

BRIDGING THE CONFLUENCE OF WATER AND IMMIGRATION LAW

Tom I. Romero, II*

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“Immigration plays a key role in our growing water crisis because it is responsible for two-thirds of U.S. population growth. The 1.5 million immigrants who move to America each year place an ever-increasing burden on our national water supply. We should not fault recent immigrants for

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* J.D., Ph.D, Associate Professor of Law, University of Denver Sturm College of Law, and Affiliate Faculty, Department of History & Assistant Provost of IE Research and Curricular Initiatives, University of Denver. I want to thank Joseph Norris and Jana Houghteling for invaluable research as we collectively began to examine the connection between water and immigration law in my previous scholarship. I first began to formulate and to refine these connections at the Association of American Law School’s summer Workshop on Poverty, Immigration and Property in 2013 and the University of Michigan Law School’s Legal History Workshop in Fall 2015. My colleagues in the University of Denver’s Rocky Mountain Collective on Race, Place, and Law in the College of Law have provided support for this project in countless and invaluable ways. The close readings, critical feedback, and enthusiastic encouragement by all of the workshop participants and my colleagues made me realize both the importance and the scope of this project. I hope this Article, which attempts to connect the dots to many of our collective conversations and is an entry to a much larger project, is faithful to all of your wisdom and feedback. Finally, I want to highlight the outstanding work and efforts of the members of the *Texas Tech Law Review*. They did an outstanding job editing this Article and put on a tremendous live symposium on the future of water law.

satisfying their water needs; however we must act in our nation's interest by lowering immigration quotas to a level that is environmentally sustainable."¹

—Federation of American Immigration Reform (FAIR)

*"Water, like religion and ideology, has the power to move millions of people. Since the very birth of human civilization, people have moved to settle close to water. People move when there is too little of it. People move when there is too much of it. People journey down it. People write and sing and dance and dream about it. People fight over it. And all people, everywhere and every day, need it."*²

—Mikhail Gorbachev, Past-President of Green Cross International

*"ATTENTION ALL WATER CUSTOMERS: TO BE COMPLIANT WITH NEW LAWS CONCERNING IMMIGRATION YOU MUST HAVE AN ALABAMA DRIVER'S LICENSE OR AN ALABAMA PICTURE ID CARD ON FILE AT THIS OFFICE . . . OR YOU MAY LOSE WATER SERVICE. THANK YOU."*³

—Sign posted outside the Allgood Water Works in Blount County, Alabama, after the passage of Alabama House Bill 56 in 2011

I. INTRODUCTION

This Article is about the relationship between water and immigration law in the United States. The connection between the two might not seem obvious, but as the following sections detail, major developments in water law and immigration law have largely grown together. Take away major doctrinal and policy developments in one body of law, and the need for changes in the other ceases or becomes much less acute.

How does one begin to understand water and immigration law's relationship? On one level, it is a matter of language because water has long served as a metaphor to explain the "flood" and "tide" of immigrants who cross the borders into the United States each and every day.⁴ To be sure,

1. *Freshwater Limits* (2009), FED'N FOR AM. IMMIGR. REFORM, <http://www.fairus.org/issue/freshwater-limits> (last visited Apr. 10, 2016); see also ERIC A. RUARK & MATTHEW GRAHAM, FED'N FOR AM. IMMIGR. REFORM, RUNNING DRY: LOOMING WATER SHORTAGES IN THE UNITED STATES 1 (2012), http://www.fairus.org/docserver/Water_report2.pdf (noting that immigration places a strain on the nation's water supply).

2. Mark Smith, *The Big Question: Will Global Conflict Flow from the Quest for Water Security?*, WORLD POL'Y J., Winter 2009–10, at 5, 5 (quoting Mikhail Gorbachev).

3. *'No Papers, No Water': The Sign Denying Basic Services to Alabama's Illegal Residents*, DAILY MAIL (Oct. 7, 2011, 10:41 PM), <http://www.dailymail.co.uk/news/article-2046582/Obama-administration-asks-court-BLOCK-controversial-Alabama-immigration-law.html>.

4. OTTO SANTA ANA, BROWN TIDE RISING: METAPHORS OF LATINOS IN CONTEMPORARY AMERICAN PUBLIC DISCOURSE 72–79 (2002) (detailing immigration as "dangerous waters," the dominant metaphor describing immigration from Latin America). For a more recent example, see Bob Fredericks, *'Katrina' of Illegal Immigration Flooding into Border States Daily*, N.Y. POST (June 12, 2014, 2:11 AM), <http://nypost.com/2014/06/12/illegal-immigrant-increase-overwhelming-emergency-shelters/>.

water—in the flow, depth, and reach of the Rio Grande River—serves to form a continuous 1,255-mile border between the United States and Mexico.⁵ Unlike most other boundaries that distinguish the continental United States from its neighbors, the Rio Grande unquestionably marks the sovereignty of the nation, and the concomitant authority to determine who are and are not its citizens. Due to profound changes in the ways that migrants to the United States came to be counted and documented in federal immigration law during the twentieth century, language worked to stigmatize as “wetbacks,” “illegal,” and non-white all those migrants who crossed the Rio Grande, seeking a better life.⁶

On another level, the relationship between water law and immigration law can be seen as a function of demographic symbiosis. Fundamental changes in American water law doctrines would likely not have occurred without the pressures, fissures, and dislocation caused by massive national and international migration. As I suggest later in this Article, the emergence of the prior appropriation doctrine in the American West, during the middle to later decades of the nineteenth century, would likely not have happened without the sudden arrival of hundreds of thousands of migrants from all parts of the world, who sought to work and settle what had once been considered an unlivable, inhospitable desert.⁷ Applying the principle of “first in time, first in right,” the prior appropriation doctrine allowed migrants to fundamentally transform the “dry and thirsty” land of what would become the American West.⁸

This Article, therefore, is about the many ways that water and immigration law and policy are inextricably related. I have structured this Article in relation to “A Timeline of Important Moments in Water and Immigration Law and Policy,” which serves as an Appendix to this Article. Though not designed to be exhaustive, the timeline is organized into three historical eras to connect important historical developments in water and immigration law and policy. The first era and Part I of the Article explore the rise of irrigated agriculture in the American West in the late nineteenth century and the concomitant demand for a cheap immigrant labor supply. The second era and Part II of the Article connect the emergence of a metropolitan America to persistent immigration reform in the years and decades after World War II. In both cases, fundamental developments in

5. *About the Rio Grande*, INT’L BOUNDARY & WATER COMMISSION, <http://www.ibwc.gov/crp/riogrande.htm> (last visited Apr. 10, 2016).

6. See generally IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); NATALIA MOLINA, *HOW RACE IS MADE IN AMERICA: IMMIGRATION, CITIZENSHIP, AND THE HISTORICAL POWER OF RACIAL SCRIPTS* (2014) (examining the changes in immigration policy in the United States between 1924–1965 and the corresponding effect on perceptions of Mexican-Americans); MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004).

7. See *infra* notes 32–42 and accompanying text.

8. See *Yunker v. Nichols*, 1 Colo. 551, 553 (1872) (describing “dry and thirsty land[s],” such as Colorado).

water and immigration law and policy created the conditions by which the desert could support a vast agricultural empire and sprawling metropolitan economies dependent upon immigrant labor.

The third era and Part III of the Article tie local efforts to control immigration to questions of access and supply of water delivery systems. Represented in the vastly different water infrastructure of immigrant “Colonias” along the Mexican–American border and the aging water distribution systems of inner-ring suburban communities increasingly populated by “New Americans,” this final Part explores how, and in what ways, the lack of local “citizenship” has contributed to water crises in the fractured landscapes of American neighborhoods.

Ultimately, connecting the history of water and immigration law and policy at the national and local level helps us to understand the ways that each, working silently together, has reinforced patterns of racial segregation and economic subordination, of which immigrants play a large, contemporary part. As I have contended in a slightly different context, a central argument in this larger project is that in much the same way that interstate highways in the United States came to mark, bound, segregate, and contain neighborhoods of color, the underground pipes, pumps, and reservoirs of stored water and wastewater treatment plants, in conjunction with their absence, serve an equally powerful, if not more pernicious, social and economic function.⁹ Water law, which creates property rights regarding the acquisition, control, storage, and distribution of water, contributes directly to the boundaries of property development. It determines the degree of economic growth, investment, and opportunity; it bounds not only the limits of neighborhoods, cities, regions, and countries, but it also ultimately establishes the contours by which full citizenship and participation in the United States is defined.

II. THE IRRIGATION ERA AND THE NEED FOR A DOCILE LABOR SUPPLY

In 1902, Congress authorized “potentially the biggest public works program in American history” when it enacted the Newlands Reclamation Act, which authorizes the federal government to commission water diversion, retention, and transmission projects in arid lands located mostly in the American West.¹⁰ The Reclamation Act initially included sixteen western states, and later amendments in 1905 and 1906 extended the program to the entire state of Texas.¹¹ Its goal was to turn large portions of what had long

9. Tom I. Romero, II, *The Color of Water: Observations of a Brown Buffalo on Water Law and Policy in Ten Stanzas*, 15 U. DENV. WATER L. REV. 329, 354 (2012).

10. Donald J. Pisani, *Federal Reclamation and the American West in the Twentieth Century*, 77 AGRIC. HIST. 391, 393 (2003).

11. *Water in the West*, NAT'L PARK SERV., http://www.nps.gov/nr/travel/ReclamationDamsIrrigationProjectsAndPowerplants/water_in_the_west.html (last visited Apr. 4, 2016).

been known as the Great American Desert and other parts of the United States into fertile farms and orchards.¹²

Of course, indigenous inhabitants to this region had long ago discovered the precarious relationship between water, migration, and growth in this region. As early as five or six hundred years before the arrival of the Spanish in the American Southwest, the Ancestral Puebloans instituted an elaborate system of water control.¹³ Professor Michael Meyer notes: “On Chapin Mesa at Mesa Verde in southwestern Colorado they built check dams and an irrigation ditch more than four miles in length.”¹⁴ On the plains east of the Rockies, the Wichitas and the Quiviras established horticultural villages along watercourses.¹⁵ As one lived farther from the mountains, “streams became progressively more valuable In the drier, more exposed land . . . [Wichitas and Quiviras] farmers were tied closely and absolutely to the vital veins of water running through the open country.”¹⁶ As a result, communal priorities and environmental change dictated how water would be used.¹⁷ “If their population increased, or if drought or a reduction of available resources forced them to move,” indigenous communities would attempt to expand their hunting and gathering domain through war with their neighbors.¹⁸

The arrival of Europeans in present-day New Mexico would alter this balance. Using a system of community appropriation and distribution of headwaters that developed in the desert Southwest, New Mexicans seamlessly translated their water law system to the extremes of mountain weather and living.¹⁹ Accordingly, these settlers brought a highly developed system of Spanish and Mexican water law and legal innovation²⁰ that “was

12. See generally DONALD J. PISANI, *WATER AND AMERICAN GOVERNMENT: THE RECLAMATION BUREAU, NATIONAL WATER POLICY, AND THE WEST, 1902–1935* 1–31 (2002).

13. MICHAEL C. MEYER, *WATER IN THE HISPANIC SOUTHWEST: A SOCIAL AND LEGAL HISTORY, 1550–1850* 12 (1996).

14. *Id.*

15. ELLIOTT WEST, *THE CONTESTED PLAINS: INDIANS, GOLDSEEKERS, AND THE RUSH TO COLORADO* 38 (1998).

16. *Id.* (alterations in original).

17. Peter Iverson, *Native Peoples and Native Histories*, in *THE OXFORD HISTORY OF THE AMERICAN WEST* 13, 15 (Clyde A. Milner II et al. eds., 1994).

18. *Id.*

19. See Wells A. Hutchins, *The Community Acequia: Its Origin and Development*, 31 *SW. HIST. Q.* 261 (1928); Robert G. Dunbar, *The Origins of the Colorado System of Water-Right Control*, 27 *COLO. MAG.* 251, 251 (1950).

20. Fundamentally, law and legal innovation played a prominent role in the history of Spain and Mexico. According to Professor Meyer:

Because of the disparate invasions of the Iberian Peninsula following the collapse of Rome, the rulers of Spain, long before the discovery of America, were familiar in the problems inherent in trying to reconcile the interests of different races and different cultures, as well as in juxtaposing the demands of conquerors with the concerns of the conquered.

Tom I. Romero, II, *Land, Culture, and Legal Exchange in Colorado's Mountains, Plains, and Deserts*, in *EXCHANGE: PRACTICES AND REPRESENTATIONS* 125, 136 (2005). Consequently, the export of Spanish law and jurisprudence to the Americas resulted in a highly adaptive legal regime in both Spanish and

designed to protect individual rights, to encourage private initiative and entrepreneurship, to stimulate economic development, and even to accumulate personal wealth.”²¹ Especially in relation to rights associated with groundwater, the system represented

incipient capitalism, a glorification of the sanctity of private property and a celebration of *laissez faire*. With very few exceptions, a person could do what he [or she] wanted with his [or her] groundwater resource even if it prejudiced the interests of his [or her] neighbor Groundwater law represented free enterprise with but very few restraints.²²

Yet, New Mexican surface water law balanced these individual values by recognizing the needs of the larger community. Importantly, the “law recognized that unbridled individual ambition would never produce a harmonious society and viewed justice not as a metaphysical abstraction but as an attainable goal.”²³ As a result, New Mexicans, in their *acequia* systems, enshrined the concept of normative restraint, a commitment towards understanding the reasonable use of a surface water resource “to check monopoly, limit the influence of irresponsible locals, protect the disadvantaged, and most importantly to encourage equity.” By balancing private property rights in relation to the needs of the common good, New Mexican settlement in the southern reaches of Colorado introduced legal principles that would become the basis of a nascent legal water regime for the region’s immigrants and migrants.²⁴

The beginning of large-scale irrigation, however, had its roots in 1846, when the U.S. Army entered the territory of Mexico, occupying by force of arms the area that today comprises the American states of New Mexico, California, Arizona, Nevada, Utah, and parts of Colorado.²⁵ Within two years of U.S. occupation, the Treaty of Guadalupe Hidalgo formally ended hostilities between the United States and Mexico and reshaped the political, social, and legal geography of the region that would be most impacted by Reclamation.²⁶

Soon after hostilities with Mexico ended, this dry and desert region “became an important reservoir of raw materials for the expanding production of the industrial sectors of the U.S. economy.”²⁷ Requiring a deep

independent Mexico. *Id.*

21. *Id.* at 179.

22. *Id.* at 136 (final three alterations in original). For an assessment concerning the property rights of women in Spanish and Mexican law, see MARÍA E. MONTOYA, TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840–1900 (2002).

