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Checkerboarding the Desert: Land in California's East Mojave

By

Julia M. H. Sizek

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Anthropology

in the

Graduate Division

of the

University of California, Berkeley

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Abstract

Checkerboarding the Desert: Land in California's East Mojave

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Doctor of Philosophy in Anthropology

University of California, Berkeley

Donald S. Moore, Chair

Checkerboarding the Desert is an ethnography of the landownership checkerboard, the spatial technology that defines California's East Mojave Desert. It elaborates the politics of land through examining contemporary projects of environmental conservation and cultural and historic preservation in eastern San Bernardino County. By pointing to the desert's checkerboarding, I examine the legal, financial, and cultural processes that make and unmake land into alternately owned, non-contiguous one-mile by one-mile sections. Drawing on more than two and a half years of fieldwork with the Native American Land Conservancy, the Mojave Desert Land Trust, and others involved in contemporary land management in the desert, the study tracks how this checkerboard and its property lines matter.

I argue that the American Dream and its concomitant idea of property failed in the California desert, where a large grant of checkerboarded lands to the transcontinental railroad was intended to promote settlement and profit through sale. The checkerboard was conceived as a project of American Empire that was supposed to erase its tracks as it transformed the desert into a landscape of private property and picket fences. But the checkerboard remained unsold; it persisted for more than a century, even as few marks of the checkerboard appeared on the ground. The mismatch between its lived reality and legal persistence enabled the continued presence of Chemehuevis and Mojaves on its lands, and for the later repossession of Mamápukaib by the Native American Land Conservancy. The checkerboard became the enemy of conservationists and land managers in the late twentieth century as it enabled extraction and destruction in a landscape that some considered a wasteland without value. This study takes the checkerboard as a starting point to understand the East Mojave not only as a wasteland where development failed, but rather as a gameboard that sets the conditions of contemporary environmentalism and historical preservation efforts. Through examining contemporary efforts to save the desert from development, extraction, and the desecration of sacred sites, I examine the complex relationships between Native American peoples and settler society. In so doing, this dissertation aims to contribute to scholarship on the intersections of Native American Studies and settler society, the legal and financial aspects of contemporary environmentalism, and the politics of land in the rural United States.

To the peoples and places of the California desert

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List of Abbreviations

APA	Administrative Procedure Act
ARPA	Archaeological Resources Protection Act
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CBD	Center for Biological Diversity
CDCA	California Desert Conservation Area
CDPA	California Desert Protection Act of 1994
CEQA	California Environmental Quality Act
CRIT	Colorado River Indian Tribes
DRECP	Desert Renewable Energy Conservation Plan
EMNSA	East Mojave National Scenic Area
FLPMA	Federal Land Policy and Management Act of 1976
LWCF	Land and Water Conservation Fund
MDLT	Mojave Desert Land Trust
MNP	Mojave National Preserve
NAGPRA	Native American Graves Protection and Repatriation Act
NALC	Native American Land Conservancy
NEPA	National Environmental Policy Act
NPS	National Park Service
SEC	Security and Exchange Commission
STA	Small Tracts Act of 1938
TWC	The Wildlands Conservancy
UUD	Unnecessary and Undue Degradation
WEMO	West Mojave Route Network Project

Acknowledgments

On my first morning in the California desert, I hopped over the pedestrian gate to escape the gated community of my rental to run toward the mountains.¹ I had to turn around when I realized that the mountains were too far for me to reach that morning. I was tricked by the valley's long, flat bottom, and the few obstacles between me and the mountains. Years later, I'd see my mistake written about in a book published more than one hundred years earlier: "Who of the desert has not spent his day riding at a mountain and not even reaching its base?" (J.C. Van Dyke 1920[1901], 2). Though later historians would question whether John C. Van Dyke ever made this fateful ride toward the mountains (Wild and Carmony 1993), he was right about the desert's deceptions and draw, part of what kept me coming back to the desert—even during the summers—since 2012.

But the bigger reason why I kept returning to the desert was the Native American Land Conservancy and Mamápukaib. I am indebted to Theresa and Dean Mike for many lunches and conversations that began in 2012. Michael Madrigal, Sean Milanovich, Robert Paull, and Nicole Johnson were particularly helpful during my time at NALC, but all of the NALC board members have been extraordinarily gracious and kind to the impatient person who arrived in their office ten years ago. Matthew Leivas has graciously led me around the Chemehuevi Reservation and the desert. I must also thank the University of Chicago's Human Rights Center, who ensured that NALC did not have to pay for my labor through granting me a summer fellowship and the Dr. Aizik Wolf Post-Baccalaureate fellowship.

While conducting fieldwork, I accrued an incredible number of debts to those who allowed me to trail them in the office, listen to their conference calls, ride in their cars, monitor their lands, and poke around the desert with them. Thanks go to the Wildlands Conservancy, California Desert Monuments Partnership (CAMP) members, and federal employees at the Mojave National Preserve and BLM field offices. Sierra Club CA/NV Wilderness Meetings provided me with much needed insight and history into how California desert environmentalism has changed, as did backpacking trips with wizened Desert Survivors. Frazier Haney and the land acquisition staff at MDLT taught me much of what I know about vacant land transfers, but any mistake in the text is mine. The Sweeney Granite Mountains Desert Research Center offered a jumping-off point for me to conduct more East Mojave research, and James André and Tasha La Doux welcomed a social scientist into their midst.

Archivists and local historians have informed my understanding of the desert far beyond the pages of this dissertation. Charles and Priscilla Porter, who I met through my work at the Coachella Valley History Museum, adopted me during summers as my desert aunt and uncle, and graciously hosted me in Sun City for several summers. Other volunteers at the Coachella Valley History Museum helped me learn to see like an archivist, the Marilyns at the Twentynine Palms Historical Society helped me learn about desert glass on Wednesday mornings, and the Southern Methodist University Archives granted me the Ruth P. Morgan Fellowship to further investigate the papers of Isabel Kelly. The Old Spanish Trail Association granted me funds to attend their conference in 2017 and introduced me to historians who showed me their favorite places. Additionally, I consulted the collections at the Bancroft Library, California State Railroad Museum Library and Archives, the Huntington Library, Mojave Desert Heritage and Cultural Association, the National Archives and Records Administration at Riverside, the Public Lands Foundation, San Bernardino County Historical Archives, the San Bernardino Public Library California Room, the

¹ My landlady had lost the key "years ago," and never bothered to replace it. As a result, to leave the housing complex, I had to hop the fence, though I could re-enter through impersonating a car.

Sweeney Granite Mountains Desert Research Center, and the Wildlands Conservancy.

Much of a dissertation lands on the cutting room floor, and I have been fortunate to place some of my research findings elsewhere. I would like to thank Kim Stringfellow, whose *Mojave Project* published several of my meandering histories of Mary Beal, Willie Boy, and the Cadiz Project. Others, including the *Cultural Anthropology* website, *Engagement*, and *Edge Effects*, have offered avenues for me to conceptualize my research. Other public-facing writing has allowed me to reconsider scholarship, and I am grateful for Social Science Matrix and Mesa Refuge for enabling my experiments. My fieldwork and research was supported by a National Science Foundation Doctoral Dissertation Research Improvement Grant, the NSF Graduate Research Fellowship Program, a Wenner-Gren Dissertation Fieldwork Grant, a UC Natural Reserve System Mildred E. Mathias Graduate Research Grant. A version of Chapter 7, “Zombie Infrastructure,” was previously published in *Environment and Planning D: Society and Space*.

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In the writing process prior to the pandemic, I was lucky to have many comrades at freezer-scone-fueled writing sessions. My colleagues in the Don writing group have been my closest readers: Zahra Hayat, Brittany Meché, Meredith Alberta Palmer, Jen Rose Smith, and Erin Torkelson all deserve special prizes for their comments and re-reads. Additional feedback from Soni Grant, Xander Lenc, and Paul Burow have reshaped chapters of this work.

Friends and mentors have shaped my understanding of what makes for generous and informed scholarship. Beth Rose Middleton has inspired me through our collaborative work on sacred lands protection in California. Alida Cantor, Kelly Kay, Sayd Randle and other colleagues in geography have helped me find a community. Caroline Tracey has been one of my sharpest editors and friends. Wolfgang Alders, Juliana Friend, and Max Waterman have been my cohort Townies. Brittany Birberick has been an able walking buddy during the pandemic.

Dissertations remain unwritten without friendship and copious amounts of exercise. I owe thanks to my Strawberry Canyon Track Club teammates, especially Megan Gentes, Megan Lang, and Kim Sanchez. The Friday morning aquajogging club, fueled for many years by David Kessler’s sandwiches, buoyed my spirits. UCXC alumni Isaac Dalke and Gregor Siegmund have graciously remained my friends even after one too many tales of dirt bikes. Laura McFadden has shared my love of trains, and Evan Darling has reminded me to go outside and eat more Cheeseboard.

My family has supported me despite the fact that I am the only relative living west of the Mississippi. My parents, Jacquie and Howard, encouraged me to fulfill my five-year-old self’s prophecy that I would attend Berkeley. Phil was a most capable research assistant during his time in the desert with me, and Herbert’s calls accompanied my desert walks.

The desert, the most wonderful place on earth, has been a research and writing companion for nearly ten years as of this writing. Every day, I miss its silence and smells, and even the chollas. Despite my critiques in this text, my fullest admiration and support goes to those who have dedicated their time to protect the desert’s peoples, histories, plants, and animals. It is their efforts that matter.

Introduction: Mapping the Checkerboard

We mulled over the location of the property line as we sat in the shade of the tarp jerryrigged to Jeff's truck. The Grateful Dead played on the satellite radio and the pot of ephedra tea, collected from nearby plants, became oversteeped. The line on the land, we knew, would have formal implications for what we had seen while walking that morning.

Before the sun got too high and too hot to continue walking, we had walked along the edges of some of the four sections that constituted the property that belonged to the Native American Land Conservancy (NALC), a nonprofit that was his employer and my research collaborator and whose mission is to acquire, preserve, and protect sacred lands. Thus far, they've focused on the California desert. Our goal was to look at some cultural and historical sites—both from the late 1800s and from before—to determine where they fell among the property lines of what NALC owned. As we walked, we used landmarks rather than maps as our guides. We found places like Sunflower Springs, a spring that was rumored to have been called “Azalea” before it became “some flower” and finally “Sunflower.” The contingencies of this history seemed both obvious and funny to us, and we joked about it as we wore our silly sunhats and long-sleeves. Without sun protection, Jeff would burn worse than I did, and he joked about his near-constant sunburn and penchant for green clothing by calling himself an Irish leprechaun, referencing both his heritage and his pale skin.

Though we attempted to walk inside the boundaries of each of the non-contiguous sections, no fences or monuments marked the boundaries, and the only other regular occupants—cows—didn't pay attention to the invisible section lines that demarcated what was owned by the federal government and what was owned by NALC. Like the roads and ancient trails that also passed through federal and NALC-owned lands, the cow trails ignored the property lines that Jeff and I discussed. The lines seemed to matter only for bureaucrats and their permits, and for what Jeff could do officially as site steward for NALC's Old Woman Mountains Preserve, Mamápukaib.

Jeff chose the language of site steward to describe his role because site monitor, the preferred language of his co-worker Tom, seemed too passive. Even when we sat below the tarp in the afternoon, Jeff was not sitting as much as waiting to be in motion. The day before, he had shown me the results of his labor, ideas sprung from musings that had come both from NALC and his own ideas about how to restore the land. During his time working for NALC, Jeff had made a short nature trail on the property, lining the half mile with rocks he had collected. In the track of an old road, Jeff planted vertical mulch, placing dead branches into the ground as if they were living plants. The mulch was there to try to make the road disappear, hiding the imprints from trucks and tanks that traversed the landscape in the mid-twentieth century. Around their bases, he shaped small circular berms that cradled seeds and collected water, with the hope that they would live again.

Despite Jeff's efforts to restore the desert, it was slow to heal from the old scars. The desert retains history, so one could find trails from thousands of years ago if you knew how to look and the light was right. From our spot on the western edge of the Ward Valley, we could see the histories we knew—Ground Zero, the site of protests against the proposed Ward Valley nuclear waste storage project, the high tension powerlines that connected Colorado River hydroelectric projects to provide energy from the desert to the California coast, the railroad line that made the desert into the checkerboarded sections that NALC purchased—but we couldn't really imagine the right angles of property lines as they traversed the valley toward the Chemehuevi Mountains, the last range between us and the Chemehuevi Reservation, where Jeff and I had met the day before we drove the twenty-odd miles of dirt roads to Mamápukaib.

This was an ordinary day in the California desert, one in which the histories of the desert seemed to seep out of the formal and invisible property lines that rendered the desert into neat sections of 640 acres. The sites that could be on either side of the property line was a reminder that property lines failed at representing how people lived in the desert, but Jeff and I knew the implications that they would have for the official archaeological surveys NALC might conduct. In other ways, the sections came to rule understandings of the desert: for decades, NALC has used section numbers to refer to the noncontiguous checkerboarded sections that they owned in the California desert. The property lines mattered so much, even as they seemed both invisible and irrelevant when we walked through the desert.

This dissertation asks how these property lines matter. I ask this question in the context of a place where property seems to be, in some ways, unobtrusive and inconspicuous. The California desert is a place where almost no property lines exist on the ground and the slipperiness of boundaries mean that it is hard to feel confident when adjudicating an exact boundary, even with the modern-day aid of GPS. Maps don't reflect the realities on the ground. For many years, this mismatch seemed not to matter. The desert was simply beyond the ideas of land-as-property that worked elsewhere, and served as a contrast to urban life where property mattered. In contrast to these important, propertied landscapes, the desert became a wasteland or a national sacrifice zone, an area that could be freely used for extraction for the benefit of the California coast, and a site where pollution has no consequences.

I argue that these cultural ideas about the desert and how it works—the desert as a wasteland without history, the desert as a place rich in Native American history, the desert as a unique and fragile ecology that should be protected rather than destroyed—are intimately related to the property regimes that seem to simultaneously matter so much legally yet seem to matter so little on the ground. These ideas, I argue, are related to a settler scheme for the desert that never came to fruition, a checkerboard of private ownership in which land as property would reflect a new settler society. The failure of settlement left space for continued lifeways of Chemehuevis, Mojaves, Serranos, and Cahuillas in the California desert even as ownership changed. One hundred years later, the Native American Land Conservancy bought back Native lands, and Jeff and I could walk on the parcel, still unsure as to where the lines were. That is, even today, the property lines both matter and don't matter. I argue that paying attention to them reveals the broader expectations of a settler society in the United States as they show the way that property is not working.

How Land As Property is Supposed to Work

Land never seems to fit easily into a system of capitalist relations, and cannot be collapsed into capitalist commodity or colonial property (Goeman 2015). Terms like “fictitious capital” (Marx 1981 [1894]; Harvey 1982) or “fictitious commodity” (Polanyi 2001 [1944]) highlight how land is at the limit of capitalist trade and accumulation. To become a commodity, land would have to become universally exchangeable and measureable. Glossed by Lefebvre (1991) as abstract space, land would become something homogenous, a landscape of squares that could be compared with rectangles. However, land seems to be a poor commodity, as it can't be rolled up and taken elsewhere (T. Li 2014b). This limit on lands' transferability had led theorists to consider land a fictitious commodity, and perhaps even argue that land regulates what the commodity can become rather than the other way around (Prudham 2005). In other ways, land is a poor place to try to generate value, and thus a form of fictitious capital (Teresa 2015). Despite contemporary questioning of whether it is useful to call land “fictitious” (Christophers 2016), the fact remains that land has become a central means of making money even as it fails to easily fit in capitalist relations. That is, land—though not quite a commodity—becomes a means to make money into more money, a cog

in the metaphorical machine of capital.

The problem of land as a commodity highlights how relationships between people become expressed through the relationships between things. When labor becomes congealed into an object that can be sold as if it has no relationship to the worker whose labor produced it, workers are dispossessed of their labor. By bringing land into a discussion often only about labor and capital, the question is how far the parallels between land and labor—two-thirds of Marx’s (1981 [1894]) “Trinity Formula,” along with capital—might extend. Both the sale of commodities and of land imply a relation of dispossession. For the commodity producer or laborer, this is the way that their labor is exploited to produce exchange-value for someone else. In the language of land as property, the relationship of dispossession often told through the loss of common property and the emergence of private property through the story of the English enclosure movement. Enclosure, as a historical moment and as a metaphor for describing the emergence of private property, is a story told to argue that lands were once communal, but later became private property belonging to individuals. That is, the emergence of property is the emergence of “an *exclusive* individual right, my right to exclude you from some use or benefit of something” (Macpherson 1978, 2). This indicates a clear social relationship—perhaps that “good fences make good neighbors” (Frost 1914)—but also that to mark land as property is to exclude.

Even the language of enclosure points toward the failure of property to encompass land, a much more capacious concept. As Tonawanda Seneca scholar Mishuana Goeman (2015, 72) notes, to make land into property “perpetuates the logic of containment.”¹ That is, to make something as multiple and meaningful as land into a piece of property is violently reductive, ignoring the myriad relations between people and land. Rendering land into property also makes land exchangeable: Money becomes equivalent to land, a story whose violence I examine in relation to the Indian Claims Commission, a Congressional effort to end Native American claims to land in the mid-twentieth century.²

While enclosure fails to capture lived experience with land, it does highlight the relationship between land and dispossession; that is, how private property require taking land away from someone else. These forms of dispossession have been given many names: whether primitive or originary accumulation (Marx 1976 [1867]), accumulation by dispossession (Harvey 2009), or land grabbing (Hall 2013; Lee and Ahtone 2020), these concepts all explain how attempts to take land are not only about taking an object, but is a way of changing relationships among people and relationships between people and the land. That is, land as property is not only a thing or a bundle of rights, but rather indicative of profoundly unjust and unequal relationships among people (Macpherson 1978, 2, 4). As in Marx’s (1976 [1867]) analysis of the commodity, landed property bundles a set of relationships and lived experiences into something that can be exchanged as if they are unrelated to the social relations that underpin them.

The proliferation of phrases to denote dispossession of land points to the many forms of enclosure and dispossession that shape land ownership over time, but also points to their similarity. Marx famously argued that the distinction between the transition from feudalism to capitalism is not that dissimilar from that of colonization. He argues that, in colonization, prices for land are made high enough to ensure that ordinary wage-workers can’t afford it (1976 [1867], 939). In other words, the system of primitive accumulation applies equally to colonization and to the transition from feudalism to capitalism. For him, the New World’s colonization reveals “the secret” of capitalism in the Old World (940).

1 See discussion of containment in Simpson 2014.

2 A note on nomenclature: I use the terms Indian, Native American, and Indigenous somewhat interchangeably, following from my interlocutors.

With regard to primitive accumulation, the New World is the Old World, but more so. With its own originary tale told by John Locke (1980 [1690], 30), the New World seems to be an Edenic wilderness: “in the beginning, all the World was America, and more so than that is now; for no such thing as money was anywhere known.” Locke’s story is not only a Biblical tale of wilderness as a place of suffering and personal growth (see Nash 2014, 14, 17), but a distinctly economic wilderness, a place without money or easily legible forms of improvement (Oelschlaeger 1991, 75). Ignoring forms of Native American money and exchange,³ Locke presents America as an untamed frontier. Later Locke’s story becomes recognizable as frontier narrative, in which the American psyche becomes distinctive through taming the American wilderness and its peoples (Turner 2010 [1893]). More broadly, the surplus of land became a central characteristic of America: Thomas Jefferson (2006 [1781], 94) argued that America was marked by a shortage of labor and abundance of land. These surfeit of American lands are either assumed vacant, taken by conquest, or even purchased.⁴ They were made into American—and not Indian—lands through labor: “Those who labor in the earth are the chosen people of God,” Jefferson wrote (175). The “chosen people of God,” perhaps unsurprisingly, are white. As Haudenosaunee scholar Meredith Alberta Palmer (2020, 796) argues in her close analysis of Jefferson’s land theories, “improving the *land* became a metonym for a racial project carried out by a population of ‘improved’ *people*.” That is, a particular kind of white labor was what was needed to distinguish improved lands from the wild lands of America. Agriculture, house-building and fence-construction were what marked possession across British colonies (Seed 1995, 17; Cronon 1983, 130; Moreton-Robinson 2007). These forms of marking ownership were a component of the Jeffersonian Dream and the American dream (Gates 1996): that settling on a (free or cheap) plot of land will give settlers the opportunity to produce agricultural commodities for the market and support themselves. That is, if you have your own plot of land, somewhere, you will be able to become a proper citizen.

This dissertation concerns the afterlives of this American dream in a place and time in which it no longer seems to make sense. In many ways, the American dream never made sense in the vast California desert, an ecology that could not accommodate the agrarian aspects of the Jeffersonian dream without massive irrigation projects. But the measures and lines that gridded the more humid climates of the east were also applied to the desert West, with the idea that the desert might bloom into a democratic society too. The California desert checkerboard was made not only through a Jeffersonian plan for settlement, but through a plan that worked against Jefferson’s anti-aristocratic goals: the gift of every other section to the railroad, what became the checkerboarded desert.

The Checkerboarded Desert

The checkerboard was the spatial form of the Jeffersonian Dream. Emerging from the cadastral map, the checkerboard is a spatial technology meant to order the landscape and its people, aiming to create a white and democratic society through agrarian small-holding. In contrast to the cadastral map that imposes the grid and precedes it, the checkerboard centers the question of non-contiguous land ownership within cadastral ordeings, and implies that each section—owned by different individuals—can be easily distinguished.

The checkerboard is overlaid on top of the cadastral map. Based on the Saxon measurements of rods and chains to form the measurements for the Anglo-Saxon acre,

3 Historians and archaeologists have consistently disproven the idea that the idea of money was never known in America, though examining shell bead money in California, for example (King 1976, Gamble 2020).

4 “That the lands of this country were taken from them [Native Americans] by conquest, is not so general a truth as is supposed. I find in our historians and records, repeated proofs of purchase...” (Jefferson 2006 [1781], 101).

cadastral measures already encoded race into its formation (Horsman 1981). In the Public Lands Survey System, or township-range, formation that was first implemented in the Northwest Territory (present-day Ohio), each township measured six miles by six miles, broken into thirty-six square sections (Hildegard B. Johnson 1976). Each section, a mile square or 640 acres, could also be subdivided into parts—160 acres in each of the northwest, northeast, southeast, and southwest corners.

The cadastral map and the checkerboard depends on a view from above, even if such views were impossible—for lack of airplanes—at the moment when the landscape was broken into the grid (Hildegard Binder Johnson 1976, 143). The map is a God-trick and a way to order the landscape, not a set of situated and embodied practices made through being on the land (Haraway 1988; Rose 1997). In contrast to the early surveys that found desert mountains to be impassible (Greene 1856), the cadastral plan imposed order onto the landscape, creating abstract space that appeared to be homogeneous and empty (Lefebvre 1991). The cartographic trick of the cadastral map anticipates its eventual purpose to split the landscape into checkerboarded holdings.

The cadastral plan imposed order on the landscape, but it also tried to render the landscape into a certain kind of settler space through smallholder agriculture. Thomas Jefferson, arguably the key figure in implementing land survey principles in the United States, wanted to make the landscape into an “Anglo-Saxon dream” that began with ordering the land (Horsman 1981, 22; Palmer 2020, 798). Mapping the landscape claimed to represent facts on the ground as they made the same facts into reality (Harley 1989; Pickles 2003). The map itself created the idea of order, envisioning the landscape as it predicted its future (Scott 1998). I argue that the relationship between the checkerboard represented a vision of the landscape in transition, a transit teleology that predicted a landscape of small private properties.

