policy-making. In particular, she

asserts, “we lack the rich ethnographic accounts and analysis [of policy-making efforts] that have taught us so much about the enforcement of environmental law” (37).

Not much has changed since Hutter’s review of socio-legal interest in environmental law and policy. In one recent survey, Fisher et al. (2009) comment that, “it can be seen that there is relatively little environmental law scholarship published in law journals with a national or socio-legal focus.” Even outside of the environmental law field, there is little intersection between law and society and the environment. In the Law & Society Association’s flagship publication, *The Law & Society Review*, the word “environment” appears in the title of fewer than a dozen articles and book reviews. Most of these do not even deal with the environment as subject matter; instead, they examine such issues as legal mobilization among environmental groups (Vanhala, 2012), and the effects of voluntary environmental standards on corporate behavior and environmental commitment (Perez et al., 2009). Some of these articles address themes of governance, in the sense that they evaluate environmental regulatory rules and practices, mostly in the international context. Kagan et al. (2003), for example, study environmental performance in 14 pulp and paper manufacturing mills in Australia, New Zealand, British Columbia, and the states of Washington and Georgia in the United States. They conclude that regulation matters in shaping corporate environmental performance, but may be less influential than social and economic pressures in shaping behaviors that go “beyond compliance.” Berliner and Prakesh (2013) examine the importance of national regulatory structures on corporations adoption and influence of voluntary environmental standards. They find that voluntary compliance with environmental standards is more likely, and more likely to be effective, in countries that have strong regulatory governance structures. For the most part, scholars primarily remain focused on a subset of environmental actors: corporations. Feldman and Perez (2009), however, examine

the effects of regulatory incentives on individual motivations to recycle. Their findings suggest both the capacity of private organizations to act as sources of governance and that there may be value in implementing differentiated regulation strategies at the municipal level.

To be sure, the “environment” is a broad term, encompassing many ideas about human-nature relations, land use, resource regulation, sustainability and resilience, among other topics. There exist some articles that do not explicitly mention the environment but still deal with topics that might broadly be considered “environmental.” For example, Carmela Murdocca’s (2010) article, “‘There’s Something in that Water’: Race, Nationalism, and Legal Violence,” examines the way water contamination in an Canadian aboriginal community was handled by state and federal governments. Her critique of the water crisis serves indirectly as commentary on resource management and environmental justice. Nonetheless, a review of abstracts of articles from the last decade of *Law & Society Review*, as well as comparable journals, such as *Law & Social Inquiry*, supports the conclusion that sociolegal scholars have not accorded the environment – or various permutations of environmental conflict and regulation – much attention or analysis.

A close reading of the few articles that do consider the environment – however tangentially – shed some light on the prevailing sociolegal approach to environmental issues and environmental regulation. Despite Hutter’s call for more history and ethnography in sociolegal studies of the environment, surveys and experiments dominate the data-collection toolkits; quantitative analysis provides the basis for most of the conclusions. Second, concerns about motivation and compliance – primarily on the level of organizations – drive much of the inquiry. Individual values, interests, and perceptions of the environment – and law’s role in shaping or altering these – remains largely unexplored in sociolegal scholarship. Third, when asking about

the effects and influence of regulation on environmental behaviors, scholars seem primarily concerned with identifying and explaining gaps between rules and actions; questions about how those rules interact with social behaviors, or even how such rules might shape interpretations of human-nature interactions, have yet to be explored in most sociolegal scholarship.

Interest in the intersections between law, society, and the environment may be increasing. In 2017, Bergin and Orlando (2017) edited a collection of essays entitled *Forging a Socio-Legal Approach to Environmental Harms*. The book brings together legal and social science scholars to consider causes, effects, and possible remedies for environmental crime. This interdisciplinary approach, Bergin and Orlando urge, can offer insight into the drivers of environmental crimes, as well as into the legislative frameworks that have allowed environmental criminality to expand so widely. While the collection focuses specifically on environmental crime, the editors suggest that exploring the legal and social scientific conceptualizations of environmental harms promises a “launching point” for greater exploration of socio-legal approaches to environmental issues.

*The Mekong: A Socio-Legal Approach to River Basin Development* (Boer et al. 2016) offers one such approach. Published in 2016, the book is a product of an interdisciplinary collaboration between professors of geography and professors of law. The subject of the book is the development of the Mekong river basin, which spans the countries of Thailand, Laos, Cambodia, and Vietnam, and which, as the book’s authors’ note, has been the subject of much scholarship, including historical, political, and ecological analyses of the basin. Boer et al. distinguish their study of the basin from this other work by “presenting the Mekong through a socio-legal lens,” which they specify as

show[ing] that the relations between different actors over the use and management of the river and its basin – indeed the basin itself – are meaningfully

imbued with and constituted through law, understood plurally to include international, regional, national, and subnational laws.... In this pluralist understanding, law is inextricably bound up with and inflected by the political, social, economic, and physical ecology of the river (3).

Boer et al. adopt a very definition of sociolegal scholarship, one that highlights an apparent uniqueness premised upon the “law and [something]” tradition. As they see it, importing a socio-legal approach to the study of the Mekong helps excavate the basin from an overly rigid doctrinal approach to the governance of transnational river basins (41). It does so, they argue, by combining legal techniques with techniques derived from the social sciences and humanities (43). Yet, they also make plain that the socio-legal approach is about more than importing science into the study of law; it also is useful, and is indeed used in the book, as a critical tool. By this, they mean that the socio-legal approach permits an expansive understanding of law – one that extends beyond formal rules and statutes to encompass a wide range of actors and norms (59-60). Also, they argue that the approach allows them to question to the reliability of common assessments of river basin development, by foregrounding the normative understandings that propel supposedly objective decision-making (60). Above all, they argue, the socio-legal approach that they adopt “enlivens” law as something more than an instrument, manifesting as “an unruly and ungovernable material or form of knowledge” and confounding expectations that law can be used to achieve known outcomes (60).

This particular view of the sociolegal approach informs Boer et al.’s concept of governance, which they present “as a practice that entails the blurring of law into societal and political modes of rule-setting and enactment” (87). In one chapter, they explicitly examine the governance of the Mekong, attending to what they call the “mode” of governance: the techniques, successes, and challenges used and encountered by the basin’s key transboundary governance institution: the Mekong River Commission (MRC) (88). One key aspect of this

modality, they suggest, is that legal norms structure contemporary governance and practice by, for example, requiring certain mechanisms for resolving disputes. However, they note that because international law in this area is fairly recent, it is difficult to pinpoint many concrete links between formal law and governance practice (89). Moreover, the paucity of formal law shows how infrequently “soft” norms translate into “hard” law and calls into question the assumption that imposing more regulations would impact perceived shortcomings in decision-making. Instead, they find, it is institutional arrangements – the inner workings of commissions like the MRC and the politics that influences decision-making there – that most impact decision-making processes that affect the development and management of the Mekong.

This appears, at first glance, to be a classic law and society analysis: one that highlights the gap between formal law and law’s impact “in action,” which has the effect of relegating law to the sidelines, making it a mere origin point or strawman against which other new and interesting interactions become apparent (Bertenthal, 2017). However, Boer et al. in fact extend the analysis to make clear that formal law does not just evaporate in the shadow of political and social encounters. Instead, law embeds politics and society in “a complex and at times confusing network of international, regional, and national legal norms, practices, and institutions” (114). In other words, formal law remains ever-present as a sort of scaffold for society; structuring the form and possibilities for social, scientific, and political interactions. This is why, Boer et al. argue, one cannot achieve reform merely by revising laws nor simply by addressing the “modes” of governance; efforts must be directed at both and always with the understanding that what we label “law” and “society” inevitably, and inextricably, intertwine.

### **III. Observing and Making Environments: Research Design and Methods**

It is with the intent of making the intersections between law, society, and the environment visible that I designed my study of the Owens Valley. The project combines archival research of legal and historical documents with more than two years of ethnographic research in Los Angeles and the Owens Valley. In addition to court documents and legal opinions available on Pacer and Westlaw, I have consulted archives of the Eastern California Museum in Independence, the Owens Valley Library in Independence and Bishop, the Inyo County courthouse in Independence, the Los Angeles Department of Water and Power in Los Angeles, the Bancroft Library at the University of California, Berkeley, and the National Archives at San Francisco, as well as personal documents and records preserved by individuals and families and shared with me in the course of my research.

Between May 2015 and August 2016, I lived in Independence, which is the County seat and the approximate halfway point between the major cities of the Valley. The Valley is more than 180 miles in length, and I travelled frequently to attend events and to meet with interlocutors. In 2016 and 2017, I returned to the Valley several times for a few days or a week at a time. Several groups also broadcast their meetings over the internet, and I have tuned into these broadcasts as a means to continue following ongoing controversies even through the writing of this dissertation. Because of the close links between the Valley and the City of Los Angeles, interlocutors, meetings, and documents also exist in Los Angeles. I lived in Los Angeles both before and after my fieldwork in the Owens Valley and I have been able to take advantage of this placement to conduct research and to attend meetings in the city, both on visits from the Owens Valley and after I left my apartment there.





*July Fourth on Main Street, Independence, CA.*

I found the Owens Valley to be a particularly good site for a case study of environmental conflict and environmental governance. A long history of conflict over land and resources provides ample data to explore; it also permeates contemporary interactions. Environmental conflict in the Owens Valley is often highly contentious, usually public, and, thus, quite visible. It's no wonder, then, that the Valley has come to be seen as a laboratory for examining conflict and development in the American West more generally (Walton, 1991).



*Protests in the Owens Valley, 2013. Photo by Jon Klusmire. Source: Behrens (2013)*

Just as the Owens Valley as a place influenced my study of environmental governance, my emplacement in the Valley also contributed to the design and results of this study. I was not embedded in a specific organization, and I did not follow events exclusively in a particular site. I met interlocutors, and became aware of issues to follow, by virtue of being a member of the community and through my participation in community life. Such free-form research imparted several advantages to the overall study: My research topics and interlocutors were not limited to what a specific organization was interested in, or could make accessible. I had no competing work obligations or other responsibilities aside from pursuing my research. I was free to follow people and issues in myriad directions. Moreover, I was not readily identifiable with any particular cause or political stance, and, in a polarized society that was already extremely suspect of outsiders, it proved helpful to escape a label that would almost certainly alienate at least some people in the various communities in which I circulated.

Participant observation of this kind harkens back to the oft-imagined anthropologist who moves into a foreign culture and attempts to document aspects of life, language, and relationships for an interested audience “back home.” Such immersion indubitably produces very rich results (Becker and Geer, 1957), even when, for example, the anthropologist stays close to home (e.g., Stewart, 1996). It also can be extremely messy: presenting all the familiar challenges of moving to a new place, understanding community, making friends, and finding things to do, compounded by the researcher’s imperative to “produce results.” At the start of this project, I had imagined my fieldwork would be far easier than the romanticized anthropologist who ventured to “a tropical beach close to a native village, while the launch or dinghy which has brought [him or her] sails away out of sight” (Malinowski, 1922:4). After all, I was only moving 250 miles from my home, did not need to learn a new language, did not even need to leave the state in which I’d lived for more than a decade. But this, it turns out, was an overly optimistic view of the work that goes into discerning and disentangling the threads that comprise culture. Whether one is living among neighbors and friends (Bourgois, 1995), or taking on a new life for the purposes of research (Duneier and Carter, 1999), or exploring a life one hopes never to have (Biehl, 2013), the ethnographer is always – however reluctantly – observing an “other,” searching for subtext beneath the predominant narrative, and recasting seemingly coherent images into fine-grained details.

I spent much of my time in the Owens Valley doing what felt like many of the people there were doing: I took long hikes and appreciated the scenery; I wandered into the library and chatted with the librarian or other patrons; I drove to a coffee shop to enjoy functional internet; I made long grocery lists so I only had to make the two-hour round trip to the store once a week; I attended public meetings, including joint meetings between Inyo County and the City of LA,



working groups, and informational presentations; I joined the Civic Club and worked at various community events; I ate dinner with neighbors and had lunch with friends; and so on. This participation in communal life provided important context for my research, giving me a sense of what living in this place was like. It gave me a way to understand the people involved in the conflicts I was studying, and to do so not through the platitudes about the “other” America, rural counties, or the great West, but, rather, through my own embodied experiences of being in and of that particular place (Lee and Ingold, 2006).



*On a hike with Friends of the Eastern California Museum, 2016.*

Chance conversations as I was going about my day provided detail and unexpected insights into the questions that are at the heart of this research project. Because of the informal nature of these encounters, I would scribble observations on paper, or type a note in my phone,

whenever I had a few minutes to write. I would work these into lengthier notes later, along with impressions and observations from other activities of the day and week. During the many hours driving, I recorded voice memos detailing my observations, and I transcribed these reflections in whole or part. I also conducted semi-structured interviews, often repeatedly and sometimes recorded by video or audio, with approximately 30 people: water managers, environmental activists, federal agency staff, stakeholders, and community members. These interviews provided additional information, clarification, and interpretation about the events I was observing, the history of the conflicts I was following, and general sensibilities of everyday life in the Valley.

While I found interviews to be useful in providing foundational information and clarification, they were less helpful in addressing the questions that motivated my research: understanding the roots of conflict and the role of law in shaping or ameliorating that conflict. This was partly due to people's extreme self-consciousness about sharing information – especially in this politically charged environment. And there was the fact, too, that it was sometimes impossible to hold interviews with specific people. Notably, I could not interview anyone from LADWP. I was told, by a LADWP employee and by others in the community, that there was an embargo on the employees speaking about the organization; the organization had endured too much negative publicity from media and researchers alike, and did not want to risk additional pejorative commentary. LADWP workers and officials were ever-present in the Valley, however: working on infrastructure projects; speaking at and attending public meetings; publishing reports and press releases. That I couldn't get an interview with them did not mean I lacked access; my research into their perspectives just took a different form.

Achieving access was just one of several challenges presented by my research design. I was a relative newcomer in a very small town – a town where, as one resident once joked with me, people came to settle so they didn't have to see anyone. In short, it was a town whose residents savored, as the name itself implies, their independence, and where, without the benefit of an established connection to at least one group of people, I had to work hard to integrate myself, developing a level of activity and sociality that far exceeded my usual pace. For much of the first few months, I spent a good deal of time establishing trust, working against what was a widely held assumption that I was a “spy” for some competing interest. Yet becoming too close to any one person or group risked alienating others; so I faced a constant balancing act of establishing connections and maintaining at least a show of objectivity. And while remaining free from organizational demands and interests was liberating, I also found myself pulled in many directions, as people I encountered drew my attention to the topics with which they were variously preoccupied. All of this meant that the research often felt exhausting and overwhelming, and sometimes uncomfortable, too, as lines between friend and research subject increasingly blurred.

None of these challenges are unique, of course, and much has been written – especially in the field of anthropology – about the loneliness, frustration, and disorientation inherent in fieldwork (e.g., Cerwonka and Malkki, 2007). I raise these issues here because it is important that researchers acknowledge the affective dimensions of their work, as well as the very frequent and significant obstacles they encounter in seeking to carry out a research design. This is the type of background information that too often gets hidden beneath the neat methods sections we encounter in journal articles and monographs, in the tidy phrase “this study draws from ethnographic research.” Yet it is precisely these challenges and frustrations – the need to make a

creative compromise or pivot in the face of an obstacle – that drives so much data collection and, just as significantly, subsequent analysis of that data.

#### **IV. Curious Combinations: Chapter Outline**

Knowledge, as Mark Twain (2010) suggested, is not about developing new ideas, but, instead, about refracting old ideas in new and colorful ways:

There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and put them into a sort of mental kaleidoscope. We give them a turn and they make new and curious combinations. We keep on turning and making new combinations indefinitely; but they are the same old pieces of colored glass that have been in use through all the ages.

This observation seems especially apt in the context of environmental law, which, in the face of a rapidly changing world, has long endeavored to take old ideas about humans and nature – and especially, the relationship between the two – and creatively combine them to address increasingly pressing challenges and scarcities. The kaleidoscope analogy also promises to be useful as a means of organizing research and writing about both the environment and law. As ideas are reflected, refracted, and reconfigured in kaleidoscopic fashion, new understandings and perspectives emerge: sometimes opaque, often unexpected. As a means of facilitating this sort of discovery, I have elected to organize this dissertation as a sort of kaleidoscope. Rather than offer a linear narrative of environmental governance – which might trace the formation and implementation of the concept in a straightforward way – I instead present several different facets of governance. Each of the following chapters may be read as a twist of the kaleidoscope, so that a variety of perspectives on the relationship between law and environmental governance might be observed and considered.

Chapter One offers a brief timeline of past events, as a means of providing both historical and legal context for the chapters that follow. In the remaining chapters, law remains a focus,

but its form may not always be readily recognizable. As Eve Darian-Smith (1999:3) has noted, “there is more to an understanding of law than can be accounted for through a narrow focus on the obvious legal arenas of courtrooms, Parliament, legislation, and the legal profession”; we must examine “both textual and textual dimensions of law,” including, also, those dimensions that do not clearly relate to legal doctrine. One important dimension, as Darian-Smith and others have recognized, are the spatial and political relations that surround and emplace law.

Chapter Two examines these relations through attention to the ways in which understandings of urban and rural places enter the popular imagination. Through close attention to the texts and images through which constructions and distinctions of urban and rural emerge, I reveal how we come to understand the meaning of the public good – a concept that underlies so much of environmental law – and, especially, how such conceptions of the “public” are tied to particular places.

Chapter Three juxtaposes past and present conflicts, looking back at an agreement between LADWP and the federal government to exchange lands and establish three new Indian reservations in the Owens Valley, and then looking ahead to consider how that agreement will continue to shape contemporary conflicts over land and resources. By comparing similar conflicts at different points in time, this chapter explores conventional ways of framing resource conflicts, and probes the potentialities of a new approach to describing and debating environmental conflict.

Chapter Four shifts from a focus on events during a particular time to analysis of time itself. Through close analysis of both the temporalities embedded in legal regulations and those observed and constructed by those interpreting and implementing such regulations, this chapter endeavors to understand the basic orientations and constructions of the future that shape the



direction and tempo of environmental change. I suggest that any attempt to regulate the future depends on the cultivation and deployment of ways of seeing that future. In other words, the ways of defining the problem of the future shapes what we think we can do and not do in that future. Drawing from extensive fieldwork among people designing, implementing, and living with environmental regulation, I also argue that there is a fundamental disconnect between the way environmental law sees the future, and the ways in which people who will live that future see it. Through this analysis, the chapter explores the development and use of time in law and it offers us the opportunity to reflect on what the study of time can tell us about the relations and processes that make up environmental law.

## CHAPTER TWO: A TIMELINE OF OWENS VALLEY LEGAL HISTORY<sup>3</sup>

*“[The owner] tried to sell it [the ranch] to the City for 2500 dollars and they offered him 15 for it. Well, he told the City he wasn’t going to sell it to them for 1500 dollars. And he was talking to a group of people at quitting time out in the shop and he says, ‘I’d sell it to anybody else for 1500 dollars except the City.’ My dad pulled a silver dollar out of his pocket and he says, ‘Here’s the down payment.’” – John Baxter, Owens Valley resident<sup>4</sup>*

- 1905** Los Angeles Water Commission approves plan for an aqueduct from the Owens Valley to the City of Los Angeles. The City of Los Angeles begins acquisition of land and water rights in Owens Valley downstream of the proposed aqueduct intake dam. Construction of the Los Angeles Aqueduct is commenced.
- 1913** LADWP completes aqueduct and begins the export of water from the Owens Valley to Los Angeles by diverting the water from 62 miles of the Owens River.
- 1914** California’s State Constitution is amended to allow taxation of property owned by cities and other entities outside of their boundaries, meaning that land owned by Los Angeles within the Owens Valley may be taxed by Inyo County. (Today, Los Angeles is the largest taxpayer in Inyo County.)

*“This [San Francisquito] plant signified the power that allowed Los Angeles to grow to the great city that it is.” – Edward Lewis, electrical service manager, LADWP<sup>5</sup>*

- 1917** Los Angeles completes San Francisquito Power Plant No. 1, a hydroelectric power plant lying along the Aqueduct that uses the rushing water to generate electricity for Los Angeles.

<sup>3</sup> Existing timelines and compilations of Owens Valley history inform and expand upon the timeline presented here, including especially Stringfellow, “The Owens Valley Timeline,” *Boom*, Oct. 8, 2013, available online <https://boomcalifornia.com/2013/10/08/owens-valley-and-the-aqueduct/>; and The Inyo County Water Department, “Owens Valley Water History (Chronology),” available online <https://www.inyowater.org/documents/reports/owens-valley-water-history-chronology/>.

<sup>4</sup> Interview with Philip and John Baxter, June 26, 2015.

<sup>5</sup> Quoted in Bartholomew, “LADWP’s Power Plant 1, which energized growth for Los Angeles, turns 100,” *Los Angeles Daily News*, March 18, 2017, available online <https://www.dailynews.com/2017/03/18/ladwps-power-plant-1-which-energized-growth-for-los-angeles-turns-100/>.

*I was born in this valley and my ancestors have lived here for thousands of years. My relationship with Owens Lake goes back to when I was a baby and I heard stories about things that happened on the lake from my grandmother . . . . She remembered as a little girl when this lake was full. Her Grandpa Sam would dream and predict the future. He told everybody, "You're going to see a day when this lake is dry." Everybody said, "Yeah, whatever, that's too big of a lake to dry out." But sure enough it did. – Kathy Bancroft, Historic Preservation Officer for the Lone Pine Paiute-Shoshone Tribe<sup>6</sup>*

- 1924** Owens Lake becomes a dry lake bed, a result that California authorities will later attribute to Los Angeles's diversion of the Owens River. 70 armed men seize control of an Aqueduct gate and shut off the water flow with an explosion, starting what will later be dubbed the "Owens Valley war."
- 1925** Merchants demand reparations for loss of business due to Los Angeles's purchase of the Valley's farm lands, and, in response, California legislators pass a law allowing Los Angeles to purchase properties in towns. (By 1933, Los Angeles will have purchased 85 percent of the valley's residential and commercial property and 95 percent of the valley's farm and ranch land. Later, the City will sell many of these properties back into private ownership without the associated water rights.

---

<sup>6</sup> Quoted in "Kathy Jefferson Bancroft: The Sacred Owens Valley," Metabolic Studios, July 24, 2017, available online [https://www.metabolicstudio.org/posts/pdf/89\\_the-sacred-owens-valley-an-interview-with-kathy-jefferson-bancroft.pdf](https://www.metabolicstudio.org/posts/pdf/89_the-sacred-owens-valley-an-interview-with-kathy-jefferson-bancroft.pdf).



*Water gushing from the Aqueduct after protestors use dynamite in 1927.<sup>7</sup>*

- 1927** Protestors use dynamite to blow up 400 feet of the Los Angeles Aqueduct.
- 1928** By this time, Los Angeles owns nearly 90 percent of the Valley’s water rights.
- 1934** Los Angeles files water rights application for water from the Mono Basin, which lies north of the Owens Valley. The City commences construction of an 11-mile underground water tunnel to connect the Mono Basin with the Owens River.
- 1939** Los Angeles and the U.S. Government sign an agreement exchanging Los Angeles-owned lands for lands the U.S. holds in trust for Native Americans living in the Owens Valley. The exchanges result in the development of three new Indian reservations in the Valley.
- 1940** Court order popularly known as the “Hillside Decree” prohibits Los Angeles from pumping and exporting groundwater from an area around Bishop labeled as the “Bishop Cone.” This protection situates the City of Bishop differently from the other cities and towns in the Owens Valley; a fact that sometimes will thwart future efforts at collective action within the Valley.
- 1941** Los Angeles begins water diversions from Mono Basin.

---

<sup>7</sup> *Los Angeles Times*, February 24, 1928.

*And then you've got Los Angeles, which owns more land than in Los Angeles and they say, we don't need to abide by County rules because we're a city and so we can create our own rules. And then those trump the County rules and the County is kind of left going, well, I don't know what we can do here because where people are living is primarily surrounded by LA, so what are we actually governing here? – Alan Bacock, Water Program Coordinator for the Big Pine Paiute Tribe<sup>8</sup>*

- 1945** California enacts the Charles Brown Act, which requires Los Angeles to grant existing tenants of its land in Inyo County the first right of refusal on lease renewals and land sales.
- 1947** Having been advised by its City Attorney that direct land sales are illegal, Los Angeles resumes sales of its Owens Valley town properties at public auction. It continues to sell those properties without the associated water rights.
- 1952** LADWP diverts the river from the Owens River Gorge to produce hydroelectric power.
- 1963** LADWP announces its plan to construct a second aqueduct from the Owens Valley to Los Angeles.
- 1963-68** LADWP reduces the amount of water to be provided for irrigating lands in the Owens Valley in order to make additional water available for export through the second aqueduct.