23. Romero, II, *supra* note 20.

24. *Id.*

25. *See id.*

26. Treaty of Peace, Friendship, Limits, and Settlement, Mex.-U.S., Feb. 2, 1848, 9 Stat. 922.

27. WILLIAM G. ROBBINS, COLONY AND EMPIRE: THE CAPITALIST TRANSFORMATION OF THE AMERICAN WEST 26 (1994).

pool of labor for the extraction and exportation of such raw materials, Mexican-Americans (former Mexican citizens who chose to remain in the conquered territory), Mexican nationals, and other immigrants and migrants flooded this region seeking a better life.²⁸

Two of the largest groups of migrants were American citizens and European nationals seeking to make homestead claims, especially after 1862.²⁹ The homesteading law allowed Americans to receive, virtually for free, title to 160 acres of land in fee simple in exchange for five years of continued settlement and improvements to the land.³⁰ In a land devoid of rivers and lakes, however, settlers instead encountered dramatic hardship. A telling example is found in the case of an abandoned ranch found by one homesteader in eastern Colorado in the 1860s:

Its owner left a crude sign that with minor rewording could have spoken for thousands of [migrants] knocked to their knees during hard times: “Toughed it out here two years. Result: Stock on hand, five towhead and seven yaller dogs. Two hundred and fifty feet down to water. Fifty miles to wood and grass. Hell all around. God Bless Our Home.”³¹

Immigrants to the region, accordingly, innovated the nascent water law regimes in the region to account for these challenges. In the early 1860s, for example, the Colorado territorial legislature enacted a series of statutes that appeared to adopt both the common-law riparian-rights doctrine³² and the emerging doctrine of prior appropriation.³³ The conflict between statutes had far reaching implications that would constantly underlay many water law and immigration law disputes.³⁴ According to Professor Dale Goble, “a change from riparian to appropriative water rights . . . arguably violated both private property rights of riparian landowners and the fundamental allocation of power between the federal and state governments.”³⁵ In approaching the

28. MONTROYA, *supra* note 22, at 104; see Guadalupe T. Luna, *Chicana/Chicano Land Tenure in the Agrarian Domain: On the Edge of a “Naked Knife,”* 4 MICH. J. RACE & L. 39, 52–53 (1998).

29. Romero, II, *supra* note 20, at 137. The Homestead Act of 1862 promoted settlement of the public domain and in turn encouraged permanent settlement in much of Colorado and the American West. *Id.* at n.69; see Homestead Act of 1862, ch. 75, § 1, 12 Stat. 392 (repealed 1976).

30. Romero, II, *supra* note 20, at 153 n.185.

31. *Id.* at 142.

32. For the move towards the riparian doctrine, see Act of Nov. 5, 1861, § 1, 1861 Colo. Sess. Laws 67 and Act of Aug. 15, 1862, § 13, 1862 Colo. Sess. Laws 44, 48. According to Professor Dale Goble, “although these provisions did not expressly adopt riparian rights, they did reflect the common law’s limitation of the use of water to those ‘on the bank, margin, or neighborhood’ of the stream and the associated principle of equitable allocation of water in time of drought.” Romero, II, *supra* note 20, at 138 n.78.

33. Romero, II, *supra* note 20, at 138. For the Colorado legislature’s early actions towards developing a theory of appropriation, see Act of Mar. 11, 1864, § 32, 1864 Colo. Sess. Laws 49, 58.

34. Romero, II, *supra* note 20, at 138.

35. *Id.*

problem, Colorado courts simply asserted that the issue did not exist.³⁶ As Justice Helm of the Colorado Supreme Court asserted in *Coffin v. Left Hand Ditch Co.*, in 1882, “we think that the [prior appropriation] doctrine has existed from the date of the earliest appropriations of water within the boundaries of the state.”³⁷ Notably, Colorado courts embraced prior appropriation as a result of the unique ecological challenges facing Colorado’s residents. According to Justice Helm,

Water in the various streams . . . acquires a value unknown in moister climates. . . . [V]ast expenditures of time and money have been made in reclaiming and fertilizing by irrigation portions of our unproductive territory. Houses have been built, and permanent improvements made; the soil has been cultivated, and thousands of acres have been rendered immensely valuable, with the understanding that appropriations of water would be protected. Deny the doctrine of priority or superiority of right by priority of appropriation, and a great part of the value of all this property is at once destroyed.

. . . .

We conclude, then, that the common law doctrine giving the riparian owner a right to the flow of water in its natural channel upon and over his lands, even though he makes no beneficial use thereof, is inapplicable to Colorado. Imperative necessity, unknown to the countries which gave it birth, compels the recognition of another doctrine³⁸

The end result of such reasoning is that Coloradans, and most citizens of the states that would follow, established vast property rights in the American West’s most scarce resource: Water.³⁹ Prior appropriation would become known as the Colorado Doctrine as its basic principles spread throughout the law and jurisprudence of much of the American West.⁴⁰ Armed with such changes in law, thousands of migrants trying to plow a living out of the western desert created a sharp increase in the amount of irrigation during the late half of the nineteenth and early twentieth centuries.⁴¹

36. *Id.*

37. *Id.* (quoting *Coffin v. Left Hand Ditch Co.*, 6 Colo. 443, 446 (1882)).

38. *Coffin*, 6 Colo. at 446–47; see also *Yunker v. Nichols*, 1 Colo. 551, 553 (1872) (asserting that the “rules respecting the tenure of property must yield to the physical laws of nature . . . [i]n a dry and thirsty land” such as Colorado).

39. *Romero*, II, *supra* note 20, at 138; see COLO. CONST. art. XVI, § 6; *Strickler v. City of Colo. Springs*, 26 P. 313, 316 (Colo. 1891) (holding that “a priority to the use of water [for irrigation] is a property right” that may be sold and transferred separately from the land upon which the right arose).

40. See generally DAVID SCHORR, *THE COLORADO DOCTRINE: WATER RIGHTS, CORPORATIONS, AND DISTRIBUTIVE JUSTICE ON THE AMERICAN FRONTIER* (2012). According to Robert Dunbar, “most of the seventeen Western States adopted with modifications Colorado’s centralized administrative system” in providing for the adjudication of water rights to special water courts. *Romero*, *supra* note 20, at 141 (citing Dunbar, *supra* note 19, at 262).

41. Stephen C. McCaffrey, *The Harmon Doctrine One Hundred Years Later: Buried, Not Praised*, 36 NAT. RESOURCES J. 549, 550 (1996).

In addition to the Mexican nationals who became American citizens under the Treaty of Guadalupe Hidalgo, as well as those American citizens and Europeans lured by the prospect of homesteading, one of the largest migrant groups to this dry and arid region were Chinese citizens.⁴² Under the Burlingame Treaty of 1868, the United States promised to extend Chinese residents working in the nation the “same privileges, immunities, and exemptions in respect to travel or residence, as may there be enjoined by the citizens or subjects of the most favored nation.”⁴³

The experience of Chinese immigrants who migrated to the American West beginning in 1849 contrasted sharply from those farming the arid landscape. Lured initially by the discovery of gold, Chinese immigrants encountered economic and social instability, which pushed them to work not only as miners but as cooks, laundrymen, and perhaps most visibly, as railroad laborers in the completion and extension of the Transcontinental Railroad through the Trans-Mississippi West.⁴⁴ Largely because the region was heavily industrialized and was linked seamlessly with national and international labor and capital markets, the Chinese competed with a myriad of ethnic and racial groups for daily wages.⁴⁵ It was in response to the multitude of Chinese laborers that local and federal authorities utilized the law to erect rigid racial boundaries that anticipated a racialized, immigrant workforce that would be essential to reaping the bounties of the arid West’s irrigated farmlands.⁴⁶

Telling in this regard is the prosecution of Tiburcio Parrott in 1880 for hiring Chinese laborers to work in his mines.⁴⁷ Authorities specifically charged Parrot under Article 19 of the California constitution⁴⁸ as well as the

42. See generally LUCY E. SALYER, *LAW AS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (2d ed. 1995).

43. The Burlingame Treaty, China-U.S., July 28, 1868, 16 Stat. 739.

44. See generally SALYER, *supra* note 42.

45. See, e.g., ROBBINS, *supra* note 27, at 61–102. Tomás Almaguer points out that “the arrival of black slaves during the Gold Rush heightened anxiety among European Americans that slavery might compromise [the American West’s] prospect of becoming a haven for free white labor. When Chinese immigrants followed blacks into the mining region, whites drew close analogies between black slaves and Chinese ‘coolies.’” TOMÁS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* 153 (1994). Such fears were exacerbated by American companies, who preferred to hire non-European and non-American labor, and largely hired Chinese whenever possible. See *id.* White workers, however, believed that such laborers

were mere pawns of capitalist interests and other monopolistic forces that relied upon unfree labor. Consequently, white male laborers believed that Chinese workers threatened both their precarious class position and the underlying racial entitlements that white supremacy held out to them and to the white immigrants who followed them into the new class structure.

Id. at 154.

46. The Burlingame Treaty, *supra* note 43.

47. Paul Kens, *Civil Liberties, Chinese Laborers, and Corporations*, in *LAW IN THE WESTERN UNITED STATES* 499, 499 (Gordon Morris Bakken ed., 2000).

48. Article XIX, Section 3 of the California Constitution of 1879 specifically prohibited people of Chinese origin from being employed by the state. CAL. CONST. of 1879, art. XIX, § 3 (“No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.”).

Penal Code of California⁴⁹ when his company hired Chinese workers to labor in his mines. In the subsequent judicial resolution of the matter, *In re Tiburcio Parrott*,⁵⁰ the court focused on Article 5 of the Burlingame Treaty between the United States and China.⁵¹ The key question was whether “Chinese subjects visiting or residing in the United States” were accorded “the same privileges [and] immunities . . . as may there be enjoyed by the citizens or subjects of the most favored nation.”⁵² On these terms, the court agreed that the domestic law was void.⁵³ Yet, the court went one step further by using the 14th Amendment to define more precisely this clause of the Burlingame Treaty.⁵⁴ According to the Court, this provision of the federal Constitution

places the right of every person within the jurisdiction of the state, *be he Christian or heathen, civilized or barbarous, Caucasian or Mongolian*, upon the same secure footing and under the same protection as are the rights of citizens themselves under other provisions of the constitution.⁵⁵

Accordingly, one’s “privileges and immunities” define the rights of American citizens.

There is no difference of opinion as to the significance of the terms “privileges and immunities.” Indeed, it seems quite impossible that any definition of these terms could be adopted, or even seriously proposed, so narrow as to exclude the right to labor for subsistence. As to by far the greater portion of the Chinese, as well as other foreigners who land upon our shores, their labor is the only exchangeable commodity they possess. To deprive them of the right to labor is to consign them to starvation. The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man, wherever he may be permitted to be, of which he cannot be deprived, either under the guise of law or otherwise, except by usurpation and force.⁵⁶

Most importantly, the jurists read these provisions of American law as extending to men like Tiburcio Parrott greater power to control and discipline

49. In February 1880, the California legislature responded by inserting into the state’s criminal code two provisions that subjected corporate officers to criminal penalties and imprisonment for violations of the constitutional provision for employing “directly or indirectly, in any capacity, any Chinese or Mongolian.” *Id.* § 2.

50. *In re Tiburcio Parrott*, 1 F. 481, 485 (C.C.D. Cal. 1880).

51. *Id.*

52. The Burlingame Treaty, *supra* note 43, art. VI.

53. *In re Tiburcio Parrott*, 1 F. at 498–99, 504–07.

54. *Id.*

55. *Id.* at 509 (emphasis added).

56. *Id.* at 508–10.

a multiracial labor force, rather than extending any special privilege for Chinese laborers.⁵⁷

Irrigating the Great American Desert, accordingly, fueled a fervor, almost religious in its faith, that “out of aridity would come a level of prosperity beyond anything Americans had seen before, making the West the home of the future.”⁵⁸ To be sure, by the “end of the nineteenth century irrigation had become a veritable crusade.”⁵⁹ Though proponents urged large-scale adoption on moral, religious, and even scientific grounds, its connection to patriotism and the development of American notions of self-government animated most of the discussion.⁶⁰ To be sure, in the “democracy created by irrigation,” American farmers would hire non-white immigrant laborers to help them accumulate wealth and prosperity.⁶¹

It is in this context that President Theodore Roosevelt signed the Reclamation Act into law on June 1, 1902.⁶² Speaking one year later, Roosevelt claimed, “The passage of the National Irrigation Law was one of the greatest steps, not only in the forward progress of the states, but to that of all mankind.”⁶³ Whereas 7.3 million acres of land were irrigated in 1900, Frederick Haynes Newell, the first director of the Reclamation Service, estimated that 100 million acres could be reclaimed in the West alone, not to mention the millions more throughout the United States.⁶⁴

57. *Id.* at 497–98. Both judges in the case feared the consequences of Chinese labor on the racial makeup of the region and the nation. Judge Hoffman noted:

That the unrestricted immigration of the Chinese to this country is a great and growing evil, that it presses with much severity on the laboring classes, and that, if allowed to continue in numbers bearing any considerable proportion to that of the teeming population of the Chinese Empire, it will be a menace to our peace and even to our civilization, is an opinion entertained by most thoughtful persons.

Id. at 498. Similarly, Judge Sawyer noted:

Holding, as we do, that the constitutional and statutory provisions in question are void, for reasons already stated, we deem it proper again to call public attention to the fact, however unpleasant it may be to the very great majority of the citizens of California, that however undesirable, or even ultimately dangerous to our civilization, an unlimited immigration of Chinese may be, the remedy is not with the state, but with the general government.

Id. at 518 (Sawyer, J.). Yet, as Judge Hoffman pointed out, if the California constitutional prohibition is enforced, a bank or a railroad company will lose the right to employ a Chinese interpreter to enable it to communicate with Chinese with whom it does business. A hospital association would be unable to employ a Chinese servant to make known or minister to the wants of a Chinese patient; and even a society for the conversion of the heathen would not be allowed to employ a Chinese convert to interpret the gospel to Chinese neophytes.

Id. at 492 (Hoffman, J.).

58. DONALD WORSTER, *RIVERS OF EMPIRE: WATER, ARIDITY, AND THE GROWTH OF THE AMERICAN WEST* 111 (1985).

59. *Id.* at 114.

60. *Id.* at 114, 120–23.

61. *Id.* at 124.

62. See *The Bureau of Reclamation: A Very Brief History*, RECLAMATION (Jan. 12, 2016), www.usbr.gov/history/borhist.html (indicating further that Congress passed the Act on June 17, 1902).

63. PISANI, *supra* note 12, at 1–2.

64. *Id.* at 3–6.

This legislation made possible the irrigation of the arid land throughout the West, which was never before possible under the backing of private investors. For example, after moving to Carson City in 1888, Francis G. Newlands, who would become the architect of the Reclamation Act, quickly became involved with the local irrigators and water users.⁶⁵ As an ambitious young attorney entering a tumultuous time in Nevada water law, Newlands took up the cause of constructing the Truckee Irrigation Project, a privately financed enterprise planning to regulate the flow from Lake Tahoe.⁶⁶ However, the Project quickly failed, leading Newlands to the conclusion that only the federal government could accomplish such large-scale infrastructure projects.⁶⁷ Newlands chased this idea to a seat in Congress, continuing to champion his vision of irrigation in the arid West, when he was finally able to see the Truckee Irrigation Project built as one of the first projects authorized under the Reclamation Act.⁶⁸

Yet, it was not just men like Newlands who would be beneficiaries of the law.⁶⁹ Certain immigrants were intended to reap the law's bounties.⁷⁰ The historian Donald Pisani recounts the following profile, taken from the Reclamation Service's monthly publication, the *Reclamation Record*:

At age twenty-two, Joe Bianchi came to the United States from Italy. For twenty years he worked in the coal mines at Cle Elum, Washington. When the Yakima [Reclamation] Project opened, he risked his entire savings, \$2,500, as a down payment on nineteen acres near Prosser priced at \$7,000. He then borrowed \$300 from friends to get started. Initially, the farm had no improvements save for a three-room shack worth less than \$150. With utterly no agricultural experience, Bianchi watched his neighbors and did as they did, setting out one acre of strawberries and a half acres of eggplant during the first year, as well as corn and wheat. He later added asparagus, cherries, tomatoes, onions, rhubarb, and potatoes. A \$3,000 annual gross return permitted him to build a five-room bungalow for his wife, four children and within a few years he owned the land and home free and clear, along with an automobile. Four other Italian coal miners bought farms on the Yakima Project during the mid-1920s, and apparently, all prospered.⁷¹

Though Newlands designed the Reclamation Act to create farms that would be run by a single family like the Bianchi's, in practice, it encouraged large

65. Sylvia Harrison, *The Historical Development of Nevada Water Law*, 5 U. DENV. WATER L. REV. 148, 161 (2001).

66. Barbara Cosens, *Farmers, Fish, Tribal Power, and Poker; Reallocating Water in the Truckee River Basin, Nevada and California*, 14 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 1243, 1250 (2008).