The Jeffersonian Dream was one of individual smallholders who would each work the land as their own private property. Jefferson’s ideas underlaid the later Homestead Act of 1862, which granted quarter-sections of 160 acres to eligible heads of families (Hildegard B. Johnson 1976). Cheap land would subsidize each smallholder, who would farm their land in order to make profits off of their own labor. This would create a geography of a certain type—the checkerboard—in order to bring into being a new social order that differentiated America from Europe. Key to Jefferson’s (2006 [1781]) vision was the small scale of production, that each man would only have enough land that he and his family could work, and that such connections between people and land would prevent the problems of wage-labor in cities and the problems of life among the masses.

But Jefferson’s project was not an idyll of egalitarian agrarian life: small landowning was to be a norm, but only for some. Jefferson, a slaveowner himself, thought of landowning as only available to a certain kind of person who could improve themselves through improving the land. Explicitly excluded from these possibilities for improvement were Black people—both enslaved and not—and Indians (Collier 1992; Palmer 2020, 804). Because landownership was a prerequisite for other rights of citizenship and voting, Black people and Indians were excluded from the rights of citizenship. In other words, to own landed property was a marker of being or becoming white—and American (Harris 1993).

Shaping people through land was not only the foundation of American land, but its consistent theme. One hundred years later, a new checkerboard landscape of ownership would be created in order to try to make Indians into white people. The General Allotment Act, also known as the Dawes Act, was intended to break up communally-held Native American reservations and assimilate tribes into the white American public through giving individual tribal members alienable lands (Prucha 1995, 667-668). Individual landholdings

were supposed to encourage Indians to think as individuals rather than collectives. Breaking up collectively-held reservations, individualized allotments were supposed to motivate Indians to work to maintain their private property (659).

Further, private landholding was expected to complete a process that anthropologists diagnosed: Indians were losing their culture. Early anthropologists explicitly stated that they thought Indians were no longer culturally whole, as they asked their informants to tell of their “grandfathers’ time” (Kroeber 1925, 338). Like the status of tribal lands under the Dawes Act, Native American cultures were assumed to be fractionated pieces of a whole that then only persisted in remnants. Surrounded by white cultures and white lands, Native peoples were considered survivals, in the words of E.B. Tylor (1924 [1871]), “processes, customs, opinions, and so forth, which have been carried on by force of habit into a new state of society different from that in which they had their original home.” The Tylorian idea of the survival highlighted that Native people were supposed to disappear under American empire, and justified breaking up reservations and taking Native lands.

However, new landownership did not necessarily change the relationship between people and land. Rather, the new legal system encountered existing social relations and practices and interacted with them, what Donald Moore (2005) describes as entangled landscapes. In the desert, the entanglements were the Indigenous—and specifically Chemehuevi—relationships to the landscape. Trails, villages, and sacred sites dot the desert landscape, and the new checkerboard was overlaid on top of these existing relationships rather than eliminating these relationships entirely. In the majority of the unsettled checkerboard, legal ownership existed uneasily alongside the lived realities that questioned its success. The mismatch between lived realities of Chemehuevi and Mojave life in the California desert and the cartographic representation of ownership revealed how the cartographic project was an anxious projection onto the landscape, not an accurate representation.⁵ The mapping project named the desert and attempted to integrate it into the American empire (Carter 1988; Gregory 1994, 171-172).

Just as Jefferson’s imagined cadastral map could not be implemented in a vacuum of abstract space, the plans of the cadastral survey and checkerboard created a landscape of settlement also failed to be reflected on the ground. It is for this reason that I often refer to the process of checkerboarding or the desert as checkerboarded, as the intentionally awkward language refers to how the checkerboard is produced, contested, and in flux. The strange gerund of checkerboarding reveals the infelicitous relationship between map and reality. The checkerboard was a project to create a “correspondence between actuality and record” (Sayre 2002, 177) as much as it was an “imagined geography” (Biolsi 2005). Yet, as “mere surveyor’s lines, over which people may walk back and forth without any consciousness of their presence,” as Abraham Lincoln once put it (q. in Hildegard Binder Johnson 1976, 127), the boundary lines appeared not to matter, as Hildegard Binder Johnson writes, “unless one is, perchance, a student of geography” (127).

The inconsequential nature of surveyed lines seemed particularly to be the case in the California desert, where the pattern of checkerboarded ownership appeared to only be on maps, rather than in reality. The pattern of checkerboarded ownership alternated between federal government and the railroad: If each landowner were given their own color, would reveal a distinctive checkerboard pattern on a map.⁶ Lasting from the late nineteenth century through the late twentieth century, the checkerboard was a defining feature of the California desert during my fieldwork, convenient for some and a nemesis for others. What made the

5 See discussion of Gregory 1994, 60-72. See also King 2019, 86.

6 This is also how the checkerboard appears in parts of the Navajo Nation’s reservation (Barry and Wood 1978; Grant 2018).

checkerboard so important, then, was its unbroken pattern⁷ and persistence.

The persistence of the railroad checkerboard in the California desert was unusual because it was designed to disappear. As part of the broader program of encouraging colonization in the American West, the land grants were considered a means to an end for both for the railroad and for the federal government. At the time land rich and cash poor, the federal government opted to give free land to the railroad rather than other financial incentives. And indeed, inasmuch as land grants are mentioned today, it is in this sense: a financial tool of empire, destined to disappear as colonizers bought the land from the railroad. For the railroad, the checkerboarded lands were supposed to be means to an end of profit. As the lands were not contiguous—they only touched at the corners—they were hard to develop collectively. The best way to return profits on the lands was to sell, and, for the most part, the railroads did. As a result, in most places, the checkerboard's traces were only found in historian's records. In the mid-twentieth century, historians examined land grants as a means to understand the link between land ownership, corporate power, and colonization (Gates 1954, 1966; Decker 1964; Henry 1945; McAfee 1968; McAllister 1939). These studies showed just how successful the railroad brought together capitalism and empire through land, even as they placed the checkerboard solidly in the past.

In the California desert, however, the checkerboard persisted much longer than it did elsewhere.⁸ The lands designed to be in transit to settlers didn't pass hands. The few settlers who arrived to the desert often left just as quickly, and most never arrived. The checkerboard's persistence alone evidences its failure in making the desert into a place of settlement and smallholding. This desert, rather than violently settled, was mostly neglected, allowing Native Americans to continue to live there even as ownership passed hands. As Mohawk scholar Audra Simpson (2014, 11) puts it, the question of Indigenous politics is to consider how to challenge what most perceive as "settled," or completed already, to argue against "the presumption that the colonial project has been realized." Building on her analysis, I consider precisely these failed projects, moments of tension in which the maps don't match up to the projects on the ground, and the legacies, tracks and histories that such projects reveal.

The checkerboard offers a starting point to question the teleologies and genealogies that already tell stories of the desert. I offer the checkerboard, then, as a means of telling history differently, according with those who offer ways of telling history through diversion or anti-crisis (Halberstam 2011; Roitman 2013; Patel 2017). By insisting upon the failure of the desert checkerboard as a project meant to transform the desert, I not only question the teleology that underlies the checkerboard and its presumed future, but investigate what has happened, and is made, in the spaces left behind by this way of reordering the landscape that has succeeded in creating new lines and boundaries as it has failed to keep people from passing them. The checkerboard, I argue, offers an alternative to the desert that is only understood as a wasteland or wonderland.

The Wasteland and the Wonderland

The checkerboarded desert on maps never came to fruition on land, a fact typically explained by referencing that the California desert is considered to be a wasteland where no one could live. This idea of a useless desert is one that is actively produced—the desert is not inherently a wasteland, but rather made into one—what Traci Voyles (2015), following

7 This pattern was unbroken because there were few prior land claims in the desert that forced the railroad to select alternative sections, known as indemnity lands, to patent (Powers 1889).

8 The closest and best comparison, aside from the Navajo Reservation, is the BLM O&C lands in Oregon, which were the result of a "revestment," in which the federal government reclaimed ownership over some railroad lands (Richardson 1980).

Valerie Kuletz (1998), calls wastelanding. Wastelanding follows from a form of environmental determinism that explained the links between people and landscapes in the nineteenth century. Manifest Destiny proponent and surveyor John Frémont, for example, found that Indigenous desert peoples were just like their environment, uncivilized and desperate; or, in his words ‘desolate,’ ‘savage,’ and ‘barren’ (q. in Voyles 2015, 17).⁹ By coupling environmental determinism with ideas of race and civilization, he made it seem like tribes were part of nature. These names were encapsulated in the common nineteenth century nomenclature for California Indians: Di**ers, a term that referred to the way that different California Indian tribes relied on roots and other foods from the ground, carried with it assumptions that Native peoples were lazy and of a lowly civilizational status, precisely because they did not practice settled agriculture (Lönnberg 1981, 216; Lightfoot et al. 2013). The term did, not coincidentally, rhyme with a racial epithet used against Black Americans, referencing anti-Blackness as a means to fuel anti-Indigenous sentiment.

In contrast, civilization was defined through a progression from hunting and gathering to sedentary civilization, a so-called Great Chain of Being that ranked whiteness, a shifting category that broadly included those of European descent (Brodkin 1998), above other racialized groups. Governments, explorers and settlers used these definitions of civilization to justify Manifest Destiny, dispossess tribes of their land, and start projects of “improvement” to make the desert bloom (Pierce 2016). In these projects, the California desert appeared as a wild frontier to be tamed, a dangerous place to be brought under American rule, rather than an already inhabited place where tribes tended the wild (K. Anderson 2005). This vision of the California desert is aptly encapsulated by an anonymous Chemehuevi, speaking to Carobeth Laird (1976, 5), “To the white man, the desert is a wasteland; to us it is a supermarket.” The position of this Chemehuevi reinforces the cultural specificity of wastelanding—that it is a lack of imagination more than anything that inheres in the landscape.

Wastelanding helps to define the limits of ideas developed elsewhere and applied to the desert, or, as Peter Wild argues, the desert as a place “where habits used in humid climes are bound to fail” (q. in Teague 1997, 5). One example of the failed habit applied to the California desert is the idea that the desert checkerboard that would become the land of smallholders. In some ways, the desert seems to be only an exaggeration of the failure of the dream of smallholder farming elsewhere in the United States, and the eventual rise of agribusiness (C. Fraser 2017, 513; Dudley 2000). Yet, in another way, it’s clear that the desert never became this way: smallholders never properly arrived.

If the desert as a place for smallholders failed, what emerged in its wake? I argue, in Chapter 1, that the failure of the desert as a place in transit from wilderness to civilization resulted in a place of transit, a wasteland or wonderland that was a place to visit and travel through rather than to live. Thus, I argue that the desert as a wasteland—a pollutable place where extraction can take place without consequence—is only the mirror image of the desert loved by the desert rat, a non-Indian¹⁰ person “who is especially susceptible to the charms of the desert,” who might visit the desert frequently, retire, or mine there, but who is not a

9 Although deserts are often seen as never-changing and impermeable to damage, settlers often blamed Natives for environmental damage—creating the desert from what was a previously-lush grassland (D. Davis 2016; Voyles 2015; Weisiger 2011; R. White 1988). Though this inconsistency in both blaming Native Americans for damaging the desert appears to be inconsistent with a desert impermeable to damage, both views are consistent with attempts to dispossess Native peoples of their land.

10 I borrow this language of non-Indian from working with NALC, who frequently uses this language to describe people who are not Native American. In the context of the California desert, this language also makes sense, as settler is often inadequate to describe the relationship between non-Indians in the desert, as comparatively few non-Indian people settled there in any meaningful way.

homesteader in the true sense (Jensen 1931, 120; see also Kyne 1914; R. Henderson 1939). Yet both of these visions of the desert, as neglected space and protected place (Nystrom 2003) depend on a critical idea that no one could live there. While there had always been ideas that the desert could be remade through landownership—that perhaps it would become a checkerboarded landscape of private property or it could be made to bloom—the forms of landownership and influence that I examine are part of a distinctive time and era: the modern environmentalist movement.

How Environmentalism Remakes Property

The rise of environmentalism—or, more properly, a conservationism focused on protecting land—is often told through figures like John Muir and Gifford Pinchot. Muir, a man known for his respect for nonhuman life, seemed to “[care] more about ‘animal people’ than about some human beings” (Purdy 2019, 117), and propagated racist stereotypes about Native Americans, Mexicans and Black Americans. His focus—on saving the land and the animals, but not the people—became deeply entrenched in the approach to environmentalism that excluded people from wilderness. That is, creating wilderness was a social project that brought together violent dispossession with the creation of a pristine nature (Cronon 1995; Neumann 2002). Forced removals of Ahwahnechee from Yosemite and the subsequent creation of an ‘Indian village’ for cultural tourism reconfigured relationships of people and land as it insisted that Native Americans were both absent from the landscape and a part of it (Spence 1999). The work of making wilderness was the work of making place for white people, a space for recreation rather than a place for people who might ‘work for a living’ (R. White 1995; Pulido 1996; Kosek 2006; Finney 2014).

This form of environmentalism posited a particular relationship between people and land: People, and particularly civilized people, were despoilers of natural beauty, and thus that the best way to protect land was to remove people from it. In the California desert, this was often considered redundant, as many assumed that no one could live there. Then how does the desert fit into broader understandings of environmentalism? Histories of environmentalism often center California, but relegate this quarter of the state’s land to a paragraph or a footnote.¹¹ Many have commented that deserts stretch the limits of conservation and scientific practices developed in other regions, and critiqued the vision of deserts as degraded pastureland rather than as its own nonequilibrium ecology (Wilmsen 1989, Fairhead and Leach 1996, Sheridan 2007; Sayre 2010; D. Davis 2016). To study desert conservation first-hand, then, is to consider what is often left out of the conservation story that focuses on charismatic trees and sublime views in the tales of the high Sierra.

In fact, John Muir knew first-hand about the California desert: his daughter, Helen Muir Funk, had moved there for her health. He had even recommended her home of Daggett, six miles east of Barstow, to others with respiratory ailments (D. Van Dyke 1997; Wild 2007; Sizek 2016).¹² His distaste for the desert was not shared by his daughter or her friends in the small town that also had boasted another visitor who would become famous for his association with the austere landscape: art historian John C. Van Dyke, whose influential *The Desert* (1920 [1901]) is often credited with bringing conservation to the desert. His book, most likely cribbed from the experiences of his brother, a local judge (Teague and Wild 1995; Wild and Carmony 1993), argued that the California desert had been misunderstood by “practical men” who thought that “the main affair of life is to get the dollar,” regardless of whether or not getting the cash meant the destruction or changing of natural places (1920 [1901]: 60). Van Dyke’s critique was that these men thought that the desert should be changed or modified to suit their desires, and that they would replace nature with “weeds,

11 See, e.g. Nash 2014; Worster 1985; Cohen 1988; R. White 1995; Pincetl 1999.

12 For more on Southern California as the environmental cure, see Lummis 1894, Abel 2006.

wire fences, oil derricks, board shanties and board towns” (61). Against these practical men, Van Dyke had a different idea of desert aesthetics, in which the desert landscape should not be measured against verdant Eastern landscapes, but instead valued on its own terms.

When Van Dyke traveled the desert, it seemed far from the city of Los Angeles, but fifty years later, with new interstates and a rise in car culture, the desert became the city’s backyard. Facing a resurgence of interest in recreation on public lands in the 1950s and 1960s, the new rise of environmentalism critiqued some forms of recreation while deeming others to be proper (Hays 1987). This new environmentalism—often defined through its legislation, which included the Wilderness Act (1964), the National Environmental Policy Act (1970), and the Federal Lands Policy and Management Act (FLPMA) (1976)—began a new regime for considering the future of federal lands, and ushered in a new era of environmentalism in which law and regulatory processes became central to determining the success of environmentalist goals.

FLPMA reshaped the desert, presaging how law would become central to environmentalism in decades to come. First, FLPMA declared the federal government’s general goal to be to retain rather than dispose of federal holdings, which implied that the checkerboarded land ownership that existed in 1976 would become permanent, as the government would no longer support disposing of public lands through homesteads or other means. The checkerboard would only become more important in the 1980s and 1990s, as environmental groups took up the issue. Second, FLPMA created a new administrative region in the California desert, the California Desert Conservation Area (CDCA), which included eighteen million federally-administrated acres in the twenty-five million acre region. Within this region, it also created new Wilderness Study Areas in the desert and the East Mojave National Scenic Area (EMNSA), the ‘jewel’ of the Bureau of Land Management in the East Mojave. This area later became the Mojave National Preserve (Hamin 2003; Nystrom 2003). With the creation of new administrative regions came the need to study them, and a new realm of grey literature came into existence (King and Casebier 1976; Bureau of Land Management 1980). Finally, as part of creating the CDCA, FLPMA created a new way of administering public lands that entailed soliciting public feedback on what should be done with the land. The four-year desert planning process was an experiment in asking the public for their opinions on the California desert that culminated in the 1980 Desert Plan. Beyond the desert, FLPMA began a reshaping of federal processes that would use public opinion as part of their planning processes, a process that was first done in the California desert (see also Tracey and Sizek 2017). FLPMA hints at how environmental law became increasingly important for shaping federal lands and legal landscapes outside of them. In decades to come, environmental law reshaped approaches to administrative, property, and tort law (Lazarus 2004, xiv). That is, the shifts in environmental law extended far beyond federal lands.

FLPMA, like other environmental laws of its time, did not neatly coincide with a rise in influence and power of the federal government over their lands. Though the initial passage of these environmental laws created mandates for or created organizations like the Bureau of Land Management and the Environmental Protection Agency, they also faced uneven implementation. Under the Reagan Administration, Department of the Interior Secretary James Watt sought to roll back many of the environmental changes proposed in the previous decade (Wheat 1999). What these new law did was give rise to a new set of environmental organizations and nonprofits who sought to enforce their agendas through the law. These environmental lawsuits are both blunt instruments meant to change how a system works—how, for example, procedures of consulting the public might be run—as well as stalling tactics meant to buy time until a project is no longer profitable or public opinion turns against an extractive project. Through National Environmental Policy Act (NEPA) processes

and its California counterpart, the California Environmental Quality Act (CEQA), purported to include the public in their consultation processes, though critics have argued that these processes are not much more than mere theater intended to make a project appear acceptable (F. Li 2015; Powell 2018; Tsosie 2003). At the same time, the rise of environmental law meant that environmentalists have been able to influence plans for land that they don't own. In both cases, however, both consultation and NEPA lawsuits highlight how central environmental groups have become in determining the futures of land that they don't own, thereby questioning the limits of both private and public lands as property.

The new rise in environmentalism conducted through the law, however, was also complemented by new environmentalism that was both a fiscal and financial endeavor. Motivated by Reagan-era pushes for privatizing public lands and new legal-financial instruments for purchasing land rights or land outright, the land trust emerged and rose meteorically in the 1990s (Fairfax and Guenzler 2001; Bebbington 2004; Bulkeley 2005; Fairfax et al. 2005; Kay 2016). Many land trusts buy land and sell it back to the federal government, both purchasing land on the open market before they sell it to the federal government to save it "forever." This raises questions about the way that non-profit conservation becomes market-mediated, and how ideas of the public become conscripted into financial processes (Hayden 2003). This also raises broader questions about the continued financialization of land and the effects of investment in land, which has been studied largely in housing and agricultural contexts (Stout 2019; Fairbairn et al. 2021). Adding to this conversation, I ask how the methods and tools used to transfer land—at the level of the title report—change how conservation works, bringing a critical legal perspective to a conversation that often examines finance. In other words, I consider how land trusts try to make the gap between legal status and on the ground status might be made to disappear through legal and financial strategies. The dominant approaches to land conservation also raises questions about what is possible through these strategies.

For an organization like NALC, they face an additional quandary: how to make practices used by mainstream land trusts into Indigenous ones (Carroll 2012). Whether through the use of cultural conservation easements (Middleton 2011) or the creation of a tribal park (Carroll 2014), tribes have considered new ways to make Indigenous environmental justice. Both building on earlier theories of environmental justice that have often emphasized the unequal distribution of environmental harms in urban areas, Indigenous environmental justice activists argue that environmental justice only focused on distributive problems of justice overlooks the fundamental problems of environmental injustice for Indigenous peoples: that environmental projects attempt to separate Indigenous peoples from their lands and sever relationships between humans and non-humans (Whyte 2016).¹³ The question, under Indigenous environmental justice, is how to get land back—owned by and under control of Indigenous peoples.

A Map of the Checkerboard

Mapping the East Mojave

This dissertation concerns California's Eastern Mojave Desert. Defined by rainfall patterns, the East Mojave begins just east of Ludlow, approximately fifty miles east of Barstow. The summer monsoons hit harder in the east than they do in the western or central parts of the Mojave (Hereford, Webb, and Longpré 2006). This makes the vegetation

13 Contemporary Indigenous environmental justice projects both build on and critique earlier forms of critiquing conservation as well. By both recognizing the harms of 'fortress conservation' (Neumann 2002; West et al. 2006; Dowie 2009) and of the 'tribal slot' (Conklin and Graham 1995; T. Li 2000; Nadasdy 2005), Indigenous environmental justice also critiques the problematic inclusion of Indigenous peoples through half-hearted consultation, arguing that it is just as harmful in the same ways as exclusion.

different. Here, perennial grasslands flourish, even as they were not always recognized as such (McAuliffe 2016; Hyrum B. Johnson 1976; Rowlands 1980; Sizek 2021a). But by far the most common way to define the East Mojave is by an administrative history: The East Mojave National Scenic Area (EMNSA), established in 1976, defines the boundaries of what people today call Southeastern California's East or Eastern Mojave Desert (Hamin 2003). Since the California Desert Protection Act of 1994, the EMNSA has been known as the Mojave National Preserve, and managed by the National Park Service. In 2016, another administrative unit has been added that wraps around the western, southern, and eastern side the Preserve: Mojave Trails National Monument, which matches the Preserve in size at 1.6 million acres (Kennedy 2016).

Before the East Mojave National Scenic Area existed, alternative definitions of the East Mojave bounded the region by highways and railroad lines. What was popularly known as the “lonesome” or “magic” triangle took as its boundaries Route 66 on the south (later I-40), Highway 91 (later I-15) on the northwest, and California's borders with Arizona and Nevada on the eastern side (Belden 1960; Stovall 1962). The “magic triangle,” however, looks less like a triangle and more like a diamond with corners at the towns of Barstow, Stateline, Needles, and Amboy (Bard 1972, 7). This is a region that many have defined through the transit that occurs through it (Gilman 1977), and understood not to be a place itself.

The East Mojave also constitutes much of the eastern half of San Bernardino County, a county whose size is so massive that their 1965 stationary used to depict the county outline alongside the states of Delaware, Rhode Island, Massachusetts, and New Jersey, whose total still falls 700 square miles short of San Bernardino's (San Bernardino County Historical Archives 1965). For the County, its federally-owned hinterlands are a revenue problem, since approximately 80% of the county that is federally owned does not provide property tax revenue (San Bernardino County Community Task Force 2010). As a result, an underfunded county provides few services to its distant denizens. Residents, even in unincorporated areas relatively close to the county seat—like Joshua Tree, a mere ninety minutes away—complain about the services they receive from the county. For areas like Nipton, the Chemehuevi Reservation, or the Lanfair Valley, travel time to San Bernardino is easily doubled. In short, the East Mojave constitutes a large part, in acreage but not population, of the largest county in the United States.¹⁴

Perhaps unsurprisingly, this region is understudied by academics. James André, a botanist, calls it a “botanical black hole.”¹⁵ In the social sciences, the published literature on the region is largely a stack of grey literature from the 1976-1980 Desert Plan and the invaluable work of local historians who have detailed the history of people, places, and, trails (D. Van Dyke 1997; King and Casebier 1976; Shumway et al. 1980; C. Walker 1986; Casebier 1999; Wild 2007; Schoffstall 2014). In adding to this literature, I cannot tell the history of all of the East Mojave. Instead, I decided to tell the story of the checkerboard, its predominant spatial form.