*Significant changes have taken place within the Owens Valley's agrarian landscape over the last 100 years; by 1920, 75,000 acres were still being irrigated as pasture and by 1960, approximately only 30,000 acres remained. By 2002, less than a 12,000 acres were still being irrigated for ranching purposes. – Daris Moxley, Owens Valley rancher<sup>9</sup>*

- 1968** The California Constitution is amended to change the manner of assessment of Los Angeles-owned property in Owens Valley and to prohibit Inyo County from taxing water exported from Owens Valley.

---

<sup>8</sup> Interview with Alan Bacock, November 12, 2015.

<sup>9</sup> Quoted in “There it is – Take it!: The Owens Valley and the Los Angeles Aqueduct 1913-2013,” available online <http://thereitistakeit.org/moxley/>

- 1970** The Second Los Angeles Aqueduct is completed. Five months later, California enacts the California Environmental Quality Act (CEQA), which requires state and local agencies to identify significant environmental impacts of their actions, and to mitigate or avoid those impacts.
- 1972** Los Angeles announces plans to permanently increase groundwater pumping in the Owens Valley. In December, Inyo County commences CEQA litigation against Los Angeles.

*The ecological impact of the second aqueduct, viewed in conjunction with the underground pumping and measured by the quantity of extraction, has not been fixed but has substantially increased in severity in the period before, during and after its construction – County of Inyo v. Yorty (Cal. App. 1973)*

- 1973** A California state court issues a writ commanding Los Angeles to prepare an Environmental Impact Report (EIR) on the water supply for the Second Aqueduct, as required by CEQA, and restricts groundwater pumping by Los Angeles pending Court approval of that EIR.
- 1977** A California appellate court finds that LADWP's EIR on the water supply for the Second Aqueduct does not satisfy the requirements of CEQA. After LADWP cuts water supplies to Owens Valley ranchers, Inyo County obtains order from Appellate Court requiring that water supply to be restored. The court allows limited groundwater pumping due to severe drought, but requires Los Angeles to submit a water conservation plan for the city.
- 1980** Inyo County voters approve an Owens Valley Groundwater Management Ordinance, which creates the Inyo County Water Commission and Inyo County Water Department to oversee and manage Owens Valley water. It further requires Los Angeles to obtain a permit from the County before it can pump groundwater from the Owens Valley. Los Angeles files two lawsuits challenging the Groundwater Management Ordinance.
- 1981** A California appellate court finds LADWP's second EIR on the Second Aqueduct water supply to also be inadequate, and continues to limit groundwater pumping intended to supply that aqueduct.

**1982** Inyo County and LADWP sign a Memorandum of Understanding (MOU) designed to facilitate joint management of the Valley’s water supply. The MOU creates the Inyo County/Los Angeles Standing Committee, which includes representatives from both jurisdictions and is charged with making water-related decisions for the Owens Valley. It also creates Inyo County/Los Angeles Technical Group, which also includes representatives from both the City and Inyo County and is charged with investigating water use and management and making recommendations to the Standing Committee.

*The state has an affirmative duty to take account of the public trust in the planning and allocation of water resources – National Audobon Society v. Superior Court (1983).*

**1983** The California Supreme Court rules that the public trust doctrine applies to Los Angeles’ diversions from the streams tributary to Mono Lake, and requires that the Lake maintain a certain level.

**1983** A California state court finds that the County’s Groundwater Management Ordinance unconstitutional and preempted by state law. California’s legislature enacts a law authorizing the Great Basin Unified Air Pollution Control District to require Los Angeles to provide reasonable mitigation of air quality impacts associated with its water gathering activities.

**1984** Los Angeles and Inyo County reach an “interim” groundwater management agreement. The appellate court lifts its groundwater pumping restriction and instead allows the County and LADWP to implement groundwater management under the interim agreement.

**1989** Inyo County and LADWP reach a preliminary agreement on a long term water agreement. Under the preliminary long-term agreement, “ON-OFF” groundwater pumping management is implemented in the fall of 1989. The preliminary agreement is released for public review.

*This decision [re the Water Agreement] is probably the most important one I will ever make as a Supervisor or citizen of Inyo County – Warren J. Allsup, former County Supervisor<sup>10</sup>*

- 1991** Los Angeles and Inyo County approve the “Long Term Water Agreement.” Sierra Club, Owens Valley Committee, Native American tribes, State Department of Fish and Game, and California State Lands Commission challenge various parts of the Agreement. Full implementation remains on hold until these disputes are resolved.
- 1994** Los Angeles enters into an interim agreement with Mono County and the California Department of Fish and Game, guaranteeing a certain flow in the Owens River Gorge. Los Angeles begins decreasing the amount of water diverted from the Mono Basin as a means of increasing the water level in Mono Lake.
- 1997** A settlement agreement resolves the remaining challenges to the Long Term Water Agreement.
- 2001** LADWP begins dust mitigation program to reduce dust pollution on Owens Lake.
- 2006** The Lower Owens River Restoration Project begins, aiming to increase the number of fish in the river, create riparian and marsh habitat, and develop recreational opportunities.

*They don't care about the laws. What we're all seeing is disregard for the law. The Water Agreement creates rules and civilized behavior. They're not following them. We are nothing more to DWP than a sediment basin that holds water. – Nancy Masters, Inyo County librarian and resident<sup>11</sup>*

- 2012** Los Angeles destroys a building formerly housing a barbershop, which had been designated a historic structure by Inyo County. This is one of several such structures destroyed by Los Angeles, and highlights the tension created by the City's continued ownership of land and property in Inyo County.
- 2013** Los Angeles publishes the so-called Master Plan for Owens Lake dust mitigation, habitat preservation, and water conservation.

---

<sup>10</sup> Allsup letter to constituents (1991).

<sup>11</sup> Quoted in Kessler, “Little Shop of Sadness,” Sierra Wave Media, April 26, 2012, available online <http://www.sierrawave.net/shop-of-sadness/>.



*William Mulholland fabricated a drought in Los Angeles to frighten voters into approving a bond issue to help finance the construction of the Los Angeles Aqueduct. It was impossible to contradict Mulholland because there were no hydrologic data for Los Angeles other than those in the files of the Los Angeles Department of Water and Power. – David Wagner, Owens Valley resident<sup>12</sup>*

- 2015** Los Angeles sends a letter stating that, due to drought conditions, it would not deliver water to be used as irrigation of ranches and other areas of the Owens Valley. County Supervisors argue this is a violation of the Long Term Water Agreement, and LA agrees to supply “reduced” irrigation water.

*L.A. took their water and land a century ago. Now the Owens Valley is fighting back. – Louis Sahagun, reporter<sup>13</sup>*

- 2017** Inyo County Supervisors launch an eminent domain proceeding to take back land acquired by Los Angeles in 1900.
- 2018** LADWP files suit against Inyo County for violating the California Environmental Quality Act by initiating eminent domain proceedings against the City of Los Angeles.

---

<sup>12</sup> Wagner, “Letter to the Editor: LADWP using drought to its advantage,” Sierra Wave Media, June 18, 2015, available online <http://www.sierrawave.net/letter-ladwp-using-drought-to-its-advantage/>.

<sup>13</sup> Sahagun, “L.A. took their water and land a century ago. Now the Owens Valley is fighting back,” *Los Angeles Times*, July 13, 2017, available online <http://www.latimes.com/local/california/la-me-owens-valley-eminent-domain-20170712-story.html>.

## **CHAPTER TWO: MUNICIPAL POWER AND THE RURAL “NON-PLACE”**

As I alluded to in the introduction, the City of Los Angeles has played a crucial role in shaping historical and contemporary experiences of and in the Valley. According to most narratives, the Aqueduct has enriched the city immeasurably, but it also has drained the Valley and transformed it into a dystopia of economic and ecological ruin. The significance of this story lies in its conclusion: a rural-to-urban water transfer promoting modern city development at the expense of rural communities and landscapes. To be sure, this is an important and potent legacy, one that has exerted a powerful influence on water reallocation policy in the American West (Libecap, 2007). Yet this version of the story – which has become shorthand for the dangers of urban growth and greed – is packaged too neatly as a declensionist history; one that obscures much about the processes through which these urban-rural relations were formed. The interaction between Los Angeles and the Owens Valley was significant not only in shaping contemporary environmentalism, but also in building an urban infrastructure held together by specific ideologies of a public good dependent on, but nonetheless artificially separate, from rural America.

In this chapter, I focus on the constructions of rural and urban as ideas and places. While the concept of rural-spatial social and economic interdependencies is not new (Cronon, 1991), most scholarship portrays urban-rural relations as dichotomous and asymmetrical (Daniels, 1999; Williams, 1973). In contrast, this chapter draws attention to the boundary crossing, shifting, and blurring between urban and rural along many dimensions of community life – especially the common preoccupations with land, resources, and the protection and distribution of such things. With respect to the Owens Valley and Los Angeles, the relations between urban and rural are dictated not only by geography – that generalized sense of what lies within and outside of the

burgeoning city's borders – but also were created through popular culture: images and words that aim to define and delineate both the Owens Valley and Los Angeles as subjects, and also executors, of environmental governance. In what follows, I examine a few exemplars of these narrative constructions, offering dueling perspectives from both Los Angeles and the Owens Valley. The creative ways that disparate people define and describe spaces as both physical and imaginative worlds works to distinguish places as either appropriate or not for certain kinds of activities. The significance and meaning of these places then become important for how environmental activity can work. Put another way, “how we tell stories influences how we act in the world” (Harrison, 2017: 458), and examining those stories helps to provide insight into the underlying norms, values, and also proposals for change of environmental governance.

#### **I. Water + Land = People: LADWP's Public Relations Campaign**

Literature and popular media are saturated with stories and perspectives on the Owens Valley. The sheer number of commentaries has created, in the words of economist Gary Liebcap (2007), an “Owens Valley syndrome,” whereby any discussion of water transfer and use inevitably prompts comparisons with the Owens Valley. Perhaps even more important than the texts about the Owens Valley are the views of that Valley offered by those directly involved in the events there. In this section, I analyze an extended publicity campaign waged by LADWP in an effort to convince voters to approve its plans to acquire water from the Owens Valley and construct an aqueduct to bring that water to Los Angeles. To situate that campaign in context, we must go back to the early twentieth century, when municipalities were struggling to meet urban residents' demand for gas, water, and electric services.

*A. Defining the public good in Los Angeles*

The key question for cities across the nation was whether water and power services should be given over to private industry, to flourish or fail along with the market, or whether utilities' unique character as a common-pool resource meant that they should be managed by the people and their duly elected representatives. Proponents of private ownership pointed to the efficiency and economic gains resulting from private ownership. Their opponents fretted about concentrating yet more wealth in the hands of a few, and argued that, because utilities were essential to the public good, they should be managed by the public itself (Ostrom, 1953).

Proponents of the latter view won an early victory in Los Angeles, when the City Charter was amended in 1902 to provide for public ownership of water and electric services. Private corporations continued to exist alongside the new public entity, however, and competed not only for customers, but also for right of way for pipes, poles, and electrical lines. Between 1900 and 1911, the Bureau and Southern California Edison – the city's privately owned electrical service provider – were in and out of court, battling to determine who would control the city's electrical grid. The battles between the city and the privately owned Edison Company focused attention squarely on the streets and neighborhoods of Los Angeles. Seemingly trivial details, such as where to erect a telephone pole, or how far to space power lines kept planners and engineers focused on the minutiae of the urban landscape. Officials of the municipal water department, however, looked towards different horizons – to the Owens Valley, where they saw an abundant source of water that could slake the thirst of the growing metropolis (Kahrl, 1983). Central to their vision was not only the perceived need for water in Los Angeles but also the perceived lack of need for that water in the Owens Valley. Drawing water from the Owens Valley, wrote

historian Jack Heyser in 1934, became inevitable as “the little city of Los Angeles began to build up so fast with waves of Tourists and Settlers.” This, he explained,

led to the idea to go away up into the Owens Valley, in the distant County of Inyo. Here there was an abundance of clear melted snow water going to waste in that vast Soda Sink called Owens Lake. Here this sweet water was left to evaporate in this Hell-Hole doing nobody any good. Los Angeles was just about 250 Miles more or less.<sup>14</sup>

Heyser’s account is typical of the justifications provided for Los Angeles eventual usurpation of Valley land and water. Contrasting the value of the resource with the poverty of the County and its inhabitants permitted Los Angeles to justify its actions on utilitarian grounds, to proclaim that by working on behalf of the greatest good for the greatest number, it was indeed operating in line with the conservationist ideology of the time (see, e.g., Jacoby, 2003; Miller, 2001).

***B. The power of the non-place***

What needs to be explained is not just why the water and power resources were funded and developed but why they were developed by the city itself, rather than the private utility companies already operating in the area. An extended publicity campaign – waged aggressively by DWP between 1905 and 1910 and then sporadically over the next two decades – offers significant insight into the answer to this question. While officials fought the private utility companies in courtrooms and backrooms – through litigation and negotiation – the Water Department’s Division of Public Affairs was engaged in a different kind of battle for public opinion. It published newsletters and print ads; stickers and bill inserts; and even commissioned articles and semi-fictionalized stories that it published in local magazines and newspapers.

Although produced by a municipal agency, with the clear purpose of furthering municipal goals, these public relations materials did not focus on Los Angeles. Instead, they introduced

---

<sup>14</sup> Heyser, Jack, “The Los Angeles City Fathers Go Water Hunting” 20 July, 1939. LADWP Records, Ephemera Collection – Series II.

and detailed the Owens Valley region, focusing not on the technical infrastructure of the Aqueduct that would eventually connect that region to the city, but, instead, on the resources, topography, and character of the Valley. Through this campaign, the Water Department urged urban residents to locate nature outside the city's boundaries and to make use of the natural environment in certain specified ways. By "de-localizing" nature in this manner, the Department generated popular support for resource extraction and development in the Owens Valley, and created a lasting legacy of local urban identity in contrast with a naturalized rural Other. Promoting vision of public good through utopian visions of the Owens Valley, this campaign revealed fundamental ideologies of the rural, othering the natural world in service of explicitly municipal ends and helping to shape a vision of the public good as grounded in urban life. This definition of the public good was created against, not by, the residents of the Valley, and it would cast a long shadow over those who continue to live there today.

By the 1920s, the Aqueduct was complete and the Department no longer needed to raise massive amounts of money for construction. However, maintenance of the Aqueduct and power stations still required a fair amount of capital and the Department sporadically floated new bond measures even during this period. Moreover, the City of Los Angeles had to deal with significant – and sometimes violent – unrest in the valley, as the remaining residents became increasingly incensed over what they saw as the Department's theft of their water. This generated a significant amount of negative press coverage in both the Owens Valley and Los Angeles papers and officials in both locales publicly challenged the Department to show that it was indeed working for the greater good. Spurred by the need to counterbalance these forces, the Department's Public Affairs Department transitioned to a new form of publicity. Rather than traditional print ads and bill inserts, they began to produce standalone publications, which

mirrored in both form and function popular travel guides. The effect of these publications was a blurring of lines between advertising and travelogue, less an overt sales pitch than a fount of information about a far-off place. The most iconic of this new effort was a series of consecutively numbered pamphlets entitled “Little Journeys into Water and Power Land.”<sup>15</sup> Running five or six pages and neatly folded in book form, each of these pamphlets featured photographs of the Valley’s majestic scenery, along with explanatory text extolling not only natural beauty but also the purity and abundance of whatever natural resource was portrayed.

A page from “Trip No. 1” offers an example of this new publicity genre. Featuring a cloudy sky cut by a jagged alpine peak, the photo on this page foregrounds a large alpine lake. The lake is so clear that it functions as a mirror for the low-lying hills and trees surrounding it, so that the snowy landscape shows double. The text below the picture draws the reader along, as a guide would on a nature hike.



*Photo of Palisades Glacier, from Little Journeys into Water and Power Land, Trip No. 1.*

---

<sup>15</sup> LADWP Records – Ephemera, Series II.

“Proceeding northward a few miles beyond the Aqueduct intake, we enter Big Pine Canyon,” the description begins. It points out that there are no fewer than six lakes there, fed by a mountain glacier, which not only provides pure water but connects the present with “the remote Glacier Age.” These lakes, the text concludes, are “typical of the hundreds of others in the Sierra Nevada mountains which serve as a source of the water and hydro-electric power” brought to Los Angeles by the Department of Water and Power.

The message embedded both visually and textually is twofold. First, that the Department had found a veritable paradise, which would supply with city with the purest of water to provide both a vital life source as well as an increasingly valuable energy source. But just as importantly, the Department was drawing important boundaries between the city and the source of its newfound wealth. By addressing its readers as tourists, the Department reminded them that this natural world existed elsewhere. It was a land to be visited and admired – accessible but nonetheless distant. Second, it was markers of the modern city – the massive steel and concrete Aqueduct, and hydroelectric plants – that offered a distinctive contrast to the images portrayed in these brochures. One turned north from the Aqueduct, or departed from one of the power plants in order to find the mountains, lakes, and forests.

Nature, in the brochures, was not merely contrasted to the municipal infrastructure; it also directly challenged that infrastructure. In Trip No. 2, for example, the Department traces a sort of reverse pioneer adventure, showing the pipe snaking up a high mountain pass, away from the Valley and back toward the metropolis.





*Jawbone Siphon Section, from Little Journeys into Water and Power Land, Trip No. 2.*

The text accompanying this photo plays up the arduous journey even more: “In the course of its difficult journey to the city,” the Department wrote, “[the pipe] is confronted with scores of mountain barriers....At other points, deep canyons challenge the passage of the waterway.” Not until the Owens Valley, the reader is reminded, “do we find the Aqueduct water flowing in an open conduit.” Here, too, then, the Department presents a stark contrast between the tightly engineered municipal infrastructure, valiantly struggling through myriad natural challenges, and the open, country space in which one may enjoy an unconstrained, wide-ranging freedom.

Such comparisons are far from unusual. In fact, romanticization of American rural spaces was, in the twentieth century, a common strategy for dealing with the increasingly frenetic pace of municipal development and growth (Goldman & Dickens, 1983). Pastoral images and poetic odes to open space reminded urbanites not only that it was possible to escape – albeit temporarily – the unpleasant conditions of city life, but also that those conditions represented a victory of sorts, the overcoming of significant barriers through man’s industry and

skill. The contrast, then, was not only meant to highlight a rural idyll but also, just as importantly, to celebrate man's ability to conquer even "mountain barriers" and "deep canyons."

Images such as this, and other municipal propaganda, presented a paradox: They celebrate the natural landscape and scenery apart from – and almost to the exclusion of – any person. Long-peopled lands need to become empty in order to justify extraction; nature exists only where people are not (Cronon, 1996). Yet the explicit subtext underlying the vibrant imagery was that the land and resources were there to serve to an unseen human force, to nourish and sustain not just man, but a specific, urbanized man in need of water, power, and an escape to a purer, simpler world. What is interesting, then, is the extraordinary degree to which concerns with the natural world were, at their core, anthropological concerns – about power and politics and relations between people and between people and the natural world. Underlying these concerns were questions that had haunted the municipal water project from the very outset: What, after all, was in the public good? And who, exactly, were the public?

### *C. Utopia is a watering hole*

For LADWP, the utopian ideology of the rural Owens Valley took on even greater instrumental value. It became a strategy for blending the city with its far-off source of power and water. Rather than bringing together city and country, the Department began to separate the two in a formula that its chief engineer, William Mulholland, described as "water plus land equals people."<sup>16</sup> According to this simplistic formula, the Valley contained the water and land; Los Angeles contained the people. This picture of the Owens Valley was of course inaccurate: approximately 1200 people and more than 800 Native Americans remained in the Valley during the first three decades of the twentieth century. But it was in the Department's interest to pretend, insofar as possible, that these people did not exist. The Department was a public utility,

---

<sup>16</sup> Memo, 8 September 2009. LADWP Records – Public Affairs.

which was a still-evolving and controversial concept. The City had taken a gamble on public ownership of its water and power, but it wasn't clear what, exactly, the bounds of this new enterprise would be, or how well it would survive against the onslaught of private companies' legal attacks. At the heart of its dilemma was, as one skeptical power executive put it, "How does one even define the 'public' – which public, what good?"<sup>17</sup> Answering these questions was the task of the Department of Public Relations, as one internal memo noted in July 1911, and that department must "Make clear who this utility serves."<sup>18</sup>

The Department thus undertook the difficult task of defining the "public interest." It did so by locating the public in particular places – notably urban landscapes and suburban homes – and, especially, by removing them from others. In the dozens of images of the Owens Valley that appeared in the Department's advertising campaigns, one never sees a person – just mountains, and forests, lakes, and streams. In these images, there are no people to contend with – no one to argue with over positioning of pipes and poles and rights of way. The Department's campaign presented the Valley as a terra nullis, to be explored, enjoyed, and appreciated. Its formidable natural challenges were to be overcome and conquered, but never taken – for, according to these publicity campaigns, there was no one to take it from.

Not only did the Department portray the Owens Valley as a deserted place, it unmoored the place itself from any specific geographic location. Consider, for example, a promotional film, made in 1928 to urge yet another round of public financing.<sup>19</sup> The film begins with a long shot of a watering hole where a single burro stands, looking forlornly into the camera. It then pans to the City of Los Angeles, showing, first, buildings, then a montage of crowds of people, as a deep voice tells the viewer, "It is a far cry from the 49'er and his meager water needs to

---

<sup>17</sup> Memo, 14 July, 2011. LADWP Records – Executive Affairs.

<sup>18</sup> Memo, 8 September 2009. LADWP Records – Public Affairs.

<sup>19</sup> LADWP Records – Ephemera, Series IV.

those of the great metropolis of this Pacific Coast. Los Angeles, with its ever increasing demands for water, to preserve the life of its people and to power its complex industrial empire.”

The city, the narrator explains, went in search of this water in the High Sierra, 200 miles northeast, in the Owens Valley. The film then reveals a photo of a mountain range, which dissolves into a close-up of snow, gently falling on a mountain peak before picking up speed and swirling in a blizzard. Then the scene fades to a peaceful scene of snow-capped peaks. The narrator explains that here was the source Los Angeles had been seeking, “and found it in tiny snowflakes falling on a mountaintop.” As the film moves to more images of the Owens Valley - creeks pouring into the Owens River, the Owens Gorge where power lines would soon be erected, shots of wild flowers – the narrator proudly proclaims, “The harvest is on; water for millions is on its way!”

People populate the Owens Valley only three times during the introductory portion of this film. The first is when a delegation from Los Angeles visits the Valley, scouting for water. The second is when workers arrive to begin building the Aqueduct. The third is when groups of well-dressed city folk tumble out of cars, skis in hand. Even to a casual viewer, it is clear that the people come from the city to enjoy the pristine natural, and unpopulated, Valley – whether for ski runs and fun or what the narrator calls the “serious business” of finding water.

The film transitions from this seemingly barren landscape to images of abundant fish swimming in local fish hatcheries. The “pure, fresh” water pumped into the Aqueduct, the narrator reminds us, also sustains the “essential” operations of these hatcheries, which produce millions of eggs and breeding stock that are then flown to lakes and rivers on distant mountain trails, where they will await the hordes of sport fishermen who arrive from the city at the first sign of spring. And then the camera pans to a deep gorge, and the narrator reminds us that water

is not merely for the mountains and fish and people, but also to be used for “the task of generating electric power for the City of Los Angeles.”

Pausing for a moment on the discharge from the power plants, the film then takes us to a busy laboratory where men in white lab coats bustle about ensuring, as the narrator puts it, the purity of this “liquid life.” The film closes with a series of city shots – of a fountain gushing water, of a fireman’s hose putting out a building blaze, of a child turning a tap, of a housewife turning on her electric oven – as the narrator suggests that “it is in the homes of Los Angeles that the water for millions reaches its greatest human value.”

The message of this film is neither hidden nor subtle. The Owens Valley exists not so much as a place as a source: of water, scenery, sport, and even food. Industry, science, and home are all located in Los Angeles, to be nourished and enhanced by the water extracted and transferred from the Valley. In LADWP’s propaganda, there is no question of where the public resides. To determine who should benefit from the Department’s extraction, one need only look to the city - indeed, only there is one likely to even find people in the first place.

The rural identity, as defined and delineated by LADWP, served as a secure foundation for both the ideological and political interests of the City of Los Angeles. From the belief in the continuing importance of rural and urban differences, residents of Los Angeles gain both a sense of who they are, and actual material benefits in the form of water and power. What gives this foundation its stability and force may be the natural(ized) associations between the rural Owens Valley and an untouched, unclaimed utopia. Set in the context of tensions between public and private interests in the battle for municipal utilities, the public relations campaign highlights the importance of cultural discourses in shaping what might otherwise be predominantly legal and political concerns.