67. *Id.*

68. *Id.*

69. See PISANI, *supra* note 12, at 9–10.

70. *See id.*

71. *Id.*

farms requiring large amounts of labor.⁷² According to the law, the government would restrict farm size from 40–160 acres.⁷³ “A married couple could acquire water for 320 acres . . . [and] any person who owned more than 160 acres” could acquire “cheap water to irrigate *all* the land for a decade or more” before the law required he or she to sell it.⁷⁴ Indeed, “within a few years of passage of the Reclamation Act . . . reclamation as homemaking gave way to reclamation as dam building, and social reform gave way to a massive federal program for the construction of dams and canals,” which would serve large, irrigated landholdings dependent upon access to a cheap and docile labor supply.⁷⁵

In 1930, Thomas Mahony, Chairman of the Mexican Welfare Committee for the Colorado State Council of the Knights of Columbus, documented this system that emerged in Colorado and much of the American West.⁷⁶ In an address to the Catholic Council on Industrial Problems, Mahony described in great detail the inner workings of the sugar industry in the reclaimed lands of arid, northeastern Colorado.⁷⁷ At the top were the sugar companies who purchased and refined the sugar beets, which were grown by local growers throughout the state.⁷⁸ The grower, “to make a profit at the price he gets, must have low wage labor or else he won’t grow beets; and without beets the sugar companies could not operate their factories and make a profit.”⁷⁹ The harvesting of the sugar beets, however, was not easy.⁸⁰ It required intensive cultivation during most of its seven-month growing season.⁸¹ For up to sixteen hours each day, “in the intense heat of spring and . . . summer and in the raw, cold . . . days of late fall,” the laborers were subjected to “monotonous, back-breaking work, under high pressure, with low pay, sometimes long deferred, with bad housing and living conditions.”⁸²

What made this particular pool of labor unique, according to Mahony, was the fact that “it is dependent upon the labor of the family: the father, the mother, and little children,” for the raw material—sugar beets.⁸³ “As one

72. See, e.g., *id.*

73. Pisani, *supra* note 10, at 402.

74. *Id.*

75. PISANI, *supra* note 12, at 13.

76. Tom I. Romero II, “*A War to Keep Alien Labor out of Colorado*”: *The “Mexican Menace” and the Historical Origins of Local and State Anti-Immigration Initiatives*, in *STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY* 66 (Carissa Byrne Hessick & Gabriel J. Chin eds., 2014) (quoting Thomas F. Mahony, Address at the Catholic Conference on Industrial Problems: Problem of the Mexican Wage Earner (May 12, 1930)).

77. *Id.*

78. *Id.*

79. *Id.*

80. See RUBÉN DONATO, *MEXICANS AND HISPANOS IN COLORADO SCHOOLS AND COMMUNITIES, 1920–1960* (2007).

81. DENNIS NODÍN VALDÉS, *AL NORTE: AGRICULTURAL WORKERS IN THE GREAT LAKES REGION, 1917–1970* 5 (1991).

82. DONATO, *supra* note 80 (quoting Thomas F. Mahony).

83. Romero II, *supra* note 76. In the last decades of the nineteenth century and the early years of

sugar company circular noted, ‘an inexperienced man can work 9 acres, a woman 7 acres, and children in proportion to age.’⁸⁴ Mahony stressed that this was not work to which “native Americans,” either as individuals or families, were likely to seek or want. To make his point, he detailed the work a child was likely to do during a season:

The total length of all rows in an acre of beets is . . . just about 5 miles. To block and thin an acre of beets, the child straddles a row, blocks and spaces the beets to 12 inches apart and then thins, leaving the big beet. His work usually starts at 6:00 A.M. and lasts until 7:00 P.M. or later. The child, a contract worker, crawls on his hands and knees back and forth across the fields, hour after hour, all day long under a blistering sun, five miles to the acre. . . . There is hoeing and weeding in the summer, and pulling and topping in the fall, each process [consisting of] 5 miles of rows to the acre.⁸⁵

Due to pervasive discrimination in manufacturing and service work, the beginnings of restrictions on immigration from southern and eastern Europe in 1917, and sugar company-sponsored propaganda that said the Mexicans (regardless of citizenship) were especially well-suited for sugar beet cultivation and harvest, Mexican-American and Mexican families were pushed into this narrow segment of the labor supply.⁸⁶ Also pushing Mexicans north of the border were conditions related to water and land use.⁸⁷ In the wake of the Mexican Revolution, for instance, President Cárdenas continued his predecessors’ reform policies, breaking up *haciendas* (extensive plantations) into small plots of land.⁸⁸ The small plots, which yielded less agricultural productivity than the large plantations, led to a lack of employment, exacerbated by physical conditions, such as “drought, lack of credit, water, and seeds.”⁸⁹ The unemployed Mexican workers became hungry and desperate, and were very receptive to opportunities for a better

the twentieth century, the sugar beet industry’s labor supply consisted primarily of local woman and children, or young immigrant men from the cities. These laborers were paid by the day or the week. The industry then turned, first to eastern-European families, and ultimately, to Spanish-surnamed families as its primary labor pool. The family

altered the organization of work in several ways. First, supervision became primarily the responsibility of parents instead of corporation overseers. Second, families contracted for the entire season rather than by day, or week, or task. . . . Third, wages changed from payment by time to piecework, typically based on the number of acres worked. . . . Fourth, with the entry of families, employers had to [ostensibly] provide more durable housing and related perquisites.

VALDÉS, *supra* note 81, at 6.

84. Romero II, *supra* note 76.

85. DONATO, *supra* note 80, at 25.

86. *Id.*; VALDÉS, *supra* note 80, at 19.

87. See Elizabeth W. Mandeel, *The Bracero Program 1942–1964*, 4 AM. INT’L J. CONTEMP. RES. 171, 171 (2014).

88. *Id.*

89. *Id.*

life.⁹⁰ As a result, every winter and early spring, representatives of the sugar companies would travel throughout the American Southwest and northern Mexico to recruit Mexican families to sign contracts for sugar beet harvest.⁹¹

With little available economic opportunity and seduced by recruiters' claims that a family could expect a plot of land, decent housing, clean and available water, and a friendly family employer, recruiters compelled these Latino families to sign the standard beet labor contract.⁹² The father would sign the contract on behalf of the family, and the size of the acreage assigned to the family in the contract would be based upon the proportional share to which every member of the family could be expected to work.⁹³ The contract provided a lump sum for every acre cultivated and harvested, as well as a small bonus for all beets produced over the standard yield in an entire season.⁹⁴ Though the experience suggested a negotiation, Mahony stressed that the terms and conditions in the beet labor contracts were set by the sugar beet companies.⁹⁵ In this regard, the company fixed the price of the labor contract, thereby securing "the labor of the entire family, father, mother, and children, for less than subsistence wage."⁹⁶ The company also unilaterally established the conditions under which the contract was to be performed.⁹⁷ Indeed, it left all disputes between grower and laborer to the company's final judgment: it provided no guarantee that the laborer would receive pay when the work was completed, nor did it stipulate when the work season would end.⁹⁸ In regards to this final point, Mahony noted that in the fall of 1929, Mexican workers "were 'compelled to work in the field until late in the winter, under terrible weather conditions, without extra pay, and under penalty of losing the money they [had] already earned, if they stop[ed] work before 'all the crop [was] harvested.'"⁹⁹

The contract also included conditions that stated if extra labor was required to cultivate and harvest the sugar beet crop, the cost of that labor would be deducted from the amount coming to the family under the contract.¹⁰⁰ Though beet labor contracts typically included clauses obligating

90. *Id.*

91. *Id.* at 172. Though the sugar industry was becoming vertically integrated as a big agribusiness during this time, it made no serious effort to purchase land to grow sugar beets. Instead, it relied on farmers, who owned moderate-sized holdings, to grow the crops. Yet, because of the time, effort, and risk in sugar beet cultivation, the sugar companies "had to offer inducements, including a guaranteed price before planting; low-interest loans, and free use of or cheap rent for costly machinery. Most important, the companies had to take the responsibility for recruiting field-workers." VALDÉS, *supra* note 81.

92. SARAH DEUTSCH, *NO SEPARATE REFUGE: CULTURE, CLASS, AND GENDER ON AN ANGLO-HISPANIC FRONTIER IN THE AMERICAN SOUTHWEST, 1880-1940* 129 (1987).

93. *Id.*

94. *Id.*

95. Romero II, *supra* note 76, at 67.

96. VALDÉS, *supra* note 81, at 2.

97. *See generally id.*

98. *See generally id.*

99. Romero II, *supra* note 76, at 67 (quoting Thomas Mahony).

100. VALDÉS, *supra* note 81, at 3.

the grower to provide a “habitable house and suitable water . . . for drinking and domestic purposes,” while also providing that “children under 11 years of age” would not be allowed to work in the fields, Mahony cited a long list of “open” and “flagrant” violations of these provisions.¹⁰¹ To be sure, it was common for children as young as six years old to be working in the beet fields, not only preventing them from attending the public schools that they were required to attend, but in conjunction with the arduous work, substandard housing, and lack of sanitation, posed a direct threat to their lives. According to one study of the Arkansas Valley cited by Mahony, nearly 30% of the children among a group of 140 beet-laboring families died working in the sugar beet fields.¹⁰²

To further exacerbate the tenuous existence of Latino families, sugar companies hoped to secure the next season’s labor supply by giving credit for food and supplies to these same families during the winter. The problem, as Mahony argued, was that the credit was to be paid out of the next season’s work.¹⁰³ In this “system of Peonage,” the Latino “family would ‘start work in the spring handicapped by a debt to the sugar company which [would] reduce the amount coming to [them] in the fall.’”¹⁰⁴ Other families, recognizing the endless cycle of debt, “flocked to Denver, Pueblo, and to some of the smaller Colorado towns.”¹⁰⁵ Encountering limited to nonexistent work opportunities, many migrant and immigrant families received support from both private charities and public agencies to make ends meet during the winter months.¹⁰⁶

The experiences of Colorado’s migrant and immigrant sugar beet laborers were a little different than the experiences of large numbers of Mexican migrants and immigrants in the United States during the early decades of the twentieth century.¹⁰⁷ Known as “Betabeleros,” Spanish-surnamed beet-laboring families proliferated throughout the American West and Midwest as sugar consumption in the United States more than quadrupled during this time.¹⁰⁸ By the start of the Stock Market Crash

101. *Id.* Valdés also provides a thorough academic description and analysis of the standard beet labor contract that Latinos encountered. *Id.* at 12–15.

102. *Id.* at 5.

103. *See id.*

104. Romero II, *supra* note 76, at 67 (second alteration in original).

105. *Id.*

106. VALDÉS, *supra* note 81, at 6.

107. JUAN R. GARCÍA, MEXICANS IN THE MIDWEST, 1900–1932 13–18 (2003).

108. *See generally* BEN RICHARDSON, SUGAR (2015); ANTHONY WINSON, THE INDUSTRIAL DIET: THE DEGRADATION OF FOOD AND THE STRUGGLE FOR HEALTHY EATING 57–58 (2013). Sugar beets were initially grown in California, Michigan, and Colorado, and spread by the first two decades of the twentieth century to Ohio, Minnesota, Montana, and North Dakota. ALBERT PRAGO, STRANGERS IN THEIR OWN LAND: A HISTORY OF MEXICAN-AMERICANS 161 (1973). According to one study, the rise of the sugar beet industry and the rise of acreage put into sugar beet production was attributable to “an expand[ed] market, a publicly financed research network, available investors, . . . cheap land . . . [, and] rapid demographic growth in the nation.” VALDÉS, *supra* note 81, at 3 (emphasis added); *see also* DEUTSCH, *supra* note 92.

of 1929, Mexicans formed an estimated 75%–90% of the total sugar beet labor force—comprised almost entirely of young families with children as young as six—which spent six to eight months a year struggling to survive as laborers in the sugar beet industry.¹⁰⁹ Although Mexicans worked as laborers in the mining, railroad, and canning industries throughout the American West and Southwest, sugar beet labor provided the vast majority of available jobs in Reclamation states.¹¹⁰

Not surprisingly, the question of Mexican labor in the beet fields and beyond became wrapped up in national discourse of nativism, racism, and immigration restriction in early decades of the twentieth century. Agribusiness, which benefitted most from the Reclamation Act, and whose fruits were being used to feed the growing and great cities of the American West, propagated the notion that Mexicans were a docile and easily controllable labor supply.¹¹¹

Immigration law, accordingly, played a prominent role in this regard. As early as 1882, Congress legislated the broad exclusion of many Chinese immigrants.¹¹² As we have seen, the Chinese and other Asian immigrants were a source of cheap labor for the construction of large, nationwide projects, such as the Union Central Pacific Railroad.¹¹³ Westerners generally feared the encroachment of the Chinese culture on American society, and along with nativists in Congress, compelled the Legislature to pass the Chinese Exclusion Act of 1882 as the first reversal of the country's largely open immigration policy.¹¹⁴ The distrust of both the Chinese and the Japanese continued through the early 1900s, and in 1917, Congress passed another federal immigration law, excluding all immigrants from the “barred Asiatic Zone” and establishing a literacy test for all immigrants.¹¹⁵

In the aftermath of World War I, Congress passed an emergency measure restricting immigration from specific countries of birth to three percent of the total number of foreign-born persons from that country in the 1910 Census.¹¹⁶ After considering the emergency quotas implemented,

109. VALDÉS, *supra* note 81, at 13.

110. See ALMAGUER, *supra* note 45, at 104. According to one study, the sugar beet industry in Colorado “provided approximately 20,000 jobs each season, while the state’s railroads employed only about 5,000 Chicanos for maintenance of way, and its coal mines just over 3,000.” DUETSCH, *supra* note 92, at 128–29.

111. DUETSCH, *supra* note 92.

112. See Chinese Exclusion Act, Sess. I, ch. 126; 22 Stat. 58 (1882) (repealed 1943).

113. See Ernesto Hernández-López, *Global Migrations and Imagined Citizenship: Examples from Slavery, Chinese Exclusion, and When Questioning Birthright Citizenship*, 14 TEX. WESLEYAN L. REV. 255, 268–69 (2008).

114. See NGAI, *supra* note 6, at 18, 64; Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L. REV. 853, 856, 860 (1987).

115. See NGAI, *supra* note 6, at 18; Henkin, *supra* note 114; Mae M. Ngai, *The Strange Career of the Illegal Alien: Immigration Restriction and Deportation Policy in the United States, 1921–1965*, 21 L. & HIST. REV. 69, 82 (2003).