Chapter Map

The map of the checkerboard is both the central obstacle to and opportunity for land trusts in the California desert, and it is for this reason that I begin the dissertation with understanding the checkerboard. Chapter 1, “Transit Teleologies,” tells a history of the checkerboard through the U.S. government and the transcontinental railroad. The railroad and its checkerboard, I argue, were supposed to bring with it white civilization, making the desert into a place in transit from Indian lands to tamed civilization. What happens when this project

¹⁴ Alaskan provinces are not included because of the distinction between provinces and counties.

¹⁵ See André 2014 for a botanical overview of California deserts.

fails to create meaningful change, I argue, is not only the continuation of Indigenous lifeways in the interstices of the checkerboard, but the formation of a desert defined through transit and transportation: that is, a desert that is not a place for people to live, but rather is instead a wasteland or wonderland without people.

The idea that the desert without people is precisely what NALC seeks to counter through repossessing checkerboarded lands off the reservation. In Chapter 2, “Checkerboarded Repossession,” I examine NALC’s contemporary acquisition of Mamápukaib as a way to understand the relationship between money, land, and Indianness in settler society. I argue that, while settler society expects tribes to accept money for land, efforts of Native Americans repossessing private land through purchase upset settler expectation of what Indians are like.

NALC’s tactics for reclaiming desert lands are unusual, and in Chapter 3, “Future Deeds,” I examine the typical story of desert land acquisition through showing how two mainstream land trusts, the Mojave Desert Land Trust and the Wildlands Conservancy, envision a future landscape of federal lands. These organizations acquire land at a massive scale—either by number of parcels, by acres of land, or both. After purchasing the land, MDLT and Wildlands will sell the land ‘back’ to the federal government through mechanisms like the Land and Water Conservation Fund, which finances federal land acquisition in areas like the Mojave that are heavily checkerboarded. This turnover allows organizations like MDLT and Wildlands to finance their own organizations, but also reshape the legal landscape of the land. Future deeds, then, refer not only to future federal landownership, but the way that deeds are reshaped in the acquisition process.

Soon after acquiring their land, MDLT and others sell their lands to the federal government. The problems of federal land management is the subject of Chapter 4, “Benign Neglect,” which details how the federal government’s response to a regime of environmental law is one of benign neglect. Benign neglect, I argue, is a response to a regime of environmental litigation under the public trust doctrine as well as the impossibility of knowing enough about the desert and having enough funding and people to adequately manage it. This echoes the colonial strategy of benign neglect that perpetuates inequality. Federal strategy, I argue, is to neglect desert lands, but in so doing, enables the desecration of sacred sites.

In Chapter 5, “Telling without Telling,” I examine the problem of sacred site protection through the lens of the Native American Land Conservancy’s work to preserve and protect Mamápukaib. I examine two intertwined strategies—one rhetorical, and one grounded in landscape management—to “tell without telling.” These strategies insist on Indigenous presence and persistence in the California desert while refusing to be specific in their location. This strategy of refusal reveals a methodological approach for talking about sacred sites while it also critiques the checkerboard as a means of dividing the landscape into private property.

While land trusts ostensibly work to acquire lands as part of their strategy to protect the California desert, much of environmental litigation has focused precisely on lands that are not owned by land trusts: federal land and land owned by private entities. To understand the latter case, I focus on the Cadiz project, a proposed water extraction project in the California desert. While I was conducting my fieldwork, Cadiz was the most actively shifting regulatory battle in the California desert. While the Cadiz project was not precisely the same as other environmentally detrimental projects, it did check many boxes as a long-proposed project that was transparently about making the desert subservient to the needs of the greedy California coast. At the same time, the most current iteration of Cadiz’s twists and turns were intimately related to David Bernhardt, the Trump Administration Secretary of the Interior and former

lawyer whose firm represented the company. Encapsulating the anti-regulation sentiment and insider politics of the Trump Administration, the Cadiz project seemed absurd and unstoppable. Environmentalists opposed the project through litigation, state-level lobbying, and federal lobbying, making the Cadiz project an excellent example of all of the major tactics to oppose a project. I picked Cadiz, then, not because it was the only or even the most environmentally-detrimental project proposed in the California desert, but because the long-proposed project most clearly revealed the regulatory regimes on the intersection of private and public lands in the California desert.

In Chapter 6, “Regulatory Alchemy,” I analyze how project opponents and Cadiz Inc both frame understandings of the project’s profitability through regulatory schemes. Through centering regulation as a site of profit, I argue that Cadiz makes money through regulatory alchemy, that is, profit that emerges from a new conception of nature made in and through regulation rather than through valuing water or nature itself.

In Chapter 7, “Zombie Infrastructure,” I return to the railroad. Contemporary manifestations of Cadiz as a zombie project, I argue, hearken back to the imperial railroad of the late-nineteenth century and the monstrous economic metaphor of the octopus. Using nineteenth century economic monstrosity as a means to understand the contemporary influence of the railroad over policy, I follow debates over the railroad right-of-way to retell stories of capitalism and empire, and how the railroad never quite disappears.

In a brief epilogue, I consider one proposed future of the desert that could become “loved to death.” Drawing on the transformation of Joshua Tree National Park from wasteland to wonderland, I follow how my interlocutors think the farther afield East Mojave might become a future wonderland, and with what effects.

In each of these chapters, I seek to understand the problem of checkerboarded land ownership through examining the technical and legal documents and processes that have become so central to environmental work today. While I have decided to focus on the technical, this is also a decision that was made for me: when I began working in the California desert with NALC in 2012, many of my tasks were precisely to translate the legal changes to the desert, and what they might mean for the organization. This was before the Desert Renewable Energy Conservation Plan (DRECP) was finalized. This plan was critiqued by some environmentalists as a reason to put more industrial-scale energy in the desert, and lauded by others as at least a way to address a green energy future (Woody 2010). My role—wading through grey literature and trying to construct an understanding from it—presaged my later roles at NALC that would include investigating other kinds of official problems like where boundary markers were, what historians had to say about a place, and what could be done about fences. These problems were technical and often legal, but they pointed to a broader reality that I would come to understand during my fieldwork in the desert between 2015 and 2019.

This dissertation draws on more than two and a half years in the California desert between 2012 and 2019, including an extended eighteen month stint of fieldwork from 2017-2018. During the summers of 2012, 2013, 2015, 2016, and 2017, I spent my time at the Native American Land Conservancy, an intertribal nonprofit land trust, and my ties to the organization are the basis of the remainder of my research and the implicit comparison for my analysis of federal agency and other nonprofit land management strategies. I helped with grant applications, botanical lists, website copy, and piles of documents, the kinds of work that many small nonprofits sorely need but are left undone without free labor. While I was in the desert in 2017 and 2018, I extended the reach of my research to include non-Native conservation organizations working in the same region, in part because NALC had begun partnering with organizations through an alliance for the 2016 establishment of Mojave Trails

National Monument and its first year of management. NALC's new partners included the Conservation Lands Foundation, National Parks Conservation Association and Mojave Desert Land Trust. During my eighteen months of continuous fieldwork, I spent significant time with the Mojave Desert Land Trust, whose land acquisition and management staff taught me the ins and outs of large-scale land acquisition and transfer in the California desert. I traveled with their land monitoring team to see desert lands and spent long car rides on bumpy roads talking and looking out the window. Many others—scientists at the Sweeney Granite Mountains Desert Research Center, local historians at the Coachella Valley History Museum and Twentynine Palms Historical Society, and a large number of environmentalists and professionals—informed and shaped my approach to thinking about what the California desert. These people were former city dwellers, lifelong desert rats who spent their time recreating in the desert, or people who understood the desert just as a place to live. With them, I would drive, walk around, and poke around in the desert, and their myriad experiences reminded me just how partial my own account of the desert would be. These interlocutors—people who had spent more than my lifetime living, traveling through, and thinking about the California desert—had an attitude in which they held tight to their knowledge and love of the desert even as they knew that they would only be able to see its tiniest fraction.

Chapter 1: Transit Teleologies

During a 1911 survey of the Mojave, railroad surveyors complained of the high winds, heat, and cold. In a letter, they wrote about how sand infiltrated what they thought were the most impermeable of instruments, but the biggest problem was the wind that meant that they “experienced much difficulty in holding our camp to mother earth” (q. in Orsi 2005, 77). The railroad surveyors were tasked with making what previous surveyors called “rough impracticable mountains” into surveyable settlements (Green 1856). Their job was to order the landscape, which in turn would augur settlement (Scott 1998; Blomley 2003b; Elden 2007), but instead the experience of the surveyors reflected the reality of the railroad: that the company was failing to secure itself to the grounds that had been granted to it under the transcontinental railroad grants.

The transcontinental railroad had promised to make the desert from an impassible land into one dense in white settlements, at a moment when a new form of transportation was financially underpinned through immobile land grants in the California desert. This was a transit teleology: the promise that a new mode of transportation will transform the relationship between potential settlers and the California desert, and in so doing, make the desert from an Indigenous space into a white space. In this chapter, I examine the foretold transformations of the California desert and their subsequent failures as a repeating story of an attempt to fulfill a teleology in which the apex of settlement is never reached. I argue that landownership changes didn’t change conditions on the ground.

The failure to change the desert into a white space asks new questions of a problem at the center of Native American and Indigenous Studies: how Native Americans are made to be part of the past as they are erased in the present, and how ideas of Indianness themselves have become ‘empty signifiers’ that traverse far beyond the historical times when such ideas were originally applied (Byrd 2011; P. Deloria 1998). This mutability of Indianness, so central to settler notions that Indians might disappear takes a particular form in the California desert, where Chemehuevis are critiqued for being both too primitive and too modern. Here, I draw on Shoshone scholar Ned Blackhawk’s (2006) analysis, as he reveals shows how Shoshone peoples were trapped between being too primitive and too modern simultaneously, which he uses to reveal the problematic teleologies at the heart of conflicts in Nevada. This mutability of Indianness, of course, is underpinned by another reality of settler society: that the settler project of trying to make Natives disappear is intimately related to what Mohawk scholar Audra Simpson (2014, 33) characterizes as “colonialism’s ongoing life and simultaneous failure.” Attempts to shore up colonial power, then, are both a sign of continuing colonial life alongside its attendant anxieties.

In the wake of the failure of transit teleologies to transform the California desert, the desert becomes a space of transit, either a wasteland or a wonderland through which people travel, but do not live. The wasteland is understood to be a liability for the railroad line that owns much of it, while the wonderland is a protected place that is considered to be a critique of the negative portrayal of the desert (Nystrom 2003). I argue that these concepts, rather than articulating opposite ideas about the desert, are actually two sides of the same coin: a desert that is defined by transit, not permanence.¹ A desert of transit today, I argue, does the same work that transit teleologies had done a century before by marking the desert as a place where Indigenous peoples traveled rather than lived.

1 These ideas of the desert are intimately related to how people in arid spaces are often seen as “impermanent” or “nomadic.” For examples of analyses and critiques of these characterizations in other places around the world, see D. Davis 2007; Wilmsen 1989).

Producing Land without Owners

The 1848 acquisition of California by the United States created the fiction of a land without people that was accordingly ripe for settlement. While extinguishing Indigenous title was seemingly as simple as a penstroke declaring lands to be part of California,² justifying the new land regime required portraying Native American title as non-title to justify white ownership. A necessary component was the redefinition of what constituted possessing land. The language of possession is ambiguous, as it can indicate having the piece of paper that constitutes a legal title or to the labor of “settling” the land (Blomley 1998; Seed 1995). Many settlers considered California Indians as unable to possess property, either because of their racialized status or because of their apparent—though now thoroughly debunked— inability to work the landscape (Miranda 2012, 45; Lightfoot et al. 2013). In the late 1800s and early 1900s, however, the question was not whether or under what circumstances Indians could be said to possess the land, but rather how to understand the system that existed before settlers would arrive.

One of the central questions—in reading the past before colonization—was to determine what “possession” meant, and therefore what new settlers might be taking away from tribes if they settled the land. John P. Harrington, who was then aided in his research by his then-wife Carobeth Harrington Laird (who later married a Chemehuevi man), noted in a report that “these nomads were sadly inconsiderate of modern ethnologists who wish to draw lines on maps” (Harrington n.d. a, 0473). As Harrington was not known for his humor (Laird 1975), he likely meant this as a serious problem that ethnographers had: “all their boundaries are hard to define,” as “there was a constant shifting and over-lapping” between Chemehuevis and other tribes (Harrington n.d. a, 0473). In his discussion, he tried to distinguish between lands that Chemehuevis “possessed” and “ranged over.” The latter category matched what Chemehuevis thought that they owned, but Harrington thought that fell short of possession. He thought that Chemehuevis “had rather grand ideas,” and did not prudently limit their claims to the “valid and enforceable” possession. He thinks that their claim to land “in which they felt a sort of proprietary interest” was too far-reaching. As he continues to describe what he thinks is an absurd claim of Chemehuevis in the Mountain Sheep Songs, he concedes that, despite these claims, “their range was truly enormous” (ibid). He corroborates these claims by telling stories of Chemehuevis and their relationships with tribes throughout present-day Arizona and California: hunting mountain goats in Walapai territory, harvesting cactus fruit in Apache territory, visiting relations in Yuma territory, and trading with coastal tribes (0474). In his other works about Chemehuevi peoples, he also provides examples of Chemehuevi ownership, especially vis-a-vis the Mohaves, “the traditional foes of the Chemehuevi of the Providence and New York Mountains” (Harrington n.d. b, 490). He recounts stories of battles over springs in regions like the Piute Mountains and Granite Mountains, detailing how it was often difficult for Chemehuevis to gain control over a spring, but that once Chemehuevis “got them out of there” (Harrington n.d. b, 157), that Mohaves wouldn’t come back. Harrington’s depictions of sophisticated and far-reaching intertribal relationships undermine his attempts to narrowly define Chemehuevi possession, making his map-making futile.

Harrington’s failed maps were mirrored by those made by “America’s most influential, if now forgotten, midcentury ethnographer”: Julian Steward (Blackhawk 2006,

2 While the legal claim to lands throughout California appeared to be simple, there was actually a complex process by which Mexican claims to coastal California lands had to be adjudicated in American courts (Cowen 1977, 9-10). For Indians in these regions, it was difficult to legally claim their lands, as deeds often indicated that Indians could remain on the grants in Mexican deeds, but did not extend these courtesies in the new American titles (Lightfoot 2005, 212-214).

278). Steward's reading of territory depended on the economic and ecological boundaries of tribes, not the linguistic boundaries favored by his graduate adviser Alfred L. Kroeber (Kelly 1934; Manners 1974; Pinkoski 2007; see also Kroeber 1939). A 1935 journal entry captures precisely how he disagreed with the Kroeberians, and his former classmate Isabel Kelly: "Kelly's 'Las Vegas [band of Southern Paiutes]' that covers half the U.S." (q. in Kerns 2010, 87). His joke indicated that he thought the boundaries claimed by Isabel Kelly's report of Southern Paiute bands were absurdly large, just like Harrington's own quip that Chemehuevis had no consideration for modern anthropologists.

Yet, in Steward's cultural ecology framework, the claim that Chemehuevis overstretched their boundaries was reflective of what Steward thought of them: that Chemehuevis were simple, like their environment. Rather than relay the sophisticated understandings of intertribal relationships, instead Steward insists that Chemehuevis are primitive like the other tribal bands he studied. In his writings on Shoshone people, for example, he wrote that the Great Basin desert, America's simplest environment, was also the home to the simplest people (Blackhawk 2006, 277). By correlating ecological factors with cultural ones, Steward not only made cultures more comparable to each other in the footsteps of his adviser Alfred L. Kroeber, but used the ecological factors as proxies for the political, cultural and social development of tribes. In Steward's understanding, the "primitive family bands" that he thought constituted Shoshone life could never become tribal governments or complex political societies (279). Using a "simple" environment as shorthand for "simple" people, Steward understood desert peoples to be the least able to adapt to modern civilization.

For both Steward and Harrington, a large component of the possession problem was Chemehuevis' seasonal round.³ The seasonal round, a pattern in which Chemehuevis would go to different places throughout the year, according to their uses and ceremonies at each place (Laird 1976), was quite different from the forms of agricultural civilization Steward saw at the end of his theory of multilinear evolution. In Steward's (1955) theory of multilinear evolution, certain traits would develop over time, with agricultural civilization at its apex. The assumed value of agricultural civilization aligned anthropological ideas of possessing land with ideas of colonial possession through a form of sedentarist metaphysics (Malkki 1992). Steward's and Harrington's analyses of land tenure suffered from an imaginative lack, as they saw only fences that indicated homesteading as appropriate ceremonies of possession (Seed 1995). The presumed nomadism of Chemehuevis also made it harder for Steward to see them as they lived in the present.

In Steward's analysis of Shoshone people, he argued that they were left in the past even as they were living very much in the present, working jobs for wages and living in white ranching and mining districts (Blackhawk 2006, 279). Any adaptation Shoshones made to contemporary conditions, like working for wages, was seen publicly as a sign that they were "on the verge of extinction" (11). Similarly, Indian agents simultaneously praised Chemehuevis for working for wages—a sign that they would disappear and become white—as they decried their primitive inability to stay in one place (Kelsey 1911). The contradiction was that Chemehuevis are simultaneously too primitive and too modern, considered incompatible with modern ways of life even as they undertook modern forms of labor. As Blackhawk (2006, 272) argues, Indians only seemed incompatible with modernity, making Native Americans the "empty signifier" of American racial classifications. This category in transit—that of the disappearing Native American—was the underbelly of railroad colonization, a process that promised to make land in transit.

Transit Teleologies

In the tumultuous 1850s, the railroad offered a promise to "solder weak spots in the

3 For a critique of assumptions of nomadism and Indigeneity in another setting, see J. Smith 2020.

chain of national unity” (Deverell 1994, 10), to unite the isolation of the California coast through the inland to the eastern heart of the country. “A great centralizer,” as Henry George (1868), the influential nineteenth-century political economist wrote, the railroad was a means to create a nation through a mode of transportation, what den Otter (1997) would call technological nationalism. In den Otter’s framing, the railroad was a technical solution to two aspects of American empire: settlement and internal unity (23). The railroad consolidated the military and imperial power of the state in far-flung regions (Angevine 2004), quashing dissent and ensuring that the United States appeared united. The railroad promised new beginnings. In the words of Max Maria von Weber, a civil engineer who worked on railroads in Europe: “with the construction of railroads, American culture *began*” (q. in Schivelbusch 2014 [1979]: 89). That is, the railroad harbored hopes that it would tame the wilderness and the American frontier, and with that, that America could begin as a cultural and social phenomenon.

American culture could begin only through taming the American frontier. Railroad industrialist John Murray Forbes argued that “the railroads which are at last checkering the West in all directions will give a new element of certainty to the transit of the Emigrant which has been hitherto wanting” (q. in Pearson 1911, 67-68). Though he was certainly trying to promote the railroad, he was also right: the railroad did protect against some deceitful “scalpers” who defrauded westward migrants as well as against the dangers of traveling on the Emigrant trails.

In the Colorado River basin and the Mojave Desert, the railroad promised protection against Indians, and replaced the military road and wagon trail that had preceded it. Before the railroad came to the California desert, military men had surveyed a path for the railroad and emigrant trail across the arid Southwest (Whipple 1856; Beale 1858), relying on Mojave Indian guides to lead them across what later became known as the Mojave Road, a set of military stations at springs across the arid East Mojave (King and Casebier 1976). While the US government conducted land surveys and even went so far as to recruit Edmund Beale and his Camel Corps to create a path across the desert, emigrants were afraid of the Mojave after the inaugural emigrants on the Beale route, the Rose-Baley party, failed to make it to California in 1858. As they approached the Colorado River, the Rose-Baley party allowed their roving cattle to destroy Mojave crops and appeared to settle in the fertile floodplain within Mojave territory, provoking a battle between Mojaves (as well as some Hualapais) and the Rose-Baley party (Scherer 1994). While the events of the Rose-Baley party were contested, the results weren’t: the group’s suffering made the 35th parallel route unpalatable to future emigrants (Baley 2002). Seeing Mojave resistance to new settlers, the US government decided to increase military presence in what was then called The Needles, and demand of an indefinite surrender of Mojave leaders as a condition of peace (Scherer 1994). As anthropologist Alfred Kroeber, in a piece co-written with his son Clifford (1994 [1973], 54), summarized: “Here was a tribe that would resist its doom, and the U.S. government moved quickly to crush such resistance.”

The military presence at Fort Mojave in The Needles was soon joined by settlers and miners⁴ who lived from the fertile valley along the Colorado River, which led the government

4 Mining was particularly active in this region around 1864, as the mining rush on the Colorado River was a site for capital investment that built on earlier gold rushes in 1849 (Altergott 1930, 75). In the 1870s and 1880s, there were also mines in the Eastern Mojave at Waterman (near Barstow), Calico (near Daggett), Ivanpah, and Providence (near present-day Mitchell Caverns State Recreation Area, an inholding in the Mojave National Preserve) (Bard 1972, 54). Mines relied heavily on Chemehuevi and Paiute labor (50-51). Importantly for this discussion, the system of mining claims is different from that of permanent settlement, and were quite ephemeral. As historian Robert Bard describes it, “often a rich strike would be quickly followed by an influx of miners from declining areas, who lived in tents for the first months in the new

to establish reservations for Chemehuevis and Mojaves. When settlers were brought by steamboats to farm the Colorado River valley (Polhamus 1988), the government established reservations for the Mojave at the Colorado River Indian Tribes Reservation (CRIT) in Parker, Arizona (1865), and at Fort Mojave in The Needles (1870) (Sherer and McCormick 1966; Knack 2001). Chemehuevis, who largely avoided the intertribal CRIT reservation because of ongoing conflicts with the Mohaves who lived there,⁵ remained in the fertile Chemehuevi Valley between Parker and Needles as well as in the desert mountains (Fowler and Garey-Sage 2016).

Although the reservations were not successful in concentrating the Chemehuevis and Mojaves entirely, they were successful in another way: confirming the then-predominant idea that Indians were largely a military problem (Prucha 1995, 464, 475). Soon, however, the military policy toward Native Americans would be ceded to another force, as General Sherman would write in his last report as general of the Army in October 1883:

“I now regard the Indians as substantially eliminated from the problem of the Army....The Army has been a large factor in producing this result, but it is not the only one. Immigration and the occupation by industrious farmers and miners of the land vacated by the aborigines have been largely instrumental to that end, but the *railroad* which used to follow in the rear now goes forward with the picket-line in the great battle of civilization with barbarism, and has become the *greater* cause.” (Sherman q. in Prucha 1995, 560).

While this assessment of the shifting tides of Indian policy in the 1880s sought to separate the military management of Indian tribes from the new transcontinental transportation, the railroad relied on a military history (Angevine 2004). Not only did the paths that the railroad take rely on military expeditions and surveys, but the army defended the construction of new railroads, and then later used the lines to transport their troops across the West (Angevine 2004, 177-185). Though Indians may have become a problem belonging to the railroad, neither railroad nor tribes were free from the military.