## II. An “Invincible Rurality”: The Owens Valley People

Far from situating themselves in a non-place, people in the Owens Valley feel a strong sense of place: They view themselves and their communities in reference to where they live and the relationships – emotional, economic, and otherwise – that they have developed with the Owens Valley. They also have worked to present and shape this sensibility through their own narratives of the Valley. These stories appeared in various forms, including serial fiction published in the local newspapers that so often served as forums for airing complaints about Los Angeles and the Aqueduct. Perspectives on the Valley and its history also appear in novels whose readership extended well beyond the Owens Valley.

Regardless of the genre, the stories emerging from the Owens Valley offer a marked contrast to the idyllic, unpeopled landscapes presented in the LADWP literature. In these stories, the people of the Owens Valley feature prominently, reminding the reader of who was affected and in what ways. For example, Cedric Belfrage’s novel *The Promised Land* (1978), captured the bleak moods of farmers in the Owens Valley as the Owens River was drained into the Aqueduct. Through these characters, Belfrage suggested critiques of both Los Angeles’s actions, and the means through which the city acted, especially its efforts to turn the Valley into a non-place. “I’d like to know,” one of the characters mused, “what kind of country this is. You work all your goddamned life to make a home in a goddamned wilderness, and then a few bastards...can come along and turn it back into wilderness and call it progress” (58).

### A. *Reclaiming relations*

Mary Austin’s novel *The Ford*, also grapples with the history of Los Angeles in the Owens Valley. Like Belfrage, she considers how the city’s interventions transformed both the landscape and opportunities to “make a home” there. Adopting various roles as a feminist,

regional theorist, social commentator, social historian, poet, naturalist, dramatist, social historian, lecturer, reviewer, political strategist, and organizer, Mary Austin's work covers a wide range; all of it was concerned, to varying degrees, with the American West. Austin moved to the Owens Valley in 1892, and lived there with her daughter and husband until 1906. Both she and her husband opposed Los Angeles's plans for the Valley and endeavored to reveal the extent of the city's still-mysterious scheme to acquire the Valley's water. In 1905, Mary Austin published an article for the *San Francisco Chronicle*, in which she denounced the city's "craft and graft and bitterness and long-drawn wasteful struggles" and implored her readers to keep in mind that little was to "be gained by the commonwealth if it robs Peter to pay Paul."

In *The Ford*, Austin writes a barely fictional account of Los Angeles's early efforts to buy up Owens Valley land. Set in the Tierra Longa Valley, the novel focuses on the Brent family: a struggling farmer, Steven, his citified wife, and their two children, Anne and Kenneth. The narrative begins by focusing on the familial and the personal; it describes the poverty of farm life, Mrs. Brent's unhappiness and untimely death, and the children's gradual maturation into young adults. It soon transitions to a more political plot, focusing on the Brents' reactions – and sometime resistance – to the efforts of their wealthy neighbor, Old Man Rickart, who contrives to take over wide swaths of Tierra Longa land to capture the oil that only he knows lies beneath. After making a rash decision to sell his land below its value, Steven Brent and his family join dozens of their neighbors in a small town nearby. Driven from the land that he loves and reeling from the loss of his wife, Steven finds work on the newly developed oil fields, and languishes.

Meanwhile, his children struggle to find their own way. His son, Kenneth, grows closer to Old Man Rickart and eventually becomes a lawyer for his company. Ann, fiercely independent and the true heroine of the story, becomes a real estate broker in the Valley. She

accumulates wealth and connections, which she aspires to use to develop her father's dream of turning the Valley into a Reclamation District. "Fifty years ago, when my father drove over the pass," Steven told his daughter, "Even in those days they dreamed of a dam at Indian Gate... Water and power...and farms...farms, not cities." In pursuing the goal of developing a dam to irrigate the thousands of acres of land – to produce water and power and farms, not cities – Anne must compete with Rickart's secret plans to sell Tierra Longa's water to Los Angeles. In detailing these struggles, the novel largely follows the real-life events of the Owens Valley, telling the story of the great "water war" (Hoffman, 1981) through the fictional family's encounters with Rickart.

Then the novel diverges from history. Encouraged by his sister, Kenneth quits his position with Rickart and dedicates himself to saving the Valley. Los Angeles, and hence Rickart, give up and decide to get water elsewhere. Anne helps to heal the rift between Rickart and Kenneth, and the book ends with both the reclamation of these relations and of Tierra Longa's water. The plot foregrounds Kenneth and Anne's efforts and actions, and thus brings the rural personhood to center stage. Through all of this, Austin draws an explicit contrast with the portrayals of land and people so often suggested by the Los Angeles and LADWP perspectives. To the city folk (in Austin's novel as in life), the land is but "one of the pieces of the game," the river "like a scarf and tossed to one side or the other as the play went" (165). That sort of world was "unimaginable" to Kenneth, who instead saw the valley he grew up in as holding "the only sense of home, of the continuity of existence" (165). Neither privileging the land over people, nor relegating it to mere context, Kenneth instead suggests continuity between the natural and social worlds, and the possibility of happiness in finding equilibrium between them. Indeed, Kenneth recognizes the danger of forgetting people in the equation, recognizing that the ruin



Rickart had caused his family and friends had been “done without thinking of them at all; he had done it by his gift of being able not to think of them” (175).

On one level, *The Ford* is historical fiction, an account of the Owens Valley but with a happier ending. Austin is not merely interested in telling a story, however; she wants to explain why things unfolded as they did. What becomes apparent is that the Brents and their neighbors failed to keep the Valley because they had become too much a part of it. They were hindered by “their invincible rurality...how by as much as they had given themselves to the soil, they were made defenseless in this attack upon it” (221). This was not just country men versus city men (Williams, 1973); the country men had become the country itself. It was their submission to the soil, the blurring of boundaries between man and land, that made both men and land so vulnerable. When Steven Brent sells his land to men who will clearly not care for it or put it to use, he, too falls into a fallow state. It is only when his children restore the land to him, and he spends hours back outside making it productive, that he regains his health and vigor.

On the other end of the spectrum is Old Man Rickart, who maintains a stubborn separation from the land he acquires. Kenneth became acutely aware of both this separation and the power it generates as he visits Rickart’s properties throughout the Western U.S. Observing these properties, Kenneth “found himself thinking of them as things a man might well give his life to, – the development of forest lands in Lassen County, the vast reaches of salt lakes in Nevada...[but] [n]othing developed far in the Old Man’s hands...he took them up and laid them down again....It was if a huge bite had been taken out of the round of his capacity, and left him forever and profitably unaware of the human remainder” (176). This inability to conjoin with the land he owned, Kenneth realized, made Rickart immune to law as well. Lawyers such as Kenneth were merely “a kind of compass” and “[l]aws were not human institutions at the making

of which men prayed and sweated, but so many hazards and hurdles of the game” (176).

Through Kenneth’s musing, we learn how Rickart came to claim the sort of power he held: the power “of driving men before him in herds, of rounding on them, fleecing them, and scattering them again to depleted pastures” (302). Rickart’s power is both terrifying and effective because it is the power to dehumanize, to not only turn men into flocks but, moreover, to scatter them, and deprive them of community.

Austin’s assessment of the significance of community – and the risks of scattering it – is emphasized in the novel’s plot. As the Brents spiral towards a nadir in both economic and personal fortunes, the Brent children must contend with the loss of their childhood friends and with the neighbors and hired help they had grown up with. In the new town where their father struggles to make a living in the oil fields, neighbors turn against one another, and even accuse Steven Brent of conspiring with Old Man Rickart. Their unhappy stay in the town culminates with a terrible fight between former friends – a fight that left one nearly dead in an oil drum and the other suspected of having pushed him in there. It is only when these animosities recede to the background that the story takes a more optimistic turn. The Brent children are reunited with their childhood friends, and renew their old bonds of affection, despite the differing paths their lives have taken. Steven Brent and some former residents return to Tierra Longa, and, with the help of Anne, work together to make the land productive again. Only after these relationships take hold and strengthen do Anne and Kenneth succeed in defeating Old Man Rickart’s plans to divert Tierra Longa’s water. Kenneth and, especially, Anne, are the clear protagonists; but the rebuilding of the Tierra Longan community, as well as of their own family and relationships, were a necessary preface to their success.

In telling this revisionist history of the Owens Valley’s struggles against Los Angeles,

Austin implicitly adopts some of law's underlying assumptions: that water as nature exists separate and apart from man and was a resource to be used and controlled. When it comes to land, declared Steven Brent, "we've got to master her – we've got to compel her." If left to Rickart and big-city financial interests, Austin suggests, the Valley's ruin would indeed become inevitable; but the valley people's heightened affinity and empathy for all things natural could bring about a different result. Austin seems to suggest that it is not what is being regulated (the type or property, the type of resource), but who is entrusted to do the regulating.

The novel's hopeful end, with the intimation that the Brents will succeed in establishing a Reclamation District that will distribute water to all Tierra Longa, also suggests a departure from the legal master narrative of environmental tragedy. Rather than echo the characteristically negative views about inevitable ruin resulting from competition over scarce resources (Hardin, 1968), Austin suggests that community – at least the right type of community – is beneficial, or even necessary, to the preservation of resources. After all, it is only when the Brents rally their neighbors, when Anne helps them to repurchase lands and put them to use as farms, that they overcome the evil capital interests represented by Old Man Rickart and, just as importantly, manage to keep the water in the Valley. Even if ruin is inevitable – which Austin in no way concedes – it will happen less quickly with an intact community working with their own interests in mind, than if there were no community to defend the resource in the first place.

### ***B. Performing community***

Ideas about community also pervade contemporary Owens Valley narratives. In 2013, Los Angeles and the Owens Valley celebrated 100 years of the Aqueduct; the centennial celebrations gave rise to myriad portrayals of Los Angeles, the Owens Valley, and the relations between them. In retelling that history from the Owens Valley perspective, storytellers embraced

a performative mode of narration, enacting, as well as embracing, communitarian values. A prime example of this was the “100 Mule March,” which sent 100 mules and attendant packers to travel the entire 240 miles of the Aqueduct in October 2013. As a story of the Owens Valley, the march operated on several levels: It was a catchy public event that garnered significant press attention and drew attention to the fraught history of the Aqueduct and Los Angeles’s continued presence in the Owens Valley. It also offered a heavy dose of symbolism, tethering the images of the steel and concrete Aqueduct to the animals and people reproducing its line dynamically.



*Mules nearing the end of the March in Los Angeles. Photo by Jon Klusmire. Source: [kcet.org](http://kcet.org)<sup>20</sup>*

Packers and their mules have special significance in the Valley, representing a means of survival in rugged wilderness, and also forming the backbone of the labor force that built the Aqueduct. The City of Bishop hosts a popular weekend called “Mule Days” which celebrates

<sup>20</sup> <https://www.kcet.org/shows/artbound/photos-100-mules-moving-through-the-sierra-mountains>

the mule, and attracts more than 30,000 visitors every year. Tied so intimately to the Valley's history and identity, the marching mules might readily be interpreted as representing the continual outflow of resources from the Owens Valley to Los Angeles: resources that include not only water but also the people and things that make the Valley what it is. But the mules only provide part of the picture. The landscape they traverse forms important backdrop and context, reminding all who see it not only of the majesty, but also the aridity and fragility, of the high desert. That landscape also becomes part of the performance, as disturbances caused by mules leave visible tracks on the desert ground and remind the viewer that everything passing through – inanimate and animate alike – leaves its mark.

The transformation of the Aqueduct into a mobile performance proved to be a potent attraction. In 2015, individuals both within and outside the Owens Valley came together for a so-called "pilgrimage" that they referred to as "Walking Water." The organizers recruited people to walk the length of the Aqueduct in three phases, each phase lasting approximately one month over the course of three years. Deliberately gesturing toward a spiritual journey, the walks were intended as "fervent prayer and pioneering social action." Themes of community and the power of collective action predominated the events. In writing up her vision for the pilgrimage, the Coordinator, Kate Bunney, emphasized that the walks were not intended as a demonstration or statement against something, but, rather "a celebration of the possibilities we have when we come together."<sup>21</sup>

When Bunney referred to coming together, she didn't just mean the people of the Owens Valley, or even Los Angeles. Walking Water attracted participants from 12 nations, many of whom are active in water conservation and management policies. The morning began at dawn, with a water blessing followed by a guided meditation. The walkers would then set out for the

---

<sup>21</sup> *Walking Water* "Vision," available online <http://walking-water.org/about/the-vision/>.

day's walk, which averaged 8 to 14 miles per day. In the evenings, they would reconvene for an event called "Talking Water," where walkers and community members would share their stories and entertain questions.



*Walking Water, 2016. Photo by Sayd Randle.*

The pilgrimage wasn't for everyone. "They're pretty weird," confided one Owens Valley resident who had participated for a few days. "I think some of them might be in a cult," another participant whispered to me during a Talking Water event in Bishop. The Inyo County

Supervisors were invited to participate but voted not to do so in their official capacity. LADWP employees did not participate either; and I heard a few rumors that LADWP had forbidden their employees from attending any Walking Water events. Whether true or false, these impressions and innuendoes underscore the difficulties of achieving performance art. It is one thing to create something with a brush or pen in hand; another thing altogether trying to direct the actions of a diverse group of people and bring them together into a community.

Still, the performativity of the 100 Mule March, Walking Water, and other actions like these, help to enact and effectuate connections between urban and rural, drawing them together not only through actions such as walking, but also through the continuum of experiences of participants as they traverse from one setting to another. If LADWP public relations materials worked to efface the human presence, and writers such as Austin sought to foreground the people, performance art such as that described here can be said to merge the two approaches, blending people and landscapes into a singular experience of place, as well as cementing the existence of such a place for participants and observers alike.

### **III. Publics in Place**

The rural identity, as defined and delineated in LADWP's campaign, served as a secure foundation for both the ideological and political interests of the City of Los Angeles. From the belief in the continuing importance of rural and urban differences, residents of Los Angeles gain both a sense of who they are, and actual material benefits in the form of water and power. What gives this foundation its stability and force may be the natural(ized) associations between the rural Owens Valley and an untouched, unclaimed utopia. Set in the context of tensions between public and private interests in the battle for municipal utilities, the public relations campaign

highlights the importance of cultural discourses in shaping what might otherwise be predominantly legal and political concerns.

Los Angeles was not deciding the future of an existing water and power system; rather, it was building one from the ground up. Its residents and officials wrestled with those challenges during one of the most intense periods of city-building, and they did so by distinguishing the urban center from its rural periphery, reconstituting the city's connections to the natural world. In the process, they made a unique – and uniquely urban – contribution to twentieth-century discussions about the meaning of nature, and the importance of rural America in sustaining urban growth. The possibility of the rural non-place is never absent from the reality of the urban place; the non-place exists not to produce an organic society of its own but to support a public presence and interest firmly located in the urban center. This, at least, was the narrative offered by LADWP – a mode of lawmaking that operated outside of courts and legislatures to inscribe an ideal version of sustainability on the Owens Valley, and which continues to have profound consequences for the governance over that Valley and the people who live there.

The response of those living in, and concerned with, the Owens Valley, aims to re-center the rural, as both a place and a power. The techniques they adopt can be as transgressive as the ends they seek to achieve: rewriting history, as Austin does, or merging art with the everyday, as the marches along the Aqueduct have done. Yet they do not seek to upend an order, so much as rearrange it. Rather than offering an inversion of the LADWP paradigm – a sort of picture where people matter and place does not – these rearrangements proffer a more collaborative integration between people and place. They put people in place, but also underscore the significance of that place to the people. In doing so, these works suggest that building community may be the most significant way of protecting self and surroundings; they challenge through form and message



the dichotomies inherent in dividing social and natural worlds, urban and rural centers and needs. It is this vision of living together that the people of Owens Valley contend with on a daily basis, although they do not do so easily and without acrimony.

### CHAPTER THREE: THE QUEST FOR CONTAINMENT

Silhouettes of trees and streets rolled rapidly across an orange background as the story of the broken pipe unfurled in rapidly streaming blue block letters at the bottom of the screen. “Last year,” the words appeared, “the Big Pine Tribe received less than half of its water...” The reason, according to the lettered narration, was that a pipe was broken, and the entity responsible for fixing it – the Los Angeles Department of Water and Power (LADWP) – refused to do so unless “the Tribe gives up its water rights.” Instrumental music gave way to melody, and voices declared “they’re poisoning the waters for our sons and our daughters so now we’re on the frontier... One people, one cause, now it’s us against the pipeline.” “Stand up!” the singers implored, as the screen flashed the time and location of a LADWP meeting and urged the viewer to attend and speak in support of the Big Pine Paiute Tribe, which had produced the video.<sup>22</sup>

The positioning of tribe versus pipeline and imperatives to “stand up” were clear allusions to the then-current crisis at Standing Rock, a controversy that has grabbed national attention and has come to represent an important battle in the ongoing war to protect tribal sovereignty. There exist striking similarities between Standing Rock and the situation facing the Big Pine Paiute, explained Jesse Archer, the Chairperson of the Big Pine Paiute Economic Development Corporation and one of the creators of the video. At Standing Rock, members of the Standing Rock Sioux Tribe in North Dakota and their supporters staged months of protests against the planned construction of the Dakota Access Pipeline, which would funnel oil from Dakota Oil fields across four states to a terminal point in Illinois where it could then be shipped to refineries. In public and legal forums, the Sioux argued that the pipeline would contaminate

---

<sup>22</sup> “Fix the Broken Water Pipeline: Big Pine Paiute Reservation,” available online [https://www.youtube.com/watch?v=p\\_MaezUP-54](https://www.youtube.com/watch?v=p_MaezUP-54).

their drinking water and damage burial sites; they urged the U.S. Government to deny permits for the construction of the pipeline near the tribe's reservation.

The Big Pine Paiute were also fighting against a pipeline, Jesse told me. The pipeline at issue was broken, and this was problematic because it supplied most of the reservation's drinking and irrigation water. It was not, however, on reservation land, and LADWP, which owned the land that the broken pipeline lay on, prohibited access to Paiutes wanting to fix it. In the Paiute controversy, then, the resource involved was water, not oil, and rather than prevent access, the tribe aimed to obtain it. Still, Jesse, asserted, there was a material parallel to the Standing Rock case because pipelines stood at the center of both conflicts; there also was a symbolic parallel because, like the Sioux, the Paiutes were constructing the fight over access as a fight over tribal sovereignty. Among other things, they needed water to support a public health initiative to decrease diabetes by growing their own food; and to supply a long-planned travel center and casino. Environmental self-sufficiency, Jesse told me, was fundamental to economic and political self-sufficiency.

Sentiments such as this were echoed repeatedly by members of the tribe speaking at the March 2017 meeting of the Los Angeles Board of Water and Power Commissioners. The Commissioners are LADWP's governing board, and they have power to change LADWP policy. Members of the Paiute tribe, who had travelled more than four hours to attend the early morning meeting, implored the Board to intervene. "Bigotry and racism comes to mind as we have been needlessly sidetracked and red-taped...What I'm getting at is the lack of respect for our community and the environment," Shannon Romero, the Big Pine Tribal Chairperson, told the Commissioners. Paul Hewitt, the water operator for the Tribe, told the Board that 600 people were affected by the broken pipe, and that the responsibility for fixing it was clear: "We're not

getting the respect that we deserve as people.... [and] who's to blame? The pipe's on your land.” Jaime Robinson, a 16-year old tribal member, asked the Board to make things right: “My brothers have to play in the dirt and there is no green. And I come here and there's green everywhere and it's really not fair and I just really hope that you guys fix the pipe because even though I won't be able to live with green everywhere I want the generation after me to be able to.” Comments such as these continued to flow as thirty-two members of the public – Big Pine tribal members, members from other tribes, and supporters from Los Angeles – advocated a quick fix for the broken pipe.

These various appeals proved to be immediately impactful. A representative of LADWP told the Board of Commissioners that the Department would fix the pipe within a week. Perhaps because of the quick resolution to this immediate problem, the Tribe's demands for sovereignty and environmental justice dissipated. The particular framing adopted during the pipeline controversy, however, remains striking, for it represented a unique, and potentially fruitful, approach to staking resource claims: tying those claims to communal rights and identities.

In this chapter, I explore the intersections between resources and sovereignty, with a particular focus on how access, rather than ownership, provides a legal structure to link the two. The chapter begins by situating the concept of ownership as a legal principle and tool, including how competing views of ownership play out within property law. I next introduce the concept of access as an alternative to ownership, and suggest why this concept proves beneficial in thinking about how to frame disputes over resources such as water. After this doctrinal and theoretical framing, I move on to the specific case of the Big Pine Paiute Tribe, using the story of the pipeline to illustrate the particular ways that property and access narratives play out in the context of resource struggles.

## **I. From Ownership to Access**

Almost any theory of property rights implicitly (and sometimes explicitly) invokes some notion of personhood: to be a person requires some control over resources in the external environment (Radin, 1982). Recognition of legal personhood is intimately tied to recognition of legal ownership over some thing or things. This is why property plays such an important role in discussions about individual autonomy and the changing nature of communities. Even the common definition of property often reverts back to ownership: Property is “something that is owned by a person, business, etc.” (Merriam-Webster, 2004:996); “the thing of which there may be ownership” (Civ Code Cal. §654).

Although it is the linchpin of most discussions of property, the concept of ownership lacks coherence. Some scholars view it as “a bundle of rights”: a series of rights held against others, including, for example, the right to possess, to use, to capitalize, and to keep from expropriation (Merrill, 1998; Penner, 1995). Others, however, reject any concept of ownership that implies absolute dominion and, instead, define ownership as the exclusion of others from the thing owned. This so-called boundary approach directs attention to the non-owners: those that must consent to allow an owner to act in particular ways, and to prevent others from interfering with his actions (Demsetz, 1974). In this sense, the owner is simply the person left after non-owners have been excluded.

The problem with both theories of ownership is that they provide only a weak account of the concept of ownership at work in the law, construing ownership as a bounded right, with little explanation of the owner’s position within the boundaries of the thing that is owned. An owner is not a uniform entity: owners may be private, public, collective, or individual; they may be temporary or permanent; they may be enriched or impoverished by the thing owned. An owner

may be said to own land, resources, even identity (Harris, 1993). As the property changes, so, too, does the nature and power of ownership, expanding and contracting according to the breadth and character of holdings (Rose, 1998).

Katz (2008:278) offers a more dynamic conceptualization of ownership as neither right nor exclusivity, but, instead, as authority: the authority to determine who does what, and by what means and when, with a particular resource. Understood in this way, ownership becomes a dynamic state, with control and exclusion of things being variable and circumstance-dependent. Put another way, ownership might be understood as being about access: the power to provide or limit resource use and appropriation. Thinking about access, rather than property, Ribot and Peluso (2003) argue, is a more productive way of accounting for the ways in which resources are used or restricted. They define “access” as “the ability to benefit from things” – a potential power, rather than the inherent power generally assumed within the concepts of property and ownership (153).

An access-framework is preferable, too, as a means to escape the possessive and patriarchal logics inherent in the concept of ownership. The history of ownership – including not least of all its attachment to the legal and social power of whiteness and maleness – means that the concept attaches to logics requiring that land, resources, and, often indigenous peoples, too, are to be valued and measured through the regulatory mechanisms and disciplinary knowledges that privilege not only whiteness and maleness but also humans in general over and beyond other living and non-living things. The concept of access, however, does not bear the weight of this history; and the logics that power it do not presume gender, race, or even humanity. As a term and a concept, “access” invites a wide variety of claimants: The focus does not rest with who has what but on how one stands in relation to others, and when, why, and where one does so.

By focusing on this potential, Ribot and Peluso (2003) draw attention to the range of social relationships that can constrain or enable people to benefit from resources (154). Thus, for example, an individual farmer may control access to his fields, but neighbors may limit that farmer in his access to the water necessary to irrigate those fields. This individual “will be in a dominant position with respect to some actors and in a subordinate position to others” (159). People and institutions are situated differently in relation to each other and to resources at various historical moments and geographic scales (154, 158). An access-framework enables us to account for such differences by eschewing the status-centered label of ownership to instead focus on position, which shifts and morphs and is best defined in relation to other people and things. An access-framework also speaks more generally to the varying processes and relations that undergird what we typically think of hallmarks of property: control, use, and maintenance. Ribot and Peluso suggest that access may be either legal or illegal. Legal access to resources is achieved either through rights – implying that some government will enforce a claim or that rights are recognized through custom or convention – or through some legal instrument such as a deed or easement. Illegal access, on the other hand, operates through some form of coercion; violence and theft are examples. Each of these types of access are effectuated by specific mechanisms. To summarize Ribot and Peluso (162-72), these processes and relations include:

- access to technology: This access indirectly leads to access to resources and includes, for example, access to tube-wells, pumps, and electricity;
- access to labor: This includes the labor necessary to establish and maintain access to resources, as well as the opportunity to barter labor in return for patronage that opens up access to resources;
- access to knowledge: Access to resources may be shaped by beliefs, discursive practices, and negotiated systems of meaning. Thus, for example, NGOs might establish priority in access by referring to their claims as being made in the name of environmental protection; villagers in a rural village might lay claim to particular fruit by recounting the

history of its tree; scientific narratives also justify a particular form of control over resources;

- access to authority: Access to individuals and institutions who make and enforce laws, rules, and customs, can influence who benefits from resources;
- access to social identity and social relationships: Access may also be mediated by membership in a community or group – including age, gender, and race – which often defines access to other mechanisms, such as authority. So, too, can shifting relations between individuals and groups open up access, through standard social mechanisms such as trust, dependence, and patronage.