116. See Emergency Quota Act, Pub. L. No. 67-5, 42 Stat. 5. (1921).

Congress sought to make a permanent system of quotas based on nations of origin.¹¹⁷ The 1924 Immigration Act (the Johnson–Reed Act) made the system permanent and preferential of certain countries of origin.¹¹⁸ While Mexicans and other Latin-Americans were exempt from the wholesale exclusion of first the Chinese, then the Japanese, and ultimately the large-scale restrictions on Southern and Eastern Europeans in immigration law and policy from 1882–1924, Mexican immigrants as well as Mexican-Americans filled the vacuum left by the embargo on European and Asian labor. “Mexicans, according to one contemporary critic, were called upon to do the ‘work no white man will do.’”¹¹⁹ Advocates of Mexican immigration in the first ten years of the twentieth century, particularly those in agriculture and in the railroad industry, “did not propose accepting Mexicans as full-fledged members of society. Rather, employers insisted that . . . Mexicans were an inferior race . . . well suited for hard labor . . . who would return to Mexico when their labor was no longer needed.”¹²⁰ This final point, in particular, was to rebut claims that Mexicans were disease-ridden, had genetic predispositions to crime, had displaced their American counterparts, and could never assimilate into white America.¹²¹

Though there were no quotas imposed on Mexican immigration at the time, there were key provisions of a progressively complex edifice of federal immigration law that applied to all immigrants, regardless of their origin. For example, The Naturalization Acts of 1790 and 1870 required one to be either black or white to become an American citizen.¹²² In 1924, Congress, as part of its sweeping restrictions on immigration, restricted immigration to only those persons eligible for citizenship and formed the Border Patrol to police almost exclusively the United States’ water-based border with Mexico.¹²³ The quota system, also adopted by the Johnson–Reed Act, excluded Mexico and Canada by deeming all persons from North America to be white as far as immigration policy was concerned.¹²⁴

117. See generally Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153.

118. See *id.*

119. Kevin D. Brown & Tom I. Romero, II, *The Social Reconstruction of Race & Ethnicity of the Nation’s Law Students: A Request to the ABA, AALS, and LSAC for Changes in Reporting Requirements*, 2011 MICH. ST. L. REV. 1133, 1152 (quoting Robert McLean, *Tightening the Mexican Border*, 64 SURVEY 28, 55 (1930)).

120. See *id.* (alterations in original) (quoting Natalia Molina, “*In A Race All Their Own*”: *The Quest to Make Mexicans Ineligible for U.S. Citizenship*, 79 PAC. HIST. REV. 167, 171 (2010)).

121. See *id.*; NATALIA MOLINA, FIT TO BE CITIZENS?: PUBLIC HEALTH AND RACE IN LOS ANGELES, 1879–1939 116–57 (2006); ALEXANDRA MINNA STERN, EUGENIC NATION: FAULTS AND FRONTIERS OF BETTER BREEDING IN MODERN AMERICA 57–72 (2005).

122. The Naturalization Act of 1790, ch. 3, 2 Stat. 103 (repealed 1795); Keith Aoki, *No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment*, 40 B.C. L. REV. 37, 39–40 n.9 (1998).

123. See Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153; KELLY LYTLE HERNÁNDEZ, MIGRA! A HISTORY OF THE U.S. BORDER PATROL 2, 19–69 (2010).

124. HERNÁNDEZ, *supra* note 123, at 19–69; NGAI, *supra* note 6, at 50.

Furthermore, immigration officials were required to deny entry to idiots, paupers, mental or physical defectives, criminals, polygamists, public charges, and illiterates.¹²⁵ Aliens found to be anarchists, public charges (within five years of entry), prostitutes, or guilty of a crime of “moral turpitude” were subject to deportation at any time after their entry into the United States.¹²⁶ U.S. employers recruited Mexican families precisely because they did not have many of the legal conditions that prevented entry into the United States.¹²⁷ Despite some calling for quotas on Mexican immigrants, such as John Box (a representative from East Texas), the support of large cotton and fruit growers, who relied on Mexican labor, fended off these discussions.¹²⁸ Not surprisingly, the employment of Mexican labor was proportional to the expansion of irrigable land by the 1930s.¹²⁹

To be sure, by the beginning of the Great Depression in 1929, the Great American Desert had been transformed. But it was transformed in ways not envisioned by many of those who hoped to deploy water and property to create a land of family farmers.¹³⁰ The historian Donald Worster argues that, instead, what was created was “a modern hydraulic society, . . . a social order based on the intensive, large-scale manipulation of water and its products in an arid setting.”¹³¹ A “coercive, monolithic, and hierarchical system” that was “reflected in every mile of the irrigation canal,” this system required vast amounts of migrant and immigrant labor to make it successful.¹³² A shift to cities was already beginning to take shape, and it was accelerated by the failure of irrigation law and policy to create a nation of independent farmers and the concomitant success of immigration law to provide a cheap and replaceable labor supply for emerging large-scale agribusiness in the early decades of the twentieth century.¹³³ The great urban archipelagos of this emerging hydraulic society had the ability to grow and thrive because of the critical connection between water and immigration law.¹³⁴ Together, both worked to play a role in shaping the hinterlands that today are essential to the metropolitan American West’s growth and sustainment.¹³⁵

125. See Ruben H. Klainer, *Deportation of Aliens*, 15 B.U. L. REV. 663, 672–77 (1935).

126. *Id.*

127. See generally *id.*

128. NGAI, *supra* note 6, at 52.

129. GILBERT G. GONZALES & RAUL A. FERNANDEZ, *A CENTURY OF CHICANO HISTORY: EMPIRE, NATIONS, AND MIGRATION* 127 (2003).

130. PISANI, *supra* note 12, at 8.

131. WORSTER, *supra* note 58, at 7.

132. *Id.*

133. See Romero, II, *supra* note 9, at 344.

134. *Id.*

135. The concept of the hinterlands and its relationship to metropolitan growth is detailed best in WILLIAM CRONON, *NATURE’S METROPOLIS: CHICAGO AND THE GREAT WEST* 263–68 (1991). The hinterlands of a city, or the rural and less dense landscapes that exist far removed from a metropolitan area, Cronon reminds us, are inextricably connected. *Id.* at 51.

III. THE METROPOLITAN REVOLUTION AND THE RISE OF THE ILLEGAL GARDNER

The doctrine of prior appropriation, and the principles of property and private enterprise that it represented, became the basis by which those in the United States seized the great watercourses of the American West and deployed them in the service of suburbanization and metropolitan fragmentation.¹³⁶ The United States' largest and most wild rivers, for instance, were reengineered into water-storage and water-delivery systems.¹³⁷ While the initially vast property rights in water were designed to serve a large agricultural economy, by the early decades of the twentieth century, the insatiable needs of homo urbanus people made prior appropriation the central element in the rise of sprawling metropolises like Los Angeles, San Diego, Phoenix, Las Vegas, and Denver.¹³⁸

From the very first gold rushes to the Great American Desert, "cities dominated the economic and social landscape of the West."¹³⁹ Urban development was part of water-resource development from early on, as seen directly in the rapid growth of "Phoenix, a dusty, desert railroad stop that boomed with both suburbs and orange groves after promoters talked Congress into damming the Salt River as the first major project under the Reclamation Act."¹⁴⁰ The Salt River Project (SRP) improved existing dams and irrigation canals and built new dams.¹⁴¹ Reliable water and power flowed into the Phoenix area.¹⁴² Between 1902 and 1940, when Reclamation was completed with the construction of Bartlett Dam, the Phoenix-area population increased by 60,000 people, primarily because water and power had become readily available.¹⁴³

One of the leading cases in the law of prior appropriation and metropolitan development held that governmental water supply agencies could not be held to the same burdensome and restrictive conditions as private entities when perfecting a water right.¹⁴⁴ The case exemplifies what has become known as the "growing cities doctrine," thereby highlighting that

136. Romero, II, *supra* note 9, at 343.

137. The best analysis of this remains MARC REISNER, *CADILLAC DESERT: THE AMERICAN WEST AND ITS DISAPPEARING WATER* 333 (1986). See also NORRIS HUNDLEY, JR., *THE GREAT THIRST* 121–71 (2001); David J. Hayes, *Accommodation Turns to Conflicts: Lessons from the Colorado*, in *WHOSE WATER IS IT?: THE UNQUENCHABLE THIRST OF A WATER-HUNGRY WORLD* 139, 141 (Bernadette McDonald & Douglas Jehl eds., 2003).

138. Hayes, *supra* note 137, at 146.

139. William R. Travis, *The Geography of Development and Water in the American West* 11 (Inst. Behavioral Sci., Working Paper, EB 2003–04).

140. *Id.* at 8.

141. See generally ROBERT AUTOBEE, *BUREAU OF RECLAMATION, SUN RIVER PROJECT 2* (1995), http://www.usbr.gov/projects/ImageServer?imgName=Doc_1305643556810.pdf.

142. See *id.*

143. See *id.* at 21.

144. *City of Denver v. Sheriff*, 96 P.2d 836, 840 (Colo. 1939).

a primary function of the modern prior appropriation doctrine has been to support unlimited metropolitan growth.¹⁴⁵

Accordingly, it has become a truism in western water law that there is a vast “geographic gap between where the water is and where people live.”¹⁴⁶ It “is bridged by engineering systems that collect, store and transfer” water over very long distances.¹⁴⁷ Most importantly, this system requires a legal regime “that allocates access to and control over water in ways that encourages its transfer from wetter to drier areas.”¹⁴⁸ The recognition that Reclamation would not create a nation of independent farmers, coupled with growing demand for electricity of an urban and industrial West, compelled a rethinking of the large-scale goals of irrigation.¹⁴⁹ By the 1920s, according to the historian Donald Pisani,

hydroelectric power held out the hope that industry could develop without small farms, or that the two could develop simultaneously. . . . Not only would it make rural life more attractive, but if dams could generate power for cities as well as store water for agriculture . . . [t]he farmer and the industrialist would become equal partners in the building of the new West.¹⁵⁰

Before this sort of partnership could take place, however, the law needed to settle once and for all who had the right to these interstate waters.¹⁵¹

In 1917, a number of important political figures from western states came together at a grand patriotic rally for the World War II effort in San Diego for the first meeting of the League of the Southwest.¹⁵² This League was to “bring the south-west together, so it may more intelligently understand its common problems and arrange a permanent organization which will enable it to work more efficiently its common purposes and ambitions.”¹⁵³ However, very early on in the League’s meetings, the members shifted their

145. See generally *id.*; *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 40–43 (Colo. 1996) (en banc) (arguing that cities were not speculating when they conditionally appropriated a water right based upon a municipalities reasonably anticipated projections of future growth). Colorado cases are revealing of this shift. See *Metro. Suburban Water Users Ass’n v. Colo. River Water Conservation Dist.*, 365 P.2d 273, 284–85 (Colo. 1961) (en banc) (granting a conditional right for the entire water project, even though work had not been accomplished on all parts of the project); see also A. DAN TARLOCK ET AL., *WATER RESOURCE MANAGEMENT: A CASEBOOK IN LAW & POLICY* 177–78 (6th ed. 2009). But see *Pagosa Area Water & Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 309–10 (Colo. 2007) (en banc) (indicating that the law must place some limits on unchecked municipal growth).

146. Travis, *supra* note 139, at 9.

147. *Id.*

148. See *id.*

149. PISANI, *supra* note 12, at 202.

150. *Id.*

151. See generally *id.*

152. Louis J. Wilde, *Meet to Organize Patriotic League in the Southwest*, ARIZ. REPUBLIC, Nov. 2, 1917; *Local Correspondence, with Pageant of Freedom, League of Southwest Will Emphasize Birth*, L.A. TIMES, Sept. 15, 1917.

153. See generally Wilde, *supra* note 152.

focus almost entirely to the issue of the Colorado River.¹⁵⁴ Continuing and imminent interstate legal battles for control of the waters of the Colorado River were at the forefront of the minds of the delegates.¹⁵⁵ If any of the delegates' cities and states were to prosper, the use and control of the wild and untamed waters in the region was a necessity. But, the inability to agree on a common course of action stalled development.¹⁵⁶ Irregular meetings of the League over the next few years yielded very little common ground on which the states could move forward with development of the Colorado River.

Into this void stepped Delph Carpenter. A lawyer raised on an irrigated farm in northeastern Colorado, Carpenter had made a name for himself in interstate water disputes.¹⁵⁷ As the lead counsel for the Greeley-Poudre Irrigation District, Carpenter represented the District in *Wyoming v. Colorado*, a lawsuit resulting from the District's decision to divert water from the Laramie River through a tunnel.¹⁵⁸ "With other lawsuits on the way, including one filed by Nebraska concerning the South Platte River, he began thinking about out-of-court solutions to the West's water conflicts" to avoid the uncertainty created by the precedent of the Supreme Court's doctrine of equitable apportionment.¹⁵⁹

During the League of the Southwest meetings, Carpenter and others slowly formed the concept of using the Compact Clause of the U.S. Constitution to negotiate and settle the long-standing disputes between states over the use of Colorado River water.¹⁶⁰ In 1921, Congress approved formation of the Colorado Compact Commission to discuss this topic further.¹⁶¹ Herbert Hoover (Secretary of Commerce at the time) headed the Commission as the federal representative.¹⁶² One representative from each state on the Colorado River (Arizona, California, Colorado, New Mexico,

154. See generally *Plan Congress of Southwest: Committee to Organize for Convention Activity*, L.A. TIMES, Feb. 22, 1920.

155. See generally Wilde, *supra* note 152.

156. See generally *id.*

157. See generally DANIEL TYLER, SILVER FOX OF THE ROCKIES: DELPHUS E. CARPENTER AND WESTERN WATER COMPACTS (2003).

158. Delph E. Carpenter, "Father of Interstate River Compacts," COLO. ST. U., lib.colostate.edu/archives/water/compacts/carpenter.html (last visited Apr. 10, 2016).

159. *Id.*; accord *Kansas v. Colorado*, 206 U.S. 46, 117 (1907).

160. Delph E. Carpenter, Interstate Compact Comm'r for Colo., Application of the Reserve Treaty Powers of the States to Interstate Water Controversies June 27, 1992 (transcript available in the Colorado State University digital archives); Colorado River Commission, Minutes and Record of the First Eighteen Sessions of the Colorado River Commission Negotiating the Colorado River Compact of 1922 15 (1922), <https://www.i2i.org/files/2014/01/Minutes-CORiver-Commn.pdf> (Carpenter's articulation of views to Governor Shoup).

161. S. 1853, 67th Cong. (1921); H.R. 6821, 67th Cong. (1921).

162. See generally Colorado River Commission, *supra* note 160, at 2–4. During the first session, Secretary Hoover gave an opening statement and introduced each of the members of the Commission with a brief discussion of their background and accolades. *Id.*

Nevada, Utah, and Wyoming) made up the rest of the Commission.¹⁶³ The seven western states seemed to appoint these preeminent men based only on their expertise in water development and engineering. Of the seven state representatives, only two had backgrounds as lawyers, whereas the other five were engineers.¹⁶⁴ The Chairman, Herbert Hoover, had made a name for himself as a politician practicing as an engineer in the mining industry in Australia and China.¹⁶⁵ As many engineers and politicians had thought since the inception of the Reclamation Act of 1902, the wild and untamed rivers of the West were a valuable, untapped resource that was being wasted, running freely to Mexico and the ocean.¹⁶⁶

The first series of meetings commenced in Washington, D.C., on January 26, 1922, at the Department of Commerce building.¹⁶⁷ Hoover opened the first meeting by stating that the Commission should seek to “prevent endless litigation which will inevitably arise in the conflict of state rights, with delays and costs that will be imposed upon our citizens through such conflicts.”¹⁶⁸ The delegates serving on the Commission all agreed that there would be adequate supply for each state if planned storage projects were constructed along the river.¹⁶⁹ However, the delegates spent their first week of meetings in Washington quibbling over the acreage of future agricultural development in each state.¹⁷⁰ The frustration and lack of consensus wore on, and many were close to giving up on the compact idea.¹⁷¹ James Scrugham of Nevada described that the lack of any agreement would “mean the holding up of construction work and serious delay in the financing of future projects.”¹⁷² Scrugham’s perspective was a common one among these men.¹⁷³ They all saw the Colorado River as a resource to be controlled by their superior intellect and willpower, which would ultimately add to the prosperity of the nation and each of their respective western states.¹⁷⁴

There was little discussion of *why* during the Colorado River Compact negotiations. The engineers and lawyers involved saw the largely unused river as a problem to be solved.¹⁷⁵ After the initial meetings in Washington,

163. *Id.* at 1–2. Arizona was represented by W.S. Norviel, California by Wilbur Fisk McClure, Colorado by Delph E. Carpenter, New Mexico by Stephen B. Davis Jr., Nevada by James G. Scrugham, Utah by R.E. Caldwell, and Wyoming by Frank C. Emerson. *Id.*

164. *Id.*

165. *Herbert Hoover*, WHITE HOUSE, <https://www.whitehouse.gov/1600/presidents/herberthoover> (last visited Apr. 10, 2016).