When the railroad arrived in The Needles⁶ in August 1883, Sherman had not yet written his report foretelling the demise of the military in Indian affairs, but it was clear that the railroad was changing life in the town incorporated to herald the railroad's arrival. Needles quickly sprouted a tent city to support the railroad line, boasting 1000 residents (excluding Indians) by 1885 (Gilman 1977, 120). The military continued to have its base in nearby Fort Mohave, on the other side of the Colorado River from the growing city. A set of alphabetically-named towns, each ten miles apart to provide water to the steam engines, sprung up to support the line between Needles and Barstow. Their names even heralded new futures for the land—named after elsewhere, they imagined cities that would spring up

camp. Then wood frame buildings replaced the temporary housing, and a branch railroad was constructed to the center of the mining area. But because of the delay in financing and constructing the railroad, the major deposits had sometimes been worked out before rail transport was available” (1972, 69). The ephemeral nature of the mining camps is indicated not only by the other declining regions, but by the fact that a new spur line would arrive at the same time that the mine became unprofitable. Post offices at mining camps in the Mojave lasted an average of seven years (70).

- 5 A split between factions of Mojaves at CRIT and in Needles also led to a difference in spelling names. Keeping with the spellings of the two separately recognized tribes today, I use Mojave for those who remain in Needles at Fort Mojave, and Mohave for those who go to CRIT. When not distinguishing between the two groups, I use Mojave.
- 6 From the east, which was the line initially completed, the railroad was the Atlantic and Pacific (owned by Atchinson, Topeka and Santa Fe). From the west, it was a branch of the Southern Pacific. In 1884, ATSF and its president, William Barstow Strong, purchased the SP line from Barstow to Needles (Lesley 1939, 94-95). While I refer to the line as the ATSF throughout the piece, the railroad grants were owned by the Southern Pacific, as they did not transfer to the ATSF when the merger was completed in 1884.

alongside their names.⁷ Needles became a new hub in the desert, supported and made safe by the railroad, and part of a broader transformation of the desert from a supposedly uninhabitable wasteland into a place where white settlers could live (Altergott 1930). In a broader sense, the railroad—even only as a mode of transportation—was a transit teleology, in which new forms of transportation heralded new ways of life. Life would be faster as time and distance collapsed, and America would be unified (Stilgoe 1983; Ward 1986; den Otter 1997; White 2011; Schivelbusch 2014; Karuka 2019). In other words, the railroad’s transformations of time and distance offered modernity, and a means to spread empire and civilization.

Land in Transit

While the spread of modern travel itself was supposed to create civilization, but in the desert they only did so along the narrow strip of the railroad lines, often even within the 200-foot right-of-way easement given to the railroad. As geographer Harold Gilman (1977, 130) argues, “the height of railroading was coincident with the period of most extensive settlement of the East Mojave Transit Region,” before listing towns near and along the various transcontinentals and shortlines that traversed the desert before 1920. Like other historians, his major emphasis is the towns along the railroad that the new form of transportation could support, and did not address settlement on the railroad’s land grants.

In histories of railroads, land grants are typically seen as subsidiary to the significance of the modern form of transportation that the railroad brought, even as their importance is recognized as a means of financing the railroad.⁸ The land grants, in the words of historian Robert Henry, did “what had never been done before—provided transportation ahead of settlement” (1945, 189). Building ahead of demand, the railroad land grants were supposed to help produce the conditions under which the land would be sold through selling settlers lands near convenient transportation (Mercer 1982, 19). For the railroad, the value of railroad lands was premised in their alienability: under the revenue concept of public lands, the railroad land grants were valuable only because they were transferable (Gates 1996, 117). Land grants weren’t expected to last; rather, they were supposed to disappear as the land beside the railroad was settled, fulfilling the promise of a transit teleology.

In a view from above, the land grants given to the railroad looked like a checkerboard: Alternating 640-acre sections were owned by the federal government, and the other sections were owned by the railroad. The checkerboard was an intentional overlay on top of the cadastral system, meant to ensure that no entity had consolidated ownership. The cadastral system is also known as the township-range system, in which each six- by six-mile township was broken into equal and square sections of 640 acres (1 square mile) that were numbered one through thirty-six. While the township-range system itself seemed exceedingly abstract in maps, in reality it was built on the system of rods and chains, Anglo-Saxon measures that Jefferson wanted to build into what he hoped would become an Anglo-Saxon state (Palmer 2020). Though it initially appeared mostly on maps, the township-range system was made

7 Perhaps the most interesting of these elsewhere in the desert were the West Mojave towns of Johannesburg and Randsburg, named by miners who’d worked in the South African gold mines before coming to the California gold rush (Durham 1998).

8 In texts in which land grants are discussed, they are often seen as secondary in relation to the railroad itself, as a solution to problems of capital shortage in the 1840s (e.g. Ward 1986, 89; Angevine 2004, 119), a question about the path of the railroad and the unfair advantages accrued by corporations (Waters 1950, 47; Deverell 1994, 32; Karuka 2019, 157), or a mere footnote in the broader story of a great railroad line (Bryant 1974). Even in cases when land grants are treated critically as part of the relationship between US empire and the expansion of the railroad (e.g. Karuka 2019, 168-179), they are not specifically analyzed. The best critical treatments of railroad land grants include Richard Orsi’s (2005) book on the Southern Pacific, and Angevine’s (2004) analysis of the relationship between the military and the railroad.

concrete through the practices of buying, selling, and farming individual sections, especially in the American Midwest (Price 1995, 9; Hildegard B. Johnson 1976). In the Homestead Act of 1862, sections of 160 acres—quarter-sections—were given to eligible homesteaders, and it was assumed that their practices on the land would be agricultural (Johnson 1976, 64). Some of the earliest reports of the language of the checkerboard come from crossplowing rectangular fields, as artist and ethnologist George Catlin wrote of Louisiana in 1841: “I have seen the rich Louisianan checkering out his cotton and sugar plantations” (q. in Johnson 1976, 143). The grid later became a means of self-identification: Farmers would refer to themselves through the number of their section in the township-range system, rather than by notable geographic features (149).

The railroad land grant as a practice predated the later Homestead Act, but both were wedded to Jeffersonian agrarianism and its central tenet. In this vision, settling land was a project to be carried out by a race of improved, and presumably white, people (Palmer 2020, 796). Beyond the railroad providing safer travel across the American West, it also served to encourage settlement in these far flung regions, first transforming them into a *tabula rasa* wilderness that would become settlements in the English style, with neat fences that marked the grid-line boundaries between parcels (Locke 1980 [1690]; Spence 1999; Seed 1995). Through transforming the land, promoters hoped that they would also spread civilization and consolidate the nation.

While railroad promoters often emphasized the links between new settlement enabled by the railroad and the Jeffersonian ideals of financial stability premised in land (Ward 1986), the reality was that railroad land grants were also a solution to a financial and military problem of the US government. The federal government wanted a way to transport troops without becoming too involved in the private sector (Angevine 2004, 123). Cash poor and land rich, the US government decided to use land grants as an alternative means of financing the railroad that would be revenue-neutral for the federal government, but this depended on if the land grants sold. After the federal government granted its land to the railroad,⁹ they would sell their lands at double the original price, preventing the railroad from selling their lands until after the government had sold theirs (122). After the federal parcels were sold, the railroad would be able to sell their own parcels at market rate, then using the sales of the land grants to pay back the loans they needed to construct the railroad line. Considered at the time a solution to a financial problem—how the federal government would encourage a new form of transportation—the land grant solution depended on selling the lands granted to settlers. In other words, the success of the land grants depended on the transit of land deeds between owners, eventually ending in settlement.

The first railroad land grant, modeled on land grants given to wagon roads and canals constructed beginning in the 1820s, was a political project pursued by Senator Stephen Douglas of Illinois. In 1850, he successfully lobbied for land grants for the Illinois Central railroad, and the land grant ended up outperforming expectations, in terms of land sales (Angevine 2004, 122). The federal government sold all of its land within the zone of the land grants within two years of opening sales, at two to four times its original price (122). When Illinois Central began selling its lands in 1854, they quickly sold the parcels at well above the market rate. Soon after, other states requested their own grants for railroads. By the end of the 1850s, the federal government had awarded more than 22 million acres of land grants to states in the Midwest and south (123). These land grants worked politically, as it benefited lawmakers powerful enough to bring them home to their states. But it also worked economically, because the federal government and railroads were able to profit from selling

9 Or, initially, the federal government granted the land to the states and allowed them to grant the lands to the railroad, in an effort to not infringe upon the rights of states (Angevine 2004, 120).

the land grants. The land grants finally worked for the settlers, who both benefited from the protection of the railroad and from the below-market prices of the land they purchased.

In the California desert, the land grants given to the railroad formed an almost perfect checkerboard. While, in some regions, many private claims preceded the railroad land grants, pushing the railroad's land farther from the tracks (Decker 1964, 60-64), there were no few previous private claims to disrupt the checkerboard's shape in the desert. The railroad checkerboard was the first large-scale change in federal ownership of the desert: at the time it was established, no reservations for tribes had been set aside. This meant that the checkerboard would later set up the boundaries of tribal reservations. For example, in the Coachella Valley, reservations were only on non-railroad parcels, making the large Agua Caliente Reservation into what a commentator later called "the golden checkerboard" (Ainsworth 1965). In other words, for the government, the checkerboard came first: it preceded tribal claims to lands.

Yet, the land grants didn't work in the California desert as they had been planned to function elsewhere. They equally laid out the lands in the desert, envisioning towns named in alphabetical order—Amboy, Bristol, Cadiz—to render them saleable. But they didn't sell, making what was supposed to be a temporary landholding into a permanent problem. In the next section, I track a story of how transit teleology failed in the California desert when parcels didn't sell, when lands possessed by the railroad become not an asset that will finance railroad development, but instead a liability.

Land as Liability

The land grants in the Southern California desert were the neglected counterpart of the controversial land grants elsewhere in the state of California. When the anti-railroad People's Independent Party published their exaggerated map of railroad land grants in the state in 1875 (see fig. 1), the lands that most concerned Californians were indubitably the coastal lands and those in the fertile San Joaquin Valley.

When the railroad arrived with the new line in the Central Valley, some of the sections near the line had already been settled, forcing the railroad to select alternative parcels in the case that the land was owned already, or become the landlord responsible for evicting



Fig. 1: People's Independent Party Map. Courtesy Bancroft Library.

squatters if the residents had not filed for the land. These issues of uncertain land tenure sparked conflict in the 1880 Mussel Slough incident in the southern San Joaquin Valley, near present-day Hanford. The battle between Southern Pacific officials and locals occurred precisely because of uncertainty in land ownership: the railroad's *de jure* ownership of parcels in the region happened after some farmers had already made claims to land, and before others had. By the time the railroad came to sell their parcels, some of the squatters had already made a home on the railroad parcels, and they couldn't afford the new prices that the railroad wanted. The conflict between squatters, farmers, and the railroad turned into an armed standoff at Mussel Slough, and the deaths of the farmers involved were understood as historian Leslie E. Decker wrote, in a slightly different context, "a classic example of the injustices suffered by the Pioneers at the hands of the Robber Barons" (Decker 1964, 8). The later myth of the event was made through the Frank Norris's 1901 novel *The Octopus*, which cemented the idea prevalent in the popular imagination that the railroad was a monopolizing and bloodthirsty octopus, seeking to ruin the lives of ordinary people (Beers 2004; Orsi 2005; Sizek 2021b). The public story of a the ill-fated railroad land grants damaged the reputation of the Southern Pacific, as did the turn toward anti-corporate sentiment in the end of the Gilded Age.

In contrast, the unsettled California desert had no such problems in securing title to their land, as there were no previous claims filed with the federal government. Appearing as almost a perfect checkerboard, the railroad still hoped that it could fulfill its goal as elsewhere, as a "land distributor and colonizer" (Orsi 2005, 79). In other words, they hoped to sell land soon rather than hold it for speculative purposes.¹⁰ Yet, "not all of the lands granted to the railroad companies were salable," according to later a later historian (McAllister 1939, 395-396). While approximately 88% of land grants were sold (Myrick 1969, 8-9), that left 15,840,000 acres in the hands of the railroad. Of the unsold parcels, 853,265 were in San Bernardino county, and the rest of the unsold areas were those like the Mojave: desert lands (*ibid*, 15).¹¹ By 1907, the railroad considered the land worthless (Orsi 2005, 73). By the 1920s, the lands that remained unsold were seen as a burden by land agents. In the words of one agent, "the unsold lands of the grant are an expensive asset to carry" (McAllister q. in Orsi 2005, 79). Even when the railroad reduced land prices in the 1930s, they still couldn't sell desert lands in California and Nevada (Southern Pacific Land Company n.d., 11). This land became a liability for the company, as land that is not creating

10 The company's stance would change throughout the late nineteenth and early twentieth century. After the land boom and bust of the 1880s, sales were down in the 1890s. In 1901, E.H. Harriman, chairman of the executive committee of the Union Pacific, took over the Southern Pacific Company, at which point he halted the sale of land so that holdings could accrue greater value, or be sold only in large parcels to big buyers (Orsi 2005, 124-126). Even after Charles Eberlein, Harriman's right-hand man in the no-sale policy, was pushed out in 1908, the no-sale policy remained (125). In 1912, the railroad sold the land that they held to the Southern Pacific Land Company which, in 1913, began to sell land again (Orsi 2005, 127; McAllister 1939, 282). With that policy, the Southern Pacific Land Company returned to land sales as interest permitted, until the 1940s, when the Land Company stopped selling land for fear that they were, according to Southern Pacific historian Richard Orsi (2005, 128), "losing potential profits from the lands" in the 2.3 million acres remaining in California.

11 There was one region of the East Mojave that had some success in railroad land sales: Lanfair Valley, a semi-arid region that was dry-farmed for several years between 1910 and 1920, and again during the Great Depression. However, this settlement was ultimately unsuccessful. Some historians blamed it on the ignorance of the settlers (Bard 1972, 97). Others blamed it on the climatic conditions and the lack of rain (Gilman 1977). In all cases, this reinforced the marginality of the desert: "That this attempt [at settlement] failed, even though it was supported by the railroad and had access to major markets through low cost rail transport, merely underscores the marginality of the East Mojave Transit region as a settlement area" (Gilman 1977, 136). Lanfair was largely abandoned by 1925, though some returned during the Depression (Bard 1972, 98; Sharp 1984).

capital for the company only can drain from the company's coffers. This land was not only fixed capital that was stuck physically in place without circulating, but additionally appeared to be downright harmful, a "barrier to further accumulation" (Harvey 1982, 238). In this way, this land confirmed Marx's understanding of land and capital accumulation: "landed property is distinguished from other forms of property by the fact that at a certain level of development it appears superfluous and harmful even from the standpoint of the capitalist mode of production" (1981, 760; see also Harvey 1982, 332). This moment is precisely when it appears that the land does not appear to have the value of a purely financial asset, or fictitious capital, that can produce future value. In other words, if the land appears to have no future revenue, then the land becomes a liability rather than an asset (Harvey 1982, 347, 367-369).

This apparent uselessness of desert lands reflects a broader question: what was the railroad to do with a desert that seems to be without value? Eventually, the desert becomes useful for new purposes: Scholars of the concept of wasteland/ing have suggested that eventually the desert lands become valuable precisely as a new use can be found for it, particularly in the case of American nuclear experiments and nuclear waste (Kuletz 1998, 114; see also Masco 2006; Voyles 2015; Simmons 2019). However, in the early 1900s, the desert is not as much as useful as a "pollutable" wasteland (Voyles 2015, 8), but rather remains useless as something that does not have future value. For the railroad, land in stasis is liability.

Chemehuevi Life on the Railroad's Liability

Although the railroad was legally responsible for their desert lands, little changed on the ground after they acquired their grants, as they did not develop, or even mark, their holdings beyond the railroad right of way.¹² Historians would later describe the railroad was the predominant influence on desert settlement until the highways came along. During the railroad's time, settlements were often limited to the railroad line itself, and most settlements were not much more than siding and a section crew. As a result, maps of settlements along the lines were misleading, as "cartographers... show every one as a populated place, whether it was inhabited or not" (Bard 1972, 68-69). Practically, few settlers wandered beyond the railroad lines, and the railroad did not check on their land grants. Such neglect enabled Chemehuevis to stay on their traditional homelands, counter to the transit teleologies that predicted the desert's transformation into white settlements and the demise of far-reaching tribal landholdings in the East Mojave.

In the late 1800s and early 1900s, reservations were established for tribes along the Colorado River: the Colorado River Indian Tribes reservation in Parker (CRIT, established in 1865), the Fort Mojave Reservation near Needles (established 1870), or the Chemehuevi Indian Tribe reservation (established 1907). Yet, even as reservations were established in the desert, the Office of Indian Affairs could do little to keep Chemehuevis on the reservation, and no one tried to remove them from the public domain. At the same time that the railroad acquired their vast holdings in the Mojave Desert, the Office of Indian Affairs complained that they could not keep track of the Chemehuevis, who "move about so frequently" that they could not be easily counted (Office of Indian Affairs 1887, 1). In 1911, Indian agent C.E. Kelsey wrote a letter to ask after eleven Chemehuevis living at Riverside Mountain, opposite the river from CRIT. Less than a month later, he asks for additional information to confirm what he thought he might know. He says that there are 248 Chemehuevis spread across the desert, both in areas settled by Mexican-Americans or European-Americans like the Blythe Ranch or Coachella, as well as in areas like Riverside Mountain or Old Dead Mountain that

12 The railroad right-of-way and their land grants are separate regimes. While the railroad right-of-ways are non-transferable (see discussion in chapter 7), the checkerboarded land grants were not only transferable, but intended to be sold.

were neither reservation lands nor places of employment. The Dead Mountains were square in the railroad checkerboard, just north of Needles, where many Chemehuevis would sell their crafts or would ride the rails to Barstow for employment (D. Van Dyke 1997; Thompson 1929, 730).¹³ Though today few records of these lives survive, Chemehuevis continued to live in the Mojave, despite their lands being formally owned by the federal government and railroad.

One Chemehuevi, known by the Mojave-sounding name Yaarirvya, lived in the Providence Mountains at Arrowweed (also sometimes known as Arrowhead) Spring. A Chemehuevi man of the mountain sheep clan, Yaarirvya was documented to live at this spring and farm there until his death in 1907 (Laird 1976, 11; Lee n.d.). When he lived there, he claimed rights to all of the game in the Providence and nearby Granite Mountains, though his claims were unlikely unknown to whites: surveyors missed the spring on their initial survey in 1856. Not until after Yaarirvya's death did someone known as "the Englishman," buy the rights to the spring, and he subsequently sold the parcel to Eddie Cornell, who raised cattle there before he sold the ranch to the Staples family, who lived at the nearby Granite Cove (Lee n.d.).¹⁴ In contrast to Yaarirvya's long life lived at Arrowhead Spring, the white purchasers of the land were unable to hold onto the parcel to make money, and sold it again and again because they couldn't stay.

In other cases, continued Indigenous lifeways were made through the railroad: a Chemehuevi man named Hikorum was famous for serving as a prospector in the Mojave Desert since the 1880s, and he used the railroad lines to travel throughout the desert (Battye 1934; R. Henderson 1954).¹⁵ In one account, the railroad man C.W. Maier wrote about how Hikorum found the ore that led to the creation of the Orange Blossom mine while hunting bighorn sheep:

"With the skill of an Indian hunter he brought down his game. While at this place he accidentally knocked off a piece of ore with the butt of his gun and its brilliancy caused him to pick it up and put it in his pocket." (Maier 1907, 843)

Here, Maier names Hikorum's 1897 ore discovery as if it is entirely accidental, as if he found it mistakenly after hunting for bighorn sheep in the mountains, despite the fact that Hikorum had already been credited at the time with many ore discoveries. Although Maier underplays Hikorum's mining prowess, he acknowledges how Hikorum was skilled at using new technologies like guns to hunt bighorn sheep. In fact, Chemehuevis were often known as adopting new technologies since the 1880s, when a shootout in the Riverside mountains revealed how Chemehuevis could disrupt mining interests in the area.¹⁶ While Maier is

13 This was in no way unique to Chemehuevis, as many tribal members took advantage of the new form of transportation (Kluckhohn and Leighton 1946; Voyles 2015; Karuka 2019).

14 The 1924 resurvey of the area, begun in 1921, made the spring appear on Section 22 of Township 9 North, Range 13 E, SBM (English and Kimmel 1924), and which was confirmed to be there in 2000 (Mojave National Preserve 2000, 421).

15 Beyond Hikorum, many mines throughout the desert are credited to Chemehuevis and Southern Paiutes, and occasionally to Paiutes (Vredenburg 2005; Shumway et al. 1980). The number of mines credited to them is certainly an undercount, as there was little incentive to credit the prospecting of a mine to someone other than the owner.

16 In the 1880 Calloway Affair, Chemehuevis stayed in the mountains with guns, sending a message to local reporters in Spanglish: "Chemehuevis sabe [know how to] shoot, soldiers no sabe [don't know how to] shoot" (Worthington 1880, q. in Roth 1976, see also Roth 1977). At the time, many Chemehuevis in that region were trilingual in Chemehuevi, Spanish and English, as many Mexicans were living and working in the mining district in La Paz where Chemehuevis also worked (Vredenburg 2005). Chemehuevis also intermarried with Mexicans, perhaps one of the reasons why Indian agent George Allen called them "half-breeds" in an 1893 report (United States Office Indian Affairs 1893, 106). This broad anti-Indian sentiment also reinforced anti-Indigenous racism of a type similar to what Ned Blackhawk (2006) finds for Shoshone in Nevada.

attentive to the gun that Hikorum carries, however, he stops at examining how the railroad enabled the creation of the mine by providing transportation for Hikorum to find the ore and providing the capital for railroad men like him to invest. That is, the railroad was not only a mode of transportation, but an imperial formation.

The resulting mine, the Orange Blossom, showed just how powerful the railroad had become in the region. Maier's own involvement came through the railroad: In his position as an ATSF Grand Officer looking toward retirement, he was considering new ventures, including the investment opportunity brought to him by his co-workers. The mine, in fact, was led by the president John Denair, who was a division superintendent for the ATSF (Shumway et al 1980, 85fn224). The railroad was arguably at the center of mining capital, from its investors to the ATSF line that led to the Bagdad railroad stop.

The name Bagdad, of course, had its own imperial resonances: it was named for its assumed similarity to the Iraqi—at the time, Ottoman—landscape.¹⁷ And the new Bagdad was a central cog in the railroad's empire, for a while serving as "the most important town between Daggett and Needles" (Bard 1972, 63). The mine supported new growth in the town, which soon had offices, corrals, a store, powder magazine, cottage, bunkhouse, and power plant (Puzo 1988, 40). Yet, these impressive developments that sprung up alongside the mine soon disappeared: the mine closed by 1910 and the railroad laid new tracks. A 1918 fire destroyed many of the buildings left in Bagdad, and the post office closed in 1923 (*ibid*). The hotel remained open there, even when only twenty residents stayed in the town in 1939 (*ibid*). Rather than creating a desert that was settled, the desert was only a space of extraction, a wasteland where investors could go to take desert resources back to city centers. The fact that the Orange Blossom mine was governed through the General Mining Act of 1872 rather than Homestead Act of 1862¹⁸ only cemented this point: knowledge of the desert's resources, rather than living there, was sufficient for white possession, while Native knowledge of the desert or what Harrington might call enforceable possession did not match up to the legal ownership of the land.