In what follows, I build upon this theory of access, using the case study of the Big Pine Paiute Tribe to show how the general logics of ownership can frustrate attempts to control or regulate resources, and how the access-framework might offer a more productive alternative. Like Ribot and Peluso, I attend to the mechanisms that facilitate access to resources. However, I also elaborate and challenge the neat dichotomy between legal and illegal access to show that legality is itself a mechanism rather than a category: contingent, constructed, and, ultimately, as unstable as the processes and relations identified above.

I begin by situating the Paiutes in relation to the land and resources of the Owens Valley. This requires a brief history of what has come to be called the Land Exchange: a contractual arrangement between LADWP and the federal government that shifted the Paiutes from homesteads to three new reservations throughout the Valley. I continue this narrative by describing recent legal efforts to challenge this agreement. These efforts rely on the traditional property-ownership framework and have had ultimately proved unsuccessful. I then return to the pipeline controversy with which I began the chapter, showing how the rhetoric and appeals in that conflict have shifted the dispute discourse, and opened up new avenues for staking claims to the Valley's water specifically, and to environmental justice more generally.



## II. The Land Exchange

In early spring 1931, Harvey A. Van Norman, Chief Engineer at the Los Angeles Department of Water and Power (LADWP), dispatched an urgent telegram to federal Indian agent Ray R. Parrett in Bishop, California: “Have information to the effect that Indians in the Owens Valley are in need of sustenance. Can you advise status of land discussed with you providing for their care [?]” Parrett composed a formal letter the next day, repeating to Van Norman what he had been asserting publicly for at least half a dozen years: The Indians’ situation was “indeed a distressing one.” But it was not, he admitted, a situation that the United States government was inclined to address. “The policy of the Indian Department seems, however, against assuming any additional responsibility,” he wrote. “In other words,” Parrett elaborated, “it is desired to get itself out from under the Indian problem if the opportunity avails itself.” Despite the ambivalence of his employer, Parrett declared himself a willing ally to Van Norman. Referencing LADWP’s plan to develop reservations for the Indians of the Owens Valley, he opined, “The plan discussed...is, I believe, a very feasible plan.”<sup>23</sup>

The juxtaposition of land and care in Van Norman’s telegram, and Parrett’s oblique reference to “the plan discussed” by and between departments, suggests that LADWP’s presence in the Owens Valley cannot be told simply as a narrative of resource grabs and economic dispossession, nor were LADWP’s efforts secreted and isolated from other agendas and broader politics. In their own ways, both missives—the abbreviated telegram blaring its request in all caps, and the measured response typed, signed, and carbon copied to the Commissioner of Indian Affairs and the District Superintendent—summed up the circumstances that would eventually result in a massive reorganization of people and territory in the Owens Valley. The initiatives

---

<sup>23</sup> Van Norman to Parrett, April 23, 1931, “Indian Policy,” LADWP Records; Parrett to Van Norman, April 24, 1931, “Indian Policy,” LADWP Records.

referenced in the correspondence between Van Norman and Parrett would in a few years be memorialized in the 1939 Land Exchange: a self-titled “Agreement” between LADWP and the Department of the Interior, which would create three new reservations in the Owens Valley and deliver to the City of Los Angeles more than 3,000 acres of land and appurtenant water rights.

Surprisingly little of this story appears in the historiography of the Owens Valley. Historians of the Valley have dedicated thousands of pages to describing, debating, and determining the role of LADWP in California’s “water wars,” but they are virtually silent as to the parts played by Indians in those wars, or the effects of such wars on Indians in the Owens Valley.<sup>24</sup> Their descriptions of the Land Exchange – when they mention it at all – are brief and conclusory. Williams Kahrl’s *Water and Power* (1983:1), for example, begins with the observation that “The history of California in the twentieth century is the story of a state inventing itself with water.” Following a brief sketch of the development of riparian rights doctrine in the mid-1850s, Kahrl then leaps forward to the arrival of LADWP in the Owens Valley at the turn of the century. The remainder of the history concentrates on “separating what happened from what did not,” focusing especially on “what happened” to the townspeople and ranchers to the exclusion of the Paiute and Shoshone Indians who also lived there (x). Kahrl concluded that, unlike LADWP’s takings elsewhere in the Valley, the Land Exchange was ultimately beneficial, allowing the Owens Valley Indians “superior lands and a guaranteed water supply” (358). He observed, without any apparent irony, that the “generosity” of the Land Exchange was on par with that shown toward “another displaced part of Creation,” the Tule Elk, which LADWP had transplanted to the Valley after learning

---

<sup>24</sup> Much of the history, as well as this section, focuses on the early 20<sup>th</sup> century. I have preserved the language from that time, including the use of the word “Indian,” in both direct quotes and in my discussion. As this chapter moves into or references the present, I shift to contemporary terminology, replacing the word “Indian” with the contemporary term “Native American.”

of their near extinction in other regions (374). John Walton's *Western Times and Water Wars* (1992) is only slightly more comprehensive. Walton offers an overview of the Indian Wars in the Valley, and documents Paiute and Shoshone labor on local ranches in the early 1900s, but he devotes little attention to the subsequent interactions between the Owens Valley Indians and LADWP. Like Kahrl, Walton concludes that the Land Exchange turned out to be "a boon for Indians formerly deprived of a decent home" (283).

The Native Americans living in the Owens Valley today contest the notion that the Land Exchange provided benefits to them, least of all a "decent home" or "superior water rights." Much more than a blip on the historical timeline, the Land Exchange was a crucial event for the Owens Valley tribes – one that confined them to reservations, altered their water rights, and complicated enrollment. For tribal members living in the Valley, the Land Exchange casts a long shadow over present efforts to promote economic development and sustain population growth on the reservations, which are limited by the Land Exchange in acreage and access to water. A prolonged drought and ongoing negotiations to re-distribute resources in the Valley have intensified protests against what many tribal members now perceive as an unlawful agreement, and make filling the historiographical lacuna a matter of increasing urgency.

I first came across papers in an archive held by LADWP that documented the rise of the public utility, and its efforts to obtain water from the Owens Valley, which lay more 200 miles outside the city's borders. This archive reveals the complex roles of LADWP engineers and municipal authorities, as they sought to acquire "100 percent" of the water in the Owens Valley.<sup>25</sup> In this chapter, I draw on this archive and also records created by the Bureau of Indian Affairs, as

---

<sup>25</sup> Van Norman, Harvey, December 12, 1931, Report and Accounts of the Water System, Huntington Library Collection.

well as other sources such as newspapers, legal briefs, public hearing testimony, and interviews. The history of the Land Exchange not only illuminates the gritty sources of Los Angeles's prosperity and strength; it also provides an important perspective on the interconnected social, political, economic, and environmental changes that have shaped today's Owens Valley. In addition to providing necessary context, the history of the Land Exchange shows the importance of considering competing values and interests between different groups of people in the formation of particular property regimes, which together shape possibilities for future social and environmental relationships. More specifically, an ethnographic and historical analysis of the Land Exchange and its fallouts reveal the ways in which views of municipal power, Native Americans, and water rights have shaped each other, with a range of mixed outcomes for all those involved.

*A. The Owens Valley "Indian Problem"*

To a casual observer in 1925, the Owens Valley was a place of untrammelled natural beauty. "Bishop Creek tumbles garrulously away to the right through meandering rows of brush. Holsteins turn their vapid gaze on you from pastures of Wordsworthian beauty," wrote the author and poet Gilbert Brown about his summer visit to the Valley. For Brown, and many others, the Valley presented a picture of pastoral perfection, seemingly untouched by the decades of conflict over its natural resources. Brown recalled hearing "[r]ed-winged blackbirds, bright ornaments of the marshes, sound their metallic calls from the fences beyond the rushes of the roadside," smelling "freshly cut alfalfa [that] weights the air with its heavy bouquet," and gazing upon "[c]omfortable white farmhouses stand[ing] in the shadow

of the tall trees.” But even his rapture, Brown sensed an absence in this romantic tableau: “Relentlessly, piece by piece, Owens Valley is being turned into a ghost community.”<sup>26</sup>

Few disputed either the fact or reason for this stark contrast between the natural and human landscapes. Los Angeles had opened the gates of its massive aqueduct in 1913; it continued to buy up land and water rights in the Valley, and much of the water once used for irrigation was being diverted into the Aqueduct. Weekly ads sought to lure residents of the Owens Valley to ostensibly greener pastures, arguing, as did the Hines Ranch Company of distant Merced County, “The conditions in the Owens Valley are making it necessary for land owners to seek new locations, where farming may be done under conditions that will permanently insure an ample supply of irrigating water together with soil and climatic conditions favorable to production.”<sup>27</sup> Farmers and ranchers—made desperate by the manufactured drought and dwindling markets for their produce—were easily persuaded to do so.<sup>28</sup>

While the local newspaper and politicians bemoaned the transformation of the Valley’s economic and communal prospects, they made little mention of the Indians living throughout the Valley. They, too, were suffering from the rapidly transforming Valley. Although some Indians owned property that they could sell to DWP, many were wards of the state, with no property, and few sources of income apart from their work in the Valley. By the turn of the century, ranching and farming had become the primary source of employment for the Paiute and Shoshone men and women, and as ranchlands diminished, so too did their

---

<sup>26</sup> Brown, Gilbert, “A Wonderous Weekend in the Owens Valley,” *Inyo Independent*, July 18, 1925, 2.

<sup>27</sup> *Inyo Independent*, April 4, 1925, 3.

<sup>28</sup> Liebcap, *Owens Valley Revisited*, 2007, p. 17.

wages (Walton, 1992:27-31). With fewer job opportunities, and more restrictions on entering DWP lands for purposes of hunting and fishing, some Indians found themselves dependent on government aid.<sup>29</sup> Even this aid, however, was extremely limited. According to Ray Parrett, the Superintendent of the Walker River Indian Agency with jurisdiction over the Owens Valley, such rations were comprised of: four cups of flour, two cups of rice, and three pounds of sugar, a couple of hands full of macaroni, two small cans of baking powder, and a piece of bacon “the size of your hand.”<sup>30</sup>

Scarce food and the persistence of unusually harsh winters put intense pressure on Indians throughout the Valley. Between 1920 and 1930 the Walker River Indian Agency documented an almost fivefold increase in cases of dyptheria among the Owens Valley Indians; cases of influenza and smallpox also multiplied.<sup>31</sup> At the time, only one reservation existed in the Owens Valley – a small plot of land attached to the former military outpost at Fort Independence – which was home to approximately 150 Indians. More than 1,500 other Indians lived on scattered homesites or took up temporary residence on DWP’s recently acquired lands. Many of them built shelters near the streams and rivers that fed the Aqueduct, and as the Indians’ health worsened, LA City officials’ concerns grew.

By April 1930, perceptions of Indians “living under deplorable conditions, some being on the verge of starvation” prompted LADWP’s governing board to order an inquiry

---

<sup>29</sup> Smithton to Porter, March 14, 1930, “Statistics on Indians in Owens Valley,” LADWP Historical Records Department—Los Angeles, CA [hereinafter LADWP Records].

<sup>30</sup> “A Dire Situation for Owens Valley Indians,” *Inyo Independent*, April 4, 1925, 3.

<sup>31</sup> Monthly Report for the month of December 1929, Walker River Indian Agency, BIA Files—National Archives, San Francisco [hereinafter NARA Records].

and report on the situation.<sup>32</sup> LADWP's Chief Engineer and General Manager, Harvey A. Van Norman, assigned the task to his Right of Way and Land Division—the division responsible for handling the Department's real estate portfolio—and A.J. Ford, the Right of Way and Land Agent then stationed in the Owens Valley, directed the field and office work necessary to respond to the charge. He completed the final report shortly thereafter, in June 1930.

***B. "A Sad Picture": Indian welfare in the Owens Valley***

Despite the alacrity with which it was written, Ford assured his readers that the report was “founded upon concrete facts, as found in the field.”<sup>33</sup> In a brief “acknowledgements” section, he elaborated on the nature of this fieldwork: Two LADWP agents, assisted by the Indian Service's Farmer in Charge and former Superintendent of the Owens Valley Indian School, L.L. Goen, canvassed the Valley and created a rudimentary census of the Indians they encountered. LADWP's Irrigation Engineer identified (albeit through unspecified means) potential new lands to which to move the Indians. In addition, Indian agent Ray Parrett, the Indian missionary Richard Price, and a prominent local businessman offered suggestions and “constructive criticism of the past and present situation.” Based on the “concrete facts” compiled through these means, Ford produced a 26-page report describing the extent and causes of the “Indian problem,” followed by a sketch of his proposed solution to establish three new homesites, and hundreds of pages of exhibits including pictures of existing housing, floor plans for proposed housing, areas of proposed homesites, estimated costs, and census details. His solution, Ford confidently asserted, would be successful as

---

<sup>32</sup> “What's To Be Done? More Help Needed for Owens Valley Indians,” *Big Pine Citizen*, March 13, 1930, p.1.

<sup>33</sup> Ford, A.J., “The Indian Problem,” June, 1930, “Indian Policy,” LADWP Records, p.2.

long as it did not “fall into the hands of theorists who believe every Indian should be a ‘Hiawatha’ or ‘Minnehaha.’”<sup>34</sup>

Hiawatha, a Native American leader credited with unifying five tribes into the Iroquois Confederacy in the 18th century, and Minnehaha, his fictionalized lover, are potent symbols of Native American strength, humanity, and capacity to transcend cultural divides between each other and between Indians and white men. These were not the qualities Ford highlighted among the Indians of the Owens Valley. Instead, he described a “semi-Nomadic” people long in conflict with the white settlers, the “victim[s] of an unfortunate situation,” “largely being dependent on leadership” and “helpless without such guidance,” who “have prospered best when on a steady payroll” although “[n]one of them can be termed as skilled laborers.” As a result of an “almost exhausted market” for their labors, Ford presented what he called a “sad picture” of the Indians in the Valley, “a picture not only of being in a state of poverty, but also for the greater part, living under adverse conditions.”<sup>35</sup> By painting this picture, Ford masterfully crafted a “problem” statement that led directly to the Department’s desired solution: The Owens Valley Indians were “victims” who could hardly be expected to fend for themselves, who were unsuccessful farmers who had little claim to the land, and who were by then wholly dependent on agricultural employment that was seeping out of the Valley as quickly as the water was. Notably absent from Ford’s causal assumptions were the role of the federal government—whose failures and missteps have been well documented by historians and even its own agents—and also, the obvious (if not always explicit) exclusionary social mores and practices that made it difficult for Indians

---

<sup>34</sup> Ford to Parrett, June 12, 1930, Walker River Agency, NARA.

<sup>35</sup> Ford, “The Indian Problem,” pp. 9, 16-17.



to thrive in the settler community.<sup>36</sup> Also absent from Ford's description was any acknowledgment of the myriad and creative ways that Owens Valley Indians had developed to support themselves, and indeed, to prosper, throughout the centuries, including trade with other tribes, seasonal adaptations, and an elaborate irrigation system (DeDecker, 1988).

Instead, the static and uni-dimensional problem statement Ford presented led him to find "conclusive evidence of responsibility" on the part of LADWP, which thus lent him the moral authority to propose a solution on the Department's behalf. Under Ford's formulation, the "Indian problem" was a problem of LADWP's own making, and hence, it was LADWP's duty—and right—to address it, "in order that the present living conditions of the Indian may be bettered and their future stabilized, so that they will have something to look forward to."<sup>37</sup>

### ***C. Competition and Collaboration: Allocating Responsibility***

The solution proposed by Ford would serve, with various modifications, as a blueprint for LADWP in future negotiations, and, ultimately, as the basis for the Land Exchange deal itself. At the heart of Ford's proposal was a plan for the federal government to abandon the Indians' existing homesite tracts, to develop new tracts on land owned by LADWP, and to move all Indians to those sites. The plan thus required coordination between the Indian Service—which would have to agree to abandon its current lands and to buy LADWP land—and the City of Los Angeles—which would have to agree to sell its lands and, in some cases, to lease other lands to Indians.<sup>38</sup> It also would require that the approximately sixty-five Indians who owned their land outright agree to sell that land to LADWP. To make matters

---

<sup>36</sup> Hoffman, *Vision or Villany*, pp. 65-75.

<sup>37</sup> Ford, "The Indian Problem," pp. 11.

<sup>38</sup> Folder 72, Carson City Indian Agency, Files of A.J. Parrett, NARA Records.

more complex, not only would the federal and local agencies have to cooperate in the land exchange; they would have to work out further agreements for water, to which the government did not have definitive rights beyond the current homesites.<sup>39</sup>

It would be better to move the Indians out of the Valley altogether, advised A.L. Walthen, the Superintendent of the Indian Irrigation Service in Los Angeles, “as their chances for getting work is lessening as the City is purchasing all the land of the Valley.”<sup>40</sup> William Kennett, the Indian agent in Carson City, did not propose an alternative but instead advocated further planning and action. He suggested that Ford’s report was founded upon erroneous facts, and recommended that the City undertake another, more comprehensive, census in conjunction with his office. Even A.J. Parrett, the Indian agent in Bishop who proclaimed that “the plan which the City has established for assistance of the Indians is a wonderful one,” expressed concern about potential conflict between his agency and the City, and suggested dividing responsibilities such that the City “adhere closely to care of the Unrestricted class and the Government employees look after care of the Restricted.”<sup>41</sup>

The reactions of the local Indian agents to Ford’s report pointed to at least two significant miscalculations on the part of LADWP. First, in taking responsibility for the

---

<sup>39</sup> Right of Way and Land Department Meeting minutes, June 17, 1930, LADWP Records; Parrett to Ford, Aug 18, 1930, Walker River Indian Agency, NARA.

<sup>40</sup> Workman to Ford, April 27, 1931, LADWP Records.

<sup>41</sup> Parrett to Ford, Nov. 28, 1931, Walker River Indian Agency, “Correspondence,” NARA Records, 3-4. Parrett explained the distinctions between the three classes of Indians at that time: unrestricted (“one who does not reside on Government reservations or lands, has no land holdings or other income, and is retained under the jurisdiction of the Federal Government as to his general welfare”) and restricted (under the jurisdiction of the Federal Government but is on a Government homesite or allotment) and Independent Indian (“one who has secured either land or funds through his efforts and falls exactly in the same category as any other American Citizen.”). Porter to Ford, Jan. 13, 1932, “Indian Policy,” LADWP Records.

“Indian problem,” LADWP ignored the institutional reality of its most important ally, the Indian Service, whose mission was to care and provide for the Indians in Owens Valley. The Indian Service could not fully support LADWP’s efforts to ameliorate the situation in the Owens Valley without undermining its own imperative – and thus justification – for being there. Second, in proposing new reservations, LADWP had disregarded the prevalent political mood, which, as the Attorney to the United States Indian Committee put it in a meeting with one of LADWP’s lawyers, was decidedly against “so-called ‘Indian colonies.’”<sup>42</sup> Indeed, the Senate Indian Committee at that time supported a parallel plan that involved neither LADWP nor the Indian Service, but, rather tasked the Red Cross with assisting Indians in the Owens Valley.

Faced with these myriad hurdles to its plan to acquire “100 percent” of land and water rights in the Owens Valley, LADWP modified its approach.<sup>43</sup> In a follow-up report submitted to LADWP’s governing board on September 4, 1931, Deputy Right of Way and Land Agent E.A. Porter stressed that the general conditions observed in Ford’s 1930 report had not changed, and anticipated that they would become worse throughout the winter. Porter reiterated that the situation likely was due to lack of labor, a condition that was proximately caused by LADWP. Rather than suggest that LADWP undertake the controversial step of providing land and housing for the Indians, Porter advised only that it “take initiative” and then plan for a more collaborative approach through which “City, Federal, County, and State Governments, American Red Cross, etc.” would work together to relocate the approximately 800 Indians currently living on lands that LADWP wished to

---

<sup>42</sup> Collier to Haynes, Nov. 24, 1931. “Administrative Files,” LADWP Records.

<sup>43</sup> Van Norman, Harvey, December 12, 1931, Report and Accounts of the Water System, Huntington Library Collection.

acquire. In pressing his case for letting LADWP proceed before securing the cooperation of other agencies, Porter argued that “the most efficient results can be secured if only one agency can be permitted to execute the proposed plan.”<sup>44</sup> Porter concluded by recommending that LADWP appropriate funds to further fact-finding and relief efforts, as well as find ways employ Indians on infrastructure development and repair in the Valley.

Such arguments won over the Department’s Board, which agreed to provide \$30,000 to LADWP to continue its work among Indians in the Valley. No doubt efficiency was a significant concern of LADWP, which was eager to resolve the “Indian problem” and move forward with its plans to build reservoirs on land currently occupied by Indian owners and squatters. But the cautious approach that Porter outline in his report to the Board had other rationales as well. As one LADWP attorney remarked in an internal memo, LADWP anticipated that such efforts would help it to secure the cooperation of the Department of the Interior (DOI), in hopes that it would shoulder at least half of the high cost of developing new lands and supplying them with water. By promoting itself as the source of humanitarian aid in various forms, LADWP could demonstrate its good faith and suggest to the DOI its usefulness in a matter that was traditionally under the purview of that federal agency.

This strategy would only work if the government needed LADWP and, at this stage, it was far from clear that it did. Persistent rumors throughout the summer of 1931 suggested that the Red Cross was preparing to direct its efforts to the Owens Valley to invest a substantial amount of money and resources there. LADWP’s General Manager Van Norman tried repeatedly to confirm such rumors. He repeatedly sent letters and telegrams to Indian Agent Parrett asking for updates on the Red Cross, but Parrett professed to be as uncertain as

---

<sup>44</sup> Porter, E.A., September 4, 1931, LADWP Records.

he was.<sup>45</sup> The answer did not come until late winter that year, in the form of a short telegram from the Indian Commissioner C.J. Rhodes to the President of the Board of Water and Power stating that the Red Cross would not be undertaking work in California, and imploring Los Angeles to continue its assistance to the Indians of Owens Valley.<sup>46</sup>

***D. Preventing “contamination”: A justification for removal***

Rhodes’s telegram marked a turning point in the federal-municipal partnership in the Owens Valley. With all other avenues of aid apparently foreclosed, and the Owens Valley Indian agencies in turmoil, the Department of the Interior began to consider in earnest LADWP’s proposals for solving the “Indian problem.” In June 1932, Porter co-authored, along with LADWP Appraiser C.D. Carll, another report on the condition of the Indians in the Owens Valley. Despite more than a year of research, Porter and Carll had very little in the way of new information to report. They concluded that the Indians’ condition was still very poor and that LADWP was still proximately responsible for their situation. What their report did contribute, however, was a much more detailed proposal for resolving the situation—and a much clearer justification for doing so.

Porter and Carll urged that it would not be sufficient to provide merely money and services, as the Red Cross had allegedly promised to do. Nor, they specified, would it be practical to move the Indians out of the Valley altogether, as the federal government was trying to do. The real concern, and the only means to provide lasting relief, according to Porter and Carll, was to return to the idea of developing new homesites and building “proper housing” on them. As Porter and Carll reported, Indians were then living in what the

---

<sup>45</sup> Parrett to Ford, August 10, 1931, Walker River Indian Agency, NARA Records.

<sup>46</sup> Rhodes to Haynes, Dec. 5, 1931, DWP Records, Los Angeles City Archives.

LADWP agents saw as “shacks, tents, wickiups, and hovels” that were “too small...unsanitary...[and] in violation of housing laws”—conditions that posed threats not only to the health and welfare of the Indians but also to the water supply. Transformed from a matter of welfare to a matter of environment, the “Indian problem” was no longer one solely of national political concern. Contaminated water could easily leak beyond the borders of Indian settlements, infecting the population of the Owens Valley and the end-users of the water in Los Angeles. Because now the water system, not just the Indians themselves, was “under threat,” Porter and Carll counseled that immediate action should be taken to move the Indians and isolate them from the City’s water supply. The reasons for doing so were no longer the health and welfare of the Indians but more global “reasons of conservation of water, to secure better lands, to improve sanitation, and particularly to prevent contamination of water supplies.”<sup>47</sup>

Porter and Carll’s report, and the new environmental-crisis framing they erected around the issue of the Owens Valley Indians, mobilized the Board of Water and Power Commissioners, who urged the Secretary of the Interior to work with LADWP to reach a final solution to the “problem” of Indians in the Valley.<sup>48</sup> In October 1932, the Secretary appointed Roy Nash, then Superintendent at the Carson City Indian Agency, to investigate the situation in the Valley and advise on further actions. This marked the beginning of several more years of investigation and report writing, with few definite milestones. Despite appearances, however, significant changes distinguished this period from the prior few years. First, the question was no longer whether the government would agree to LADWP’s plans to

---

<sup>47</sup> Porter, E.A., and Carll, C.D., Report, June 1932, LADWP Records, 14.