166. *See* Colorado River Commission, *supra* note 160, at 28–29.

167. *Id.* at 1.

168. *Id.* at 2.

169. *Id.* at 3, 18, 21, 26, 28.

170. *Id.* at 91–144.

171. *Id.* at 127.

172. *Id.* at 136.

173. *Id.*

174. *See, e.g., id.* at 134–35.

175. *Id.* at 95–100.

the Compact Commission took another twenty meetings in Phoenix, Denver, and Santa Fe between January and November of 1922 before signing the Colorado River Compact.¹⁷⁶ The Compact separated the states into an upper and lower basin, each with the right to develop and use 7.5 million acre-feet of water annually.¹⁷⁷ The Compact best describes its purpose as seeking “to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods.”¹⁷⁸

After securing certainty over their water supply through compact and litigation, western states and their burgeoning metropolitan cities grew exponentially. California’s State Water Project by itself has come to serve twenty million municipal and industrial users, in addition to 750,000 acres of irrigated land.¹⁷⁹ It derives essentially all of its water from the Sacramento–San Joaquin river systems, which drain from the Sierra Nevada Mountains.¹⁸⁰ Some of this water is moved over 400 miles to users in southern California via a 444-mile aqueduct, the longest continuous water conveyance in the West.¹⁸¹

Los Angeles is the prototypical example of how water has fed metropolitan growth. Beginning in the early decades of the twentieth century, Los Angeles’s metropolitan water district used the doctrine of prior appropriation to buy up water rights in the Owens Valley in the Sierra Mountains.¹⁸² As the city captured and diverted the water through large aqueducts that stretched hundreds of miles to the outskirts of Los Angeles, the Owens Valley literally and economically dried up.¹⁸³ As Los Angeles grew and the Owens Valley water supply proved insufficient for the city’s needs, it followed the same model used in other water basins with great success.¹⁸⁴ Other growing metropolises followed Los Angeles’s example, putting incredible strain on a limited water supply.¹⁸⁵ Today, twenty-five million Americans in metropolitan areas rely on one river, the Colorado, to keep the taps turned on.¹⁸⁶

176. *Id.* at 1.

177. The Colorado River Compact is published in multiple locations. *See, e.g.*, COLO. REV. STAT. ANN. § 37-61-101 (West 2007); *Colorado River Compact of 1922*, U.S. BUREAU RECLAMATION, www.usbr.gov/lc/region/g1000/pdffiles/crcompact.pdf (last visited Apr. 10, 2016).

178. COLO. REV. STAT. ANN. § 37-61-101.

179. *California State Water Project Overview*, CA.GOV: DEP’T WATER RESOURCES (Aug. 11, 2010), <http://www.water.ca.gov/swp/index.cfm>.

180. *California State Water Project Today*, CA.GOV: DEP’T WATER RESOURCES (July 18, 2008), www.water.ca.gov/swp/swptoday.cfm.

181. *Id.*

182. Romero, II, *supra* note 9, at 344.

183. *See* REISNER, *supra* note 137, at 100; *see also* HUNDLEY, JR., *supra* note 137, at 347.

184. Romero, II, *supra* note 9, at 344.

185. *Id.*

186. Hayes, *supra* note 137, at 146.

As a consequence of the water certainty secured by compacts like those governing the Colorado River, water is delivered year round to metropolitan distribution infrastructures that begin in catchments high in the mountains for most arid western cities.¹⁸⁷ Local watersheds and aquifers in these areas are insufficient; yet, metropolitan development in this region thrives. In turn, metropolitan growth has compelled the United States to develop one of the most comprehensive systems of water infrastructure in the world with massive dams and reservoirs, modern groundwater pumps, billions of miles of water and sewage pipes, sophisticated wastewater treatment plants, and a broad regulatory framework over industrial and hazardous waste.¹⁸⁸ Indeed, instead of water resources dictating land use, land use dictates water development and affects the physical and social geography of the region.¹⁸⁹

This has had a noticeable impact for many metropolitan residents who have rarely had to consider how much water they consume each and every day.¹⁹⁰ An average suburban American household, for instance, consumes about 350 gallons of water a day for drinking; personal hygiene and sanitation; landscaping; and other outdoor uses, such as maintaining a swimming pool, running a fountain, or washing a car.¹⁹¹ To be sure, the labor needed to propagate such water-intensive uses would be borne largely by immigrants who came to settle in these metropolitan areas.

Although historians have extensively documented the central role of federal transportation, housing, and lending policies in the growth and fractionalization of metropolitan areas in the post-World War II United States,¹⁹² few connected the dots about the importance of water and immigration law and policy to the growth of metropolitan heterotopias.¹⁹³ Accordingly, the Hart–Celler Immigration Act of 1965 would have deep consequences for these urban archipelagos.¹⁹⁴ The Act, passed at precisely the same historical moment as the momentous civil rights legislation dismantling Jim Crow, and in an era defined by water doctrines like those of the great and growing city, would have three important consequences. First,

187. Travis, *supra* note 139.

188. Romero, II, *supra* note 9, at 353.

189. Travis, *supra* note 139.

190. ITT CORP., VALUE OF WATER SURVEY: AMERICANS ON THE U.S. WATER CRISIS 11 (2010), http://www.xyleminc.com/valueofwater/VOW_presentation/pdf/itt-value-of-water.pdf.

191. AM. WATER WORKS ASS'N, *Water Use Statistics*, DRINKTAP, <http://www.drinktap.org/water-info/water-conservation/water-use-statistics.aspx> (last visited Apr. 10, 2016). See generally NANCY L. BARBER, U.S. GEOLOGICAL SURVEY, SUMMARY OF ESTIMATED WATER USE IN THE UNITED STATES IN 2005 (2009), <http://www.pubs.usgs.gov/fs/2009/3098/pdf/2009-3098.pdf> (providing information on water sources and the proportion of water used for domestic, industrial, agricultural, or mining purposes).

192. See generally OWEN D. GUTFREUND, TWENTIETH-CENTURY SPRAWL: HIGHWAYS AND THE RESHAPING OF THE AMERICAN LANDSCAPE (Oxford University Press reprint 2005).

193. Tom I. Romero, II, Kelo, Parents, and the *Spatialization of Color (blindness) in the Berman-Brown Metropolitan Heterotopia*, 2008 UTAH L. REV. 947, 978.

194. Immigration and Nationality (Hart–Celler) Act, Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified in scattered sections of 8 U.S.C.).

it changed dramatically the country of origin for most immigration to the United States. Whereas prior to passage of the law Latin Americans and Asians together constituted slightly less than 2% of the U.S. population, by 2012, they collectively represented (as a result of immigration) almost a quarter of those counted by the census.¹⁹⁵ Second, and related, the Act cemented the modification of the nation's racial map, which had been "marked principally by the contours of white and black and that had denoted race as a sectional problem."¹⁹⁶ According to the historian Mai Ngai, "Immigration law was part of an emergent race policy that was broader, more comprehensive, and national in scope."¹⁹⁷ Third, these newcomers would disproportionately settle in metropolitan areas after 1965, to the point that by the first decade of the twenty-first century, 85% of the immigrants lived in metropolitan regions.¹⁹⁸ These immigrants, in turn, would fill a burgeoning demand for low-status, low-paying jobs (such as lawn maintenance) resulting from the rise of these water dependent metropolitan regions.¹⁹⁹ One of the stereotypes that would emerge out of this development was the "illegal gardner" maintaining the manicured lawns and verdant flower beds of metropolitan homes.²⁰⁰

The settlement of immigrants in metropolitan areas would also lead to segregated patterns of housing. First, beginning in the 1920s,

American cities witnessed a construction boom that surpassed all previous periods of growth. . . . [S]everal million units of housing were built during the decade [and also in the years following World War II], allowing second generation immigrants to escape the slums. But while these were healthy changes, . . . [t]he expansion of the suburbs drew the rich and middle-class out of the city. At the same time, the combination of slowed immigration and economic mobility resulted in increased vacancy rates in working-class districts.²⁰¹

African-Americans and non-white immigrants took up residence in those neighborhoods being abandoned by second-generation Southern and Eastern

195. Seth Motel & Eileen Patten, *Statistical Portrait of Hispanics in the United States, 2011*, PEW RES. CTR. (Feb. 15, 2013), <http://www.pewhispanic.org/2013/02/15/statistical-portrait-of-hispanics-in-the-united-states-2011/>.

196. NGAI, *supra* note 6, at 228.

197. *Id.*

198. Audrey Singer, Brookings Inst., Keynote Address at the Urban Libraries Council: Immigrant Gateways: Faces of the Next Cities (May 4, 2007), http://www.brookings.edu/~media/Files/rc/speeches/2007/0504demographics_singer/20070504.pdf; see also Roger Waldinger, *Immigration and Urban Change*, 15 ANN. REV. SOC. 211, 212 (1989).

199. Waldinger, *supra* note 198, at 219–21.

200. MATT A. BARRETO, SYLVIA MANZANO & GARY SEGURA, THE IMPACT OF MEDIA STEREOTYPES ON OPINIONS AND ATTITUDES TOWARDS LATINOS 3–4 (Sept. 2012), <http://www.chicano.ucla.edu/files/news/NHMCLatinoDecisionsReport.pdf>.

201. Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 13–14 (2003).

European immigrants who saw themselves as white, “a development that accelerated after World War II.”²⁰² These patterns would remain largely unchanged into the last decades of the twentieth century.²⁰³

Beginning around the 1990s, immigrants began to bypass “the inner city and mov[e] directly to the suburbs.”²⁰⁴ Finding older but affordable housing stock in these suburban developments built between the 1950s and 1980s,²⁰⁵ Latinos, Asians, and other immigrants began to live in the suburbs rather than in core cities.²⁰⁶ Indeed, during the last ten years, more non-white immigrants lived in these older suburbs than in cities, and their growth rates there exceeded those in the cities.²⁰⁷

Accordingly, many immigrant neighborhoods in both the urban core and first-tier suburbs are on the front lines of a water infrastructure crisis. Despite having one of the world’s most developed water-delivery infrastructures, much of the United States’ water-delivery system is old and rapidly deteriorating.²⁰⁸ A significant proportion of the nation’s trunk lines, sewage lines, and pumping systems were laid in the nineteenth or early twentieth centuries, or in the housing boom that immediately followed World War II.²⁰⁹ As a result, much of the United States’ water infrastructure where immigrants are most likely to be concentrated is in dire need of repair or replacement.²¹⁰ The U.S. Environmental Protection Agency (EPA), for example, has found that more than 1.7 trillion gallons of water are lost per year to leakage, while

202. Romero, II, *supra* note 193, at 959–60. *See generally* KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998) (examining how Jews came to be viewed, by themselves and others, as white in the decades following World War II); THOMAS A. GUGLIEMMO, *WHITE ON ARRIVAL: ITALIANS, RACE, COLOR, AND POWER IN CHICAGO, 1890–1945* (2004) (detailing the many ways that Italians benefitted from their privileged color status as whites); DAVID R. ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (rev. ed. 1999) (exploring how European working-class immigrants utilized the “wages” of labor power and hierarchy to become considered as white).

203. *See* Romero, II, *supra* note 193, at 956.

204. TWENTY-FIRST CENTURY GATEWAYS: IMMIGRANT INCORPORATION IN SUBURBAN AMERICA 14–15 (Audrey Singer et al. eds., 2008).

205. WILLIAM H. FREY, BROOKINGS INST., *MELTING POT CITIES AND SUBURBS: RACIAL AND ETHNIC CHANGE IN METRO AMERICA IN THE 2000S* 10–11 (2011), http://www.brookings.edu/~media/research/files/papers/2011/5/04-census-ethnicity-frey/0504_census_ethnicity_frey.pdf; *see also* MYRON ORFIELD & THOMAS LUCE, UNIV. OF MINN. LAW SCH., *AMERICA’S RACIALLY DIVERSE SUBURBS: OPPORTUNITIES AND CHALLENGES* 2 (2012), https://www1.law.umn.edu/uploads/e0/65/e065d82a1c1da0bfef7d86172ec5391e/Diverse_Suburbs_FINAL.pdf (noting that suburbs are becoming more racially diverse).

206. *See* BRUCE KATZ ET AL., BROOKINGS INST., *METRO POLICY: SHAPING A NEW FEDERAL PARTNERSHIP FOR A METROPOLITAN NATION* 51, 60–62 (2008), http://www.brookings.edu/~media/Research/Files/Reports/2008/6/metropolicy/06_metropolicy_fullreport.PDF.

207. Singer, *supra* note 198.

208. Brett Walton, *America’s Water Infrastructure Shows Its Age—The National Debate About How to Pay for Repairs*, CIRCLE BLUE (Mar. 5, 2012), <http://www.circleofblue.org/2012/world/americas-water-infrastructure-shows-its-age-the-national-debate-about-how-to-pay-for-repairs/>.

209. *Id.*; *America’s Infrastructure Crisis Isn’t Overstated*, AMERICA’S INFRASTRUCTURE REP. CARD (Nov. 14, 2013), <http://www.infrastructurereportcard.org/asce-news/americas-infrastructure-crisis-isnt-overstated/>.

210. *See* Walton, *supra* note 208.

millions more are lost to over 240,000 water main breaks each and every year.²¹¹

From 2006–2009, “more than 9,400 of the nation’s 25,000 sewage systems” dumped “untreated or partly treated human waste, chemicals and other hazardous materials into rivers, lakes,” and groundwater supplies.²¹² A 2007 study by the EPA documented over 75,000 sanitary sewer overflows each year, resulting in the discharge of three to ten billion gallons of wastewater into the United States drinking water system.²¹³

The challenge facing immigrants in these metropolitan water crises by themselves are dire. Add to that the fact that immigrants have minimal to no English proficiency and are less likely to be U.S. citizens²¹⁴ and are racially, ethnically, and economically alienated from the polity.²¹⁵ In the aggregate, these factors compound the ability of communities to advocate for the necessary improvements to their water infrastructure.²¹⁶

The perverse irony of this is that immigration to the United States, particularly from Mexico, is in some sense attributable to water law and policy that is drying up international water supplies. For instance, the Mexican Water Treaty, which governs water allocation of the Rio Grande River between the United States and Mexico, requires one-third of the water flowing from the six Mexican tributaries to be allocated to the United States.²¹⁷ Like the allocation schemes governing the Colorado River Compact, the allocation scheme signed in 1944 was based on inaccurate assumptions regarding how much water would actually be in the river from year to year and the rate of metropolitan growth.²¹⁸ Thus, by the beginning of the twenty-first century, thousands of farms in northern Mexico lay fallow because the Treaty allocated their water supplies to Texas farmers.²¹⁹ As the Mexican agricultural economy has collapsed, many have traveled north

211. ENVTL. PROT. AGENCY, AGING WATER INFRASTRUCTURE RESEARCH PROGRAM: ADDRESSING THE CHALLENGE THROUGH INNOVATION 2 (2007), <http://nepis.epa.gov/EPA/html/DLwait.htm?url=/Adobe/PDF/6000012A.PDF>. These numbers, and their astronomical costs, are expected to rise as the systems continue to age. *Id.*

212. Charles Duhigg, *As Sewers Fill, Waste Poisons Waterways*, N.Y. TIMES (Nov. 22, 2009), <http://www.nytimes.com/2009/11/23/us/23sewer.html?pagewanted=all>.