Perhaps the question of legal ownership of desert lands was seen not to matter, when the future of the land seemed to be a liability to the railroad rather than an asset. In the railroad's eyes, the lands remained as a liability rather than as an asset until after World War II, when the 1938 Small Tracts Act resulted in a new rush for desert lands, enabled by the newfound automobility of desert residents. Yet, as I argue in the next section, the Small Tracts Act, rather than cementing settler presence in the California desert, continued to make the region into a space of transit rather than of settlement. Making the desert into a playground for leisure continued to erase the desert as homeland, making it appear to be impossible for Chemehuevis to continue living there.

From Liability to Leisure

After World War II, the railroad suddenly heard about interest in the desert lands that before seemed unappealing to buyers. Federal and railroad land sales rose during World War II and the period immediately after, leading the railroad to end sales of its lands permanently in 1948 in order to protect their landed investments (Southern Pacific Land Company n.d., 12-13). The company thought that the rise in sales came from the high income tax rate and growing population in the west (*ibid*), but it was just as likely the rise of a new federal

17 The town is locally famous as the most arid place on the North American continent, with 767 days without rainfall between 1912 and 1914. The "h" of Baghdad was removed for the town of Bagdad in order to make telegraph communications easier (Schoffstall 2014).

18 The settlement under the Homestead Act in this region of the California desert was limited to areas near springs, where ranches were often centered, or in the Lanfair Valley, which was supported by the Union Pacific Railroad line and had between 14-19 inches of rain per year during the 1910s and 1920s, when most of the lands were settled (See Thompson 1920; Gilman 1977; King and Casebier 1976).

program: the Small Tracts Act of 1938.

The 1938 Small Tracts Act (STA) was a government program intended to get rid of lands that were otherwise unused: what Samuel Trask Dana and Myron Krueger (1958, 126) call “vacant, unreserved public lands” that were valuable for residence or recreation. Under the program, Americans could file for 5-acre tracts in certain regions. The main requirement was a small house needed to prove up their filing “Really not homesteads in the true sense,” as one filer put it (Stedman 1945, 13), the Small Tracts Act filings were distinguished from earlier land disposal policies because there was no requirement for permanent settlement. They were advertised as a way to get your piece of desert heaven, a vacation home that would be available for any enterprising filer. Among filers in the program were Ronald Reagan and Frank Sinatra (Stringfellow 2009, 16), who further promoted the idea that having one’s own place in the desert would make it a vacationer’s wonderland. As a result, the program became, as geographer Alex Clark put it, “some combination of recreation and land speculation” (Clark 1971, 3). The program became part of a new era of speculation on the desert’s future, on a much smaller scale than the 640 acre sections the railroad held.

Although the STA was passed in 1938, interest in the lands offered didn’t take off until after the end of World War II (Dana and Krueger 1958, 126). Focused in areas around existing larger towns and cities like Barstow and Twentynine Palms, the Small Tracts Act offered an escape from the drab nine-to-five office work that grew after the war (Wild 2004). The homes that were built under the STA program were frequently classed as “weekend homes” and “cabins or rest homes” rather than permanent residences, and one writer who claimed her small tract cabin as a permanent resident quickly reneged on that in the summertime (Lee 1954, 15; R. Henderson 1944, 38; Venn 1950, 23-24). For those in Los Angeles, these new homes were no longer quite so far, and the automobility of the 1950s made them easier to reach, if only for weekends. The end of wartime gas rationing and postwar disposable income—though for a largely white middle class—meant that these new homes were accessed not through public transportation or railroad, but by car (Puzo 1988). Rather than an actual homesteading experience, the dream sold to STA owners was a simulation of it, what historian Peter Wild calls “a chromatic desert fantasy” (2004, 11).

While some were entranced by the offering of cheap public lands for vacation homes, others found the program “ill-considered legislation that encourages people to take up land for a purpose for which no real need exists or under conditions that will be inimical to the long-run public interest” (Dana and Krueger 1958, 126). As applications “swamped” the Bureau of Land Management, who took over the program in 1946 from the General Land Office, they were unable to appropriately classify lands before selling them to the public (128). Tracts were set without regard to the services that they would require to become homes. Roads were improperly located, there was no water, and generally there was a “lack of any comprehensive plan to assure satisfactory standards of housing” (128). The filings, which were concentrated in the western Mojave, around Barstow and in the Morongo Basin, were unfinished, rarely truly improved, and vacant. As one planner put in a searing critique of the program,

“A typical, improved, small-tract parcel has an unfinished garage-sized, mass-produced shack that is especially designed for the small-tract market. There are rarely streets, utilities, and other ground improvements. In most areas one can pass by a hundred vandalized vacant structures before finding an occupied or substantial one” (Schneider 1962, 22).

This planner’s critique emphasizes the disorderliness of this program and its poor implementation, but also reveals the way that those involved in the program ultimately only made their houses into highly temporary—and unnecessarily ecologically damaging—sites

across the Mojave. Rather than “jackrabbit homesteads” as they were colloquially known (Stedman 1945; Stringfellow 2009), these were not viable places for people to live. Some even speculated that they “were probably filed as a means of obtaining land, with little intention of living there” (Bard 1972, 112).

Instead, these cabins—or, just as often shacks—were merely spots for recreation, mirroring a broader boom in recreation during that era driven by a gas-guzzling public. While in 1945, the average car ownership per household was 0.69, by 1960, it had reached 1.16, a dramatic rise (Kain 1967), and many began to take their cars for recreation in the California desert. One of the most visible forms of new desert recreation was dirt biking, which rose dramatically in the 1960s after Hondas came to the US in 1959 (Youngblood 2007). Hypermasculine proponents of the sport—one dirt biker I interviewed went by “Super Hunky,” a nod to his Polish heritage and brawn—imagined the desert as their playground where their actions didn’t matter, and as a wasteland that their bikes couldn’t destroy (Sizek 2019). As one would write in a blog post that he sent me, “All it takes is a good couple day[s] of rain, the wind blowing at Mach one, and all vestiges of dirt bike trails and buggy road[s] are wiped clean. Like no one was ever there. Man has no impact on the Desert, unless it’s cut open by mining companies” (Cuddy 2018). He juxtaposed large-scale changes—mining—to the little guy, implying that such large-scale coordinated changes were the only destruction that deserved to be regulated. Not only did destruction of the desert not matter, but dirt bikes were considered unable to destroy the desert.

In other ways, it seemed like destruction and domination was the goal of dirt biking. Both advertisers and dirt bikers alike viewed the activity as an enterprise that would dominate nature: for example, a Yamaha advertisement boasted that its new Exciter would “[dish] the dirt the rest will have to eat” (Meacham 1971, 169). The hypermasculine image of this advertisement resonated with another man and his ride: the cowboy. Motorcyclists of the 1950s had already made themselves in this image, as films like *The Wild One* remade the antihero of the Western into a modern motorcyclist (McBee 2015). It wouldn’t be surprising, then, that dirt bikers also envisioned themselves as rule-breaking cowboys. Dirt biking also resonated with cattle grazing in the desert in another way: both were highly ecologically destructive to fragile desert ecosystems.¹⁹

In 1967, when the Bureau of Land Management published their first report on the growing trend, they estimated that 130,000 to 140,000 people were coming to the desert for dirt biking events, either in support of their family members or as participants themselves (BLM 1968). This fantastic rise in dirt biking, to the federal government, seemed like an impossible thing to manage. The report, rather than ending with a solution to the dirt biking problem, ends with a question: “What can be done?” (BLM 1968, n.p.). The only answer offered is that the Bureau of Land Management doesn’t currently have the capacity for resolving the problem, and that they don’t know enough about the negative impacts of motorcycle riding.

The STA was premised in the idea that the desert was a beautiful wonderland and escape from work, but ultimately failed in that the structures built were not permanent: the fantasy sold to new desert-owners didn’t exist in reality. In contrast, dirt bikers didn’t think the the desert was a wonderland, but rather a wasteland that couldn’t be destroyed through

19 In the 1970s, grazing managers also recognized the compounding effects of off-highway vehicle use and grazing, stating that: “In recent years recreational use, particularly off-road vehicles, has further impacted the range on the western fringe. This has resulted in additional livestock management problems, as well as decreasing forage production potential. Wild horse and burro populations have rapidly expanded due to the protection afforded by Federal Law. Conflicts for forage have resulted from these rapid expansions. Finally, unwise grazing practices have contributed to a reduced carrying capacity when compared to presettlement conditions in limited areas of the CDCA” (Bureau of Land Management 1979).

human activity, or where the possibility of such destruction didn't matter. Yet both reinforced the notion—one through its failure and the other through its vast success—that the desert was not a place for human habitation. In this sense, the desert was not a land in transit en route toward a transit teleology of settlement, but rather a land of transit. That is, the failure of desert land in transit was co-constituted with the rise of the desert as a land of transit, only a space to pass through, not a place to live.

The Magic Triangle

In 1954, a promotional section of the *San Bernardino Sun-Telegram* advertised the far reaches of the county. Tucked between a story about Trona (“not a place but a state of mind”) and a full-page advertisement from Barstow’s Chamber of Commerce, they described a scenic triangle:

“East of Barstow there is a vast triangular-shaped stretch of the Mojave desert that lies north of U.S. Highway 66 and south of 91 which, though literally filled with scenic wonders, is relatively unknown to the world” (*San Bernardino Sun-Telegram* 1954: 3D).

The triangle, of course, comes from a bird’s eye view of the California desert, a view from above that uses highways to bound the desert, as would become normalized as a description of the East Mojave. It is not only through the highways that the boundary of the area are defined, but rather that the entirety of the region is defined as a region where transportation reigns: a 1977 geography dissertation about the area defines it as “the East Mojave Transit Region,” insisting that services only support transportation through the “marginal” area (Gilman 1977, v; see also Garrison 1960). In this study, Gilman classifies the small fifteen small settlements in the desert as highway service (6), highway/railroad (4), railroad (3), and primary industry (2), but their small sizes meant that researchers were wary of calling them towns (56-58). These towns were simply exceptions to the rule of an underpopulated desert, and only there to support the highway.

The largest towns, as Gilman implies, were those that supported transportation.²⁰ In the 1920s, along Route 66, Goffs had two stores, two saloons, and two hotels (Bard 1982, 92), and Fenner, another ABC town, had a hotel. In the 1930s and 1940s, motorists could get gasoline or stop at a cafe at Essex or Danby, or they could stop to stay overnight in a “modern fireproof hollow tile cottage” (1934 ACSC Booklet q. in Puzo 1988, 51) at Chambless, a town that sprung up at the intersection of Cadiz Road and Route 66.²¹ But once Route 66 was paved and automobiles were improved after World War II, these towns would no longer be needed. Even as they became obsolete, they still represented a major share of the East Mojave’s population (Bard 1972, 125).

Small towns could also be left out by realignments of the highway, which often forced them to relocate or be abandoned (Bard 1972, 92). “Will Amboy be left in the ‘middle of the desert’ by a decision of the State Highway Commission?,” a 1962 article in the Twentynine Palms newspaper *The Desert Trail* asked regarding a realignment of the highway (n.p.). The Interstate system, as one historian put it, “devoured it [Route 66]” when it was completed in 1973 (Puzo 1988, 65, 69). By the late 1970s, Amboy had only fifteen people who supported the gypsum and salt mines in the region (Gilman 1977, 65; Puzo 1988, 37). All of the buildings in the Amboy went up for sale in 1975 (Puzo 1988, 70). This simply pointed to the

20 Generally, this was the case. Fifty-four of the fifty-eight settlements in the East Mojave were originally established for transportation (Bard 1972, 162). Although I focus on the Route 66 corridor here, the I-15 corridor tells a similar story. In 1926, Baker, along the newly constructed Arrowhead Trail and later I-15, had no residents. By 1939, they had one hundred and ten (Gilman 1977, 149). By the 1970s, Baker was one of the largest settlements in the Eastern Mojave with 570 residents (61-62).

21 Though keeping to the alphabetical order, Chambless was not properly one of the ABC towns. It wasn’t named until at least the 1920s, according to historian Patricia Schoffstall (2014, 67).

broadest truth that few lived in the ABC towns. Using census data and estimates from visiting towns, Robert Bard (1972, 147) estimated that there were 9 people in Bagdad, 50 by the railroad station at Cadiz, 45 at the Cadiz Village, and 3 at the summit; 8 people in Danby, 37 people in Essex, 1 in Fenner, and 20 in Goffs.²² He also estimated that, if including the towns of Barstow and Needles, ninety-eight percent of East Mojave inhabitants lived along the transcontinental routes in 1970 (1972, 241).

If compared to the broader East Mojave, the ABC towns were perhaps among the most successful settlements. Only two towns in the East Mojave—Baker and Mountain Pass—had more than fifty people, and the former was bustling from the construction of Interstate 15 between Barstow and Las Vegas, and the latter from the rare earth mine (154). And, if one were to exclude the highway corridors, only 280 people occupied more than 4,000 square miles (156). These people were communications workers,²³ railroad employees,²⁴ ranchers, miners, or retired people.²⁵ The lack of population in the East Mojave, again, only points to the failure of settlement—that either people came to the desert and chose not to stay, or never came at all.

Popular news characterized the East Mojave as a depressing and empty place without people, “a dying community” with rare exceptions (Stovall 1962, 11). In the lonesome triangle, one claimed, there was no longer much to see (Stovall 1962, 11). But boosters contested this description of towns bypassed by new freeways,²⁶ arguing that the maintained roads promised to make the desert wasteland into a wonderland for the curious tourist. They called the region the “scenic” and “magic” triangle, a means of advertising the desert filled with attractions that include wildflowers (Belden 1966), small towns and historic mining camps (Belden 1964), and cinder cones and sand dunes (Taliferro 1979). Advertising the triangle’s attractions required questioning the idea that the desert was a wasteland, but still was the view of the desert through a windshield (Louter 2006). Articles referencing the “lonesome,” “scenic,” or “magic” triangle all reinforced the notion that the desert was not a place to live. The expectation of loneliness—or, in the wonderland valence, solitude—simply reworked the questions from generations before: how to read a seemingly immutable desert that stubbornly resisted transformation.

Even as the desert transformed from wasteland to wonderland, the desert retained the failure of the checkerboard, and the idea that the desert was not a place for people to live, but a place for travel. Rather than a transit in lands, the desert became a place of transit and transportation, erasing the histories and presence of Chemehuevi lives.

22 1970 census data found that every community in the East Mojave was too small to be considered a town in census data (Bard 1972, 163).

23 Those who maintain communications and other infrastructure, including the microwave, power line, and water infrastructures (182).

24 The railroad employees’ homes were most commonly built on the lands of the railroad right-of-way, not on the railroad checkerboard (Bard 1972, 178-9).

25 Bard (1972) estimates that only 9 places were primarily the homes of retirees, and then that only sixteen people lived in those homes (189).

26 Or, at least, as was feared by boosters of desert towns like Needles, and celebrated when the route was finalized to include the town (Brown 1966).

Chapter 2: Checkerboarded Repossession

As I sat in the Saint Kateri Tekakwitha Mission Center on the Soboba Indian Reservation with Michael Madrigal (Cahuilla), the President of the Native American Land Conservancy (NALC), he told me about the odd position of organization: “we buy back our own land.” Before colonization, only tribes were in charge of land management, but today, tribes only manage a small fraction of their tribe’s territory. He remarked upon the odd status of the land where we were conducting the interview that day: that is, there at Soboba, where the tribe was considered to be “squatters on their own land” after Mexican land grants,¹ American settlers and the railroad claimed title. He described this as “an interesting and painful story.” To a certain extent, Michael’s life has been spent living with this interesting and painful story. As lay minister at the chapel where we met on that day, his role is to help people in the wake of histories of dispossession, whereas at NALC, he worked to reconnect Native Americans to the land through repossessing it. The history was important not only for its own sake, but was needed for maintaining Native culture and relationships, what he hoped that NALC was doing through “keeping connection to our land.”

While Michael was pointing to the most obvious aspect of the NALC—an intertribal 501(c)(3) that exists “to acquire, preserve and protect Native American sacred lands” (NALC n.d.)—he also referenced a history of dispossession that underlies the need for contemporary repossession projects. In this chapter, I build on Michael’s explanation of the context that underlies the Native American Land Conservancy, its goals, and its founding. I use two moments—the Indian Claims Commission and NALC’s repossession of Mamápukaib—to illustrate how NALC navigates the settler expectations about Indians, land, and money.

These two moments highlight a paradox: Settler society expects Native Americans to accept money as an adequate substitute for land taken to them through colonization, but considers Native Americans who use money to buy back such lands as private lands to be culturally inauthentic. In other words, money can serve as a payment by settler society to redress historical harms, but that can ironically not be wielded by tribes to purchase back land. This paradox builds on the work of anthropologist Jessica Cattelino (2008, 2011, 2012), who has powerfully demonstrated how the expectations of settler society² seek to challenge or question tribe’s rights as sovereign governments and their cultural legitimacy once tribes have gained economic independence.³ The question of buying back is not only complicated by relationship between tribal governments and tribal nonprofits, but by the specific contours and expectations of Indian lands as reservation lands. I analyze NALC’s acquisition of private property as a key aspect of understanding the politics of Indian land today.

Yet, this chapter is also motivated by another question, and a modern-day demand to return land to Indigenous peoples. A uniting slogan, Land Back is often abstracted in its general use (Moscufo 2020; Hopkins 2021). Though the demand for land back often takes place in specific contexts and under specific circumstances, land back has also become a meme that appears without grounding, a kind of rallying cry that ends in an ask for money like a land tax, rather than returning land. This chapter examines the broader politics and

1 Soboba, like other tribes located closer to the coast of Southern California, were affected not only by the presence of Spanish Missions, but by Mexican land grants. The region around Soboba was part of the Rancho San Jacinto Viejo Land Grant of 1842 (Cowan 1977, 79). Land grants did not extend farther east than that region, so no land grants were established in the Coachella Valley or Eastern Mojave.

2 Here, I use this term to refer to the broader group of people in the United States who are not Native American, rather than to specifically refer to those who might live in the eastern Mojave (for a discussion of the term and its limitations, see Stasiulus and Yuval-Davis 1995).

3 Others have followed the relationship between cultural authenticity and capital in different contexts around the world (Comaroff and Comaroff 2009; Cooke 2014).

history of returning land to tribal entities, considering the relationship between money, land, and settler society.

Money for Land

In 1946, Congress established the Indian Claims Commission to settle a longstanding issue in Indian Country: how to settle centuries of dispossession through a legal process adjudicated through the courts. Created after decades of disputes and challenges in Indian administration as well as to resolve a backlog of other claims made against the federal government, the ICC was intended to solve all disputes in a ten-year series of hearings (Lurie 1957; Rosenthal 1990). Given the complexity of the claims, the process ended thirty years later. While the ICC did compensate tribes for land taken from them without their consent, it failed to achieve its more ambitious goals of solving many of the other problems that the Bureau of Indian Affairs had since its inception.

The ICC was intended to “wipe the slate clean of all Indian claims” as it was to “do justice to the Indians” (Washburn 1985, 23).⁴ In one lens, the rise of the ICC was a result of the compassion of the federal government and the American public; in another, it was simply a predecessor to the policy of termination, when the federal government ended its relationship with individual tribes after declaring them to be no longer sufficiently Indian to be recognized (ibid).⁵ One of the goals of the commission, as per a report from the House of Representatives in 1945, stated that the commission “would make it possible to terminate a substantial part of the continuing federal appropriations for Indian administration” in the long term (q. in Rosenthal 1990, 86-87). This clearly revealed how the ICC was intended to “serve the government[,] not the Indian” (Rosenthal 1990, 49). The ICC, then, was both a project of seeming federal benevolence and an attempt to end federal obligations of tribes, a means to declare the process of colonization and assimilation complete at the same time that it reaffirmed federal commitments to minority peoples in the short-term (Rosenthal 1990, 92).⁶ Just as the later termination policy that sought to end federal responsibilities to tribes, the Commission was focused on resolving Indian claims by substituting land loss for money gained.

After tribes filed for a claim under the ICC, they had to prove that they have original, or Indian, title to their lands. These claims to land were dependent on so-called expert testimony from anthropologists like Julian Steward or Alfred L. Kroeber, both of whom were involved in the consolidated Indians of California case, as well as in the separate docket for Chemehuevis (Stewart 1961). These anthropological ‘experts’ were asked to determine which lands tribes had possessed exclusively since time immemorial,⁷ a delineation that depended as much on how anthropologists approached their topic as it did what the tribe’s actual land practices may have been (Rosenthal 1985, 52). In California, debates about tribal territory tended to fall either along the Kroeberian interpretation, which favored linguistic boundaries and larger territories for tribes, or the Stewardian one, which narrowly calculated tribal

4 Scholarship regarding the ICC emphasizes the element of justice and settling Indian claims, which is why I have chosen to emphasize this aspect of it here. However, the ICC was also motivated by very practical concerns on the part of the federal government: that jurisdictional disputes with the federal government were already a headache for administrators as much as were cases that asked for restitution of past harms (Lurie 1957).

5 Though this predates the contemporary politics of recognition, it shares the contemporary pull of multicultural recognition: that if recognized, Native Americans can be integrated into the broader American public (Povinelli 2002).

6 This recognition of minority groups was especially important in the post-WWII moment to maintain an international image, but the specific idea of the ICC had been introduced in Congress first in 1935, and failed both in 1935 and 1937 (Rosenthal 1990, 62-64, 92).

7 This phrasing is an odd one to codify into law, but it had serious implications for the results of the ICC, as it reinforced the forms of salvage anthropology that Kroeber and others practiced.

territories through guessing their subsistence needs. This debate, which I discussed in the previous chapter in terms of the question of what it meant for tribes to ‘possess’ land, not only was used to determine how much land to grant to each tribe, but how much money tribes would receive from the ICC, as a larger land base would translate to greater ICC compensation.

After the tribe’s aboriginal territory was set, the Commission assessed the market value of the land and how much the tribe would receive (Rosenthal 1985, 47).⁸ In order to receive the funds, tribes had to demonstrate how the funds would be used to develop the reservation or meet fulfill other goals specified by the government (Carlson 1985, 103; Sutton 1985, 213). In many cases, this counteracted the government’s goal to become less involved with tribes, as federal officers monitored the use of funds (Carlson 1985). In other cases, the funds given to tribes actually helped to reorganize tribal governments, countering the government’s goal that ICC claims might acceleration termination. Chemehuevis at the Chemehuevi Indian Reservation did exactly that. Many Chemehuevis had moved to Parker or even enrolled in the Colorado River Indian Tribe after the Chemehuevi Valley was inundated after the completion of Parker Dam in 1938. Chemehuevis came back to reestablish the reservation in 1970, in part because of the ICC funds that had prompted reconnection among its members to reorganize to claim their money (*Chemehuevi Newsletter* 1971a). The reorganization of the tribe was also, of course, not insulated from the time: resurgences of Indian activism alongside the broader civil rights movement also prompted Chemehuevi members to reorganize their tribal government, which were occasionally referenced in the bimonthly *Chemehuevi Newsletter* (e.g. 1971b; 1973). In these cases, the ICC judgments did not necessarily imply that the government was finally resolving Indian claims and unsettled disputes. Instead, ICC claims solidified the relationship between tribes and the federal government through transferring money.