<sup>48</sup> Haynes to Parrett, October 20, 1930, DWP Records, Los Angeles City Archives.

exchange lands, but only how such an exchange would be accomplished. The Department of Interior and City of Los Angeles were by now working in tandem, holding regular meetings, and seeking to influence the form of legislation that would effectuate the exchange of lands.<sup>49</sup> Second, an implicit division of responsibilities left LADWP with autonomy in selecting new reservation sites, appraising the land values, and even designing the homes that would be built on them. This left LADWP with almost complete control over the material and spatial form of the new reservations, with little apparent input from the Indians who would live there or the government agency whose responsibility it was to ensure their welfare. As will be examined more fully in the third section, the new reservations took shape, almost exclusively, in relation to water—designed to isolate Indians from the Valley’s water sources in what would be the ultimate containment.

As LADWP and the Department of Interior grappled with the problem indigenous groups posed for their missions and visions of the Owens Valley, the Owens Valley Indians wrestled with the far more pressing problem of their removal. Accessing Native Americans’ perspectives presents numerous challenges. In particular, sources documenting the Native Americans points of view tend to be sparse—in part because few institutional or personal imperatives necessitated written documents, in part because the writings that do exist were not always preserved in existing archives, and in part because there are few witnesses who can provide firsthand accounts of their experiences, and others who refuse to discuss the Land Exchange at all given the persistence of conflict and expectations for future litigation over it. Yet one can still piece together at least a partial view of the Owens Valley Indians’ reactions to the administrative debate swirling around them. These materials reveal not only

---

<sup>49</sup> Hill, Clarence, Report, November 1, 1930, LADWP Records; Press Release, November 5, 1930, Public Affairs Division, LADWP Records.

the nature of the Indians' protests against the bureaucratic machinations of outsiders and efforts to be heard in governing their own affairs but also underscore alternative ways of framing the debate, challenging not only the substance of the agreement but also the very means through which such debate would play out.

*E. The “self-styled Indian committee”: Claiming representation*

On December 1, 1931, three Indians met with E.A. Porter, the LADWP Deputy Right of Way and Land Agent. Writing to his direct supervisor, A.J. Ford, more than a month later, Porter recounted the visit from what he termed “a self-styled Indian committee.” He noted that the Committee argued against the City’s employ of two white residents to disburse aid to the Indians, and emphasized that such work should be given to “educated Indians” instead. Porter reported that he “was able to convince them that they, nor anyone else in Owens Valley, had any right to dictate to this City how money should be spent.” As for claims that LADWP had taken away the Indians’ livelihood—a claim that LADWP had acknowledged in its insistence that it should be given autonomy in solving the “Indian problem”—Porter was unusually defensive. He offered the opinion that the welfare work in the Valley was “better organized than in any other section in the West” and he reported informing the Committee that they should consider themselves fortunate, that Indians outside the Valley were suffering even more and that even whites were coming to the Valley because conditions there were so much better than anywhere else.<sup>50</sup>

Having thus justified LADWP’s decisions and actions, Porter switched into a more offensive mode, attacking the characters of the Committee members. One, he wrote, ‘drinks a great deal, gambles and bootlegs among the Indians,’ another ran away from the Sherman

---

<sup>50</sup> Porter to Ford, Jan. 13, 1932, LADWP Records.



Institute at Riverside and “is termed more or less a wanderer,” and the third was a landowner whose acquisition of property was through means “very shady to say the least.” The subtext of Porter’s remarks were clear: These were not men who could be trusted and, what’s more, were men who likely held little sway even within their own communities. He advised “at no time should the Indians, or the self-styled ‘leaders’ be recognized” and cautioned that if they were admitted into the ongoing negotiations, “neither the Government nor the City will be able to go very far in the final solution of the problem.”<sup>51</sup>

It is impossible to know what the Indians said in the meeting, or how they presented their case, apart from Porter’s report of what happened. But we might glean some of the arguments they likely raised—as well as the spirit in which they raised them—from a letter some members of the delegation wrote to Mayor Porter in Los Angeles soon after their meeting with Porter. On December 27, 1931, Harry B. Cornwall and J.E. Clifton sent a letter to the Mayor in which they explained that they had been elected by the Indian leaders in the Owens Valley “for the purpose of learning such facts from such sources of information as they are able to get, of the \$30,000 appropriated by the Water Board of the City of Los Angeles and the character and scope of a plan recommended by a certain committee just a few years ago.”<sup>52</sup> Cornwall and Clifton protested that the Indians had not been consulted with respect to any plans for their welfare and, moreover, that they disagreed with the plans that had been set in motion without their input. First, they objected to the allocation of the \$30,000, which they saw as “charity,” when they would prefer, instead, a means to earn money. Second, they objected to the proposed distribution of money, which, as they

---

<sup>51</sup> Porter to Ford, Jan. 13, 1932, LADWP Records.

<sup>52</sup> Porter to Cornwall and Clifton, December 27, 1931, LADWP Records.

understood it, would be limited to Indians north of Lone Pine, and to the exclusion of the primarily Shoshone Indians who lived in the southern end of the Valley. Just as Porter had attacked their motives in his letter to Ford, Cornwall and Clifton questioned the LADWP's intentions in the Valley. "The City wants the water" suggested the Indians, and would do whatever it needed to get it, until "there is nothing left for the Indians to do but turn back to the old primitive ways." These were trenchant critiques, but Cornwall and Clifton concluded on a conciliatory note, explaining that they could "agree to a reasonable plan acceptable to all in this Valley," and wished the Mayor "A Merry Christmas and Happy New Year."<sup>53</sup>

By addressing their letter to the Mayor of the City of Los Angeles, rather than to Porter or anyone else at LADWP, we can surmise that the Indians had reached an impasse with the utility and were instead appealing to the City that ostensibly regulated it. But the Mayor rarely directly involved himself in LADWP's affairs, and this case presented no exception. He referred the matter to the Board of Water and Power, which in turn requested an appraisal of the matter from the LADWP general manager Van Norman, who deferred to the chief of the Right of Way and Land Agency, A.J. Ford. Ford wrote on January 19, 1932 and enclosed Porter's memo. Referring to that memo, he reiterated that the "so-called 'Committee'" was misrepresenting facts and ought to be ignored.<sup>54</sup> And so, Porter's memo having come full circle, and the Owens Valley Indians having been marginalized by the refusal even to recognize them as a legitimate committee, the matter of Indian representation in debates over their welfare seemed to be foreclosed.

---

<sup>53</sup> Cornwall and Clifton to Porter, December 27, 1931, LADWP Records.

<sup>54</sup> Ford to Van Norman, January 19, 1932, LADWP Records.

**G. *The Giant and the Waterbaby***

Resistance, however, can take many forms, and may be found even where political advocacy has failed. Stories can be an especially potent form of confrontation, crafting not only opposition, but also an alternative means of relating (to) history. The narratives of the Owens Valley Indians are particularly accessible, thanks to a project implemented by anthropologist Alfred Kroeber who set out to collect indigenous oral histories throughout California. Three of his students travelled to the Owens Valley in 1935, where they enlisted younger Paiutes to interview their elders and record the stories in notebooks. The interpretation of the stories are not fixed, of course, and Paiutes working now to transcribe the stories from the notebooks have challenged the transcription of some of the oral histories, noting that they had heard the stories told differently. Still, the collection provides a rich opportunity to hear Paiute voices – filtered though they may have been – where archives and other documents generally hold only silence.

The stories emphasize place, serving as a map to the topography of the area, and also to the spirits who reside in particular features: the rivers and lakes, mountains and streams. Encompassing both space and symbolism, the stories are, as one tribal member explained to me, a guide to Paiute culture. Some might also be understood as a commentary on contemporary events. The Cultural Preservation Officer for the Big Pine Paiute drew my attention to one story in particular, entitled “The Giant and the Waterbaby.” Susie Baker, an Owens Valley Paiute from Big Pine, told the story, which, in summary, went like this: A giant approached the Alabama Hills, a range of hills and volcanic rock formations not too far from the intake of the Los Angeles Aqueduct. The giant had devised a means of hunting prey: he would scream at the top of his voice and as people ran, he would pick them up and

kill them. Sick of hearing the giant scream, the Waterbaby – a spirit who lived in Owens Lake – went to a nearby trail and lay on a rock to await the giant. When the giant found the Waterbaby, he asked where the baby’s mother and father were. The Waterbaby refused to answer, so the giant began to press the baby’s head and fingers. The Waterbaby sat up and seized the giant by the finger. He threw the giant into the Owens Lake and drowned him. Years later, the Waterbaby retrieved the giant’s bones and threw them across the Owens River, opposite the Alabama Hills, where they remain today.

The Waterbaby is an important figure to the Paiutes, whose name derives from the word Paya, meaning “water.” There are multiple meanings to the story, not least of which is to mark some of the topographical features of the Owens Lake area. But the context in which the story was told mattered, too, especially, as the Big Pine Cultural Preservation Officer told me, because Susie Baker was known to be a vocal critic of Los Angeles. At least one interpretation of the narrative is that the giant is Los Angeles – or is one manifestation of Los Angeles’s presence in the Valley (Bauer, 2012). Water, in this tale, gives life but it also takes it away, offering a message about the kind of life that must be lived.

When Kroeber’s students toured the Owens Valley, the proposed Land Exchange was almost finalized – the deal was done in principle, but it would take several more years for LADWP and the BIA to finalize the details of acreage and water rights. Between 1935 and 1937, the federal government held meetings in the Valley to inform Paiutes about the proposal. Baker would have been aware that her people’s future was about to change. She concluded the narrative by telling her interviewer that the rock on which the Waterbaby waited for the giant still existed, but she wasn’t sure it would endure. “It may be destroyed by the Los Angeles aqueduct builders,” she said. “The Waterbaby’s home may still be there. I do hope it’s

there.” Baker’s commentary makes clear that she intended the story, at least in part, to respond to the presence of Los Angeles in the Valley and to signal her hopes that the Paiute’s home – like that of the Waterbaby – would remain. Just as significantly, Baker’s story reclaimed the Paiutes’ story of their interactions with Los Angeles and reframed it in a manner that was meaningful to them. The Waterbaby’s heroism further suggests a future in which the Paiutes will reclaim not only the narration of their history, but, also, their home and their water. Hopes for such a future remain strong, propelling both a lawsuit and public protests. I describe these actions, and discuss their import, in the final two sections.

### **III. Paiute-Shoshone Indians of the Bishop Community v. City of Los Angeles**

On June 12, 2006, the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony filed a complaint against the City of Los Angeles. The plaintiffs resided on the Bishop Paiute reservation, one of the three reservations created by the Land Exchange. The lawsuit initiated by the complaint sought to eject LADWP from lands that the plaintiffs claimed rightfully belonged to the tribe. The complaint alleged that LA had obtained the land in contravention of specific conditions imposed by Congress: namely, that a majority of adult Indians entitled to use the land consented to the transfer of ownership of that land from the United States government, which held it in trust for the Indians, to the City of Los Angeles; that the exchange must include water rights appurtenant to the exchanged lands; and that the value of land and water rights given by the U.S. to the City should not exceed the value of water and land rights received by the U.S. from the City.

The crux of the plaintiffs’ claim was that the U.S. had not obtained valid consent for the transfer. Instead, agents for the Bureau of Indian Affairs collected signatures from the Indians of the Owens Valley before the terms of the Land Exchange had been finalized, thereby making it

impossible for the Indians to give informed consent. Moreover, the plaintiffs alleged, 187 of the 211 signatures obtained were made on blank pieces of paper, and bore no indication of the exchange to which the signatories were purportedly consenting. The plaintiffs further alleged that water rights were not included with the exchanged lands and, moreover, that because water rights were reserved by each party, it was impossible to value the lands, let alone determine that the exchange traded lands of equal value.<sup>55</sup>

These arguments were never resolved, for the district court dismissed the plaintiffs' lawsuit before it reached trial. The court's reasoning, later upheld by the Court of Appeals,<sup>56</sup> was that the United States was a required party to the lawsuit, because the United States, not plaintiff, was the legal owner of the lands: it owned the lands in trust for the Indians of the Owens Valley. Even if the plaintiffs were victorious in their lawsuit, the court noted, the lands would revert not to them but to the United States. The court determined it was without power to grant relief to the plaintiffs because it could not order the U.S. to give the lands back to them unless the U.S. also was a party to the lawsuit.<sup>57</sup>

Under the law, an agreement cannot be cancelled unless all parties to the agreement are before the court. The problem with making the U.S. a party, however, is that the U.S. government enjoys sovereign immunity and no one, including Indian tribes, can sue the U.S. without first obtaining permission from Congress. As it turns out, Congress had given tribes permission to sue the United States; but tribes had only a limited time period in which to bring suit. The Bishop Paiutes had not filed their claim within that window; and Congress had given

---

<sup>55</sup> Complaint for Ejectment, Case No. 1:06-cv-00736-OVW, filed June 6, 2006.

<sup>56</sup> *Paiute-Shoshone Indians of the Bishop Colony v. City of Los Angeles, et al.* (9th Cir. 2011).

<sup>57</sup> *Paiute-Shoshone Indians of the Bishop Colony v. City of Los Angeles, et al.* (E.D. Cal. 2007).

no further opportunities to bring suit. Regardless of the merits of their claims against the City of Los Angeles, it was essential to have the United States as a party to the lawsuit and since the United States could not be made a party, the lawsuit could not proceed. After more than four years of litigation, the case was dismissed.

For the courts deciding this case, rights to and over land – rights to alienate it or keep it, as well as rights to contract for it freely – derive from and are limited to ownership over that land. For Native Americans, the question of ownership is muddy, because, apart from lands purchased outright through private sale, U.S. law recognizes ownership only through a trust, thus meaning that the United States holds title to Indian lands. The courts didn't decide any of the substantive claims: that the Paiutes had been defrauded, for example, or that the Land Exchange violated the Congressional Act. Instead, they were deaf to such claims because, they said, only the owner of the lands could raise those claims; and the United States had not done so. By framing their complaint as a property claim – seeking to eject LADWP from their lands – the Paiutes found themselves in a trap whereby the rights they asserted were preceded and propelled by ownership. Without outright ownership, it was as if the rights they asserted did not exist.

#### **IV. “Fix the Pipe”**

The pipeline controversy discussed at the beginning of this chapter has its origins in the Land Exchange. After all, it is because of that Exchange – and, specifically, LADWP's commitment to supply water to the reservations – that the pipeline exists at all. However, the outcome of the dispute over the pipeline ended differently than the ongoing conflict over the Land Exchange. Whereas LADWP continues to fight any attempts to change or alter the terms of the Land Exchange, the utility company did agree to make necessary repairs to the pipeline, despite its assertion that it was not legally required to do so.

This difference is attributable to many things, not least of which is the scale of the controversy; but I argue that the particular framing – as an access rather than property issue – played an important and instructive role in shaping the outcome of this particular conflict. By “frame,” I mean the “schemata of interpretation” that enable individuals “to locate, perceive, identify, and label” occurrences (Goffman, 1974:21). By suggesting interpretations and meaning, frames function to organize experiences and guide action within a particular life space or the world at large (Snow et al., 1986). When I say the broken pipe was framed as an access issue, I am drawing that conclusion from a review of the comments made at the public hearing, from social media campaigns, and from interviews with members of the Big Pine Paiute tribe. Here are some examples of that framing:

“The pipe is owned by LADWP, it’s on their land, and the language in the law is clear that it’s their responsibility to repair it.” – Chairwoman Shannon Romero, *Indian Country Today* (2017)  
[<https://indiancountrymedianetwork.com/news/politics/big-pine-paiute-fix-broken-pipeline/>]

“The Tribe has escalated its efforts to engage LADWP to respond to longstanding requests to discuss irrigation concerns that have been stalled or ignored.” – Big Pine Paiute March 2017 Press Release.

“You guys call yourself the city of angels. I guess that’s a lie; you might as well just change it. Los Diablos is what I call you guys. It’s fitting.... We are tired. Your obligation was to bring water to the exterior boundaries of the reservation. It’s broken on your land; you won’t let them do it [come over to fix it] without signing a new agreement. Blackmail them to lessen their rights for land and water in our original homeland. We’ve been there 15,000 years. And this is how we’re treated by angels?” – Harry Williams, March 2017 Board of Water and Power Commissioners Meeting.

It is important to note that the access framing highlighted in the quotes here does not replace the assertion that the land still belongs to the Native Americans. As evidenced in the quotes above, that argument remains powerful and pervasive; but the access argument suggests



another claim on the land and water at issue: a claim that accepts, rather than challenges, the current ownership status quo. In the first quote above, from Chairwoman Shannon Romero, access is raised as an affirmative obligation: LADWP is arguably responsible for fixing the pipe because the problems are present on their land, because the utility (and only the utility) can approach it without committing trespass. In the second comment, from the 2017 Press Release, access takes on a different meaning, as the statement implies that the Paiutes have long sought to talk with LADWP to address longstanding concerns over the crumbling pipe infrastructure. In the final quote – a fiery accusation from tribal elder, Harry Williams – access takes on a dual meaning. It mirrors the form of access suggested by Romero – the ability to reach the pipe. It also suggests a more abstract form of access: an access to something “good,” “right,” “just”; that which one might expect an angel to deliver but which LADWP has continually blocked or denied.

Taken together, these three comments reflect the diverse meanings attributed to access. Although these and other statements rarely explicitly referred to access, they opened up a new conversation about rights and obligations – a conversation that was more about who could benefit or claim them than who was entitled to them. This subtle shift in the framing of conflict is important for at least two reasons: First, it shifted the scale of the controversy, and thus downgraded the stakes of resolution. Instead of making a claim on thousands of acres of land, the Big Pine Paiutes suggested here that they were only asking to be allowed to approach (the negotiating table, the land where the pipe lay). Thus, instead of a resolution requiring that the City of Los Angeles give up valuable land and water rights, the resolution required only granting permission to be in the same place; this both preserved existing power dynamics (where the recognized owner has power to allow or disallow access) and suggested a solution that was

neither permanent nor terribly costly. The second reason an access framing is important is that it shifted the register of the controversy from one of conflict to one of cooperation. If access was being sought and ultimately granted, two opposing sides would find themselves in a similar place or position, working jointly towards an outcome, rather than sparring from opposite sides. This new framing changed both the tenor and the tone of dispute. LADWP indeed fixed the pipe that was spilling so much water in the Owens Valley, but the issue is likely to resurface again. One local business owner posted an announcement on Twitter that a broken water main has forced closing of business for the night. In the notice, the owner referenced the #fixthepipe campaign, reminding us that crumbling infrastructure remains a potent issue, to be addressed through claims to access and shared responsibility.<sup>58</sup>

This appeal to shared responsibility is a potent component of the access-framing, signaling a turn from the individualized grievances that so often define property disputes to a means of addressing larger, community-level, benefits and harms. The court battles lost by the Paiute-Shoshone Tribe reveal how limiting claims to ownership can be. Because of the need to identify the title holder – in that case, the United States – the court foreclosed any opportunities for the Tribe to assert its claims and interest to the land it occupied. Although that land sustained the Tribe, and was its home, they could not assert legal interest in the land without proving ownership. An access, framework, on the other hand, would open up broader possibilities for protecting land and its resources, investing a community of interests, rather than remaining embedded in a unitary ownership interest.

While in the specific case of the pipeline, the Big Pine Paiutes argued for access and maintained their right to the lands which Los Angeles owned, LADWP insistence that they give

---

<sup>58</sup> Dixie Tavern tweet, available online <https://twitter.com/DixieTavernATL/status/950865166677237760>.

up claims for the land in exchange for access foreshadows a likely refusal to tolerate such dual claims in the future. At a time when environmental justice claims are very much on the fringe, individuals and groups would do well to study the case of the pipeline in the Owens Valley. Reframing environmental disputes on different terms can open up more possibilities for resolution; offering a promise of a practical victory, if not necessarily an entirely just one.

## CHAPTER FOUR: REGULATORY FUTUROLOGY

A casual drive through the Mojave Desert “relentlessly reminds the traveller of his human condition and the circumstances of his tenure upon the earth.” These words – from a short story written by Aldous Huxley and Christopher Isherwood (1956) reflecting on mysticism and the seductions of the Western landscape – often echoed in my head, as I drove along Highway 395, the split road that cut through the part of the Mojave Desert known as the Owens Valley. It was hard not drift into philosophical reflection on that long, straight highway with few cars and lousy radio reception; hard, too, not to be reminded of the relatively small place humans held in this world, as vast swaths of desert, sky, and mountains filled the windows on all sides. But I never could get too caught up in romantic notions about nature’s majesty, or the idea of (wo)man’s temporal fragility, for all around me stood reminders of just how big, and how lasting, an impact humans made: an impact that lasted well beyond their tenure on earth.

Perhaps nothing is as potent a symbol of this impact than Owens Lake. You can see the lakebed well before entering the Valley, for it once covered more than 100 square miles. The Lake is a perennial lake. Throughout its history, it has endured periods of extreme water – at times so deep that steamboats would travel across it to deliver supplies to and retrieve unprocessed silver ore from nearby silver mines. At other times, the Lake has experienced extreme drought, sometimes evaporating to levels so low that the indigenous Paiute Indians could walk across its surface. Today, the Lake is a mostly dry, dusty playa, and resembles, above all, an industrial construction site.



*Owens Lake, 2016.*

This chapter examines the history, present, and imagined futures of Owens Lake as a means of elaborating something I call regulatory futurology. Put simply, “futurology” is the study of the future, with the explicit aim of making predictions. The subject of this chapter is how environmental rules and regulations execute such a study. Specifically, I am interested in the data that forms the basis of regulatory predictions, the images of the future that predominate in these various rules, and, especially, how all of this is implemented in practice.

Most studies of how law works – and whether it works at all – focus on social relations: We study law and society or law and culture. Recently, we’ve witnessed a “spatial” turn in legal theory and in sociolegal studies, which brings together the seemingly unrelated fields of law and geography and opens up analysis of how law can be a productive force in shaping material,

social, and mental spaces (Blank, 2010; Braverman et al., 2014). In this reification of society and space, however, legal and sociolegal scholars have not had much to say about the intersections of time and law. Time, in most of this scholarship, serves only as context, easily reducible to empirical history (Valverde, 2015). Yet, as a few sociolegal scholars have shown, time proves to be a significant technique for shoring up both legal authority (Cabatingan, 2016; Greenhouse, 1989) and for imposing judicial power over individuals (Lynch and Bertenthal, 2016). Time, as Mariana Valverde (2015, 32) suggests, is as important as space and society as a tool with which “to study describe, analyze, and theorize legal relations and legal processes, in the broadest sense of ‘legal.’” My investigation into regulatory futurology offers an empirical exploration of time in law and reflects on what this tool can tell us about the relations and processes that make up environmental law.

I begin this chapter by providing some historical context for Owens Lake and the conservation efforts underway there. I then explain the legal framework structuring these efforts, and engage in an analysis of the language and rhetoric of the California Environmental Quality Act (CEQA) as a means of showing how the future is constructed in legal doctrine. I look at CEQA because it is the most important environmental regulation in California; most of the individuals involved in planning efforts on Owens Lake are aware of, and frequently reference, that particular law. The remainder of the chapter provides an empirical demonstration of how this context and framework play out among policymakers, scientists, and members of the public trying to plan for an uncertain habitat future on Owens Lake.

## **I. Owens Lake: “A Place That’s Subject to Change in a Great Big Hurry”**

To understand Owens Lake, Ben Buckley<sup>59</sup> told me, I would need to know much more about it than what I see today. We were sitting at a wooden table in the Bishop City Park, just after lunch on a chilly October day, and I had reluctantly taken off my wool hat and was leaning across the wooden table to hear Ben in the strong winds. Ben is a co-leader of the Habitat Working Group (HWG), which is charged with planning the development and maintenance of habitat on Owens Lake. Rather than prolong our discomfort in the cold weather, Ben suggested that I come to hear him talk at the Mono Lake Visitor Center the following week.