213. ENVTL. PROT. AGENCY, *supra* note 211. A related issue, as represented by the water quality crisis in Flint, Michigan, is the dangers presented by “widespread use of lead in public and private plumbing systems . . . the industry has not (with notable exceptions) been proactive in reducing risk through full [lead service line] replacement programs and has highlighted utility customer’s risk on private property.” See FLINT WATER ADVISORY TASK FORCE, FINAL REPORT 3–4 (2016), https://www.michigan.gov/documents/snyder/FWATF_FINAL_REPORT_21March2016_517805_7.pdf.

214. Singer, *supra* note 198.

215. Romero, II, *supra* note 9, at 146.

216. *Id.*

217. Treaty Respecting the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Mex.-U.S., Feb. 3, 1944, 59 Stat. 1219.

218. Romero, II, *supra* note 9, at 146.

219. FRED PEARCE, WHEN THE RIVERS RUN DRY: WATER—THE DEFINING CRISIS OF THE TWENTY-FIRST CENTURY 16 (2007).

across the United States border in search of work.²²⁰ Those who have stayed dig deeper into the earth in search of nonrenewable groundwater supplies.²²¹

Thus, the push and pull of the thirsty metropolis created an unquenchable thirst for immigrants coming to the United States. Built upon the law of the river that came out of compacts and treaties, meteoric metropolitan growth in the United States created a mighty stream by which immigration would flow and fuel growth of these same places. Hoping to find opportunity and a better life in metropolitan America, immigrants instead encountered hostility and backlash in many of the neighborhoods that they entered. Not surprisingly, water law and policy would remain the defining feature of immigrant life in hostile, isolated, and segregated developments, towns, and municipalities.

IV. THE GREAT LOCAL THIRST FOR PROPER DOCUMENTATION

In announcing a “tough new anti-illegal immigration ordinance[]” passed by his city council in July 2006, Mayor Lou Barletta of Hazleton, Pennsylvania, forcefully declared, “We must draw the line and we are doing it tonight.”²²² Though he was specifically speaking about what became the first of many local ordinances adopted by the Hazleton City Council in the coming months, he figuratively reinforced the sovereign boundaries of this small but rapidly growing community eighty miles outside of Philadelphia.²²³ The Hazleton Ordinance (the Ordinance) was typical among the scores of anti-immigration ordinances drafted and enacted during this time.²²⁴ It did not allow a person to occupy any rental unit in the city without obtaining a mandatory occupancy permit.²²⁵ To obtain a permit from the Code Enforcement Office, an applicant needed to provide “[p]roper identification showing proof of legal citizenship and/or residency.”²²⁶ The Ordinance also imposed heavy sanctions upon the owner of the property if he or she allowed occupants to inhabit a rental unit without the proper permit from the Code Enforcement Office.²²⁷ These ordinance provisions were reinforced through separate sections that provided stringent guidelines and sanctions to control who could and could not be hired within the City of Hazleton.²²⁸

220. *Id.*

221. *Id.* at 17.

222. Jon Dougherty, *States Take Lead Against Illegal Immigration*, U.S. FED. NEWS, Aug. 7, 2006, 2006 WLNR 16099419.

223. *See id.*

224. IMMIGRATION REFORM LAW INST., MODEL ILLEGAL IMMIGRATION RELIEF ORDINANCE, <http://www.illegalaliens.us/IRLIModelIllegalImmReliefOrdver5.pdf> (last visited Apr. 10, 2016).

225. Hazleton, Pa., Ordinance 2006-13, § 6 (Aug. 15, 2006).

226. *Id.* § 7b(1)(g).

227. *Id.* § 10(b) (fine of \$1,000); *id.* § 10(a) (imprisonment of up to ninety days).

228. *See id.* § 4.

Among the many reasons given by the “People of the City of Hazleton” in endorsing passage of the Illegal Immigration and Relief Act Ordinance, the Ordinance’s declaration of purpose indicated that illegal immigration was contributing to “overcrowded classrooms and failing schools,” as well as “destroy[ing] our neighborhoods and diminish[ing] our overall quality of life.”²²⁹ Importantly, the collective goal of the Ordinance was clear.²³⁰ As Hazleton’s mayor bluntly stated to the *Washington Post*, the Hazleton Ordinance was designed to make the municipality “the toughest place on illegal immigrants in America. . . . I will get rid of the illegal people. It’s this simple: *They must leave.*”²³¹ Although a federal judge prevented the enforcement of Hazleton’s specific ordinance in July 2007,²³² it did not prevent nor deter other municipalities and communities from considering similar ordinances aimed at dissuading Latino immigrants from moving to, settling in, and becoming a part of these communities.²³³

The Hazleton Ordinance and the actions and statements of its city council and mayor exemplify many of the most salient dimensions surrounding the anti-immigration ordinances proposed, and in many cases adopted, in 104 communities in 28 states.²³⁴ While the State of Pennsylvania seemed to be a fulcrum for many of the proposed or adopted ordinances,²³⁵ dozens of other communities—large and small, rural and metropolitan—considered, and in some cases passed, Hazleton-type ordinances to deter an “immigrant threat.”²³⁶ Latinos in general and Mexicans and Mexican-Americans, in particular, have been “demonized as a grave threat to the American culture, society, and the economy”; “systematically excluded from rights, privileges, and protections extended to other Americans”; and “subject to increasingly harsh and repressive enforcement actions that drove them further underground.”²³⁷ These local and state authorities have also colluded with the federal government to create what legal scholar César Cuauhtémoc García Hernández dubbed the emblems of “crimmigration law,” whereby noncitizens and citizens alike, especially

229. Ordinance 2006-10 (July 13, 2006).

230. See Michael Powell & Michelle Garcia, *Pa. City Puts Illegal Immigrants on Notice*, WASH. POST (Aug. 22, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/21/AR2006082101484.html>.

231. *Id.*

232. *Lozano v. City of Hazelton*, 496 F. Supp. 2d 477, 555 (M.D. Pa. 2007).

233. See JILL ESCHBENSHADE, IMMIGRATION POLICY CTR., DIVISION AND DISLOCATION: REGULATING IMMIGRANTS THROUGH LOCAL HOUSING ORDINANCES 3 (2007).

234. *Id.*

235. *Id.* According to Professor Eschbenschade, as of 2007, Pennsylvania is home to 32 of the 104 proposed or adopted ordinances, which is ironic considering that Pennsylvania contained “only about 125,000 undocumented immigrants in the state, or 1 percent of the population (which is less than one-third of the national average).” *Id.* at 4.

236. ROXANNE LYNN DOTY, THE LAW INTO THEIR OWN HANDS: IMMIGRATION AND THE POLITICS OF EXCEPTIONALISM 88–99 (2009).

237. Douglas Massey, *The New Latino Underclass 2* (Stanford Ctr. on Poverty & Inequality 2010), http://inequality.stanford.edu/_media/working_papers/massey_new-latino-underclass.pdf.

those from Latin America, are conceptualized as “criminal deviants and security risks,” and “people to be feared.”²³⁸

As with the “color-blind” criminal justice system documented in Michelle Alexander’s study, the *New Jim Crow*, once a Latino is labelled illegal, the “old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal.”²³⁹ It is no surprise that this occurs in metropolitan areas where Joe Arpaio in suburban Maricopa County, Arizona; Joe Barletta, the Mayor of Hazelton, Pennsylvania; and Steve Levy, the Suffolk County Commissioner in Long Island, New York, became overnight celebrities for their virulent and oftentimes vicious crackdowns on immigrant communities.²⁴⁰ The actions of the Allgood Water Works utility in denying water service to immigrants without proper documentation in Alabama after the passage of Alabama House Bill 56 in 2011 is merely the latest example of local anti-immigration sentiment.²⁴¹ This latest measure, however, comes with a twist because it has the potential to deny the most basic resource necessary for human survival based on immigration status.²⁴²

To be sure, the spate of anti-immigration provisions passed by local municipalities (especially those in the suburbs)²⁴³ and states since 2005 has led many commentators to label such restrictions—and the racial animus behind them—as Juan or José Crow.²⁴⁴ As I and others have shown, this is not a new phenomenon, but one directly related to ways that Latinos have

238. César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 B.Y.U. L. REV. 1457, 1457 (2013). As García Hernández explains:

Convictions for a growing list of offenses results in removal—the technical umbrella term for exclusion and deportation. Sometimes commission—rather than conviction—of such an offense is sufficient. At the same time, immigration law enforcement has increasingly adopted the securitized approach of criminal law enforcement. And criminal investigations involving certain crimes related to immigration activity have borrowed many of the more lax procedures traditionally used in the civil immigration law system.

Id. at 1458 (footnotes omitted).

239. Michelle Alexander, *The New Jim Crow*, PEN AM., <http://www.pen.org/nonfiction-essay/new-jim-crow> (last visited Apr. 10, 2016).

240. See generally JUAN GONZALEZ, *HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA* (2000). I explore the phenomenon of these ordinances in relation to their historical relationship to Latinos in *No Brown Towns: Anti-Immigrant Ordinances and Equality of Educational Opportunity for Latina/os*, 12 J. GENDER, RACE & JUST. 13, 17–34 (2008).

241. See Ashley Portero, *Alabama Immigration Law: Prove Citizenship or Lose Clean Water Supply*, INT’L BUS. TIMES (Oct. 10, 2011, 12:33 PM), <http://www.ibtimes.com/alabama-immigration-law-prove-citizenship-or-lose-clean-water-supply-322418>.

242. *Id.*

243. Typical of such ordinances is one passed in the Dallas suburb of Farmers Branch, in which members of the city council stated that the goals of the enactments were to “sen[d] a message to people who aren’t in the country legally, [that] Farmers Branch is not the place for you.” *Villas at Parkside Partners v. City of Farmers Branch*, 675 F.3d 802, 805 n.4 (5th Cir. 2012), *aff’d on reh’g en banc*, 726 F.3d 524 (5th Cir. 2013).

244. See, e.g., Diane McWhorter, Opinion, *The Strange Career of Juan Crow*, N.Y. TIMES (June 16, 2012), <http://www.nytimes.com/2012/06/17/opinion/sunday/no-sweet-home-alabama.html>.

been racialized since the early decades of the twentieth century.²⁴⁵ In other words, the new Jim Crow is really the old Juan Crow for Latinos, who have long been affected by the racialized tensions inherent when local and state governments exercise the most disciplinary powers of their sovereignty (policing), which are subject to the most minimal standards of judicial review (immigration law).

The consequence has been to compel immigrants, particularly those from Latin America, to live in highly segregated communities that lack basic water infrastructure. As I have written elsewhere, “Along the border of the United States and Mexico, a true ‘borderlands’ of water law and policy exists.”²⁴⁶ In this space, over half-a-million poor Latinos live in so-called Colonia communities.²⁴⁷ Cameron Park is a typical small neighborhood on

245. See Tom I. Romero, II, *Observations on History, Law, and the Rise of the New Jim Crow in State-Level Immigration Law and Policy for Latinos*, 66 AM. Q. 153, 158 (2014). The historian Kelly Lytle Hernández notes that the increasing number of undocumented immigrants joining African-Americans in jails and prisons across the country “reveals how the paths of Mexican Browns and black Americans cross.” HERNÁNDEZ, *supra* note 123, at 32–33. The very intersection of the black and the Latino policing experience is explicitly mentioned in Bill Conroy, *Is This the Latino Ferguson?*, DAILY BEAST (Feb. 26, 2015, 4:17 AM), <http://www.thedailybeast.com/articles/2015/02/26/is-this-the-latino-ferguson.html>.

246. Romero, II, *supra* note 9, at 348–49; see Mary L. Dudziak & Leti Volpp, *Introduction: Legal Borderland: Law and the Construction of American Borders*, 57 AM. Q. 593, 594 (2005) (arguing that the United States–Mexico border is “the most iconic American border, a space that has been the subject of much powerful scholarship”). As Dudziak and Volpp ask and answer:

What, then, is a *legal* borderland? We might start with the role of law in borderlands that are geographic places. Borderlands can be contact zones between distinct physical spaces; they can be interstitial zones of hybridization. They can constitute spaces that challenge paradigms and that therefore reveal the criteria that determine what fits in those paradigms. Borderlands can also function not as literal physical spaces but as contact zones between ideas, as spaces of ideological ambiguity that can open up new possibilities of both repression and liberation.

Legal borderlands can be physical territories with an ambiguous legal identity, such as U.S. territories where the Constitution does not follow the flag, or Guantánamo.

. . . .

Dudziak & Volpp, *supra* at 595–96; see also Tom I. Romero, II, *Bound Between and Beyond the Borderlands: Region, Race, Scale, and Subnational Legal History*, 9 OR. REV. INTL. L. 301, 308 n.19, 328 nn.82–83 (2007) (discussing borderlands). Borderlands scholars owe a debt of gratitude to Gloria Anzaldúa, the author of *Borderlands*, for providing the foundational theoretical understanding of this concept in understanding social, economic, political, and historical change. See generally GLORIA E. ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987); GLORIA E. ANZALDÚA, *INTERVIEWS/ENTREVISTAS* (AnaLouise Keating ed., 2005); Norma E. Cantú, *Living on the Border: A Wound that Will Not Heal*, in *BORDERS* 11, 11–17 (Isabel Baca ed. 2011); EDWARD W. SOJA, *THIRDSPEACE: JOURNEYS TO LOS ANGELES AND OTHER REAL-AND-IMAGINED PLACES* (1996); Erika Aigner-Varoz, *Metaphors of a Mestiza Consciousness: Anzaldúa’s Borderlands/La Frontera*, 25 *LATINO/A IDENTITIES* 47 (2000); Walter D. Mignolo & Madina V. Tlostanova, *Theorizing from the Borders: Shifting the Geo- and Body-Politics of Knowledge*, 9 EUR. J. SOC. THEORY 205 (2006); Emma Pérez, *Gloria Anzaldúa: La Gran Nueva Mestiza Theorist, Writer, Activist–Scholar*, 17 *NAT’L WOMEN’S STUD. ASSOC. J.*, Summer 2005, at 1–10; José David Saldivar, *Unsettling Race, Coloniality, and Castle*, 21 *CULTURAL STUD.* 339 (2007).

247. *Colonias FAQs (Frequently Asked Questions)*, TEX. SECRETARY ST., <http://www.sos.state.tx.us/border/colonias/faqs.shtml> (last visited Apr. 10, 2016) [hereinafter *Colonias FAQs*]. Colonias are found in Texas, New Mexico, Arizona, and California. *Id.* Over 2,000 Colonias exist in Texas, where Colonia

Texas's border with Mexico, not far from Brownsville.²⁴⁸ Walking down the street, one would likely encounter “children, dogs and chickens . . . playing in the streets. A few businesses—taco trucks, car repair, a beauty salon—advertised with handwritten signs. Some of the homes [are] lushly landscaped, with hibiscus flowers and orange trees,” while others are “broken-down shacks interspersed with piles of lumber and rubble.”²⁴⁹ In 2000, it was the poorest place in the United States with a population above 1,000 people.²⁵⁰

At the most basic level, Colonias are unregulated subdivisions that have emerged as unincorporated municipalities.²⁵¹ Because they have no formal legal status as local governments, the communities do not have basic powers of zoning, taxing, and eminent domain.²⁵² As a result, Colonias lack the basic infrastructure needed to serve densely concentrated communities; most importantly, most Colonias do not have water or sewage lines to serve residents.