Then what was the money supposed to do? Economic historian Leonard A. Carlson (1985) analyzed the ICC’s payout calculations in order to understand what the government’s intent. While he argues that the land calculations were somewhat economically sound, he questions one aspect of the ICC’s project: the logic behind not paying interest on the parcels. For takings under Eminent Domain, interest is typically accrued from the time between the government acquiring the land and the payout, but the ICC did not pay interest (97-98). Some have argued that this decision was made in order to avoid large claims and the political fallout that might result (Friedman 1970). For Carlson, the question is how to consider the ICC claims as reparations: if the purpose is to pay descendants for the wrongdoing that was done to their ancestors, then interest would be applied to compensate them for past lost. If the purpose was to compensate people today for harm done to *them* by their ancestors’ loss, then interest would be less necessary.

For Carlson and others, these questions are about determining how much money should be paid to tribes, not whether money is the appropriate form of reparations. Through the ICC and other claims cases, the judiciary has made money into the appropriate means of paying damages for tribal land cases even though money payment is not required by law (Sutton 1985, 213). Some tribes, however, have resisted the idea that money could become an adequate substitute for land. The Oglala Sioux, for example, have refused to accept money as payment for their lands in the area known as the Black Hills, for which they were awarded \$17.1 million dollars (Sutton 1985, 225). Rather than accept money for land, however, the tribe instead lets the money sit in their bank account. Pushing back against the notion that land and money could be seen as equivalent, they refused to accept the deal that would render money fungible and transferable.

8 They would also take money out of the settlement as offsets for costs.

The Oglala Sioux's refusal to accept money for their land recalls a much older debate about the relationship between land and money in the context of Indigeneity in North America: that is, whether an Indian society premised in kin and land could become a society of property and money (Cattelino 2018). By offering Indians money for land, the ICC argued that tribes could be compensated for their land as private property, just as the government would compensate members of the broader settler society. Yet, the government's money was refused or used to strengthen tribal governments, often having the opposite effect that the ICC had intended. While the government wished to treat the land as private property, they contradicted the moral and ethical demand made by tribes that land is not property, but is instead a relation (Shipton 2009, Carroll 2014, Pasternak 2015).

In the following section, I examine how NALC purchases land. I argue that this case reveals the settler society's asymmetrical assumption that tribes can be financially compensated for losing their land, but cannot use that money to repurchase land. More specifically, I argue that precisely the problem for NALC was that their use of money to acquire land was seen as suspect inasmuch as it indicated that tribes could use the means of a society of property and money to buy back their relations and continue to have a society of kin and land. The "odd position" of needing to buy back land that has been dispossessed from tribes, then, is both difficult because of the conditions that has made purchase into the necessary mode of buying back relations, as well as the odd position of tribes today, in which buying back land is often seen by settlers as a means for capitalist expansion—and thus suspicion—rather than reconnection to their relations.

Buying Back

In 1997, two decades after the Indian Claims Commission payments were paid to Chemehuevis and the Indians of California,⁹ Tom Askew approached the Twentynine Palms Band of Mission Indians with an offer to sell land that his family owned in the Old Woman Mountains. He knew, in part from his own time living on the property after his service in the Vietnam War, that the land shouldn't belong to him, and instead should belong to a Chemehuevi tribe, of which the Twentynine Palms Band is one. This offer was what spurred the emergence of the Native American Land Conservancy from an intertribal cultural committee that had been previously meeting at the Twentynine Palms Band's small casino in Coachella.¹⁰ Today the Board is comprised of a nine-member board, seven of whom are members or descendants of Cahuilla, Chemehuevi, Lummi, or Ojibwe tribes.¹¹ Spanning both academics and professionals working in Indian Country, most of the board members have experience working in tribal government, tribal casinos, or ethnohistorical research. That is to say, when Tom approached the people who became the founding members of NALC's board, they were not experts in purchasing vacant land in the Mojave Desert for conservation.

The organization's goal to acquire Mamápuikaib, the Old Woman Mountains Preserve, proved to be a challenge. Although the board been initially approached by a willing seller, Tom Askew, there were five owners of the property, and all needed to agree to the sale. The other owners included the Boy Scouts, Girl Scouts, a rehabilitation center, and the Presbyterian Church (Trafzer 2015, 222; Middleton 2011). Initially, the other owners didn't know that they had a stake in the land, and they were drawn into the negotiations only once they found out that they were owners. This is not unusual for owners to be uninformed about their property in the desert: frequently, land trusts reaching out to legal owners would find

9 Most tribes in California were covered under the "Indians of California" docket, whereas Chemehuevis had their own separate docket (Beals 1985, 144).

10 For more about the Twentynine Palms Band, see Trafzer, Madrigal and Madrigal 1997.

11 This list of board members is current as of February 2022. While I was conducting fieldwork, there were additional board members, some of whom have since left the board for various reasons.

them surprised to know that they had an interest in desert land. The challenge typically is to reach the owner and keep them involved in the process. For the purchase of Mamápukaib, the problem was to get all groups to agree on a price.

While most groups agreed to donate the land if the other owners agreed to do so, the Presbyterian Church of Upland refused to donate (Trafzer 2015, 223). They initially refused to participate in discussions with the other groups, but NALC board members found another aspect more troubling: their complete lack of regard for the NALC's care for the land as a sacred place. As Clifford Trafzer, an NALC board member of Wyandot descent (2015, 225), interpreted the event, the representative was only interested in getting as much money from the transaction as he could. In an interview with me in his office in the history department at UC Riverside, Trafzer remembered "he didn't give a darn about sacred lands or protecting animals or plants. He just wanted the money and he wanted the comps [comparable lands, a real estate term] to be the same as the land close to the freeway." Even recalling the incident twenty years later made him, and his darn only masked his much greater anger that would certainly warrant a swear. Trafzer's anger is much more evident in his academic writing, in which he argues that the church only cared about the money it could gain from the transaction rather than the land itself or its sacred meaning to tribes. He calls it a "surreal reincarnation of nineteenth-century attitudes toward American Indians" in which exploiting money and resources took precedence over all other considerations (2015, 226).

The problem of the Presbyterian representative was eventually resolved through NALC's persistence and their outreach to other parts of the Church. NALC board members Joe Benitez (Cabazon) and Matthew Leivas (Chemehuevi) reached out to upper levels of the church to work around the recalcitrant representative. It was through this much higher level of the church that the problem was resolved. This was a long process, though, and today board members remember this as a moment of patience and faith in the process, as coached by board member Theresa Mike (Lummi).

But the negotiations and process of purchasing Mamápukaib revealed the broader stakes of Native American groups repossessing land at the turn of the twenty-first century. NALC's problems were magnified by a more modern-day component of Native American politics: the rise of Indian gaming. At the same time that NALC was seeking to purchase the land in the Old Woman Mountains, tribal gaming was expanding rapidly in California and across the country. While gaming as a form of economic development depends legally on the rights of tribes as sovereigns, opposition to gaming often focused on the intersection of the economic and the cultural: "American anxiety about whether Indians who were not impoverished could still be Indian," as Sinixt scholar Laurie Arnold (2016, 3) puts it. This American anxiety is that money makes everything fungible and exchangeable, which contradicts the idea that Native Americans are prepolitical or kin-based groups (Cattelino 2018). Anthropologist Jessica Cattelino (2010) analyzes this in terms of a double-bind of American Indian need-based sovereignty: that the economic resources needed to exercise sovereignty in a colonial context are dependent on the rights of tribes as sovereigns and governments (including gaming), but that, once tribes are able to exercise their economic power, their legitimacy as Indigenous sovereigns is questioned by settler society. That is, settler society views cultural legitimacy of American Indians as dependent on poverty; "rich Indians" are culturally illegitimate ones or mere special interest groups rather than sovereigns (Barker 2005). This seems to explain the Presbyterian representative's stance: Perhaps he was unmoved by claims that the land was sacred precisely because his understanding was that contemporary tribes were corrupted by gaming and therefore no longer sufficiently "Indian" enough to be able to make claims about sacredness. In other words, sovereign gaming revenues despoil Indigenous authenticity.

These ideas about gaming revenues and the wealth of gaming tribes also could have affected the inflated price that the Presbyterian representative wanted. Cliff Trafzer (2015, 225) speculates that the Presbyterian representative “may have held the common opinion that all Indians are rich as a result of gaming and did not understand that the conservancy was not a tribe and held no assets,” or, in the words of another board member, that “there is a casino pot of gold” behind every tribe. The implication here is that “rich Indians” should be able to purchase the land themselves, at the inflated price suggested by the Presbyterian representative.¹² While this relies on settler assumptions of the financial capacity of a tribe, it also reveals that the Presbyterian representative knows how a tribe should be spending money. As NALC board member Nicole Johnson put it in an interview with me, “tribes are always being told what they *should* do” as if they are not sovereign nations. The representative argues that tribes should spend their money on buying back lands taken from them during colonization, an untenable position.

This position also depends on a key confusion between the tribal business enterprise, which may have casino or other economic development revenues, and the nonprofit, which does not. A tribal business enterprise, which is chartered under the sovereign authority of a tribal government, exists to make profits, whereas a 501(c)(3) is explicitly non-profit, a public charity. This choice to ignore the difference or confusion between a tribal nonprofit and a tribal government was not unique to the Presbyterian representative. When filing for 501(c)(3) status, NALC faced similar questions from the IRS. As Trafzer recalled, “The IRS asked if we were going to put a casino there or a housing development for Native people on the land. And they had no conception [of the remote location of the Preserve] even though we sent them a map. And people think in terms of development and making money and it must be for making money.” The expectation from the IRS agent, then, was that tribal entities of any type—government or nonprofit—were interested in making money. Therefore, they asked whether NALC would intend to put tribal housing or other developments on the land, despite its remote location and obvious poor fit. While one use—preservation—would be allowed under IRS policy for nonprofits, the other—economic gain—would not. In one way, this points to an assumed transformation of tribes: that tribes today are societies of money and property, rather than ones of kin and land, and that tribes could *only* be interested in securing profits from the land for future tribal businesses. Yet, it also points to a narrower question in terms of the relationship between NALC and tribal governments. The fact that they ask after potential economic development that only a tribe could do implies that NALC could only serve as a front for the economic interests of tribes as governments.¹³

The IRS’s confusion points to a broader slippage, in which the distinction between NALC and tribal governments is not understood by those unfamiliar with Native American tribes. Sometimes, people reach out to NALC with the impression or idea that the organization can represent tribes or has direct access, acting under the misguided assumption that all tribes have the same interest and therefore that NALC could represent all of them.

12 This question of *how much* money the land is worth is frequently an issue in the desert, in which landowners (who often know very little about their land) think that their land is worthless until they find out that someone is interested in it, at which point it becomes priceless.

13 If Mamápukaib were to become a site for economic development, NALC would first need to transfer the land to a tribal government, and the tribal government in question would need to pursue the fee-to-trust process, which would be overseen by the Bureau of Indian Affairs. The fee-to-trust process is quite expensive, as I have heard from tribal employees who have been involved in the process, and makes sense for most tribes only in contexts in which the land is very valuable—and they could save money on taxes—and in which the use for the land would be a trust use, like tribal housing (especially financed by BIA) or economic development. In either case, the question of fee-to-trust would not be governed by the IRS and is outside of their jurisdiction.

This shows, as Nicole Johnson put it, “a lack of knowledge about how tribal governments actually work,” and an assumption that Native Americans must share singular interests. This reflects a longstanding issue with the term “Native American,” which unifies Indigenous peoples in the United States under one rubric at the same time that it erases differences among the 574 federally-recognized Indian tribes. While this idea is prevalent among the public, it tends to be less of an issue for the federal government, whose employees understand that NALC is not a clearinghouse of tribal governments and that government-to-government consultations should be cleared by contacting every individual tribe. However, there is often a problem in which government agencies aren’t sure how NALC fits among their diverse constituencies.

As a nonprofit, NALC isn’t always sure how it fits in either: it is both trying to be a resource to tribes and to conservation groups. As Michael Madrigal, the President of NALC, puts it, NALC is a “strange creature” in trying to “be the best of conservation and general public interests.” The challenge of the large mandate, he says, is similar to his own work as a lay minister at a chapel at Soboba, a former mission site where congregants today are both from the reservation as well as from the surrounding community. In his other work, he has served on the Human Relations Council of the Greater Hemet, San Jacinto, and Meniffee Region, an intercultural organization that promotes understanding between different cultures. Like his work there, Madrigal views his work at NALC as also “bridging gaps between communities.” Such bridges are often tenuous and require that the organization “live with uncertainty,” as it’s not always clear how the path will move forward. Of NALC’s board members, Madrigal is one of the most able to live with this uncertainty—a calming presence who aptly self-describes as “reserved,” he manages to move through the frustration that characterized so much of the process and the uncertainty that characterizes NALC’s role in these processes. As in the acquisition of Mamápukaib analyzed above, persistence and patience are central to this kind of work, and negotiating the “strange creature” that traverses unsettles expectations of Indianness as they work against them.

When NALC sought to acquire Mamápukaib, the challenge in acquiring their flagship parcel was as much about the meaning of money and land for Indigenous peoples as it was about raising money to purchase the parcel. NALC’s experience highlighted the role that settler expectations played in delaying the success of their efforts to buy back aboriginal territory. At the same time, the acquisition story points toward the ways that the Indian Claims Commission’s attempts to quiet Native American land claims failed to sever relationships with the land, or to prevent future attempts to bring land back to tribes. In the following section, I trace what happens after NALC acquired Mamápukaib, and the settler response to NALC property. I argue that NALC’s presence in the desert was as Indians that were “unexpected” by settler society, and that the purchase of private property—rather than the attempt to make more reservation land—undermines the assumed relationship between Native Americans and reservations.

Settler Surprise

When I told desert rats about working with NALC and the organization’s property at Mamápukaib, I often was met with stories of surprise. In a typical telling, someone would narrate traveling through the undeveloped desert that they assumed was entirely federally owned. When they came upon NALC’s lands, they were surprised to encounter a well-kept area, complete with fences and signage. For desert lovers who came across NALC’s land by chance, they viewed these improvements as a sign that someone cared for the desert and, like them, viewed the desert as a place of beauty rather than a wasteland. Normally, they narrated this encounter of desert care as something that invoked both surprise and relief—finally, *someone* was taking care of the land, especially as the Bureau of Land Management could not

be trusted to do so. The fact that the *someone* was a Native American group didn't unnecessarily unseat their stereotypes about Indians. But, rather than unsettle the rich Indian trope, it often served to reinforce another trope: the ecological Indian (Krech 1999; Nadasdy 2005). In other words, the Native American presences at Mamápukaib flips the narrative of the rich Indian—who presumably is not interested in cultural protection—only to reinforce the narrative of an ecological Indian who is one with the land.

But another aspect of Mamápukaib unsettled expectations:¹⁴ that it was privately held land, not a Native American reservation. While conducting fieldwork, I found that the Mamápukaib's status as a landholding confused almost everyone, even those who should have an understanding of the many land statuses in the California desert. When I was talking with a white man who is an expert on desert land and wildlife issues, he told me about a recent visit to Mamápukaib: "you know, that Indian reservation in the Old Woman Mountains." Even if he referred to the place as a reservation as a mistake—that is, he didn't mean a reservation in the true sense—he pointed to the commonly held assumption that all Native American lands are reservations.

As I discussed the issue with Rebecca Kugel, an NALC board member who is of Ojibwe descent, she told me about the uneven expectation between forms of settler possession and Native American possession. Settler society accepts that "if I'm a fancy financier in LA, I can have a hunting preserve" in the East Mojave, but it makes "Americans uncomfortable to think about Natives having private land." She continued that "Americans think that Indians don't get to own private land unless its a reservation, which they don't understand." That is, private ownership is considered antithetical to Indianness.¹⁵ Further, what Kugel, a history professor at the University of California, Riverside, suggests is that Americans have a common understanding that Native Americans are tied to reservations, but without a complete understanding of what a reservation is. Reservations, which are federal lands held in trust for Native American tribes, are not fee simple (private lands) at all.¹⁶

In short, reservations are lands held in trust by the federal government for Indian tribes, lands that owned by the federal government. Many aspects of this trust status are cumbersome. Legal scholar Jessica Shoemaker (2017, 491) argues that the BIA's oversight over trust lands renders economic development difficult, if not impossible, in the "unpredictable and cumbersome legal landscape." Considered to be one of the last arenas that has not been reformed to encourage tribal self-determination, the immense complexity of federal trust lands begets greater complexity even as it also allows for some benefits—namely, the land base needed to set up tribal government, the inability to alienate trust lands, and the lack of state or local oversight over trust lands that enables certain forms of economic development (Shoemaker 2017, fn 41). This status is what enables tribes to have economic activities that otherwise wouldn't be allowed under state regulations: for example, tribal

14 In this sense, I'm considering the work of both Jessica Cattelino (2010, 237-238) and Standing Rock Sioux scholar Philip Deloria (2004) to consider the distinction between the anomalous and unexpected. While the former serves to reinforce expectations through pointing at an aberration, the latter has the potential to upend the categories that underlie it, thus provoking transformation. The tension between the anomalous and the unexpected highlights the fuzzy boundaries between reinforcing expectations through constructing anomalies and questioning them through reconfiguring the categories themselves, the latter of which is considered to be the goal.

15 This, of course, is one of the reasons why the allotment processes under the Dawes Act was presumed to be "civilizing": privately owned land was supposed to encourage individualism and entrepreneurialism among Native Americans, as well as promote assimilation so that tribes would disappear (Prucha 1995; Palmer 2020).

16 While reservations are federal lands held for Native American tribes by the federal government, allotments to individual Native Americans can be individually held as fee simple, or private, lands. While this is technically the case, allotments are not quite the same as reservations because they are held by individuals.

smoke shops, gas stations, or gaming (Cattellino 2008). This lack of state regulations on tribal lands mirrors a state or county's inability to regulate other kinds of federal lands, including national parks and Bureau of Land Management lands.¹⁷ The trade for these benefits, however, is significant federal oversight.

While reservations are indubitably tribal lands, limiting tribal land rights to only their reservation lands is misleading. In his critique of the reservation imagined only as a modular nation-state, Thomas Biolsi (2005) points to ways that tribes have control over off-reservation lands through hunting and fishing rights. These rights, which are guaranteed by treaties signed between the United States federal government and individual tribes, allow tribes to gather food or hunt on ceded lands, such as in the case of the Warm Springs, Yakima, Umatilla, and Nez Perce reservations (245).¹⁸ While this is an example of off-reservation rights, it still depends on such provisions in a treaty signed with the federal government. But tribes can influence off-reservation conditions in other ways: Anna Fleder and Darren Ranco (Penobscot) (2004) show how the Isleta Pueblo's right to create higher water standards shape the City of Albuquerque's water standards. Yet, they question whether this is an example of tribal sovereignty beyond the reservation or just a further extension of federal standards, and therefore of federal power. In these situations, tribal sovereignty can both serve to entrench and question the limits of federal power simultaneously.

Aside from the legal aspects of off-reservation influence, the reservation cannot contain Indigenous forms of placemaking. For example, scholars have considered how urban Indians continue association with places beyond the reservation (Ramirez 2007; Orange 2018). Drawing on geographer Doreen Massey and Diné poet Esther Belin, Tonawanda Seneca scholar Mishuana Goeman (2009, 183) argues that forms of connection traverse the boundary made between the reservation and urban places to make "storied and continuous space." This form of relationality is also at play in the California desert, as NALC considers its mission to create this kind of storied space. Board member Dean Mike (Twentynine Palms Band) argues that NALC seeks to not only protect "'that place' and 'this place,' but the connections between them" (q. in Middleton 2011, 66). Insisting that space is relational rather than a mere container for activity (Massey 2005), Mike refuses the idea that land is an object that could be 'stolen' from tribes, as relationships persist beyond property lines. As Michael Madrigal summarized the NALC's mission to me, the goal of the organization is to "to help maintain relationships between Native communities and traditional landscapes." This emphasis on land as relational proves a much broader point, often taken as a starting point in Indigenous studies: that land is not property, but a relation.

Mamápukaib illustrates the forms of relationality envisioned as the relationship between places as well as the relationship between people and the landscape. The Old Woman Mountains lie along the Salt Song, a traditional song of Chemehuevi and Southern Paiute people that depict the journey of two sisters through the tribal territory (Middleton 2011, 78; Laird 1984). Sung all night during a funeral, the Song is both an oral history of women as they travel throughout Chemehuevi and Southern Paiute territory in present day Arizona, Nevada, and California, and a recounting of paths used for trade. That is, the Song is a ceremony, a story, and a map. The Salt Song Project, which is co-led by one of NALC's board members, Matthew Leivas, documented the Salt Songs and their journeys throughout the desert (Middleton 2011, 78-9; Hebner 2010, 171). Mamápukaib is also important because

17 There are many other ways that reservations are under the jurisdiction of state governments, especially in the case of PL-280. For discussions of this and other jurisdictional problems, see Biolsi 2001, Leonhard 2011.

18 Cultural conservation easements or agreements with landholders for access are similar to these legal forms—as an encumbrance on the property, they are bound through an agreement made with the landowner (see Middleton 2011). I discuss these forms in more detail later in the chapter.

of its location along trading trails, meaningful through its relationships with other places (Fowler 2009). It was one of many sites where Chemehuevis lived at least through the early twentieth century, and was marked on a 1913 map as a place of then-contemporary habitation (Coon 1913; see also Ocampo 2019, 146). Today, NALC seeks to reinforce Mamápukaib as a place of connection: as, for example, in the Learning Landscapes program for tribal youth.¹⁹ In this program, tribal youth from multiple reservations—often including Chemehuevi and Cahuilla participants—gather for a weekend of camping and storytelling at Mamápukaib. Through continuing to build relationships to the land, Learning Landscapes emphasizes land as a relation rather than as a possession, and the landscape as a whole as a place of connection rather than as a set of discrete parcels.

The reservation cannot contain the contemporary relationships between people and land that extend far beyond its legal boundaries. Through control of lands or resources off-reservation or through forms of belonging beyond the jurisdiction of the United States, tribes continue relationships with lands that are off the reservation. In the next section, I investigate how to think about Native landownership beyond the reservation. I argue that the role of private property, rather than federal property, is central to understanding the move beyond the reservation.

Native Land Beyond the Reservation

Part of Mamápukaib's unexpectedness is that it is private land rather than reservation land in the true sense. Not managed by the federal government as a backstop—as one could consider reservation lands held on behalf of federally-acknowledged Indian tribes—Mamápukaib instead is technically private property. However, the typical markers of private property are missing beyond several signs and fences telling you when you have entered NALC's checkerboarded lands. There is no home on the property, despite the insistence of former site monitor and former owner Tom who had wanted one there. The fences on the property, rather than enclosing an area of value, instead exist to keep visitors on the road rather than to keep them off. There are obvious signs of care—and visitors typically remark on meeting a site monitor if they visit over the weekend—but the land is not maintained to keep people out. Like other nature reserves owned by nonprofits, Mamápukaib operates, in many ways, *as if* it were public lands, yet clearly marked as lands owned by an intertribal organization. Just as importantly, the lands—though technically private—are not managed in a way that indicates a future of accumulation. That is, land is not an investment expected to bring back more capital in the future, nor does it have a future as part of the federal government's landholdings. Instead, I argue that Mamápukaib is a means—through private property—for NALC, and tribes more generally, to make broader claims on the desert.