Ben’s presentation was part of a series sponsored by the Audobon Society, entitled “Refreshments with Refreshing ’Ologists.” I arrived car-weary after a three-hour drive to hear Ben explain that he wasn’t actually an ’ologist, he was an attorney “in remission,” and he was there because of his connection to Owens Lake and his role as representative of the Eastern Sierra Audobon Society in “negotiating and discussing the future vision for Owens Lake.” Just as he had told me a week ago, Ben again suggested that understanding the history of Owens Lake was important to planning for its future. He offered the following story as a way of illustrating this point:

Imagine that it’s March 26th 1872 and you’re living in Swansea California, which is on the north end of Owens Lake...It’s about 2:30 in the morning and Swansea is, of all things, a port town on Owens Lake. There’s a wharf at Swansea and it’s the northern end of the route taken by two steamships that take silver ingots from the Cerro Gordo mine and take them across Owens Lake to Cartago, unload them for the railroad that takes out and returns with supplies for the mine.

And there’s this giant jolt in the middle of the darkness and the people all run outside their houses and they look at the Lake and they can see Owens Lake – the water of the Lake receding towards the middle of the lake and this giant wave. And so the

---

<sup>59</sup> This chapter describes an ongoing controversy over mitigation and management of Owens Lake. Because discussions over these issues touch on sensitive subjects and are not yet resolved, I have assigned pseudonyms to the persons I describe and quote in this chapter.

people there were terrified because they thought the wave was going to come back and engulf the town and that'd be the end of Swansee.

Well, it *was* the end of Swansee. But not for the reason they thought it was. It was the end because the water never came back to Swansee. It only came back to about a quarter mile of the shore and very, very low depth at Swansee itself. Because, you see, the whole lake had tilted to the west: It was a huge earthquake, one of the largest earthquakes in the history of California.

“The moral of the story for Owens Lake,” Ben concluded amidst appreciative laughter, “is that it’s a place subject to change, and subject to change in a great big hurry.”

That story of rapid change stayed with me long after the presentation concluded; more than anything else I’ve heard about the Lake, the reminder of such change has influenced my perceptions of what the Lake was, is, and might become. Change permeates the entire history of Owens Lake. The Lake began as one of a chain of lakes that spanned across more than half the Owens Valley – from what is today the Town of Independence all the way to Death Valley. Once the channels dried up sometime in the late 1800s, the lake became increasingly saline, and once-thriving fish and plant populations died out.



*Undated photo of Owens Lake. Source: Eastern California Museum.*



Between the 1860s and the 1880s, irrigation increased tremendously in the Owens Valley, as more settlers began to develop agricultural lands there. By 1899, 41,000 acres were being irrigated in the Owens Valley, and all this irrigation was accomplished by diverting water out of the Owens River, into a system of canals and irrigation ditches that watered the Owens Valley, rather than Owens Lake. The effects of this irrigation were so great that even though the 1880s were extremely wet water years – so wet that Mono Lake, on the far north end of the Valley rose by almost twenty feet – Owens Lake dropped by about sixteen feet (Bacon et al., 2006). Despite the water loss, the Lake was teeming with life. When the naturalist Joseph Grimmel visited Owens Lake in 1917, he saw

Great numbers of water birds are in sight along the shore – Avocets, Phalaropes and Ducks. Large flocks of shorebirds in sight over the water in the distance, wheeling about show en masse, now silvery now dark, against the gray-blue of the water. There must literally be thousands of birds within sight of this spot. En route around the south end of Owens Lake to Olancho saw water birds almost continuously. . . . The shore shallows are thronged with water birds. Avocets predominate; I estimated one bird every four feet of shoreline, which would make 1300 per mile! (Herbst and Prather, 2014).

This abundance was short-lived. When Los Angeles came into the Valley and began diverting water into the Aqueduct in 1913, the Lake's water levels dropped precipitously. By 1927, Owens Lake was dead: It had become nothing more than a dry, dusty playa. Perhaps this would have been the end of the story of Owens Lake – for a lake without water is not of much interest or use to anyone. But, in this case, the Owens lakebed is covered in a salt-rich dust that is easily eroded and carried long distances by the wind storms that frequently pass through Owens Valley. The Lake's dust is a major component of Particulate Matter pollution (PM-10) that is among the most harmful of all air pollutants. The storms are so powerful, and the Lake so emissive that Owens Lake dust has been tracked to areas more than 100 miles from Owens Lake and to elevations over 3,000 feet (Cahill et al., 1996). Some even claim that on particularly

windy days, the dust has traveled more than 200 miles, all the way to Los Angeles (Piper, 2015). In fact, by 1990, Owens Lake was emitting 300,000 to 400,000 metric tons of dust per year; it was the largest source of PM-10 pollution in the United States (Reheis, 1997). Because of the extent of the plumes, dust from the Lake could affect an estimated 40,000 people (Roderick, 1989).



*Dust storm on Owens Lake. Source: GBUAPCD.*

The people in the Owens Valley don't need these numbers to tell them that the dry Owens Lake was creating a significant health issue. "I have asthma," said Ellie Croft, who grew up on the Lone Pine Paiute-Shoshone Reservation, less than fifteen miles north of the Lake. She blames the dust for that, as well as for the fact that her father spent the last years of his life on an oxygen tank. "And" she went on, "almost everyone I know has some kind of respiratory

problem.” Without a doubt, she said, “the problems are caused by Owens Lake.” “I went to school in Independence,” Randy told me, talking about a town more than thirty miles north of the Lake. “You couldn’t leave any windows or doors open – not even for an hour – or the desks would be covered in piles of dust.” Paul, who had moved to the Valley from Los Angeles to serve as a caretaker for a house nestled high in the hills above Lone Pine, described walking out his door and not being able to see any of the town below; as if the house were a ship floating on a toxic sea. Nearly everyone I spoke with about growing up in the Valley retained vivid memories of the dust: recalling weeks when their eyes and throats burned, when they couldn’t even open their front door without being overwhelmed by dust, when the familiar 10,000-foot peaks disappeared behind hazy yellow clouds.

Responsibility for remedying the situation fell to California’s Air Pollution Control Board; specifically, the Great Basin Unified Air Pollution Control District (GBUAPCD), which was in charge of administering California’s Clean Air Act for the Eastern Sierra region, including the Owens Valley. The District is authorized to conduct studies, impose regulations and fines, and bring legal action for civil and injunctive relief on behalf of the people of the State of California for violations of its air pollution regulations. In 1983, GBUAPCD identified LADWP as the party solely responsible for the dust pollution on Owens Lake. In a dramatic move, GBUAPCD threatened to halt all operations of the Aqueduct and to cut off the water supply so that water would return to the rivers that fed Owens Lake. In response, Los Angeles lobbied the California State Legislature, sponsoring legislation that directed the City to pay for air quality studies in the Owens Valley region, but forbidding GBUAPCD to cut off the water supply to the Aqueduct for any reason whatsoever. The Bill also provided that GBUAPCD

could impose “reasonable” fees for failure to follow its dust control measures, and that Los Angeles could, if it deemed necessary, challenge those fees.

This bill structured the conflict for decades to come. What followed was more than three decades of legal disputes over fees imposed by GBUAPCD against LADWP for failure to comply with its orders and tamp down the dust. At one point, Los Angeles was accumulating more than a million dollars in fines per day. Owens Lake had become, Ben Buckley liked to joke, “a full employment source for attorneys” in Southern California. As a result of these disputes, Los Angeles spent more than a billion dollars in fees and to implement dust control measures. Because water was the fastest and most effective way to mitigate dust, the City also was using more than 25 billion gallons of water every year to control the dust on Owens Lake.

This water not only helped tamp down dust; it also created a new ecosystem, full of shallow lakes and marshy grasses that birds and other wildlife love. However inadvertently, the Owens Lake had become an important bird habitat. The Lake had more than ten percent of the inland breeding population of western snowy plovers; twelve sensitive species; more than 10,000 shore birds a day, and more than 5,000 water fowl who visited it every day. The Audubon Society designated it an important bird area, meaning that the organization would carefully monitor the area and would take all measures – including legal action – to ensure that the birds remained protected.

There was no guarantee that the Lake would remain such hospitable habitat once Los Angeles stopped putting water on it. The Audubon Society, and other agencies and people interested in the Lake’s habitat, had cause for concern. As drought persisted in California, LADWP insisted that it had to use less water on the lake. In 2010, Ben Buckley, who was then president of the Eastern Sierra Audubon Society wrote a letter to LADWP, on behalf of members

in both the Owens Valley and Los Angeles – LADWP’s “constituents,” as Ben put it – and insisted that LADWP start thinking about habitat on Owens Lake or otherwise face the consequences of its neglect. Five months later, LADWP hired a facilitator to help it start “thinking about habitat,” and to help it work with stakeholders concerned with the future of Owens Lake. County, state, federal, and tribal entities in Owens Valley, along with environmental groups and several individuals, joined what was then called the “Owens Lake Planning Committee.” LADWP released a draft Master Plan in December 2011 and Planning Committee members and members of the public submitted comments sporadically over the next two months.

Then LADWP ceased holding Planning Committee meetings, and seemingly shifted its focus by filing a lawsuit against GBUAPCD in October 2012. In a press release, LADWP cited the fact that GBAPCD had filed its own lawsuits against LADWP, and that the Department had “been left with absolutely no choice” but to file its own lawsuit “to rein in the Great Basin regulator, who is seemingly unaccountable to anyone.”<sup>60</sup> The lawsuit derailed collaborative planning efforts, and, in March 2013, LADWP declared its intent to work on plans unilaterally. In a letter to the Planning Committee, the Department assured other stakeholders that it was not “abandoning the master planning process” nor “running off with the work of the group” but, rather, acting in the interest of “making real, near-term progress in the face of so much uncertainty.”<sup>61</sup> LADWP promised to continue working with the subcommittees and working groups to gather their insights and input on various aspects of the planning process; it pointedly noted that the Habitat Working Group subcommittee should continue its work to develop habitat protection guidelines.

---

<sup>60</sup> Available online <http://www.ovcweb.org/docs/DWP-Lawsuit-Q&A.pdf>.

<sup>61</sup> Available online <http://www.ovcweb.org/docs/Marty-Adams-Letter.pdf>.

In 2014, GBUAPCD and Los Angeles finally agreed to settle all disputes over GBUAPCD's regulatory authority and fines (Sahagun, 2014). GBUAPCD agreed to allow Los Angeles to implement new methods of dust control that did not require it to necessarily use water to flood the lake. Indeed, well before the settlement with GBUAPCD, Many touted the agreement as ushering in a new era of cooperation: Newspapers proclaimed the end of the "water wars," and the Los Angeles Mayor Eric Garcetti claimed a "significant win for ratepayers and our environment in both Los Angeles and the Owens Valley" (News Staff, 2014). Not everyone celebrated the decision as a win, however. Many residents in Owens Valley have been unable to shake their longstanding distrust of LADWP, and they viewed the settlement with skepticism, if not outright animosity. Some stakeholders in the habitat planning process remained unconvinced by LADWP's conciliatory language, pointing out that the process had gone on just long enough to foment discord between environmentalists and ranchers, leaving groups so angry with each other that they would hardly notice, let alone effectively confront, whatever steps LADWP took next.<sup>62</sup>

In the wake of this truce – or void, as some saw it – LADWP released a "Master Plan" in 2014. In many ways, LA's unilateral steps mirrored the initial collaborative ones: The Master Plan proposed to maintain habitat, conserve water, and control dust. They called it "a project and a plan, but that's not true," Ben suggested. "It's actually a brochure for what might be a really good idea for a plan in the future."

---

<sup>62</sup> See, e.g., <http://www.ovcweb.org/Issues/Master-Plan.html>.

# Owens Lake

# MASTER PROJECT



transitioning  
to waterless  
and water-  
wise solutions



*Page 1 of Owens Lake Master Project "brochure."*

Unlike many in the Valley, Ben saw 2014 Master Plan as an important first step because it represented a promise that LADWP would maintain habitat: “So the three goals of the project are equally important and the commitment that has been made by everybody involved is that we will not create habitat at the sacrifice of effective dust control.” With this perceived commitment, the Habitat Working Group renewed its efforts to develop habitat protection guidelines. “We’re actually involved in some real processes that aren’t just us talking; it’s real CEQA,” Ben explained, referring to the California Environmental Quality Act (CEQA), which sets forth the guidelines for any project that might impact environmental quality. “And I know that I can tell you that this has gotten a whole lot easier since people are a lot more receptive,” Ben told me. “But it’s really hard to do something like this.... It’s never been done, as far as we can find, there’s really no place where this has been done on this scale but it seems to be the only reasonable approach we can find.”

That approach, and how it might be considered the “real” CEQA is the subject of the rest of this chapter. I proceed by examining CEQA and judicial interpretations of the statute, before turning to the details of the HWG’s approach.

## **II. The California Environmental Quality Act**

The California Environmental Quality Act (CEQA) is the California counterpart to the National Environmental Protection Act, a far-reaching statute widely associated with the “environmental decade” of the 1970s (Karkkainen, 2007:904). Like NEPA, the California statute requires that, prior to undertaking or permitting any action that significantly affects environmental quality, state and local agencies must produce and publicly disclose a statement of the environmental impacts of the proposed action, evaluating it against a range of alternatives.



CEQA guides the California State Lands Commission, which is the public agency that manages, among other things, all lakebeds in California. Lakebeds are considered sovereign lands – also known as public trust lands – that belong to the people. As the putative owner of these lands, the California State Lands Commission controls any and all development on Owens Lake, including LADWP’s dust mitigation projects. Thus, the Commission serves as crucial nexus in the regulatory chain of command. To comply with its legal obligations to GBUAPCD, LADWP must develop infrastructure to control the dust emitted from Owens Lake; yet any development projects must first be approved by the State Lands Commission. So in order to obtain approval for its various mitigation, and even restoration, projects, LADWP must first demonstrate to the State Lands Commission that its actions are in line with CEQA: that environmental impacts will be minimal, and that no better alternatives exist.

CEQA requires that :

prior to undertaking or permitting any action that significantly affects environmental quality, state and local agencies must produce and publicly disclose a statement of the environmental impacts of the proposed action, evaluating it against a range of alternatives.

CEQA thus directs the State Lands Commission in the practice of futurology. Yet the statutory language ties planning for the future almost exclusively to evaluation of the present. This linkage between present and future begins with the definition of “impacts,” which are made discernible through comparing expected environmental conditions after project implementation to conditions at a point in time identified as the baseline. No precise legal definition of the baseline exists. Instead, administrative guidelines assist in interpreting the baseline standard for both the public agencies charged with enforcing CEQA and for the public more generally.

CEQA Guidelines Section 15125 describes a baseline in the context of the Environmental Impact Report [EIR], specifying that such report

include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

This concise definition encompasses quite a bit of information: It establishes what constitutes a baseline (“physical environmental conditions”); when such conditions should be assessed (at the time the public is alerted to possible action via a notice of preparation of an EIR); and the relative analytic scales (both local and regional impacts matter). However, it’s just as important to pay attention to what the definition does not do. It does not distinguish between resources. Although wind, water, soil, air, and so forth are very different substances – and technologies for measuring them are at different stages of development – the baseline standard treats everything as similarly cognizable and measurable. The baseline standard also does not consider possible (and probable) delays the publication of a notice of preparation of a new project and the initiation of that project, meaning that the baseline may not reflect conditions at the time a project actually is begun, let alone completed. The “current” environmental conditions are thus tied to a present that does not represent the actual conditions at the start of a project, let alone its completion. Finally, the statutory language does not account for the aesthetic, cultural, or other features that people so often attach to their environments. We know that people often value their surrounding not just for what they see but for how those places make them feel, and the histories they evoke; in short, there is within every environment a “sense of place” (Feld and Basso, 1996) not readily captured by physical conditions. Yet the baseline definition doesn’t account for such feelings. Despite what can be profound difficulties in

measuring the affective attachment to place, CEQA presents the concept of current environmental conditions as readily identifiable, uncontroversial features of a setting.

Recent litigation over the concept of baseline have uncovered additional interpretive questions, including, for example: whether baselines differ for certain resource topics, such as noise and pollutants; whether current “environmental conditions” includes unlawful (i.e., unpermitted) conditions; and whether baselines may be set at some point in the future, rather than in the past. In what follows, I describe several such cases. The purpose of this discussion is not to detail doctrinal development, but, rather, to illustrate the ways an overarching debate has taken shape about the meaning and import of baselines in environmental analysis.

***A. Existing conditions***

One key question regarding the definition of the baseline is whether the “current environmental setting” that serves as the baseline encompasses unlawful or unpermitted conditions. *River Watch v County of San Diego*, 76 Cal.App.4th 1428 (1999), considered this question in the context of reviewing a case involving a developer’s application to develop a rock quarry. A group of residents living near the proposed quarry sued after the County granted the permit, arguing that the EIR approved by the County was inadequate. The plaintiffs were particularly concerned by previous mining activity on the site, which had been undertaken without a permit, and which resulted in severe disturbance to the land that stymied plants and wildlife. They argued that the assessment of potential resource value of the quarry site should account for this activity, and recognize the value that would have been there but for the prior illegal activity. The trial court agreed. However, the Court of Appeal rejected this reasoning, noting “that in general preparation of an EIR is not the appropriate forum for determining the nature and consequences of prior conduct of a project applicant.” While acknowledging that

prior illegal activities cannot be totally ignored, the court nonetheless recognized that such activity was part of the “environmental setting” at the time the project was approved, and, thus, could not be carved out of the EIR. The court also acknowledged practical problems in mixing review with enforcement, stating: “[A] particular problem we foresee in requiring an earlier baseline is that definitive evidence of prior illegality will most likely come in the form of the acts of enforcing agencies and that use of an early baseline by a separate agency preparing an EIR may either interfere, conflict or unfairly amplify such enforcement action.”

In *Fat v. County of Sacramento*, 97 Cal.App.4th 1270 (2007), the Court of Appeal was asked to consider whether the presence of unpermitted activities nullified the requirement for an EIR in the first place. In that case, a pilots association sought a permit to continue operating and to expand an airstrip that had never been approved as an airport. The pilots argued that since the proposed project would not significantly affect the site as it already existed, no EIR was required. The Court of Appeal concurred, noting that although the airport had operated and expanded without a permit for more than 30 years and there was environmental damage as a result, the “environmental setting” was the land as it existed at the time of the NOP, and would thus include all of the past activity and structures.

As these and other cases make plain, the baseline standard must account for even unlawful and unpermitted conditions. What you see is what you get, the courts say; there is no possibility of altering conditions you’ve been handed. For purposes of determining environmental impacts, agencies and individuals must compare future projects to the present setting, even if that setting includes conditions that shouldn’t be there, or that some might desire were not there.

**B. *Pasts, presents, and futures***

The Guidelines' emphasis on present conditions as the allowable baseline is tied to the statute's broader purpose of promoting transparency and public understanding of governmental decision-making. As a result, courts have been wary of any attempts to situate the baseline in the future. As the California Supreme Court explained: "An approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439, p. 448 (2013) (quoting *Environmental Planning Information Council v. County of El Dorado*, 131 Cal.App.3d 350, p. 358 (1982))). Yet sometimes, looking at future conditions becomes essential; as, for example, when a resource fluctuates over time, or an anticipated change in circumstances will render an "existing" condition moot. In *Neighbors for Smart Rail*, a divided California Supreme Court struggled with the question of where to set a baseline given near-certain changes in key factors over time. The case concerned the development of a high-speed rail line that was intended to alleviate expected road congestion and improve air quality. Because of rapid population growth, which would greatly increase both the number of cars and the amount of pollution emitted, the developer argued for setting a baseline nearly 30 years in the future, when the system would actually be operating. Only then, the developer argued, could the public develop a meaningful understanding of its operational impacts on traffic and air quality, because presumably, those conditions would be worse – and the benefits of a high speed rail line greater – after thirty years. The majority acknowledged that, sometimes, considering future conditions would be necessary, and that such consideration would be allowed is supported by substantial evidence – that is,

objective and verifiable measurements. But they remained steadfastly committed to the idea that the baseline must be set in the present, because only existing conditions could be observed and documented without resort to forecasting or hypotheticals.

It was a “specter of illusion,” in one judge’s words, that the court feared, and thus it rejected even well-reasoned attempts to set the baseline in the future. This specter appears less fearsome when looking to the past, for history can be excavated and publicly displayed. At least one court has held that historical data might be sufficient to establish a baseline, if the proponent of such data undertook the analytic work of demonstrating how that historical data, taken all together, established existing conditions (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*, 190 Cal.App.4th 316 (2010)).

Yet the courts also have been reluctant to establish baselines with reference to historical conditions. In *County of Amador v. El Dorado County Water Agency et al.*, the California Court of Appeals considered a water agency’s plan to take water from three lakes in the Sierra Nevada Mountains (76 Cal.App. 4th 931 (1999)). The agency prepared an EIR certifying that its proposed project would have no significant environmental impacts. In support of this assertion, the water agency provided documents assessing the historical operation of the lakes, including data that specified the lakes’ water levels at the end of each month for a period of several years. Citing the importance of baseline data, the court held that the water agency’s historical data was insufficient because it failed to provide understanding of why the water levels fluctuated as they did:

The month-end water level is only one element of the operation. Just as important to fisheries, river habitat, and recreational users is how those lake levels were determined. When were releases made and at what rate? What were the factors that determined when releases would be made? Are those factors equally applicable for purposes of power generation and inelastic consumptive use?

The court emphasized that the historical data simply did not provide the clarity of understanding that CEQA intended when it required assessment of “existing conditions.” Although the court conceded that a reader could “cobble” together information in the EIR to achieve the necessary understanding, it was adamant that such effort should not be required; the explanation and analysis should be stated clearly.

### *C. Legal Tenses*

Establishing “existing conditions” under the law, requires a careful temporal tailoring that sews together past and future through present measurement. The environment is not merely a matter of space but fundamentally a temporal realm, matter, and concept (Adam, 2005:8). There is in CEQA’s approach to measuring impacts on the environment a privileging of the present: a prospective strategy that can be described as a “present-future orientation,” which focuses on the present as a means of predicting the future (Richardson, 2017; Heinzerling, 1998:2025). The definitional techniques that emerge in judicial opinions and rhetoric can tell us some important things about the knowledge techniques and practices that have transformed the baseline from a mere reference point into a gatekeeper for a particular environmental future.

The courts insist that we must look only to the present, and, specifically, to the moment in which someone makes known that things are about to change. There is in this fixation with the present an implicit privileging of tangible, readily seen and measured conditions. So much so, that even those structures that should not be there must be counted simply because they are there. The chief rhetorical strategy we see is the development of stark contrasts between something called hypothetical and something called reality; between what we are told we can know and what we are told we can merely infer.

Despite what we know to be the dynamic quality of the natural world, the present-future orientation of environmental law requires that all clocks be stopped in the present time.

Although the environment is constantly changing – due to seasonal variation, natural disaster, human intervention, or just random events – the law insists upon tying the future to the current moment. By spotlighting the present in this way, the opinions create a static image of the environment in the public mind, limiting imagination of what might have been or might be, and also fixing the ideal world not to any norms or values, but to a specific point in time. Ironically, future conditions may be the subject of environmental regulation, but they cannot be considered when planning for environmental change.

If this sounds strange, imagine how difficult it must be for those tasked with planning uncertain environmental futures. In the next section, I explore how the Habitat Work Group (HWG) negotiates plans for habitat on Owens Lake; specifically, how they determine what the current environmental setting entails and the challenges such determination poses in the unique context of Owens Lake. Why is the baseline important to remediation efforts on the Lake? What tools become useful to set the baseline? What factors link the conceptualization of baselines to imagined lake futures?

The HWG has long since accepted that uncertainty is the norm. As we follow their strategies for dealing with such uncertainty, we gain some insight into alternative modes of conducting futurology, and of shaping environmental futures.



### **III. The HWG**

The Owens Lake Habitat Work Group (HWG) was preoccupied with the future, anticipating a variety of changes: changes in water levels on the Lake, changes in LADWP's plans to mitigate dust with various construction projects, changes in bird migration and nesting patterns. Between 2015 and 2018, I attended meetings of the HWG, reviewed background administrative and legal documents, and interviewed participants. The HWG includes scientists and managers from LADWP, biologists from GBUAPCD, members of the local Audobon Society and California Native Plants Society, as well as representatives of California Department of Fish and Wildlife and the California State Lands Commission. The working group meetings were nominally open to the public, although they were never advertised, and only one self-identified member of the public attended the meetings during the time that I was there.

My own attempts to attend the HWG meeting illustrate the group's limited openness. "They didn't want to let you come," Ben told me when I interviewed him in summer 2015. He urged them to let me attend, though, "because," he reminded them, "our meetings are public." I was glad that I had made friends with this former attorney, and am not sure I would have been admitted to the meetings otherwise.