Colonias first emerged in Texas in the 1950s, and the process of land use and settlement has remained virtually the same for the last sixty years.²⁵³ Landowners in unincorporated rural areas subdivide agriculturally worthless land that often lies in low-lying flood plains.²⁵⁴ The land-owning developer then sells, with a contract for deed, plots to prospective low-income Latinos who seek affordable housing.²⁵⁵ Though the developer makes vague promises about future development, the land is almost always unimproved and does not have piping for the delivery of potable water or any capability for wastewater disposal.²⁵⁶ Nor do the developers make provisions for adequate drainage.²⁵⁷ Thus, when it rains, Colonia residents find themselves subject to significant property damage and contamination by human waste.²⁵⁸ These problems are exacerbated by the reality of housing development in

residents are overwhelmingly Latino and an overwhelming majority are American citizens. *Id.* Where most of the Colonias are located, per capita annual income tends to be one-third to one-half of the state average of \$16,717. *Id.*

248. Romero, II, *supra* note 9, at 349.

249. *The Colonias of the Mexican Border: Paving the Way*, *ECONOMIST* (Jan. 27, 2011), <http://www.economist.com/node/18013822>.

250. *Id.*

251. See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 *GEO. L.J.* 179, 183 (1995).

252. See *id.* The structure of Texas government denied general ordinance making powers to counties, and counties had only the power delegated to them by the state. *Id.* at 199.

253. Romero, II, *supra* note 9, at 349.

254. *Id.* at 349–50.

255. *Id.* A contract for deed is a real estate instrument by which a grantee makes a small down payment and monthly payments, receiving fee simple title only when the total value of the land is paid off. See Shelayne Clemmer, *Texas's Attempt to Mitigate the Risks of Contracts for Deed—Too Much for Sellers—Too Little for Buyers*, 38 *ST. MARY'S L.J.* 755, 761–67 (2007) (discussing contracts for deed in 1950s Colonias). Upon default of the contract at any point until the land is paid off, the grantee forfeits the land, including any equity and improvements. See *id.*

256. See *Colonias FAQs*, *supra* note 247.

257. *Id.*

258. *Id.*

Colonias.²⁵⁹ Residents build houses in phases as the owners can afford materials.²⁶⁰ Because there is no housing code, most homes lack basic amenities, such as electricity and plumbing.²⁶¹

Colonia households deal with water and wastewater on an ad hoc basis. To obtain water for drinking, bathing, and cooking, some residents dig shallow wells; others “buy water by the bucket or drum to meet their daily needs.”²⁶² In terms of wastewater, Colonia residents rely on often-inadequate wastewater disposal methods, such as septic tank systems.²⁶³ In many circumstances, these systems “are too small or improperly installed and can overflow.”²⁶⁴ “The problem is exacerbated by the poor quality of [C]olonia roads, which are often unpaved and covered with caliche or other materials that prevent thorough drainage.”²⁶⁵ During heavy rains, it is common to find sewage pooling on the ground.²⁶⁶ The lack of wastewater treatment, in turn, impacts the drinking water supply.²⁶⁷ Wells are often contaminated, while untreated or inadequately treated wastewater is discharged into canals and arroyos (a creek or stream) that subsequently flow into the Rio Grande River or the Gulf of Mexico.²⁶⁸ Health care advocates blamed the lack of safe drinking water and wastewater disposal as the primary culprit for increased rates of Hepatitis, Anencephaly, Cholera, Tuberculosis, Encephalitis, and Diarrhea in Colonias.²⁶⁹

Accordingly, the law has played a primary role in the racial inequity of Colonias. Because Colonias emerged in unincorporated rural counties along the international border, county governments lacked many of the fundamental powers of land-use regulation in these areas.²⁷⁰ Rather than address the problems associated with unfettered growth, both county governments and state legislatures chose to ignore or only partially address the problems.²⁷¹ It was not until the late 1980s and early 1990s, however, that state governments recognized the crisis facing Colonias.²⁷² The Texas Legislature, for instance, created the Economically Distressed Area Program (EDAP) as a result of the problems associated with the explosion of

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.* For example, counties in Texas, until the early 1990s, did not have the power to pass and enforce ordinances, and had very little power over proposed development on unincorporated land. See Larson, *supra* note 251, at 198–99.

263. See *Colonias FAQs*, *supra* note 247.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. See Larson, *supra* note 251, at 198.

271. *Id.*

272. *Id.* at 201.

Colonias.²⁷³ Water is a primary indicator in the explicit definition of an economically distressed area.²⁷⁴ An economically distressed area is one “in which: (A) water supply or sewer services are inadequate to meet minimal needs of residential users”; and “(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs.”²⁷⁵ The EDAP provided funding for water and sewer services to economically distressed areas in exchange for the acceptance of certain regulatory structures.²⁷⁶ The legislation also provided for civil and criminal penalties for unscrupulous developers.²⁷⁷ Despite the regulatory promise of the EDAP, it exempted many Colonias, contained various loopholes, and was grossly underfunded.²⁷⁸

Additionally, as metropolitan density increases in counties with Colonias, the EDAP fails to account for the municipal underbounding problem,²⁷⁹ by which municipalities refuse to annex impoverished, minority, fringe communities.²⁸⁰ One theoretical response to the lack of regulatory authority is for a Colonia to come under the jurisdiction of an incorporated municipality, either through annexation, incorporation, or the chartering of a new municipality.²⁸¹ All the Colonia’s existing and new developments would then be subject to the land-use-regulation regime of the existing municipality, or new land-use regulations created by ordinance under the new municipality.²⁸² Colonias, however, are neither economically nor socially attractive prospects for municipal incorporation.²⁸³ The ad hoc nature of their water infrastructure (if any at all) requires large capital investments to bring their community in line with existing ordinances.²⁸⁴ Moreover, any

273. 1989 Tex. Sess. Law Serv. ch. 624, § 1.01(a) (West).

274. See TEX. GOV’T CODE ANN. § 775.001(2) (West, Westlaw through 2015 Reg. Sess.); see also TEX. WATER CODE ANN. § 17.921(1) (West, Westlaw through 2015 Reg. Sess.).

275. WATER § 17.921(1).

276. See David L. Hanna, *Third World Texas: NAFTA, State Law, and Environmental Problems Facing Texas Colonias*, 27 ST. MARY’S L.J. 871, 906–07 (1996). In 1993, the Texas Legislature granted counties the power to enforce subdivision rules as a precondition for receiving the state’s EDAP funding. *Id.* at 908. In 1995, an additional set of laws passed by the Texas Legislature gave counties the power to approve at the county commissioners’ court level whether or not new subdivisions meet certain platting requirements. *Id.* at 915–17. However, these requirements contained grandfather clauses. See Larson, *supra* note 251, at 201. In 1995, the legislature passed legislation requiring that any new subdivision in a severely economically distressed area and within fifty miles of the border comply with strict platting requirements. TEX. LOC. GOV’T CODE ANN. §§ 232.021–.023, 232.029 (West 1995).

277. LOC. GOV’T §§ 232.035–.036; see also Hanna, *supra* note 276, at 911–12.

278. See Hanna, *supra* note 276, at 878–79, 917.

279. Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1113–14 (2008) [hereinafter Anderson, *Cities Inside Out*]; Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 935, 938 (2010) [hereinafter Anderson, *Mapped Out*].

280. Anderson, *Cities Inside Out*, *supra* note 279, at 1113; Anderson, *Mapped Out*, *supra* note 279.

281. See Anderson, *Mapped Out*, *supra* note 279, at 984–92.

282. *Id.*

283. *Id.*

284. See *id.* at 936–37.

anticipated income or property tax benefits pale in comparison to the economic and social costs to a municipality for incorporating these undesirable lands and impoverished Latino residents.²⁸⁵ When not incorporated into a municipality, the county then governs Colonia residents, who are geographically isolated from the county seat and consequentially less able to politically assert themselves.²⁸⁶

Colonia residents, therefore, find themselves in a precarious position. On one hand, the lack of water regulation breeds inequitable health outcomes directly resulting from no access to safe drinking water or basic sanitation. On the other hand, regulations delivering water and wastewater disposal services to Colonia residents would price the poorest residents out of the market.²⁸⁷ Colonias exist to meet the affordable housing needs of poor Latinos living in border regions.²⁸⁸ Unfortunately, programs that offer assistance often have contribution requirements that Colonia residents simply cannot afford.²⁸⁹ Many promise to bring water and sewage lines to Colonias but require that households pay water and sewage tapping fees.²⁹⁰ Colonia residents, however, do not have the means to pay for cost-intensive improvements or additional monthly fees because they are extremely poor and lack equity under their contract for deed titles.²⁹¹

Colonias and anti-immigrant communities thus exist in direct reference to one another. While densely concentrated immigrant neighborhoods have aging or non-existent water infrastructure, other communities (comprised of citizens) are able to develop and deliver reliable and high quality water. As one recent study recently pointed out, “In the United States, more than 600,000 households, or approximately 1.5 million people, live without complete plumbing facilities. Many are homeless or belong to migrant or economically distressed populations.”²⁹² If the water crises in segregated communities such as Flint, Michigan have taught us anything, local water governance in these communities is anti-democratic, lacks accountability,

285. See Anderson, *Cities Inside Out*, *supra* note 279, at 1111–12.

286. *Id.* at 1098, 1113; Anderson, *Mapped Out*, *supra* note 279, at 937–39.

287. See *Colonias FAQs*, *supra* note 247.

288. *Id.*

289. *Id.*

290. *Id.*

291. See Hanna, *supra* note 276, at 897–908. The EDAP and NADBank programs have been criticized for requiring financial feasibility before bringing water to Colonias. For Texas legislative reports summarizing concerns regarding water and other infrastructure developments in Colonias, see COLONIA INITIATIVES PROGRAM, TEX. SEC’Y OF STATE, TRACKING THE PROGRESS OF STATE FUNDED PROJECTS THAT BENEFIT COLONIAS (2010), <http://www.sos.state.tx.us/border/forms/reports-11/sb-99-progress.pdf>; ROGER WILLIAMS, TEX. SEC’Y OF STATE, A REPORT RELATING TO THE COORDINATION OF COLONIA INITIATIVES AND SERVICES TO COLONIA RESIDENTS (Dec. 1, 2006), http://www.sos.state.tx.us/border/forms/sb1202_112106.pdf.

292. Wendy Jepson & Emily Vandewalle, *Household Water Insecurity in the Global North: A Study of Rural and Periurban Settlements on the Texas–Mexico Border*, 68 PROF. GEOGRAPHER 66 (2016) (internal citation omitted).

and makes the borders between citizenship, equality, opportunity, and health all the more profound.²⁹³

V. CONCLUSION

Today, there are over 42 million immigrants living in the United States.²⁹⁴ That number is projected to nearly double by 2065.²⁹⁵ Population worldwide is expected to increase 50% or more over these same years.²⁹⁶ The persistent tension between water supply and demand will only become more acute as groundwater continues to be mined; long-term droughts decrease surface water flows; and higher temperatures, decreases in snowpack, greater degrees of evapotranspiration, and more frequent droughts due to climate change compel people to move across international borders (and to the United States) in even greater numbers.²⁹⁷

Two trends are important to note as we may be entering a new era in water and immigration law and policy. First is the role of the war on terror. As Professor Rhett Larson speculated, “the tide of war and peace often turns on water.”²⁹⁸ Examining the conflict in Iraq and Syria against the Islamic State of Iraq and the Levant (ISIL), Professor Larson documents some of the ways in which this conflict is really a battle to control water, as seen in the battle to secure the Mosul Dam in Iraq.²⁹⁹ While ISIL seeks to consolidate political power by improving water services to residents in drought-ravaged regions, the larger conflict has precipitated massive migration out of the region. Though immigrants may “say they are pursuing peace or economic opportunities,” collectively, the push and pull factors of migration are rooted directly in “water security.”³⁰⁰ This reality, according to Professor Larson, leads to his conclusion that “if the U.S. desires to resolve its immigration crisis, it would do better to invest in the water security of its neighbors than in walls on its borders.”³⁰¹

293. See FLINT WATER ADVISORY TASK FORCE, *supra* note 213. For examples in communities with larger immigrant populations, see Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 CAL L. REV. 223 (2012).

294. Anna Brown & Renee Stepler, *Statistical Portrait of the Foreign-Born Population in the United States*, PEW RES. CTR. (Apr. 19, 2016), <http://www.pewhispanic.org/2016/04/19/statistical-portrait-of-the-foreign-born-population-in-the-united-states-key-charts/>.

295. D’Vera Cohn, *Future Immigration Will Change the Face of America by 2065*, PEW RES. CTR. (Oct. 5, 2015), <http://www.pewresearch.org/fact-tank/2015/10/05/future-immigration-will-change-the-face-of-america-by-2065/>.

296. SHARON B. MEGDAL ET AL., *WATER, PEOPLE, AND THE FUTURE: WATER AVAILABILITY FOR AGRICULTURE IN THE UNITED STATES 2* (2009).

297. *Id.*

298. Rhett B. Larson, *War and Water*, HUFFPOST POL. (Oct. 7, 2014), http://www.huffingtonpost.com/rhett-b-larson/war-and-water_b_5940892.html.

299. *Id.*

300. *Id.*

301. *Id.*

Thus, recent innovative legal and policy approaches to water scarcity, particularly in border regions, promise some recognition of water's connection (or lack thereof) to immigration. The November 20, 2012, Minute 319 agreement,³⁰² for example, which arose directly out of the 1944 treaty between the United States and Mexico over the allocation of the flow of the Colorado River,³⁰³ allowed the river to flow into Mexico for the first time in decades. As one study of this agreement observed, "Perhaps the most poignant moments of the pulse flow . . . occurred during a spontaneous, multi-week beach party in the Mexican town of San Luis Rio Colorado . . . complete with mariachi bands, dancing horses, carne asada cookouts, and children splashing in the water," as well as "the amazingly rapid, if fleeting return of birds, fish, beavers, otters, and other wildlife to the dry channel."³⁰⁴ In a region that had been dried up from water development on the U.S. side of the border and related agribusiness ventures in the Mexicali and Imperial Valleys for the last several decades,³⁰⁵ the return of water effectuated by Minute 319 promises greater security and stability for Mexicans hoping to live in, rather than move out of, the Colorado Delta.

A second and related development concerns the attribution of the contemporary water crisis to unfettered and unchecked immigration law and policy.³⁰⁶ The anti-immigration Federation for American Immigration Reform (FAIR), for instance, blamed "immigration-driven population growth" not only for water shortages but also for the decrease in water quality across the entire United States.³⁰⁷ Similarly, the self-described "Low-immigration, Pro-immigrant" Center for Immigration Studies³⁰⁸ details the "Great Tsunami of Immigration" threatening the United States' water supply, ecosystems, and very way of life.³⁰⁹ As a "fifth-generation

302. INT'L BOUNDARY & WATER COMM'N, MINUTE NO. 319: INTERIM INTERNATIONAL COOPERATIVE MEASURES IN THE COLORADO RIVER BASIN THROUGH 2017 AND EXTENSION OF MINUTE 318 COOPERATIVE MEASURES TO ADDRESS THE CONTINUED EFFECTS OF THE APRIL 2019 EARTHQUAKE IN THE MEXICALI VALLEY, BAJA CALIFORNIA (2012), http://www.ibwc.state.gov/Files/Minutes/Minute_319.pdf.

303. Treaty Respecting the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande, *supra* note 217.

304. Jonathan S. King, Peter W. Culp & Carlos de la Parra, *Getting to the Right Side of the River: Lessons for Binational Cooperation on the Road to Minute 319*, 18 U. DENV. WATER L. REV. 36, 112 (2014).