That is, rather than accepting the trade of money and land suggested by the Indian Claims Commission, the acquisition of Mamápukaib does the opposite: creates Indian claims outside of the boundaries of its own private property through the federal government's need for NALC assistance. I argue that it is precisely the non-contiguity of NALC's lands that helped them wield influence over the Bureau of Land Management. NALC's active management of their lands gave them purchase on lands beyond their boundaries. That is, through purchasing lands far beyond reservation boundaries, NALC created a means of getting a seat at the table, both working in and through the limitations of ideas of property that ends at the section boundaries. This comes from NALC's refusal to supplant federal government authority through selling their land to the federal government or pursuing the fee-to-trust process to make Mamápukaib into reservation lands. But it also came from

19 My decision to not detail practices at Learning Landscapes—or other such cultural events—is precisely to argue that analyzing such practices is unnecessary and unneeded. That is, I argue that this is a situation in which it is imperative to take Native Americans at their word.

another source: the Bureau of Land Management's dependence on NALC.

I would hear about NALC from federal employees who would imply that NALC had rendered their land management redundant, as NALC had the area around the Old Woman Mountains covered. A federal employee would tell me that they don't need to send their rangers out there, because the NALC site monitors did more than they ever could. In other cases, rangers might visit NALC's lands because it was nicer than other federally-managed lands. In these cases, NALC was seen as a key partner who could help solve federal problems, as in a fencing project implemented in 2014 and 2015. The project was a collaboration between the Bureau of Land Management and NALC, made possible through a grant that NALC had procured. For BLM, the benefit of the project was to reduce illegal bobcat trapping and poaching on their lands, which had been occurring for the last several years despite being illegal in BLM Wilderness, and later, across the state of California. In a restaurant near Palm Springs, a BLM official drew a map of the project on a napkin for me. The map included contour lines, section lines, and commonly used access routes for a steep box canyon on BLM property. The canyon was most easily accessed from one point on a road that went through NALC property, so the government could either put the fence on their lands and risk greater use of the box canyon, or ask NALC to put the fence on theirs. Through cutting off the dirt road "cherry stem" that had allowed vehicular access from NALC's property, BLM wouldn't have to worry about travel farther up the canyon. The project targeted protection on federal lands through private lands, a devolution of responsibility from the federal government to local landowners.²⁰ After the fencing was completed, both NALC and BLM were happy with the result, especially when the Needles office received a commendation from the state office for their collaboration with NALC.

Akin to collaborative conservation that encourages working across jurisdictional boundaries (Charnley, Sheridan, and Nabhan 2014, xiv; see also Brockington, Duffy and Igoe 2006; Charnley and Poe 2007), this project between BLM and NALC requires the federal government and private landowners to work together toward a common goal. In this case, the federal government is forced to work with NALC as an actor, precisely because they don't have control over the land where the fence would be the most effective. This contrasts with the way that the Bureau of Indian Affairs has oversight over trust lands—lands held in trust for tribes by the federal government, often in the form of reservations.

The project between NALC and BLM was instead one in which BLM knew that it did not have any regulatory control over NALC's lands, and thus that the two organizations needed to share a common goal. Unlike projects on the reservation that need to be approved by the BIA as a backstop (see M. Wood 1994, 1479-1480), NALC's actions are constrained only by their board and their mission of preservation, rather than through the BIA. As a result of their land ownership, more than thirty miles distant from the nearest reservation, Mamápuikaib also gives NALC a purchase to public lands that do appear to be distinguished from the rights of other Americans, uniquely made through a claim to a particular place in the form of private property ownership.²¹ That is, in contrast to tribes that often are treated as if they are the same as other interests on public lands (Tsosie 2001), NALC is able to negotiate a seat at the table, precisely through the mode of private property ownership that makes them into an inholder in both the BLM's Old Woman Mountains Wilderness and the Mojave Trails National Monument. It is precisely because the BLM knows that NALC could act on its own,

20 In the context of land conservation, this kind of devolution is understood both in the context of new conservation tools and a push to devolve responsibility for conservation to private entities (Fairfax and Guenzler 2001, Fairfax et al. 2005).

21 See Tsosie (2001, 1304-1305) for a discussion of this question of whether and under what circumstances Native American tribes have a special status.

without the oversight of the federal government, that the BLM needs to act in concert with NALC.

In this way, it was precisely the non-contiguity of NALC's lands that helped them wield influence over the Bureau of Land Management. Rather than conceptualizing Mamápukaib as an island stranded in a sea of federal lands, NALC's active management of their lands gave them a purchase on lands beyond their boundaries.²² That is, through purchasing lands far beyond reservation boundaries, NALC created a means of getting a seat at the table, both working in and through the limitations of ideas of property that ends at the section boundaries.

An Odd Position and a Strange Creature

During my decade of working with NALC, I was constantly reminded by board members that the organization saw its mission as one to bring a new idea into the world, a template for a new kind of land trust. In her book on Native American land trusts, Beth Rose Middleton Manning (2011) tracks the rise of NALC and groups like it who use then-novel legal tools to protect sacred lands off reservation. Her goal was to show a "range of examples of indigenous applications of 'private' conservation tools and partnerships" (Middleton 2011, 224), a means of remaking conservation practices to further Native American goals of reconnection with their relations. In his work on Indigenous resource governance, Cherokee scholar Clint Carroll (2015, 174-175) argues that tribes can rework settler systems through an Indigenous matrix, using the terms of resource-based governance as needed to promote relationship-based land governance. Though there are questions about whether and in what ways Native Americans can remake the master's tools (Lorde 2003), these tools are needed to secure access to land. Tools like cultural conservation easements, for example, can allow tribes can gain access to lands that they may not legally own (Middleton 2011). Today, such questions of reacquiring land necessarily take place in the context of contemporary calls for Land Back, a movement that insists on the return of land to Indigenous peoples.

As a contemporary demand, Land Back today is associated with a movement begun by First Nations in Canada who insist on the return of Indigenous land. Scholars and activists alike consider it to be not only about the land itself, but the return of Indigenous forms of relationality (Longman et al. 2020). As Mississauga Nishnaabeg scholar Leanne Betasamosake Simpson (2017, 199) argues, returning Indigenous land is about "refusing the divisions of colonial spatialities, networks, or constellations." In other words, Land Back is not only a demand to return the land as property, but to refuse colonial spatialities and to insist upon Native relationalities—that is, sacred relationships with land—with land that is more than property. Land Back, however, is not a demand that exists outside of settler society, as I have demonstrated in this chapter. Despite the problems that settler society presents to returning land, here I suggest that structures of private property provide a grounding for critiquing ideas about the relationship between Indians and wealth and between Indians and the reservation.

22 This is not unlike how having a "home base" gives grazing allottees purchase to the land around them.

Chapter 3: Future Deeds

“This is the last puzzle piece not protected.” June, a white woman in her late 30s, was presenting the mission of her organization to Sierra Clubbers as we met in the Flower Building in the town of Shoshone, fifty miles south of Death Valley in Inyo County. Currently the Executive Director of an environmental organization in the Great Basin, June grew up in the Morongo Basin and used to work for conservation non-profits there. Now, her job is landscape-scale conservation planning at a mainstream land trust. She focuses on preserving areas that connect different ecosystems by purchasing lands and consolidating ownership in the federal government, which many conservation organizations view as a means to plan for the future impacts of climate change in the desert. This ‘stitching the landscape back together’ is both a look toward an imagined past in which the landscape was not broken up by private ownership and a move toward a future singular ownership by the federal government, who will, it is assumed, retain and protect the land forever.¹ Landscape scale conservation, June argued, required smaller scale interventions: that is, acquiring individual inholdings—individual puzzle pieces owned by private landowners—in designated wilderness areas or wilderness study areas.

Conservationists use the term inholding to describe lands owned by private property owners within the administrative boundaries of a federally-owned unit like a national park, wilderness area, or national monument. Inholdings and speculative holdings inside park boundaries have been a central concern of park managers since the earliest days of the national parks in the late 1800s (Fairfax et al. 2005, 63; Dilsaver 2016), but today eliminating inholdings is the mission of non-profit land trusts who acquire them and subsequently convey them to the federal government through private donations and money from the federal Land and Water Conservation Fund program (Fairfax and Guenzler 2001).

When I first heard June’s spiel, I was surprised by the room’s collective response. Nods from the eighty meeting participants—Sierra Clubbers, white retirees from the California coast, and environmental organization employees—indicated that they already knew what she would say. The annual meeting in Shoshone, hosted by the town’s single landowner, more than doubled the town’s 50-person population for the weekend, packing the town’s campground (with a hot-spring-fed pool) and the town’s only restaurant, the punny Crow Bar. During the weekend of presentations, other mainstream land trusts would give different versions of the same speeches, arguing that the ‘completion’ of a wilderness area or national park was possible, as they showed idealized landownership maps in solid colors so that landownership inside an administrative boundary was singular rather than the “bewildering array of jurisdictions” that allows for piecemeal development of Wilderness areas by private landowners (Sheridan and Sayre 2014). Land trust’s pro-consolidation argument was that purchasing inholdings was ecologically and managerially important, good for land managers and the survival of keystone species.

In this chapter, I follow the process by which land trusts acquire and subsequently sell inholdings in order to ‘complete’ national parks and federally-designated wildernesses, following both the internal logic of their argument as well as the processes by which the land they purchase

¹ This is in contrast to the kind of *Stitching the West Back Together* that is suggested in collaborative conservation models because land trust goals here require landscape-level ownership consolidation. For that, see Charnley et al. 2014.

eventually becomes part of the federal estate. This is the inverse of land in transit imagined by the transit teleologies of the first half of the twentieth century, as land trusts are seeking to consolidate rather than fragment federal lands. However, I argue that their plans equally rely on another form of transit: the transit in deeds, in which deeds are transformed en route to becoming federal future deeds.

In the first half of the chapter, I show how land trusts have understood checkerboarded land ownership and land speculation as a problem that threatens the integrity of ecosystems and national parks. Essential to the land trust project is how they are able to construct private landownership as a future problem, even when the land is not likely to be developed or altered. This turns the Jeffersonian checkerboarding on its head: small private lands that could become developed are the enemy of large-scale conservation, and land trusts seek to consolidate and expand the federal estate. Land trusts do this through acquiring lands and selling them to the federal government, not through conservation easements.² They see themselves as the nimble middlemen whose work circumvents the clumsiness of the federal government and its slow acquisition process, all while making small returns off of the land transactions to fund the organization. As they acquire more and more desert lands, they say that they hope to put themselves out of business.

In the second half of the chapter, I follow how deeds are in transit by tracking how land acquisition happens from appraisal through title-checking and environmental reporting. In the vast majority of MDLT's acquisitions, nothing changes on the ground, so I track what does change: the records of the land, including its title and value. The distance between the legal title and on-the-ground actualities help to reveal a critical mismatch that produces a role for MDLT staff, in which they must make the documents—but not the land—conform with federal policies. I show how MDLT employees reshape past documentary regimes in ways that erase parts of the land's past in documentary records to conform to a vision of unchanging desert lands under federal government management, which ends in producing trust in the federal government. In other words, they produce future deeds.

In this chapter, I focus on two large-scale land operators in the California desert—the Mojave Desert Land Trust (MDLT) and The Wildlands Conservancy (TWC, or Wildlands). Founded in 1995, the Wildlands Conservancy was the first land trust to focus on large-scale acquisition in California's Mojave Desert. In the late 1990s, they acquired nearly a half-million acres of checkerboarded railroad land, which was the largest conservation land acquisition and donation to the federal government in the United States. In 2006, the Mojave Desert Land Trust was founded to take on TWC's activities in desert, and has since been the organization that has conveyed the largest number of individual parcels to the federal government. In 2020, they acquired 7,500 acres (Mojave Desert Land Trust 2021), and since their founding have acquired over 100,000 acres (Mojave Desert Land Trust n.d.). MDLT's successes in desert acquisition follows from their sound real estate strategy, which they learned from Wildlands. Today, both

2 Conservation easements have dramatically risen as a tool for conserving “high value” lands and lands that continue to be owned by ranchers, farmers, or other large landowners. These tools are often used to benefit the landowners through tax breaks or ensure a buffer of greenspace around a landowner's main property. For analysis of easements as conservation tools and critiques of the economic underpinnings of easements and conservation tax breaks, see Kay 2016, 2017, 2018; Van Sant, Hardy, and Nuse 2021.

organizations are considered to be enormous conservation successes.

Cartographic Anxiety

The California Desert Protection Act of 1994 (CDPA) created the Mojave National Preserve (MNP, or the Preserve), managed by the National Park Service (NPS), from what was formerly the East Mojave National Scenic Area managed by the Bureau of Land Management (BLM). One of the major points of contention around the MNP—aside from whether it should be managed by the NPS or BLM—was about whether the Lanfair Valley, in the eastern portion of the proposed administrative boundaries, should be included in the Preserve. What conservationists called the “Lanfair Bite” looked like a small incursion into the northeastern section of the Mojave Preserve, which, without the bite taken out, looks like a squat diamond (Wheat 1999). An area that had been historically homesteaded during few rainy years of the 1910s and 1920s, the Lanfair Valley today still has some weekend homes and a checkerboarded ownership pattern visible through the traces of agricultural clearing, easy to see by where slow-growing Joshua trees (*Yucca brevifolia*) are missing today (McAuliffe 2016; Thompson 1921). Like other parts of the East Mojave highlands, the Lanfair Valley had been transformed by historic grazing from the Rock Springs Land and Cattle Company, whose cattle inadvertently disguised grasslands by eating native bunchgrasses down to stubs and creating better conditions for shrubs to thrive (McAuliffe 2016). By the time of the CDPA, both grazing practices and

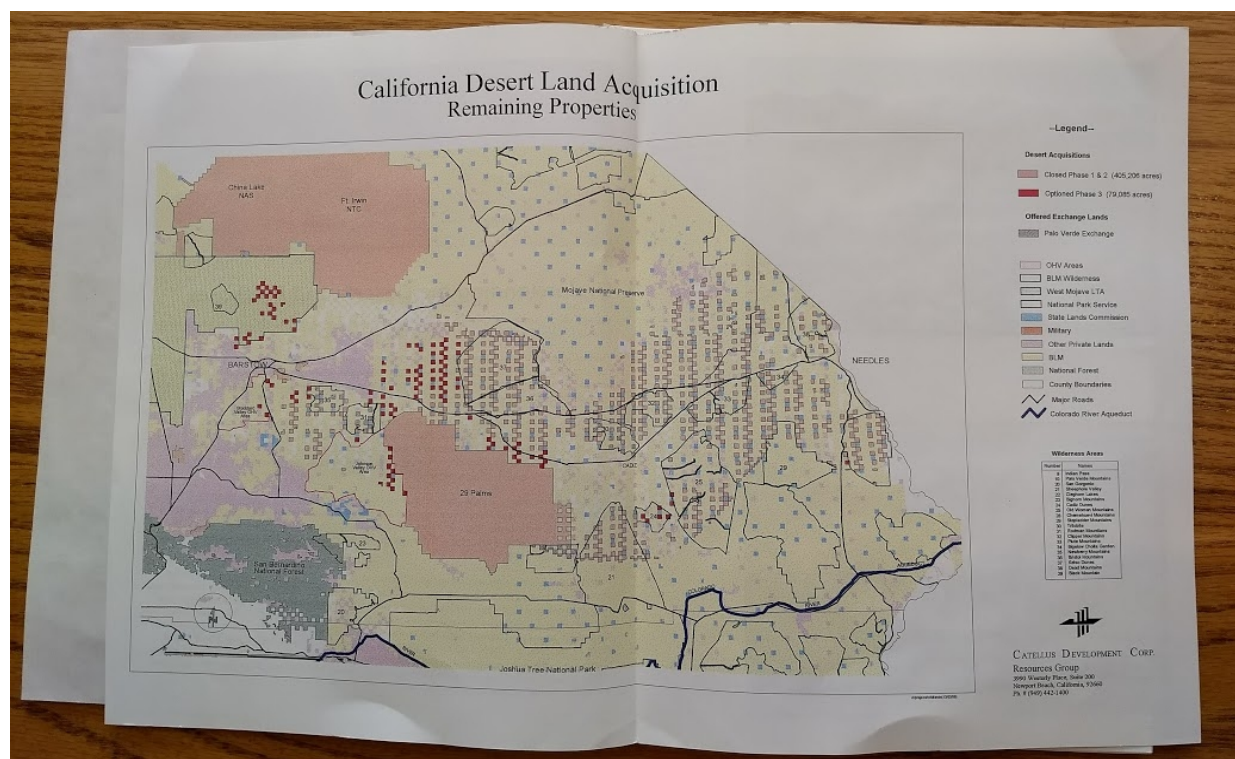


Fig. 2: Map of inholdings in the Mojave National Preserve, ca 1999. Courtesy The Wildlands Conservancy.

weekend vacation homes were not considered incompatible with goals of the newly-formed Preserve, meaning that the government didn't really consider taking lands through eminent domain as an option for consolidating ownership as they had in the 1930s (Sax 1976). As a result, the Lanfair properties remained within the administrative boundaries of the Preserve, but were not in federal hands (see pink, unoutlined areas of Fig. 2, above, depicting Lanfair Valley inholdings).

The new Preserve seemed like a win for environmentalists until they realized the extent to which the Preserve and newly established Wildernesses were checkerboarded in ownership. The private landowners who preceded the Preserve could choose to open their lands for development (primarily of single-family homes). These fears were exacerbated when "For Sale" signs appeared in the MNP, posted by the Catellus Corporation, a portmanteau of the abbreviation for California and Tellus (the Roman goddess of the earth) and inheritor of transcontinental railroad land grants that they were supposed to sell in the late 1800s. After seeing the signs, Wildlands decided that they would acquire the newly for-sale lands. The juxtaposition of the Welcome to the Mojave Preserve (background) and 'For Sale' signs (see Fig. 3) were at the center of how Wildlands marketed their campaign to purchase the Catellus lands, as they attempted to make land into an 'investible object' for conservation (T. Li 2014b). The potential for private sale, and subsequent development, of Catellus lands, was zero sum: "The private sale of the Catellus holdings would severely impact the biological and aesthetic integrity and recreational access for over 4,000,000 acres of public lands," Wildlands' promotional pamphlet says.

Drawing on the popular metaphor used to describe landownership—the checkerboard of



Fig. 3: Welcome to the Mojave National Preserve. Courtesy the Wildlands Conservancy.

640-acre sections—they further depict the land acquisition itself as a game. "Since 1995 The

Wildlands Conservancy has been in a chess match with Catellus,” they wrote in a report. Through this metaphor, Wildlands articulates their purchase as part of a strategic game in a bounded region—the board of the East Mojave. Their game is to prevent the development of individual parcels and to take over the entire board. In one sense, the entire board is that of the East Mojave, or the region affected by railroad checkerboarding in general. Wildlands frequently refers the region on the basis of individual wilderness areas or administrative units (see Fig. 4). The pasted-on caption to a BLM-issued Kelso Dunes wilderness area (which is adjacent to the western side of the MNP) map reads: “Map shot with a shotgun? No – Wilderness area illustrating Catellus parcels.” Unlike the orderly metaphor of checkerboarding, the shotgun metaphor draws on the way that birdshot leaves a shotgun shell, a clustered spread of shot rather than a single bullet. Such a metaphor seems appropriate in the Mojave Preserve, where hunting is legal and where occasional conflicts between inholders and land managers result in guns being brandished on federally-owned lands (Donovan and Morrison 2005). Beyond these resonances,

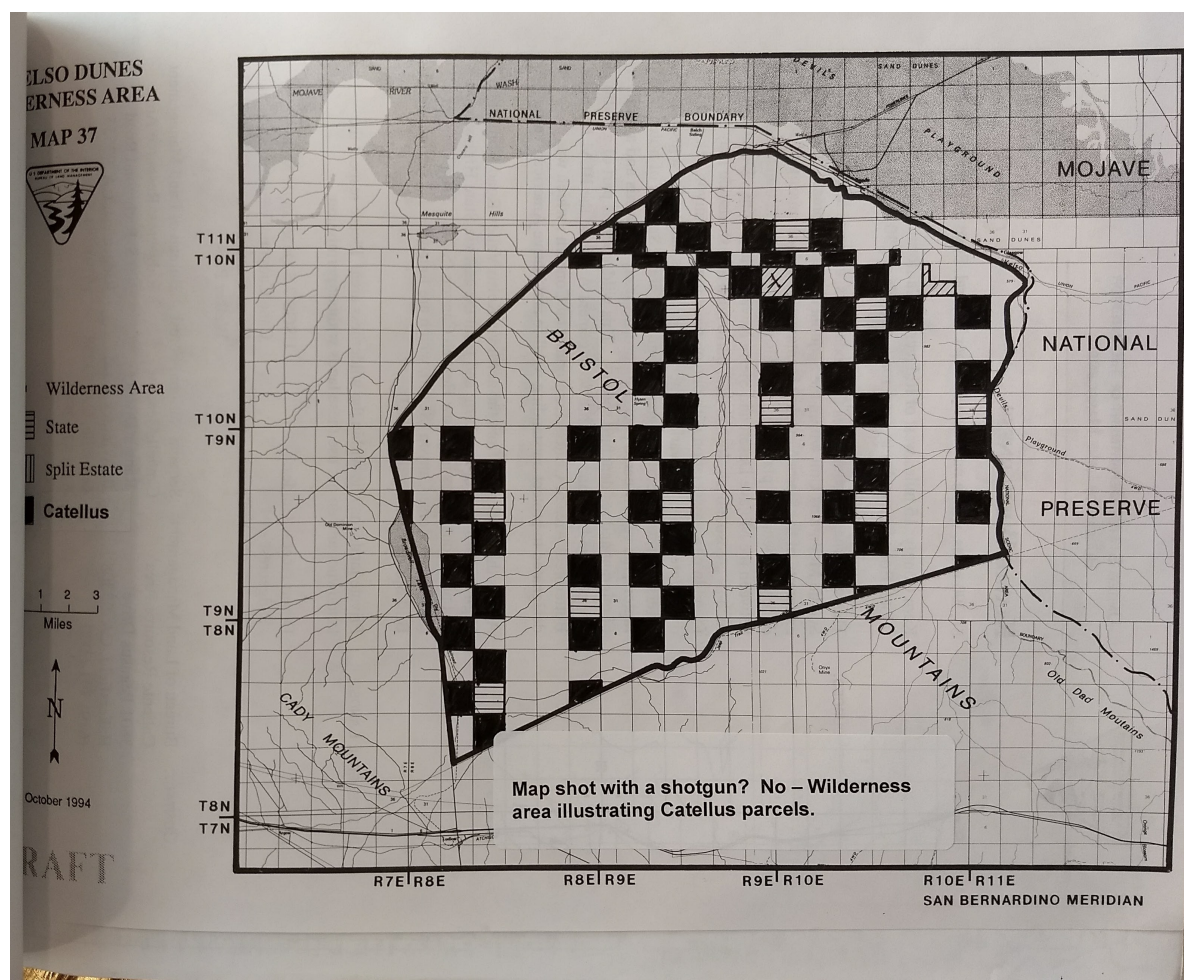


Figure 4: Kelso Dunes, shotgunned. Courtesy of the Wildlands Conservancy.

however, the shotgun metaphor also implies a different meaning: that the land would be injured

by private inholdings. The Mojave Preserve would not be able to survive being “shotgunned” by privately owned parcels, Dave Myer, TWC’s then-executive director, told me when I met him to visit their archives. The map and Myer’s comments about it implied that the Preserve is a body in need of protection (Thongchai 1994).