Others saw the HWG as surprisingly inclusive. "My understanding is that it largely happened because of California Audobon, that they pushed for a working group to deal with issues, and work kind of proactively," explained Sarah Jones, a biologist with the California Department of Fish and Wildlife and one of the regular attendees at the HWG meetings. "And I was always really surprised that they opened it up to everyone because they didn't have to." Sarah told me that she thought it was a "pretty collaborative" group now, but she admitted that it hadn't always been that way. When I reminded Sarah that many people were frustrated by the

asymmetry of information and LADWP's failure to communicate, refusing to even be a part of the group, Sarah conceded that there were reasons to be frustrated, but, in her view, "it kind of doesn't matter that LA is a poor player. You still have to be there to kind of understand what maybe they're going to do and also to have any potential say at directing it ahead of time."

The HWG meetings were held once a month or every two months, usually in a conference room in LADWP's Bishop headquarters. The meetings fulfilled several functions: communicating plans for dust control projects on the Lake; sharing information and data related to habitat management on the Lake; and detecting – if not always thoroughly discussing – critical issues, especially those flagged by the state regulators who attended the meetings. Each meeting started well before people assembled in the room, when Ben, or LADWP's Watershed Resources Supervisor, Jack Nelkin, would email an agenda, and relevant documents. The emails generally advised people to "bring lunch," as the meetings were expected to last several hours. A typical agenda included a variety of presentations – from LADWP scientists, or from consultants hired to develop habitat models – as well as line items for specific updates, such as Ben's report on ongoing negotiations with LADWP for an "early warning" system whenever it planned a project that might impact habitat. Occasionally, someone would respond to the group email and ask to add an item to the agenda, or note that the proposed meeting date did not work for some reason or another. In these ways, the discussion spilled over, expanding the interactional space and dialogue into textual form.



*LADWP headquarters in Bishop.*

The roles and relationships of the various attendees were spatially indicated at the meetings, with LADWP specialists, including biologists and engineers, clustering around one side of the table, and members of the Audobon Society, and California Native Plants Society on the other side. Sarah, from California Fish and Wildlife usually sat somewhere in the middle, while observers from GBUAPCD – who attended sporadically – sat in the back, away from the table, always opposite the LADWP side. One or two representatives from the California State

Lands Commission often attended, but only virtually, materializing their authority through the room's speakerphone. Carl, the lone member of the public who came to the meetings, often sat near the middle, anchoring the far end of the table, across from Pete and Jack, the two co-leaders, who sat closest to – but never actually at – the head of the table.

During the study period, the primary function of the meetings was to review and refine a Habitat Suitability Model in preparation for the larger project of completing LADWP's Environmental Impact Report. The Model, it turned out, was a crucial component of the report LADWP had to prepare. The report was the tool used to establish both a baseline and a predicted impact: a tool that LADWP could rely upon to show that its proposed Master Project would not have significant impact on the current environmental setting. The HWG made no decisions about the Model, or about the baseline more generally. Those decisions were left to LADWP, subject to approval by the State Lands Commission. Instead, the HWG served as a forum for sharing information, and offered an opportunity to raise any concerns or questions about future plans in an informal setting.

It also served to make the process more transparent. “You can't trust anything these guys do,” Carl confided to me during a break from one HWG meeting in summer 2015. “I'm here to keep an eye on things.” His comment echoed Sarah Jones's observation that you needed to be there “to kind of understand maybe what they're going to do.” There was in these comments – and echoed in what others told me – a sense that being there mattered, even if the experience was not altogether satisfying. It's worth noting, too, that despite their cynicism, both Carl and Sarah were actively engaged in the group, speaking up at meetings, raising questions, challenging findings, and offering input. In this way, the HWG meetings served an important, and perhaps unintended purpose: a pro-social outcome that increased trust and built cooperation among the

members of the group (Tyler and Blader, 2013), who, not coincidentally, were also the people who had to accept whatever decisions ultimately were made.

A lot of discussion happened outside of the HSM meetings, as well. For example, LADWP representatives met with consultants to review the habitat models many times outside of the meeting room, to provide data, negotiate terms of work, and set deliverables. During the HWG meetings, the consultants would refer to those other meetings – often through offhand remarks such as, “we spent several hours talking to Jack” – letting us know that much of the meeting foundation had been laid offsite. During the year that I observed the meetings, Ben also was working with the Owens Lake Project Manager to develop a notification policy, intended to inform the group of changes on the lake before they were implemented, and thus stave off potential conflict. During the meetings, Ben would report on the status of those negotiations, often promising that they were “very close” to finalizing something, and details would be forthcoming. No one raised concerns – either in the meetings or in conversations with me outside of the meetings – about these shadow working groups. Rather, there seemed to be a general acceptance that each organization would operate independently. Perhaps the lack of concern also reflected a confidence that what was discussed and elaborated during the HWG meetings would inform and influence the dozens of outside meetings and decisions produced in them.

Not everyone shared this confidence in the process. I had spoken with some of the people who refused to be a part of the HWG, because, they told me, they were concerned that the HWG was just a ploy to feign compliance with CEQA, a ruse so that LADWP could just say “the public had input; we can check that box now.” I raised this concern over coffee with Sarah, the Fish and Wildlife biologist. “I think they could do a lot less and check that box,” she

responded. “What they have is way more intense, way more input.” After several years of inactivity, punctuated only by some emails and phone calls, Sarah said that she was pleasantly surprised by how often the group met now, and how substantive the conversations turned out to be. “It is kind of amazing that they don’t have to have it and yet they use it a lot.”

What I didn’t ask is what, exactly, they use it for. Through my observations of the group’s behavior and members’ statements over the course of a year, I’ve come to at least a partial answer to that unasked question: They use it to establish a baseline. If CEQA law tells us anything, it’s that defining the “environmental setting” can be “tricky” (Remy et al., 1996:163). LADWP’s representatives were uncommonly insightful about the myriad ways the agency might be accused of manipulating or undermining the legal system, and LADWP’s management seems to have instinctively understood that defining an environmental setting from myriad perspectives, rather than a single one, would allow it to assemble and thus discern the many ways of seeing an ostensibly objective fact. The meeting process was designed – at least in part – as a defense in future actions. The HWG meetings afforded LADWP the opportunity to collect, and ultimately, articulate multiple ways of seeing both the baseline and the future in a way that both appeased potential foes, and would neutralize their arguments in hypothetical future proceedings.

Regardless of the purpose, it was important to everyone involved that the future was grounded in fact. The primary means of doing this was through the development of a habitat suitability model (HSM). “What is the HSM?” Jack – the LADWP Supervisor – asked rhetorically at one public presentation. “Think of it as “a measuring stick,” he continued, explaining that the model would be used to assess and assign value to habitat conditions. The HSM “assigns value based on actual measurement of habitat conditions”; it takes into account things that birds like and need, such as water depth, salinity, topographic diversity, and

vegetation. Jack explained that the reason for using the HSM was functional; it was a tool developed to “predict change over time.” In the next two sections, I describe this model: its purpose, and the ways in which it is used to study and manage habitat; also, the ways in which use of this tool shapes the future of that habitat through establishment of a particular baseline.

#### *A. Value acres*

Today, LADWP oversees 38 square miles of dust control on Owens Lake. Of that area, approximately 30 miles are controlled through shallow flooding. The floods don’t recreate a lake; rather, because of the topography and grading of the lakebed, the water splits off into separate individual ponds. These shallow ponds and surrounding marshes have created a habitat that birds and other wildlife love. As Ben made clear through his narrative of Swansea, the Lake is dynamic, and what was once unwelcome habitat for certain species can transform, almost overnight, into a perfect place for those animals. Since LADWP has been flooding it, the Owens Lake has become, however inadvertently, a new ecosystem – one that hosts many hundreds of species. But LADWP has a strong incentive to limit the water it uses on the Lake: Once put there, the water becomes unpotable, meaning that LA is diverting billions of gallons of water from the Aqueduct that it will never get back. Although LADWP has its share of biologists and others who appreciate the new habitat, its mission is not to cultivate wildlife, but, rather, to provide thirsty city residents and cityscapes with water and power. In a state facing almost-perpetual drought, losing water to the Owens Lake poses significant political and practical problems. So LADWP has begun experimenting with new dust-control techniques, including shallow flooding, brine pools, and gravel cover. The Lake is beginning to resemble, more than anything else, a massive construction site.





*Experimenting with dust control: Tillage on Owens Lake.*

As these changes take place, a major challenge for the HWG is to figure out what factors make for welcome or unwelcome habitat, and, especially, how much water is required to maintain existing habitat. To do that, they decided to reverse engineer the habitat. They recruited volunteers, as well as LADWP biologists, who went onto the Lake and looked for places that attracted a lot of birds. As bird counts accumulated and hot spots became more evident, the HWG began to group the species into what they called guilds: birds with roughly the same habitat requirements, such as diving waterfowl, shorebirds, and nesting birds. They reserved one guild for vegetation, based on input from the California Native Plants Society. However, during the time I was there, the primary spokesperson for the Society had retired due to health reasons, and his replacements – two women who, by their own admission, “were still getting up to speed” – remained relatively quiet during the meetings. Nor were there advocates for other “critters,” as one person in the group referred to non-birds, such as coyotes. Thus, birds



dominated the HWG's conversations, as well as the group's collective imagination of the current environmental setting.

Focusing primarily on birds, the HWG began to parse what sorts of habitat features each guild required, including, for example, water depth, salinity of the water, and microtopographic relief features, such as tall grasses or hills. In determining what features to look at, the members drew from common scientific knowledge about birds, as well as years of observations by both LADWP staff and the amateur birders in the group. The data about specific features varied, however, because pre-existing assumptions informed how closely the use of those features was monitored. For example, during a discussion of the importance of micro-topography at a December 2015 meeting, Jack acknowledged that the data on what topography existed and how it was used was thin relative to other features such as water depth. This was because, he said, they knew water depth was important but, at the time of data collection, they didn't think micro-topography was important.

The intersection of guilds and habitat features generates a complex matrix. For example, breeding shorebirds need shallow water; they have specific salinity demands; they need water available for nesting and breeding in the spring and summer; they have to have dry areas for nesting; and they have to have vegetation and varied topography so they can hide their nests. One way that the model incorporates this information is through what is called a habitat suitability index. That index assigns a value – ranging from 0 to 1 – to each feature in each of the dust control areas. The higher the value, the more present the feature in specific areas. The model thus serves as a descriptive tool: a repository for lists of the guilds and the features they require. It also is a predictive tool, assembling a series of mathematical calculations used to

determine what species came to the Lake, when and why they did so, and extrapolating from all of that to determine what they might need to return in equal numbers in the future.

The first step in creating the model was therefore to collect data; then to analyze and assemble it, as, for example, by grouping certain species into guilds, and assigning a suitability index to different habitat features in relation to each guild. The next step in the model was to multiply the index value by the number of acres, which the HWG then referred to as “value acres.” Value acres became the indicator for the amount of suitable habitat for each guild that was already present on the Lake at the time of modeling. “I want you to think of a rambling old building,” Ben, said by way of description:

And there’s a big front porch. And on the front porch are all these rocking chairs and in the rocking chairs there’s old avocets, and northern shovellers, and sandpipers, and grebes, they’re all sitting there in front of this sign that says ‘Welcome to Value Acres.’ I think of Owens Lake as this retirement home for these birds, and we call it Value Acres because that was the term we used to quantitatively figure out what was on the lake.

The participants in the HWG made a deal: nobody would request more value acres than were originally recorded in the model, and LADWP would not let the number of value acres slip below that initial calculation. “Value Acres” thus became much more than a retirement home for birds: It became the baseline for the Owens Lake habitat. The members of HWG recognized the significance of this value, and thus wanted to ensure that the Habitat Suitability Model was made to be as reliable as possible.

Some members of the group were unsure whether to trust the model in the first place, since LADWP had initially created it. To allay concerns about partisanship and bias, LADWP agreed to hire Green Space, an environmental consulting firm, to review and refine the model. The consultants met with the HWG to solicit feedback, and present their findings; they also met with LADWP staff to work out other details. The review process took nearly a year, and the

discussions between the HWG and Green Space provide significant insight into the construction of a model; also, the ways in which that model and its assumptions have capacity to shape future Lake habitat. Although members of the HWG were curious about the model, and exchanged ideas about how to make it better, their concerns touched on a broader set of issues than the construction of the model itself. For one thing, they were concerned about whether it fairly represented the Lake's habitat, and what "representative" might mean in the context of constantly changing conditions. They also were concerned whether the model served to conceal truths about birds on the Lake, and, especially, about perceived disconnects between policy goals and scientific findings. They also wanted to know how to make the model as predictive as possible. Defining and setting the baseline proved to be a common theme throughout all of these discussions. In the next section, through glimpses into a handful of habitat planning meetings, I show how participants addressed the ambiguous issue of baselines over the course of a year of planning.

### ***B. Establishing a baseline***

At a project meeting on August 27, 2015, Green Space consultants made their first presentation to the HWG. They introduced themselves, and outlined the scope of the project, which, at that point, primarily entailed validating the Habitat Suitability Model. Since the model would be used to establish the baseline, the consultants explained that they had been hired to ensure that the model was as accurate as possible. They detailed for the group the process they were following: First, they would use bird counts from the past few years to get a sense of how consistent the guilds were over the years, and, specifically, whether there were certain variables that might explain guild abundance or presence. Second, they would validate the model, testing the model against their own interpretation of the bird count data. Finally, they would work to

refine the model, using basic regression techniques to look for strong and weak associations between habitat conditions and guild abundance. “Are we missing anything?” the lead consultant asked after providing this brief summary of process.

Mark Lyon, a member of the Audobon Society, asked the consultants to clarify the data they would be using for this process and the lead consultant responded he likely would be using “just the data from the last three years.” The consultant cautioned, though, that “the job is to relate habitat variables to bird abundance so if you don’t have both described concurrently, the dataset might be interesting but not all that helpful.” Jack Nelkin, the LADWP Watershed Resources Supervisor who oversaw the data collection efforts, noted that the agency had a lot of stored data, but bird quota and nesting areas had changed immensely over a short period of time, for a variety of reasons. Sarah, the biologist who worked for California Fish and Wildlife, noted that this variability is “one of the recent challenges we’ve had at Owens Lake” and would likely continue as LADWP implemented a new water management plan. It was for this reason, Mark pleaded, that “We have to make sure the goal posts aren’t moving.”

Keeping the goal posts in place, as Mark put it, while accounting for changes that would result from the Master Project was at the heart of the group’s efforts to establish a baseline. The HWG needed to learn what sort of habitat existed now in order to make an informed decision about whether LADWP’s new management plans would create acceptable changes. It was a tripartite process that tied legal validation to the tricky relationship between baselines and prediction. Ben summed up the dilemma this way: “[A lot of the group’s comments] go to the idea that these changes are going to happen and we need to be prepared to deal with them as a group, and [LA]DWP more specifically as an entity...[and] I suspect the regulatory people are just as interested in predictability as [LADWP] is. It’s maybe a different sense of predictability,

but if we say we're going to go forward and do these things can we have a high degree of confidence that we're going to end up with the habitat value aggregate and in balance that we had before?" As Ben framed this question – of interest to LADWP, as the project planner; state regulators charged with implementing California law; and the HWG as self-appointed protectors of habitat – the baseline was both a basis for prediction, and an end-goal of the project.

Two months later, on October 25, 2015, baselines again emerged as a central issue for the HWG as Green Space opened up a general discussion about how to define both the guilds and the so-called value acres. Green Space pointed out that the guilds were not “super cohesive” and that because they were based on bird count data, the needs of species that appeared more frequently would dictate the factors said to be needed for each guild. “You as a group need to figure out what you want to maximize habitat for: Is it for diversity or do you need species-specific model?” they advised. Moreover, the consultants wanted to know, did the group plan to consider specific areas – currently demarcated for dust control purposes – or were they focused on the Lake as a whole?

The group members recognized that these were crucial questions. The model was premised on multiplying guilds by acres that matched their needs, so defining guilds and giving them sufficient habitat was crucial to establishing the all-important baseline habitat. There was consensus on the answer to the second question: the group wanted to focus on specific areas and their neighbors, a sort of regional analysis rather than individual cells or the entire Lake. There was far less agreement, however, on the question of defining guilds. Jack was quick to point out that they couldn't consider every bird: “We can't manage for those oddball species,” he cautioned. But, Sarah demurred: “Diversity is one of our goals, though I don't know if we've stated it as such.” Ben, ever a pragmatist, asked whether defining the objectives was even

necessary at this stage. The Green Space consultants suggested that it could be put off for now, but noted that it would need to be done eventually. Jason Williams, another consultant who had been working with LADWP for more than two decades, reminded the group that although they were interested in the calculation of what happened to guilds and acres in the aggregate, the goal was very straightforward: to maintain what was there before LADWP's new project – the so-called Master Project – was implemented.

This position of simply maintaining what was there before the Master Project, however, proved problematic as the HWG delved into the specifics of that Project. A particularly troublesome component of that project – at least from the HWG's perspective – was LADWP's plans to implement dynamic water management, changing the levels of water as needed to control dust and conserve water. From LADWP's perspective, the dynamic water management was an essential aspect of the Master Project; the Department's goal, after all, was to reduce use of water on the Lake (which it saw as unduly wasteful), while still controlling the dust to the extent it was legally required to do so. LADWP planned to address this issue through adaptive management. At a HWG meeting on March 16, 2016, Melanie, a LADWP staffer who was helping to coordinate the CEQA review process, summarized the key points of this approach: First, the group needed to finalize the model so as to establish baseline conditions on Owens Lake. Keeping in mind the overarching management targets – mainly to preserve these baseline conditions – monitor conditions after any change to determine whether management goals were being met. Throughout this process, the Department would examine lakewide conditions to determine whether the change in habitat value might be attributed to another trend, not caused by LADWP. If baseline conditions were not being met and could not be explained by other reasons, the Department would first adjust operations and make sure habitat conditions are within ten

percent of baseline conditions. If so, LADWP would continue to monitor and manage; but if not, the Department would develop a “remediation protocol,” which Melanie described as a larger, more long term effort to ensure baseline conditions were maintained.

Melanie’s action plan brought to the surface lingering tensions between maintaining baseline stability and introducing rapid change. For example, Sarah Jones wanted to know why the Department settled on 10 percent, and whether there would be a scaled response for larger variations; if, for instance, there would be a different and more rapid response if the habitat conditions varied 90 percent from the baseline conditions. Jason, the long-term consultant, pointed out that variation was inevitable, and that the plan was designed to ensure that LADWP didn’t have to undertake a big costly remediation for something that would soon correct. He suggested that the 10 percent signaled simply that it was time to ask “is this out of the ordinary? Are we in general hitting our target?” Allowing for variation was also essential to the learning process, Jack said: “If you’re learning it in the first year and a half and you’re not hitting it [the target] and the last year and a half you are hitting it, that gives you the ability to figure out what gives you the ability to maintain it.”

Jason and Jack’s comments amounted to, in essence, a version of “just trust us, we’ll know when we really need to act.” But many members of the group were reluctant to trust anyone, and LADWP least of all, with knowing when to prioritize any interests apart from their own. Carl, who used to work for GBUAPCD but attended the meetings as a “member of the public,” raised the question of how quickly LADWP would report any deviation. After all, he pointed out, they controlled all the pertinent information: they were in charge of monitoring, they collected the data, and they provided only limited access to the Lake. When would the HWG even find out that the baseline conditions were no longer being preserved?

Carl's comments pointed to an especially nettlesome aspect of baselines: They are predicated on data that is often difficult to collect, hard to obtain, and challenging to verify. The potential for "information failures," as legal scholar Bradley Karkkainen (2008, 1410-11) calls them, are pervasive in environmental law, and their consequences significant: predictions of future impact "may be predicated on faulty or incomplete baseline data, incomplete or inconclusive science, or simple misjudgments about the direction and magnitude of change in complex, nonlinear, dynamic, and interdependent ecological settings. If the agency turns out to be wrong, we will never even know it, much less be in a position to hold the agency accountable."

The participants in the HWG were acutely aware of these pitfalls, which were made more acute by a long history of uneven power dynamics between LADWP and residents of the Owens Valley. For assistance, they turned to law; specifically, to an agreement that Ben Buckley, on behalf of the Audobon Society, was negotiating with LADWP's head of Lake operations that would mandate reporting from LADWP for certain events and forms of data. Even after that agreement was negotiated, however, there existed a misalignment between baselines and prediction that continued to pose issues for the HWG as they persevered in the planning process.

The problem of information remained particularly thorny, especially since, Lake conditions were likely to change drastically in a short amount of time. More than a year later, the issue resurfaced in a HWG meeting. Ben Buckley suggested that there existed a major problem with the habitat model, which was used to establish a baseline for habitat. The issue, as he succinctly put it, was that the model was based on data collected before Owens Lake – and the rest of the Owens Valley – had withstood a period of historic drought. So the group had little understanding of what habitat looked like under changed circumstances, and a baseline



measurement that didn't reflect context. That context was important, Ben said, "Because I can tell you I have a high degree of certainty that we're going to have to deal with drought at Owens Lake again. I have a fairly comfortable amount of certainty that we'll have to deal with a large amount of water again." In other words, Ben suggested, the baseline the group had currently developed provided an incomplete, and possibly misleading picture of the conditions on Owens Lake. Ken Bruce, who had recently taken over for Sarah Jones as the representative for California Fish and Wildlife at the meetings, concurred:

Just saying that all we need to do is build the habitat [to accomplish the model] is a little bit premature from my perspective because we don't have a long enough time period to verify that the model is actually giving us real world information. So it would be really hard to accept a CEQA document that had – that didn't have some type of a baseline that said this is what the goal is, and it may change in the future – the numbers may change.

The conversation that unfolded between Ben, Bruce, and others reveals the dilemmas caused by the present-future temporality that dominates much of environmental law, including CEQA. Blind to much of the past, and ignoring change over time, environmental regulations force a bias towards the present (Pauly, 1995). This has real and concrete consequences for planning efforts: propelling prospective action as a means to avoid risks and mitigate damage, rather than develop opportunities for dealing with change over time. The kind of future orientation embodied in CEQA's baseline requirements renders the future a "mirage," a static image that allows little flexibility for adaptation (Richardson, 2017:15). Yet in the group's efforts to work around these constraints, we also may glimpse how efforts to implement law nonetheless invites alterations in these static conceptions of time: in Ben's attention to historical cycles, for example, or in Bruce's proposal for dynamic objectives. These temporal adjustments might not make it into the final legal document, but they remain at play in the efforts to

implement the law, opening up a clear example of how law in action might differ from a legal regulation, even – or especially – along the temporal dimension.

#### **IV. A Future-Future for Owens Lake?**

One sunny summer day in 2017, I was sitting in a LA coffee shop, casually reading papers while waiting for my order to come up. “California Far from Solutions as Salton Sea Crisis Looms” read one headline in *USA Today* (Roth & James, 2017). I paused to read the article more carefully, remembering how the Salton Sea sometimes was a topic of casual gossip at the HWG meetings. As this article and many others like it, noted, the Salton Sea is another California lake whose rapidly drying surface emits terribly toxic dust; it is three times as large as Owens Lake, and as many as ten times the number of people could be affected by the dust pollution. Unlike Owens Lake, however, the state has not identified a single entity, like LADWP, that was responsible for the cleanup. As a result, the state is undertaking to clean up the lake on its own; but funds and progress are lagging far behind what is seen at Owens Lake. State agencies have developed a remediation plan that falls far short of a complete fix, but which they hope will be practical enough to encourage immediate action. As Bruce Wilcox, assistant secretary for Salton Sea policy at the California Natural Resources Agency, told reporters, it was necessary to forsake long-term change for immediate stability: “Conditions are dire and we have to do something now for habitat, and we have to do something now for dust suppression.”

Wilcox’s statement is a helpful reminder of why, when dealing with disasters such as those confronting Owens Lake and the Salton Sea, present circumstances come to dominate so much of planning efforts. In addition to legal concerns, political gridlock and popular pressure can often shorten the timeline of projects – even those that will require many decades of work. These pressures unquestionably guide the work of scientists, policymakers, and regulatory

agencies in California, and are built into regulatory frameworks and action plans alike. They also undergird the baseline, mainstream assumptions of how life will proceed, privileging change that can be seen over that which must be imagined. Wilcox was merely acknowledging the primacy of the present. Emphasizing the desirability of immediate solutions, he was also speaking the language of California's regulators.

At the time of this writing, LADWP and the HWG are still negotiating proposals for habitat mitigation and water conservation on Owens Lake. The most recent meeting invite noted that participants should give notice if their lawyers also planned to attend, suggesting that these contentious arguments over the future may be subject to yet more legal challenges. Whereas residents in an around the Salton Sea optimistically point to Owens Lake as one possible future, members of the HWG constantly fret that their negotiations could fall apart at any time, leaving them to confront a future that looks a lot like the Salton Sea. The mirroring of these two lakes and imagined transference of their respective presents and futures offers a glimpse into the complexities of time perspectives in moments of environmental crisis. More than that, it suggests the precarity of temporality, in regulatory life and otherwise, as "present conditions" come to reflect all that came before and all that is hoped to come after.