305. María Rosa García-Acevedo, *The Confluence of Water, Patterns of Settlement, and Constructions of the Border in the Imperial and Mexicali Valleys (1900 to 1999)*, in REFLECTIONS ON WATER: NEW APPROACHES TO TRANSBOUNDARY CONFLICTS AND COOPERATION 57, 58, 64 (Joachim Blatter & Helen Ingram eds., 2001); *see also* King, Culp & de la Parra, *supra* note 304, at 46–53, 68–72.

306. *See* sources cited *supra* note 1; *see also* Roque Planas, *Atlantic Editor Wonders if Maybe Immigration Has Something To Do with California's Water Crisis*, HUFFPOST LATINO VOICES (May 25, 2015), http://www.huffingtonpost.com/2015/05/22/david-frum-immigrants_n_7423206.html.

307. RUARK & GRAHAM, *supra* note 1.

308. CTR. FOR IMMIGRATION STUD., <http://cis.org/> (last visited Apr. 28, 2016).

309. KATHLEEN PARKER, CTR. FOR IMMIGRATION STUDIES, POPULATION, IMMIGRATION, AND THE DRYING OF THE AMERICAN SOUTHWEST 11 (2010), <http://cis.org/sites/cis.org/files/articles/2010/water.pdf>.

native” of the American Southwest most threatened by this Tsunami, Kathleen Parker, the author of the Center’s report, condemned immigration: “[W]ide-open spaces are rapidly disappearing. Mountain Valleys are filling with sprawl. Wildlife are . . . displaced from critical habitats to live almost as *refugees* on urban fringes or, particularly in the case of many aquatic species, perishing despite environmental laws meant to protect them.”³¹⁰

National sovereignty, water security, and environmental sustainability are merely the latest dialectic to muddy the waters at the confluence of water and immigration law and policy. Nonetheless, this new, potential era that we are entering seems to make explicit what has long remained unspoken and unseen for water planners and managers, not to mention immigrant rights activists and lawyers, for nearly a century and half. Indeed, as these two tumultuous rivers of law come crashing into one another, we must learn to navigate the resulting rapids by better understanding the interconnected hydraulics shaping the counters, flow, reach, and shared ecology of these two mighty bodies of law.

APPENDIX: A TIMELINE OF IMPORTANT MOMENTS IN WATER AND IMMIGRATION LAW AND POLICY

I. The Irrigation Era and the Need for a Docile Labor Supply

February 2, 1848

The Treaty of Guadalupe Hidalgo

- Mexico ceded to the United States what became California, New Mexico, Arizona, and parts of Utah, Nevada, Wyoming, and Colorado
- Recognized the Rio Grande as the southern boundary with the United States and Mexico

May 20, 1862

Homestead Act

- Encouraged migration to the arid American West by providing settlers 160 acres of fee simple title to public land in exchange for a small filing fee, five continuous years of residence, and putting that land into agricultural production

May 6, 1882

Chinese Exclusion Act

- Congress imposes exclusion of all Chinese laborers into the country
- Finally repealed by the Magnuson Act on Dec. 17, 1943

310. *Id.* at 13–14 (emphasis added).

December 1, 1882

Coffin v. Left Hand Ditch Co., 6 Colo. 443, 446 (1882)

- Colorado Supreme Court declared doctrine of prior appropriation has always been law since first American and European settlers arrived in the territory:
Houses have been built, and permanent improvements made; the soil has been cultivated, and thousands of acres have been rendered immensely valuable, with the understanding that appropriations of water would be protected. Deny the doctrine of priority or superiority of right by priority of appropriation, and a great part of the value of all this property is at once destroyed.

March 1, 1889

Convention of March 1, 1889

- Established the International Boundary Commission (IBC) to apply the rules of the 1884 Convention between the U.S. and Mexico
- Eventually modified by the Banco Convention of March 20, 1905, to retain the Rio Grande and Colorado River as the international boundary

May 22, 1899

United States v. Rio Grande Dam & Irrigation Co., 174 U.S. 690 (1899)

- The U.S. Supreme Court held that if any part of a river is used for transportation, then the entire stream—including its non-navigable tributaries—is subject to superior federal jurisdiction
- Justice Brewer's opinion was that "in the absence of specific authority from congress, a state cannot, by its legislation, destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far, at least, as may be necessary for the beneficial uses of the government property"

June 17, 1902

Reclamation Act of 1902, Pub. L. 57-161 (codified at 43 U.S.C. § 391)

- Funded irrigation projects for arid lands in 16 western states (not Texas because there were no federal lands there at the time)
- Newly irrigated land was sold, and the funds were used to create a revolving fund to fund more projects
- Expressed deference to state's right to regulate water

- July 1902: Secretary of the Interior (Ethan Allen Hitchcock), under the Act, created the U.S. Reclamation Service within the U.S. Geological Survey
- Feb. 25, 1905: a separate act extended program to a portion of Texas bordering the Rio Grande
- June 12, 1906: a separate act extended the program to the entire state of Texas
- 1907: the Reclamation Service became its own organization within the Department of Interior (Frederick Haynes Newell was appointed the first director)

May 21, 1906

Convention of May 21, 1906

- Provided for the distribution between the U.S. and Mexico of the waters of the Rio Grande in the international reach between El Paso–Juarez Valley and Fort Quitman, Texas

May 13, 1907

Kansas v. Colorado, 206 U.S. 46 (1907)

- Exercising its original jurisdiction in disputes between states, the U.S. Supreme Court introduced the concept of equitable apportionment as a means to resolve water disputes between states
- Though the Court held that Colorado's doctrine of prior appropriation and its support of irrigated agriculture damaged the normal riparian flow of the Arkansas River into southwestern Kansas, the material damages did not outweigh the economic gains rendered to Colorado in making irrigation available to numerous farmers and homesteaders

November 5, 1913

William Mulholland completes the Los Angeles Aqueduct

- 233 miles through mountains and desert to bring water to the growing city of Los Angeles
- Tapped the Owens River in the Sierra Nevada and transformed the Owens Valley into a watershed for what became one of the most populous cities in the nation

1913

California adopts the Alien Land Law

- Targeted the Japanese in the state by making it illegal for aliens who were ineligible for citizenship to own farmland or lease it for more than 3 years
- Woodrow Wilson objected, fearing its effect on foreign relations

July 28, 1914–November 11, 1918

World War I: “The Great War”

- The local labor force was called off to fight in The Great War and the demand for low-skilled labor increased, especially in the Southwest for agriculture
- U.S. declared war on Germany on April 6, 1917

February 3, 1917

Asiatic Barred Zone Act

- Excluded all people from the “barred Asiatic zone” from immigrating to the U.S.

June 10, 1920

Federal Water Power Act of 1920

- The federal government gave deference to states’ right to regulate water
- Effectively coordinated the development of hydroelectric projects in the U.S.

May 19, 1921

Emergency Quota Act

- Congress passed an emergency measure restricting immigration to three percent “of the number of foreign-born persons of such nationality resident” in the U.S. per year

November 24, 1922

Colorado River Compact

- Negotiated by the seven Colorado River Basin states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming)
- Upper and lower basins each have the right to develop and use 7.5 million acre-feet of river water annually

May 26, 1924

Johnson–Reed Immigration Act of 1924

- First origins of a quota system for immigration (identifies nation of origin as system for quotas)
- Excluded Mexico and Canada and considered them “white” under the quota system
- Created the Border Patrol

December 21, 1928

Boulder Canyon Project Act

- Authorized the construction of the Hoover Dam, the first major development of the Colorado River

August 4, 1939

Reclamation Project Act of 1939

- Gave the Department of Interior the authority to amend repayment contracts and extend repayment for no more than 40 years

December 19, 1939

Rio Grande River Compact

- By 1966, Colorado was in a deficit of over 1 million acre-feet and New Mexico owed Texas 500,000 acre-feet; New Mexico and Texas took the dispute to the Supreme Court
- In 1985, the Elephant Butte and Caballo Reservoirs were full from several wet years and, under the terms of the compact, Colorado let the reservoirs spill, which immediately cleared its water debt but left New Mexico out to dry with its debt to Texas

August 4, 1942

Bracero Program Started

- The United States concluded a temporary intergovernmental agreement for the use of Mexican agricultural labor on United States farms (officially referred to as the Mexican Farm Labor Program) as a result of labor shortages in low-paying agricultural jobs
- In 1951, Congress formalized the Bracero Program under Public Law 78

- From 1942 until its end in 1964, 4.6 million contracts were signed under the Bracero Program, with many individuals returning several times on different contracts, making it the largest U.S. contract labor program in the history of the United States

February 3, 1944

Mexican Water Treaty of February 3, 1944

- “Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande”
- Distributed the waters in the international segment of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico and allocated 1.5 million acre-feet to Mexico annually
 - Increased in years of surplus to 1.7 million acre-feet and reduced proportionately during years of extraordinary drought (silent about the quality of water to be delivered)
- Authorized construction and operation of dams on the main channel of the Rio Grande
- Changed the name of the IBC to the International Boundary and Water Commission (IBWC)

October 11, 1948

Upper Colorado River Basin Compact

- Divided the water apportioned to the Upper Basin states between the 5 states
 - Arizona was allocated 50,000 acre-feet per year. The remainder of the water was distributed by percentage
 - Colorado = 51.75%
 - New Mexico = 11.25%
 - Utah = 23%
 - Wyoming = 14%

II. The Metropolitan Revolution and the Rise of the Illegal Gardner

October 1939

City of Denver v. Sheriff, 96 P.2d 836 (Colo. 1939)

- Colorado Supreme Court articulated the growing and great cities doctrine that gave developing cities like the City and County of Denver conditional water rights as it developed the Moffat Tunnel System to divert water to the city from the Western Slope of the Continental Divide

December 13, 1954

City of Denver v. N. Colo. Water Conservancy Dist., 276 P.2d 992 (Colo. 1954)

- In examining all of the work that the City and County of Denver did to develop the Blue River Diversion Project, the Colorado Supreme Court articulated the type of work great and growing cities needed to undertake to prove “due diligence” in the perfection of a conditional water right

March 9, 1964

Arizona v. California, 376 U.S. 340 (1964)

- Lower-basin states failed to reach an agreement on how to apportion waters
- Court concluded that the Boulder Canyon Project Act provided its own method of allocating water. The first 7,500,000 acre-feet per year apportioned as follows:
 - Arizona = 2,800,000 acre-feet/year
 - California = 4,400,000 acre-feet/year
 - Nevada = 300,000 acre-feet/year
- Any excess above the 7,500,000 was to go 50/50 to California and Arizona
- Present perfected rights defined as those rights existing prior to June 25, 1929 (effective date of the Boulder Canyon Project Act)

October 3, 1965

Hart–Cellar Act of 1965

- Abolished the national origin quota system for immigration
- Replaced it with a system based on family relationships with current citizens and the immigrant’s skills

September 30, 1968

Colorado River Basin Project Act

- Authorized the Central Arizona Project (CAP)
 - 304(A): prohibits using CAP water for irrigating lands which have not been recently used for irrigation (meaning irrigation occurred sometime between Sept. 30, 1958 and Sept. 30, 1968)
- 301(b): Established the allocation of shortages on the Colorado River that were not established in *Arizona v. California*
- Declared that satisfaction of the Mexican Water Treaty of 1944 is a national obligation and therefore must be met before any other water augmentation project

August 30, 1973

Minute No. 242: Salinity Control Treaty (Nixon & Echeverria)

- Echeverria threatened to take the U.S. to the World Court at the Hague
- Countries agreed that delivery must meet average salinity of 115 ppm \pm 30 ppm over the annual average salinity of the Colorado River at Imperial Dam diverted for irrigation within the U.S.
 - 1974: Colorado River Basin Salinity Control Act (Pub. L. 93-320)

October 12, 1982

Reclamation Reform Act of 1982, Pub. L. 97-293

- Enacted in response to lawsuit against the federal government in the 1970s alleging improper acreage limitation administration
- Raised the acreage limits on lands with irrigation from Bureau projects

August 14, 1983

La Paz Agreement

- Treaty between the U.S. and Mexico
- Established working groups for addressing environmental transboundary issues like water quality, air quality, natural resources, and solid/hazardous waste

November 6, 1986

Immigration Reform Act of 1986

- Provided two amnesty program for unauthorized persons, resulting in more than 3 million undocumented people being granted amnesty

November 29, 1990

Immigration Act of 1990

- Modified and expanded the 1965 Act, increasing the total level of immigration to 700,000
- Provided for the admission of immigrants from “underrepresented countries” to increase the diversity of immigrant flow

January 12, 1992

Ley de Aguas Nacionales (LAN)

- Marked the beginning of the decentralization of water law in Mexico

- Divided management of national waters by basin and created the Comision Nacional del Agua (CNA), which regulates water at the national level within CONAGUA

November 1993

North American Development Bank (NADB) & Border Environmental Cooperation Commission (BECC) created

- Created to address environmental issues in the US–Mexico border region

January 1, 1994

North American Free Trade Agreement (NAFTA)

- Goal was to eliminate barriers to trade and investment between the U.S., Canada, and Mexico
- Immediately eliminated tariffs on more than half of Mexico's exports to the U.S. and more than one-third of U.S. exports to Mexico (within 10–15 years, all tariffs were eliminated)
- Led to exponential growth of maquiladoras, which are factories in Mexico that take raw materials for production and export them to assembly plants in the adjoining U.S. city

September 30, 1996

Illegal Immigration Reform and Immigrant Responsibility Act

III. The Great Local Thirst for Proper Documentation

June 17, 1999

Colonia Initiatives Program

- Texas Legislature passed and Governor George W. Bush signed a bill to advance efforts to get colonia residents' homes connected to water and wastewater services more expediently
- The Office of the Secretary of State hired a Director of Colonia Initiatives to work in Austin and supervise six Colonia Ombudspersons to work in border counties with the highest colonia populations: Hidalgo, El Paso, Starr, Webb, Cameron and Maverick counties
- The coordinators serve as advocates among border colonia residents, state agencies, local governments, and utility companies to ensure residents are connected to water and wastewater services in the most efficient and timely manner possible

November 25, 2002

Homeland Security Act

- Effectuated the massive reorganization of immigration functions in the United States under the newly formed Department of Homeland Security in direct response to fears of terrorism

April 9, 2004

Ley de Aguas Nacionales Revised

- The national water law of Mexico, first formulated in 1992, creates basin councils to represent the interests of federal, state, and municipal government as well as at least 50% of water users and NGO's of a particular basin
- The 1992 National Water Law decentralized water system management from the federal to state and local level, opening the door to privatization of water utilities

August 15, 2006

Hazleton Anti-Immigration Ordinance

- Hazleton enacted—and amended—a series of ordinances designed to make it more difficult for unauthorized immigrants to live and work in the city
- The ordinances required anyone renting housing to obtain an occupancy permit for which only those lawfully present in the United States were eligible. The ordinances also prohibited landlords from renting to unauthorized immigrants and city businesses from hiring them

April 2010

SB 1070 and HB 2162—Support Our Law Enforcement and Safe Neighborhoods Act

- Arizona added new state crimes and penalties related to enforcement of immigration laws
- Provisions adding state penalties relating to immigration law enforcement included trespassing, harboring and transporting illegal immigrants, alien registration documents, employer sanctions, and human smuggling

February 8, 2012

Amendment to Article 12 of Mexican Constitution

- Provides that every person in Mexico is entitled to affordable, accessible, and safe water in sufficient amounts for domestic uses

November 20, 2012

Minute 319 Agreement

- Arises out of the 1944 Treaty Between the United States and Mexico Over the Colorado, Tijuana, and Rio Grande Rivers
- The minute encompasses a series of five-year pilot agreements, operational measures, and cooperative projects designed to deliver more water into Mexico