## CHAPTER FIVE: SUMMARY AND CONCLUSIONS

This dissertation has traced the confluence of environmental law, environmental conflict, and the environment-centered perspectives, practices, and promises prevalent in everyday life. Beginning with the question of how to make these intersections visible, the Introduction described the primary research site of the Owens Valley, California, and offered reflections on different ways of seeing the environmental governance that plays out there. Chapter One described the long history of conflicts over land and resources in the Owens Valley. That timeline provided necessary context for the events described in the rest of the dissertation; it also revealed the varied and often dramatic ways in which environment-focused actions manifest, the legal responses they engender, and the shifts in governance practices that result.

Chapter Two further contextualized the Owens Valley by situating it within an ongoing assessment of the constructions and meanings of rural places. Ideas about governance, as well as sustainability, often shift within particular contexts; there is a prevailing sense that things are different in rural, versus urban, places. This chapter challenged the distinction between urban and rural by showing how ideas about places are creatively constructed; also how such ideas can be challenged and reformulated. Reading the stories told about the Owens Valley can tell us about the process through which notions of “the environment” and of “nature” are produced, and how this knowledge affects the formation of environmental consciousness and identities. Such reading also suggests an important goal for law to create and strengthen communal connections, performing the role of mediator rather than divider.

Chapter Three suggested another possible intervention and reformulation of law in the context of resource conflicts. Recounting historical and contemporary confrontations between LADWP and Native Americans in the Owens Valley, the chapter foregrounded the ways in

which legislation, contracts, and traditional property rules can elide the seemingly stark divide between social and environmental controls, with far-reaching consequences for resource acquisition and management. This chapter explored various ways in which individuals and groups sought to reclaim their rights, as well as their rights to resources. The discussion in the chapter pointed to the potential of a new way of framing legal rights: one that privileges community benefit over individual gain, and focuses on access rather than ownership over land and resources.

Although much of the content of the dissertation chapters focused on the past and present, environmental law and governance orients, to a large degree, toward the future. Chapter Four took up the subject of the future, with a particular focus on how futurology becomes a technique of environmental governance. Through a comparison of the practices of futurology in both legal doctrine and planning within the Owens Valley, the chapter explored the disconnects and overlaps between legal and other ways of seeing the future, opening up further questions about how we might bring the ideals of governance in line with the realities of regulation. The investigation into regulatory futurology presented in this chapter offers one of the first empirical explorations of the development and use of time in law and offers us the opportunity to reflect on what the study of time can tell us about the relations and processes that make up environmental law.

\*\*\*

As this study of the Owens Valley makes clear, conflicts over environmental issues, land, and natural resources are pervasive, deeply rooted in past events, experiences, and emotions, and branch out to cover many other, seemingly unrelated, areas of life. Environmental governance

aims to constrain the fallouts from conflict, while also supporting new, more productive ways of acquiring and managing land and resources.

The path to doing so is neither obvious nor straightforward, however, as former Inyo County Supervisor Warren Allsup learned. Allsup, along with the other County Supervisors, voted in favor of the Water Agreement, and Inyo County and LADWP signed the Agreement in 1991. This wasn't the happy ending it was meant to be, Allsup confided to me when I interviewed him many years later. He remains bitter about the results of that Agreement, the fallout of which affected him both personally and professionally. The Agreement was tied up for years in litigation, as various groups in the County challenged its legality. In the vacuum created by these lawsuits, LADWP continued to make decisions unilaterally, many of which continued to affect people, land, and resources many decades later, and sometimes irreversibly. The Agreement was finally fully implemented in 1997, more than six years after it was first signed. While the Agreement now serves as a scaffold for most decisions involving water in the Valley, it also has created new and ambiguous rights and responsibilities. Ongoing disputes concerning those rights and responsibilities permeate governmental and stakeholder meetings; they often spill over into the courtroom, threatening to topple the very structure of cooperation erected by the Long-Term Water Agreement.

That Agreement serves as a potent – albeit brief – anecdote within this larger study of environmental governance in the Owens Valley. It aptly illustrates the tumultuous fate of most governance initiatives, as well as the complicated emotions engendered by seemingly technical regulation. Law – including the Long-Term Water Agreement, the Land Exchange, CEQA, and judicial opinions interpreting all of these – is critical to realignment between environmental and social norms. At a time when the very concept of environmentalism has become a political

flashpoint, analysis of legal regulation in the Owens Valley can deepen our understanding of how the environment is being (re)conceptualized and how borders between people and places – and the rights and responsibilities that arise in the intersections between them – are being reformed materially and socially through specific governance strategies and practices.

This study, though, is about more than environmental governance and regulation in the Owens Valley. I set out to bring together inquiry into environmental law and policy with law and society studies, as a means of revealing interconnections between people's memories of the past and contemporary conflict, between subjective understandings of place and resource regulation, and between strategies of governance and legal transformation. What I have explored, then, is how law connects people to their environment(s), and how, in so doing, law mediates – and potentially transforms – environmental order and social and moral order (and vice versa). The intersections I study are not only symbolic, but also spatial. The historical, political, and physical presence of Los Angeles in the Owens Valley means that my analysis provides insight not only into rural spaces, people, and law, but also – and just as significantly – onto the rural-urban interface in each of these areas. By looking at and through law and its connections to the social world, I suggest how law shapes the ways in which historical actors imagine themselves in historical time, and how law not only regulates people and places, but also how it binds them together, bridging divides and threading together persons, places, and things. In its reordering of the regulatory landscape, the texts, implementations, and practices of law can determine the environment itself, and may render wholly (un)natural our experiences of the world and any attempts to control it.

## BIBLIOGRAPHY

- Adam, Barbara (2005) *Timescapes of modernity: The environment and invisible hazards*. Routledge.
- Agrawal, Arun (2005) *Environmentalism*. Durham: Duke University Press.
- Agrawal, Arun, Anilk Gupta, Michael Hathaway, Susana Narotzky, Hugh Raffles, Ajay Skaria, Nandini Sundar & Arun Agrawal (2005) "Environmentalism: Community, intimate government, and the making of environmental subjects in Kumaon, India," 46 *Current Anthropology* 161-190. (2).
- Austin, Mary (1905) "The Owens River Water Project," *San Francisco Chronicle*, Sept. 3, 1905, p.19.
- \_\_\_\_\_ (1917) *The Ford*. Houghton Mifflin.
- \_\_\_\_\_ (1932) *Earth Horizons*. Sunstone Press.
- Bacon, Steven N, Raymond M Burke, Silvio K Pezzopane & Angela S Jayko (2006) "Last glacial maximum and Holocene lake levels of Owens Lake, eastern California, USA," 25 *Quaternary Science Reviews* 1264-1282. (11-12).
- Bauer, William J., Jr. (2012) "The Giant and the Waterbaby: Paiute oral traditions and the Owens Valley water wars," 2 *Boom*. (4).
- Becker, Howard & Blanche Geer (1957) "Participant observation and interviewing: A comparison," 16 *Human organization* 28-32. (3).
- Behrens, Zach (2013) "'There it is, give it back': LA Aqueduct ceremony draws protest," KCET, available online <https://www.kcet.org/socal-focus/there-it-is-give-it-back-la-aqueduct-ceremony-draws-protest>
- Bergin, Tiffany & Emanuela Orlando eds. (2017) *Forging a socio-legal approach to environmental harms*. New York: Routledge.
- Berliner, Daniel & Aseem Prakash (2013) "Signaling environmental stewardship in the shadow of weak governance: The global diffusion of ISO 14001," 47 *Law & Society Review* 345-373. (2).
- Belfrage, Cedric (1978) *The promised land*. Garland.
- Bertenthal, Alyse (2017) "The 'Right Paper': Developing Legal Literacy in a Legal Self-Help Clinic," 42 *Law & Social Inquiry* 963-989. (4).



- Biehl, João (2013) *Vita: Life in a zone of social abandonment*. University of California Press.
- Blank, Yishai & Issi Rosen-Zvi (2010) "A spatial age: The turn to space in law, the social sciences and the humanities," 10 *Studies in Culture, Politics, and Identities* 3-8. (1).
- Boer, Ben, Philip Hirsch, Fleur Johns, Ben Saul & Natalia Scurrah (2015) *The Mekong: A socio-legal approach to river basin development*. Routledge.
- Bourgois, Philippe (1995) *In search of respect*. Cambridge: Cambridge University Press.
- Braverman, Irus, Nicholas Blomley, David Delaney & Alexandre Kedar (2014) *The expanding spaces of law: A timely legal geography*. Stanford University Press.
- Bulkeley, Harriet & Arthur Pj Mol (2003) "Participation and environmental governance: consensus, ambivalence and debate," 12 *Environmental Values* 143-154. (2).
- Cabatingan, Lee (2016) "Time and Transcendence: Narrating Higher Authority at the Caribbean Court of Justice," 50 *Law & Society Review* 674-702. (3).
- Cahill, Thomas A, Thomas E Gill, Jeffrey S Reid, Elizabeth A Gearhart & Dale A Gillette (1996) "Saltating particles, playa crusts and dust aerosols at Owens (dry) Lake, California," 21 *Earth Surface Processes and Landforms* 621-639. (7).
- Cassuto, David N (2001) *Dripping dry: literature, politics, and water in the desert Southwest*. University of Michigan Press.
- Cerwonka Allaine & Liisa Malkki (2008) *Improvising theory: Process and temporality in ethnographic fieldwork*. University of Chicago Press.
- Cepek, Michael L (2011) "Foucault in the forest: Questioning environmentality in Amazonia," 38 *American Ethnologist* 501-515. (3).
- Chalfant, Willie Arthur (1922) *The Story of Inyo*.
- Cronon, William (1991) *Nature's metropolis: Chicago and the Great West*. W.W. Norton.
- \_\_\_\_\_ (1996) "The trouble with wilderness: or, getting back to the wrong nature," 1 *Environmental History* 7-28. (1).
- Daniels, Tom (1999) *When city and country collide: Managing Growth in the metropolitan fringe*. Island Press.
- Davis, Margaret Leslie (1994) *Rivers in the Desert: William Mulholland and the Inventing of Los Angeles*. Perennial.
- Dayan, Colin (2011) *The law is a white dog: How legal rituals make and unmake persons*.

Princeton University Press.

Darian-Smith, Eve (1999) *Bridging divides: The Channel Tunnel and English legal identity in the New Europe*. University of California Press.

De Burca, Grainne (2003) "The constitutional challenge of new governance in the European Union," 56 *Current Legal Problems* 403. (1).

DeDecker, Mary (1988) "Owens Valley, Then and Now." In *Mountains to Desert: Selected Inyo Readings*. Friends of the Eastern California Museum.

Demsetz, Harold (1974) "Toward a theory of property rights," *Classic Papers in Natural Resource Economics*. Springer.

Duneier, Mitchell & Ovie Carter (1999) *Sidewalk*. Macmillan.

Erie, Steven P & Pascale Joassart-Marcelli (1999) "Unraveling Southern California's Water/Growth Nexus: Metropolitan Water District Policies and Subsidies for Suburban Development, 1928-1996," 36 *Cal. WL Rev.* 267.

Ewan, Rebecca Fish (2000) *A Land Between: Owens Valley, California*. Johns Hopkins University Press.

Feldman, Yuval & Oren Perez (2009) "How law changes the environmental mind: An experimental study of the effect of legal norms on moral perceptions and civic enforcement," 36 *Journal of Law and Society* 501-535. (4).

Feld, Steven & Keith H Basso (1996) *Senses of Place*. School of American Research Press.

Fisher, Elizabeth, Bettina Lange, Eloise Scotford & Cinnamon Carlarne (2009) "Maturity and methodology: Starting a debate about environmental law scholarship," 21 *Journal of Environmental Law* 213-250. (2).

Ford, Cristie (2010) *New Governance Securities Regulation in Theory and Practice*. Columbia University.

Garland, David (1997) "'Governmentality' and the problem of crime: Foucault, criminology, sociology," 1 *Theoretical criminology* 173-214. (2).

Goffman, Erving (1974) *Frame analysis: An essay on the organization of experience*. Harvard University Press.

Goldman, Robert, and David R. Dickens (1983) "The selling of rural America," 48 *Rural Sociology*: 585-606. (4).

- Greenhouse, Carol J (1989) "Just in time: Temporality and the cultural legitimation of law," 98 *The Yale Law Journal* 1631-1651. (8).
- Hardin, Garrett (1968) "The Tragedy of the Commons," 162 *Science* 1253.
- Harris, Cheryl I (1993) "Whiteness as property," *Harvard law review* 1707-1791.
- Harrison, Summer (2017) "Environmental Justice Storytelling: Sentiment, Knowledge, and the Body in Ruth Ozeki's *My Year of Meats*," 24 *ISLE: Interdisciplinary Studies in Literature and Environment*, 457-76. (3).
- Herbst, David B & Michael Prather (2014) "Owens Lake—From Dustbowl to Mosaic of Salt Water Habitats," *Lakeline*.
- Harcourt, Bernard E (2011) *The illusion of free markets*. Harvard University Press.
- Hart, Herbert Lionel Adolphus (2012 [1961]) *The concept of law*. Oxford University Press.
- Heinzerling, Lisa (1998) "Environmental Law and the Present Future," 87 *Geo. LJ* 2025.
- Hix, Simon (1998) "The study of the European Union II: the 'new governance' agenda and its rival," 5 *Journal of European public policy* 38-65. (1).
- Hoffman, Abraham (1981) *Vision or villainy: Origins of the Los Angeles-Owens Valley water controversy*. Texas A&M University Press.
- Hutter, Bridget M (1999) *A reader in environmental law*. Oxford University Press.
- Huxley, Aldous & Charles Isherwood (1956) "Jacob's Hands: A Fable."
- Kagan, Robert A, Neil Gunningham & Dorothy Thornton (2003) "Explaining corporate environmental performance: how does regulation matter?," 37 *Law & Society Review* 51-90. (1).
- Kahrl, William L (1983) *Water and power: The conflict over Los Angeles water supply in the Owens Valley*. University of California Press.
- Karkkainen, Bradley C (2007) "Bottlenecks and baselines: tackling information deficits in environmental regulation," 86 *Tex. L. Rev.* 1409.
- Katz, Larissa (2008) "Exclusion and exclusivity in property law," 58 *University of Toronto Law Journal* 275-315. (3).
- Kahrl, William L (1983) *Water and power: The conflict over Los Angeles water supply in the Owens Valley*. University of California Press.

- Karkkainen, Bradley C (2004) "New governance in legal thought and in the world: some splitting as antidote to overzealous lumping," 89 *Minn. L. Rev.* 471.
- Latour, Bruno (2010) *The making of law: an ethnography of the Conseil d'État*. Polity.
- Lee, Jo & Tim Ingold (2006) "Fieldwork on foot: Perceiving, routing, socializing," 42 *Locating the field: Space, place and context in anthropology* 67-85.
- Lehrman, Barry (2012) "Aqueduct bibliography," available online at [www.aqueductfutures.wordpress.com](http://www.aqueductfutures.wordpress.com).
- Lemos, Maria Carmen & Arun Agrawal (2006) "Environmental governance," 31 *Annual review of environment and resources*.
- Levi-Faur, David (2012) *The Oxford handbook of governance*. Oxford University Press.
- Liebcap, Gary D (2007) *Owens Valley revisited: A reassessment of the West's first great water transfer*. Stanford University Press.
- Lobel, Orly (2004) "Setting the agenda for new governance research," 89 *Minn. L. Rev.* 498.
- \_\_\_\_\_ (2005) "Interlocking regulatory and industrial relations: The governance of workplace safety," 57 *Admin. L. Rev.* 1071.
- \_\_\_\_\_ ed. (2012) *New governance as regulatory governance*. Oxford: Oxford University Press.
- Luke, Timothy W (1996) "Governmentality and contragovernmentality: Rethinking sovereignty and territoriality after the Cold War," 15 *Political Geography* 491-507. (6-7).
- Lutz, Catherine & Geoffrey M White (1986) "The anthropology of emotions," 15 *Annual review of anthropology* 405-436. (1).
- Lynch, Mona & Alyse Bertenthal (2016) "The calculus of the record: Criminal history in the making of US Federal Sentencing Guidelines," 20 *Theoretical Criminology* 145-164. (2).
- Macnaghten, Phil (2003) "Embodying the environment in everyday life practices1," 51 *The sociological review* 63-84. (1).
- Madrigal, Alexis C (2014) "American aqueduct: The great California water saga," *The Atlantic*.
- Malinowski, Bronislaw (1922) *Argonauts of the Pacific*. Holt, Rinehart and Winston, New York, NY.
- Mayntz, Renate (2003) "New challenges to governance theory," in H. P. Bang, ed. *Governance as social and political communication*. New york: Palgrave.

- Merriam-Webster (2004) *Merriam-Webster's collegiate dictionary*. Merriam-Webster.
- Merrill, Thomas W (1998) "Property and the Right to Exclude," 77 *Neb. L. Rev.* 730.
- Mertz, Elizabeth (2007) *The language of law school: learning to "think like a lawyer"*. Oxford University Press, USA.
- Moore, Sally Falk (1973) "Law and social change: the semi-autonomous social field as an appropriate subject of study," 7 *Law & Society Review* 719-746. (4).
- Mulholland, Catherine (2000) *William Mulholland and the rise of Los Angeles*. Univ of California Press.
- Murdocca, Carmela (2010) "'There is something in that water': Race, nationalism, and legal violence," 35 *Law & Social Inquiry* 369-402. (2).
- Nadeau, Remi (1950) *The water seekers*. Doubleday.
- News Staff (2014) "LADWP/GBAPCD settle lawsuits over dust control and look forward to more use of waterless control methods without harming wildlife," *sierrawave.net*, 14 Nov., available online <http://www.sierrawave.net/ladwpgbapcd-settle-lawsuits-over-dust-control-and-look-forward-to-more-use-of-waterless-control-methods-without-harming-wildlife/>.
- O'Malley, Pat (1996) "Risk and responsibility," *Foucault and political reason: Liberalism, neo-liberalism and rationalities of government* 189-207.
- Ostrom, Vincent (1953) *Water & Politics: a Study of Water Policies and Administration in the Development of Los Angeles*. Haynes Foundation.
- Pauly, Daniel (1995) "Anecdotes and the shifting baseline syndrome of fisheries," 10 *Trends in ecology & evolution* 430. (10).
- Peet, Richard & Michael Watts (2004) *Liberation ecologies: environment, development and social movements*. Routledge.
- Perez, Oren, Yair Amichai-Hamburger & Tammy Shterental (2009) "The Dynamic of Corporate Self-Regulation: ISO 14001, Environmental Commitment, and Organizational Citizenship Behavior," 43 *Law & Society Review* 593-630. (3).
- Penner, James E (1995) "The bundle of rights picture of property," 43 *UCLA L. Rev.* 711.
- Piper, Karen (2015) *Left in the dust: How race and politics created a human and environmental tragedy in LA*. St. Martin's Press.

- Radcliffe-Brown, Alfred Reginald (1935) "On the concept of function in social science," 37 *American Anthropologist* 394-402. (3).
- Rhodes, Roderick Arthur William (1996) "The new governance: governing without government," 44 *Political studies* 652-667. (4).
- Rose, Nikolas, Pat O'Malley & Mariana Valverde (2006) "Governmentality," 2 *Annu. Rev. Law Soc. Sci.* 83-104.
- Rose, Nikolas & Mariana Valverde (1998) "Governed by law?," 7 *Social & Legal Studies* 541-551. (4).
- Radin, Margaret Jane (1982) "Property and personhood," *Stanford Law Review* 957-1015.
- Reheis, Marith C (1997) "Dust deposition downwind of Owens (dry) Lake, 1991–1994: Preliminary findings," 102 *Journal of Geophysical Research: Atmospheres* 25999-26008. (D22).
- Remy, Michael H, Tina A Thomas & James G Moose (1996) *Guide to the California Environmental Quality Act (CEQA)*. Solano Press.
- Richardson, Benjamin (2017) *Time and Environmental Law: Telling Nature's Time*. Cambridge University Press.
- Roderick, Kevin (1989) "Owens Lake's dust: Airborne health hazard," *The Los Angeles Times*, 2 Apr., available online [http://articles.latimes.com/1989-04-02/news/mn-1380\\_1\\_owens-lake-dust](http://articles.latimes.com/1989-04-02/news/mn-1380_1_owens-lake-dust).
- Ribot, Jesse C & Nancy Lee Peluso (2003) "A theory of access," 68 *Rural sociology* 153-181. (2).
- Rose, Carol M (1998) "The several futures of property: Of cyberspace and folk tales, emission trades and ecosystems," 83 *Minn. L. Rev.* 129.
- Roth, Sammy and Ian James (2017) "California far from solutions as Salton Sea crisis looms," *USA Today*, 10 June, available online <https://www.usatoday.com/pages/interactives/salton-sea/california-far-from-solutions-as-salton-sea-crisis-looms>.
- Sahagun, Louis (2014) "New dust-busting methods ends LA's longtime feud with Owens Valley," *Los Angeles Times*, 14 Nov., available online <http://www.latimes.com/science/la-me-1115-owens-20141115-story.html>.
- Salamon, Lester M (2000) "The new governance and the tools of public action: An introduction," 28 *Fordham Urb. LJ* 1611.
- Scott, Joanne & David M Trubek (2002) "Mind the gap: law and new approaches to governance

- in the European Union,” 8 *European Law Journal* 1-18. (1).
- Shah, Anwar & Sana Shah (2009) “The new vision of local governance and the evolving roles of local governments,” 3 *Journal of Public Administration*. (004).
- Snow David A, et al. (1986) “Frame alignment processes, micromobilization, and movement participation,” 1 *American sociological review* 464-81.
- Stewart, Kathleen (1996) *A space on the side of the road; Cultural poetics in an “other” America*. Princeton University Press.
- Stoker, Gerry (1998) "Governance as theory: five propositions," 50 *International social science journal* 17-28. (155).
- Stringfellow, Kim (2013) "Owens Valley and the Aqueduct," *Boom: A Journal of California* 50-59. (3).
- Tyler, Tom & Steven Blader (2013) *Cooperation in groups: Procedural justice, social identity, and behavioral engagement*. Routledge.
- Valverde, Mariana (2015) *Chronotopes of law: Jurisdiction, scale and governance*. Routledge.
- Williams, Raymond (1973) *The country and the city*. Oxford University Press.

- Teubner, Gunther (1993) *Law as an autopoietic system*. Oxford/Cambridge, Blackwell Publishers.
- Thomas, Franklin (1930) "Metropolitan Water Distribution in the Los Angeles Area," 148 *The Annals of the American Academy of Political and Social Science* 6-11. (2).
- Trouillot, Michel-Rolph (1995) *Silencing the past: Power and the production of history*. Beacon Press.
- Trubek, David M & Louise G Trubek (2005) "Hard and soft law in the construction of social Europe: the role of the open method of co-ordination," 11 *European Law Journal* 343-364. (3).
- Trubek, David M & Jonathan Zeitlin (2003) *Governing work and welfare in a new economy: European and American experiments*. Oxford University Press.
- Trubek, Louise G, et al. (2008) "Health care and new governance: The quest for effective regulation," 2 *Regulation & Governance* 1-8. (1).
- Twain, Mark (2010) *Mark Twain's own autobiography: the chapters from the North American review*. University of Wisconsin Press.
- Valverde, Mariana (2007) "Genealogies of European states: Foucauldian reflections," 36 *Economy and society* 159-178. (1).
- \_\_\_\_\_ (2009) "Beyond Discipline and Punish: Foucault's challenge to criminology," *Discipline Security and Beyond* 201.
- \_\_\_\_\_ (2010) "Specters of Foucault in law and society scholarship," 6 *Annual Review of Law and Social Science* 45-59.
- \_\_\_\_\_ (2015) *Chronotopes of law: Jurisdiction, scale and governance*. Routledge.
- Vanhala, Lisa (2012) "Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the UK," 46 *Law & Society Review* 523-556. (3).
- Viñuales, Jorge E (2016) "Foreign investment and the environment in international law: The current state of play," *C-EENRG Working Papers* 1-42.
- Walton, John (1991) *Western times and water wars: State, culture, and rebellion in California*. Univ of California Press.



Wheeler, Mark (2002) "California scheming," *Smithsonian magazine*.

Williams, Raymond (1975) *The country and the city*. Oxford University Press.

*Cases and Statutes*

Civil Code California §654

*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*, 190 Cal.App.4th 316 (2010)

*County of Amador v. El Dorado County Water Agency et al.*, 76 Cal.App. 4th 931 (1999)

*Environmental Planning Information Council v. County of El Dorado*, 131 Cal.App.3d 350 (1982)

*Fat v. County of Sacramento*, 97 Cal.App.4th 1270 (2007)

*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal. 4th 439 (2013)

*River Watch v County of San Diego*, 76 Cal.App.4th 1428 (1999)