Myer argues that the boundaries of the Wilderness Area should be inviolable and without private property. Similarly, geographers Larry Dilsaver and William Wyckoff (2005) have applied the idea of national territory or geo-body to national park lands: “[National parks are like a country in that its leaders will fight to maintain territorial integrity, attempt to influence neighbors, and control alien interests within its boundaries” (247). “Alien interests,” pose a threat to its integrity as a whole by defiling the map. The expectation, then, is that a national park, like a nation-state, might have a “pure, unambiguous community” by creating a coherent map, the map producing clarity as it erases the violence needed to produce the clean borders (Krishna 1994, 517). Sankaran Krishna (1994) calls this cartographic anxiety, referring specifically to the ways that the violent realities of postcolonial statehood don’t match up to the neat boundaries on maps. In the earliest days of creating national parks in the United States, these threats were Native Americans and racially-defined others (Spence 1999; Bederman 2001; Kosek 2006), but today these threats are replaced by a new enemy: the inholder, the private property-owner within the park.

The inholder’s violence is intimately related to the landownership map: The shotgunned desert is largely shotgunned because of the differentiated ownership, not because of actual differences in the ways that the land is used. This points to another form of cartographic anxiety, coined by Derek Gregory (1994, 72-73): the way that realities on the ground are not matched in the map. While in this case, landownership is reflected correctly on these maps, there is often no practical difference that landownership entails. There is often no difference between a privately owned parcel and a federally-owned parcel in the checkerboard on the ground, as the difference appears only on the map. The map, then, is the primary means of producing the geo-body of the MNP or the federally-designated Wildernesses in the East Mojave. That is, the iconicity of the map is what naturalizes geopolitical boundaries as inviolable territories, as Thongchai Winichakul (1994, 129), argues. If the threat that the inholder poses is represented primarily through the map, then how do land trusts understand the threat that the inholder poses? The potential violence of the inholder, I argue, comes from the idea that the principal value of the desert is speculative.

Speculative Land

The concern of the checkerboard—that an uninterrupted landscape will become interrupted by new development, thereby ruining the geo-body of the Preserve—dovetails with what conservationists think would happen if Catellus had buyers. They would simply sell it to a hapless landowner who knew nothing about the desert.

“The main value of the desert is speculative,” Frazier, the lands director at MDLT who would later become Wildland’s Executive Director, told me as we sat in his office. “The primary goal of a landowner is to sell the land to someone in New Jersey, sight unseen.” Frazier’s fictional New Jersey residents fit what Thorstein Veblen wrote about real estate, that “real estate is an enterprise in ‘futures,’ designed to get something for nothing from the unwary, of whom it is believed by experienced persons that ‘there is one born every minute’ ” (1964 [1923], 143).

The unwary buyer doesn't know the desert like Frazier, who was raised in the Morongo Basin, in the Southern Mojave, does. He argues that the desert is simply creosote scrub, a term that serves as shorthand for undeveloped and undesirable land in California. Creosote, the predominant shrub of the Colorado and Mojave deserts in California, is perhaps the most successful colonizers of desert soil (Laport et al 2012), but points to a failure of human colonization.

The remnants of desert speculation was right in MDLT's backyard in the Morongo Basin, what *The Saturday Evening Post* described as a land of creosote and cactus (N. Clark 1955). "One of the strangest land rushes in Southern California history" was comprised primarily of city folks who called their weekend homes "jackrabbit homesteads" (*Los Angeles Times* q. in Stringfellow 2009, 16). While the General Land Office and subsequently the Bureau of Land Management viewed the program as a way to get rid of surplus lands in 2.5 and five acre increments, investors purchased land for "some combination of recreation and land speculation," as described in a Master's thesis (A. Clark 1971, 3). Unlike homesteading acts that asked new residents to live on the parcel for more than half of the year and to have substantial improvements to the parcel, the Small Tracts Act of 1938 did not demand much of investors other than a small house that conformed to County ordinances (in San Bernardino County's desert portions, codes were few and far between until 1955) and surveying the land before purchase. The total cost of constructing a ready-made house, surveying, and purchase was a modest \$1000—in today's dollars, less than \$10,000—making speculating in desert futures relatively cheap and easy for those who benefited from post-WWII era programs like the GI Bill. The dream of the desert, though, was not a dream of actually homesteading or even living there full time, but rather of "fresh air and elbowroom...in general a longing for a better everyday chance to relax, chase a hobby, live securely" (N. Clark 1955, 19). Small Tracts Act lease-to-owners often described their search for property as part of the search for a kind of American dream (see, e.g. Peterson 1954; Stedman 1949), a sentiment echoed by contemporary nostalgia for the program and its effects on the desert (see, e.g. Stringfellow 2009). These American dreams, like those before it, depended on the dispossession of Native American tribes, which was being formalized through the Indian Claims Commission at the same time that the Small Tracts Act was booming.

The actual implementation of the program was, like many speculative land booms during the government disposal era, a disorganized free-for-all (S. Anderson 2018). In the 1960s, land use geographers like Kenneth Schneider opposed the Small Tracts Act as a new form of unfortunate land speculation in which lots are dispersed and speculated on without central planning or rationale. In Schneider's 1962 article on the subject, he argues that "the small-tract program has unequivocally promoted the widest scattering, the greatest isolation, and much of the worst development in the Southern California desert—all in the name of the 'public interest'" (22). His disdain for the Small Tracts Act program—which then was technically still in operation—revealed not only his dislike for desert land speculation, but its disorder. This argument—that the lack of centralized organization was one of the biggest problems of speculation—was not new: eighty years earlier, this critique was leveled against the railroad and land speculators (see Gates 1954, 289). Without large-scale centralized planning from the government, speculators would develop land in ways that would hurt the public and subsequently abandon the development when it was no longer profitable. Like the STA shacks that still litter the California

desert today, the investments would be abandoned and left an eyesore for everyone else, all in the name of public interest. Schneider's reflected a broader trend in land management that opposed the Jeffersonian ideal of small landholders and privatizing federal land in favor of concentrating landownership in the federal government. In the Federal Land Policy and Management Act of 1976, permanent federal ownership would be established, and the government would cease land giveaway programs and homesteading. This same trend it what would eventually allow MDLT to purchase land and sell it back to the federal government.

Some of the remaining shacks in the Morongo Basin, where MDLT is headquartered, were removed through a San Bernardino County program called "Shack Attack" in which the county contacted landowners for permission to demolish the shacks at no cost to the landowner. This program, promoted by conservationists and locals alike, was akin to a neighborhood blight program, a way to erase what desert people like Frazier saw as misplaced investment. In contrast, the land trust claims, their purchases of the land are in perpetuity, a forever investment in the desert as they transfer the land to the federal government.

Producing Speculative Land

When the Wildlands Conservancy sought to purchase the half-million acres of checkerboarded Catellus lands spread across the Mojave, no such large-scale acquisition of lands had been previously attempted by a conservation organization. They purchased 483,259 acres in 859 discrete parcels, lands that constitute nearly half of a percent of the total landmass of California. This deal, completed in 1999, was the largest was the largest sale and donation of lands to the federal government by a land trust. But, before the acquisition could formally start, another task was required: appraising the land. While they are a way to ascertain value, they are famously contingent (S. Wood 2022). Further, they occupy an interesting place in conservation finance: they are a way to bolster values for tax write-offs and cement the centrality of finance in conservation deals (Kay 2016; Van Sant, Hardy, and Nuse 2021). Appraisals have myriad uses: while the federal government would use an appraisal to determine what they would pay for the land, this does not match what the appraisals commissioned by Catellus or Wildlands would be.³ In this section, I track two competing appraisals: Catellus' appraisal, which emphasizes the future value of the land in order to get tax breaks from their "donation" to the nonprofit, as well as Wildlands' appraisal, which emphasizes the present use of the land. Both appraisals frame the highest and best use of the land, or what purpose of the land can bring in the greatest returns upon resale. Tracing how the Catellus-led appraisal bets on the future to produce higher values, I demonstrate how the appraisals produce speculative land in the contemporary setting.

In 1999, Catellus commissioned an appraisal of 483,259 acres of vacant Mojave Desert land in San Bernardino County, which listed their highest and best use as holding: "holding for speculative investment, holding for potential raw material extraction and holding for limited off highway recreation."⁴ Highest and best use is constrained by the current condition of the property

3 In the end, the federal government will decide what the appraised value of the land is and what they are willing to pay for it. Here, the appraisals do not represent what the federal value of the parcels are; instead, they reveal what Catellus and Wildlands think is the future of the desert. Ultimately, Wildlands did not even sell the entirety of the land at the value appraised by the federal government; the acquisition was both a sale and a donation of lands.

4 For privacy concerns, Wildlands asked me to not list the appraisal companies or specific information about the appraisals. For the same reason, I do not cite the report officially, other than to note that it is in the Wildlands

and any zoning restrictions and the uses of neighboring properties—in metropolitan areas, this may be construction of a new housing unit or the refurbishing of a building to become a commercial property that conforms to zoning regulations. Speculative holding as best use, however, is unusual, as it asserts that there are no valuable uses for the land now, and that zoning changes (determined by the county) or future trends (like off-highway vehicle recreation) are what would be needed to make this desert land useful. Following Neil Smith (1987), some geographers might call this kind of holding waiting for a rent gap to form. Catellus is starting from a moment in which there is not yet a difference between actual and potential ground rent for a given property.⁵ This speculative value of the land, importantly, does not differentiate it from the current use of Catellus lands or the current use of adjacent lands by the federal government, as Catellus would claim:

“While data expresses ‘holding’ as another market phenomenon, raw and nearly usable desert lands such as the subject properties, may have an undistinguishable [*sic*] use classification that is similar to uses found in government agencies’ purchases. Therefore holding for future appreciation, speculation and interim recreational uses represent the highest and best use of these lands” (Wildlands Conservancy Archives).

The fact that the lands were indistinguishable from government lands was, in some ways, a benefit for land speculators, because the scenic qualities that nearby federal lands offer for private landholders are an amenity that can be valued (Fellmeth 1973; Darling 2005). Even though the land was not being developed or changed, Catellus argued that speculative holding was in keeping with their obligations to their shareholders to make a profit from the lands from an eventual sale,⁶ which had been the original idea behind subsidizing the transcontinental railroad by granting them checkerboard lands to sell to homesteaders.

In contrast, the appraisal commissioned by the Wildlands Conservancy in 1999 found the highest and best use to be as vacant land or open space with some possibility for limited residential construction, the latter constricted by the limited electrical grid. These conflicts in highest and best use reflect a truth acknowledged by those who work with appraisers: appraisals are an art more than a science. While these two appraisals were conducted only two years apart, both the highest and best use were seen as drastically different as well as the price per acre. The Wildlands-commissioned appraisal had estimated \$100/acre, but the appraisal commissioned by Catellus estimated \$162/acre. These drastically different prices per acre, even when accounting for the different scales of the appraisals (the Wildlands appraisal covered only 86,000 acres whereas the Catellus appraisal covered the entire 482,186 acres), shows how wide variation can be across different appraisers, and how appraisals are not just about valuing land, but making arguments about the land’s future. For the 1999 Catellus appraisal, the price of land had already been agreed at \$125/acre across the wide acreage, and the potentially overpriced appraisal stood

Conservancy archives.

- 5 See Darling 2005 for an explanation of how rural gentrification differs from urban gentrification, and his analysis of the rent gap.
- 6 The temporality of real estate investment is at a different scale than financial transactions that constitute understandings of the stock market (see Ho 2009 for a take on the quick turnover of transactions meant for shareholder value on Wall Street). In contrast to these short-term transactions, real estate investment often seems like the only ‘solid’ thing (see Verdery 1994), and therefore like a ‘safe’ investment in tumultuous times.

to benefit Catellus as a tax write-off for the loss of potential revenue.

But the biggest difference between the two appraisals was how one portrayed the desert: one portrayed the desert as it could be, gambling on a speculative future in which recreation or other purposes may lead to higher incomes, and the other focusing on what it looks like now, open space surrounded by open space. The concept of highest and best use straddles the present and the future, helping owners decide whether the future use warrants continued holding, or if such holding would become unprofitable after paying property taxes on the lands into the future. Though appraisals are actually comparatively rare in desert lands—the Wildlands appraisal notes that most transactions of desert land are made when someone offers money to an owner rather than through a real estate listing—the rationale behind their value reflect the profit that speculators hope to get out of the land, or the value of private property.

Making a Future Through Erasing the Past

The appraisal process, which involves on-the-ground investigation of the land as well as search for comparable properties, is one of the first steps in the process of purchasing land. What follows is seller and buyer agreeing on a price and the escrow process, which represents the time after handshake and before money exchanges hands. Going into escrow is normally considered almost-sold, and sellers are often already spending money in their heads as soon as they complete the handshake. When a sale is in escrow, it goes from being listed as for sale to pending, and at this point only 3.9% of sales fail, according to Trulia (Zillow 2018). Reasons for sale failure range from financing problems—the most common for housing purchases, the standard for studies of real estate—to buyer's remorse and undisclosed problems with liens on the title or structures on the property. In this section, I trace the problems in paperwork that prevent the transformation of property from private to public; in the following sections, I trace how this process takes place through through a combination of paperwork and on-the ground management. Drawing on Federico Pérez's (2016, 225-226) concept of juridical archaeology, I argue that MDLT employees use their expertise to reduce the complexity of private lands to render it to have an easier future as state lands. What I demonstrate, then, is that land becomes public property through differentiation from private lands: rather than public property and private property equally appearing as abstract space that are equally transferable and interchangeable, here the problem with private land is precisely its history and distinctiveness in its supporting documents. That is, I seek here to complicate the violence inherent in abstract space through differentiating between the regimes of public and private property. I argue that the production of a form of public property requires removing differentiation in land, and that the process of transiting deeds requires changing them, even as nothing changes on the ground.

As we sat at a large dining room table, Peggy⁷—a senior employee and the director of acquisitions at MDLT—told me and a new hire to prepare ourselves to learn about acquiring vacant land. She begins with the caveat that the real estate coursework she took did nothing to prepare her to work in vacant lands. What she meant is that the vacant land transactions that MDLT performs are quite different precisely because they are low-value and without improvements like houses. They often at least appear to have problems with the title that would make it impossible to purchase and subsequently sell to the federal government, and our job was to navigate the 'regulatory maze' that constitutes the intersection of county law and federal

7 Names and some identifying information removed. For her and others, these may be composite characters.

regulations (Valverde 2012). As in acquisition processes that seek to fix administrative boundaries to be homogeneous on the inside, the purpose of their juridical archaeology (Perez 2016) is to fix the past of imperfections that may prevent it from becoming federally owned in the future.

Peggy has printed out all of the documents that we'll need, ranging from General Land Office records, County Assessor's Records, and the title company's paperwork, all of which will be kept on file at MDLT. "Cutting down the forest to save the desert," we joke as we pull out highlighters and pens to mark up the piles of legal documents that surround us. She tells me and the new employee, Dolly, a recent UC Santa Cruz graduate who sports a large Joshua tree tattoo on her arm, that our goal is to understand what is going on in the documents, which documents may cause problems for the Bureau of Land Management (or whatever federal agency may take on the property next), and what restrictions actually apply to the property and are either fine for transfer to the government (e.g. right-of-way easements) or a major hurdle in transferring land. Such a review begins with the most basic parts: We make sure that the property owner (seller) has full interest in the parcel (rather than fractional ownership, as in the case of multiple heirs inheriting property from a deceased relative) or that issues of interest have already been sorted out, and making sure that the cadastral land description—its township, range, and section numbers—matches what it should be and has remained consistent over time.

The problems are most frequently found are in the preliminary title report and the documents accompanying title insurance. These problems, which range from undisclosed easements on the property to mining claims, are problems of property that are both incomplete and unclear, and therefore not able to be transferred to the federal government.⁸ Most problems arise from the list of exceptions to title insurance that are attached that detail how the owner of the property does not fully control the land. The list of exceptions often includes between ten and forty items, which may or may not include all of the restrictions that might be listed in old General Land Office records. This list reveals the documented history of the property—if mining, railroads, or roads were in the area—as well as the personal histories of the current owners—the liens and loans that they took out in order to purchase the property or acquired during the process of owning it. Such documents occlude certain kinds of histories: primarily the Native histories of the parcels, since laws that protect sacred and archaeological sites hide sites both from pothunters and landowners while there is no space to note in the documents who has lived there before histories of Euroamerican settlement and documentation prior to California becoming part of the United States.⁹

The next day Dolly and I were given a sample title report for the Palermo¹⁰ property to work on, what looks like an "easy one" with relatively few exceptions. We began with tracking the chain of title through looking at the preliminary title report and the County Recorder's records, making sure that the property is truly owned by the people who are selling it. The chain

8 These safeguards are presumably to prevent fraud and prevent complexity in federal management: for example, if someone gave a property to the federal government that didn't have intact mineral rights, then they could still retain a claim to the property.

9 Though claims made under the Treaty of Guadalupe Hidalgo were not relevant to the California desert, ranchos were one of the factors that made early claims to land in California almost-always suspect.

10 This property has also been deidentified.

of title has to be checked back to California statehood in 1851, but in this case it's relatively easy. Palermo—most properties are known at the land trust by the name of the seller—had been part of the transcontinental railroad grant before the current owners purchased the property from R.R. Financial Inc, which appeared to be an arm of SF Pacific Properties Inc, related to the Santa Fe railroad that had received the grant in the 1880s. The first check is the description of the property on the deed, an obtuse language inherited from the cadastral survey that clarifies that the parcel is the bottom half of both the southeastern and southwestern quarters of the 640 acre section (there are 36 sections in a township, the six-mile by six-mile unit used in the Public Lands Survey System). This 160 acres, Peggy told us the day before, is most often described as both part of the southeast and southwest parcels rather than as the long rectangle at the bottom of the section because 640 acre parcels have always been divided into quarters. Without explaining, Peggy told us, "it's just the way that things are." We checked the description twice, as we were not quite used to the antiquated descriptions that are used to describe the land.

Like many inheritances, the section lines reveal historical mistakes and errors. Surveyors had initially used chains—a measure based on rods, a Saxon measure preferred by Thomas Jefferson as he tried to make American measures mirror his "Anglo-Saxon dream" (Horsman 1981, 22; Palmer 2020)—to measure properties and their legendary drunkenness made them mismeasure parcels in addition to how Earth's curvature required minor adjustments. Upon resurveying years later, corrected grids on contemporary parcel maps can look slightly trapezoidal or curved, as though their corrections made them curved rather than straight (see Scott 1998). As a result, many sections are not quite 640 acres, with decimal-point acreage revealing errors and correction lines. Thus, in some ways, these title changes are mere corrections, fixing errors that have accumulated in history.

As we continued checking the documents, we turned to Schedule B, the list of exceptions on the preliminary title report that defines the limits to the exclusive enjoyment of the parcel. A right-of-way easement listed as being on the property is, according to the assessor's parcel map, actually on a neighboring parcel and could easily be taken off of the title report because it is not associated with the parcel though it came up in a search for easements in the same section. Other minor problems, like the rights to water underneath the property, can't be resolved on deeds and does not present a problem for the federal government in the future: "well, it's the desert," Peggy said, as if to explain away water rights through the presumed lack of water on the parcel. But one problem did emerge as we look at one of the potential mineral rights, namely that the mineral (subsurface) rights seem to be not included with the parcel, which could potentially make the government choose not to accept the parcel at all. The previous owners, R R Company, had given the mineral rights to themselves using a shell company rather than passing the mineral rights along to the next owners. However, they had not maintained a right of surface access to allow them to actually mine for the resources. Reading through the series of mineral rights and potential leases, it seemed that some of the mineral rights for the parcels had expired, but others hadn't, though the mineral rights were never pursued. Though it seemed unlikely that the company would pursue their rights—in the immediate area, there were few mines or minerals, and company may be more or less defunct—this was exactly the kind of title problem that could result in later problems for the federal government. The railroad ghost, then, stayed in the parcel through the title though it was apparently not evidenced on the land at all, and this could become

a problem for MDLT. In Peggy's language, it needed to be "cleared," and the newfound clarity would erase the parts of the past that had accumulated in the title documentation and remove confusion about the possibility of complete ownership.

In certain ways, the problem that this title presented was like that of the 'wild deed,' when someone records rights to a property without actually being connected to the property in any way. Such claims were common during the high time of mining in San Bernardino County, Peggy had told us in our initial training, and the county couldn't really stop it, since the right to claim minerals on federal lands was guaranteed at the federal level and then recorded with the county. Thus, the county had no oversight in approving whether the claimant owned the land, and the county could be forced to record an illegal claim that could render difficult future changes in landownership. The coordination of bureaucracies between County and federal jurisdictions is always complex, but San Bernardino County presented additional problems, as the county is notorious for its corruption and inability to manage paperwork. It seems like though the rights guaranteed by the document—mineral rights that have no access rights that go with them—were effectively useless, just as wild deeds filed as mineral claims on other people's land were just an example of a lack of coordination within county governments and between the County and the Bureau of Land Management. Seeking resolution, MDLT would contact the title company to see if this note could be removed from the title report, or the land would not be accepted by BLM when MDLT would try to convey it in the future. Within a couple of months, this problem is resolved, and the parcel purchased by MDLT, though the normal means, what normally entails a combination of expertise and cultivated kindness to the title companies who cleared the title.

These practices of transferring deeds are similar to what Federico Pérez (2016, 225-226) calls juridical archaeology. Examining city planning in Bogotá, he argues that bureaucrats reify the city's planning regime as sedimented and stratified in order to both buttress the need for their specialized expertise and to deflect blame for legal imperfections. The palimpsest of California desert laws, ranging from the times of the transcontinental railroads and owing their mineral rights system to the Spanish occupation, rather than to the English common law, are another case of this juridical archaeology. In this case, MDLT employees use their specific expertise in order to ask for the removal of the restrictions on the title from title companies, knowing which companies will be likely to remove certain kinds of title problems for them. In this instance, discretion from title companies becomes a key element of ensuring a title can be sold to the federal government in the future. In contrast to juridical archaeology's focus on using confusion to permit buildings, however, MDLT's role is manufacture clarity and completion to make private land more alienable, removing the past from titles as part of the creation of a map without holes. In so doing, they create the inevitability of federal ownership through the clarity and completion of documents: through making the documents fix their unruly pasts, MDLT highlights possibilities for a federal future. In this way, MDLT harmonizes the scales of past and present as they seek to render the map into single landownership.

MDLT's practices of 'fixing' land titling processes are also reminiscent of other land titling processes, meant to regularize land tenure in the name of government transparency, enabling transfer of lands as a commodity,¹¹ and both creating and sedimenting local hierarchies

11 Though it can be the case that lack of title can also be used to enable transfer, as noted in T.M. Li 2014a.

(Hetherington 2011; Kahrl 2012; for cases specific to alienation of Native American lands, see Ruppel 2008). While land titling processes are longstanding ‘facts’ of owning property in the United States (Park 2016; Priest 2006), MDLT’s challenge in titling and need to clear titles of their documented histories points to a less-remarked upon facet of titling: the title itself is an accumulation of past uses, a running list documenting what has happened to the property when it has been owned by settlers.

Title insurance, which MDLT must purchase when it purchases property, insures against the ways that these known unknown pasts infringe on the present, and they seek to remove the problem-causing uses from the title, since the insurance will not cover the list of exceptions anyway. “In most lines except title insurance, the risk insured is grounded in the uncertainty of the future...Title insurance is unique in that it insures against ignorance of the past, that it, whether some unknown past event has clouded the ownership interest or lien interest in a parcel of real property that the insured believes to exist when the title insurance policy is issued” (Lipshutz 1994, 1). Such ignorance of the past that could affect title includes lands that were never properly alienated from their previous owners (and not recorded as such), as it does encumbrances on the property. Lenders, for example, who may seek to reclaim the property if the property has not been properly paid off.

Title insurance today is arguably less important than it was in years past, especially since records previously kept physically in County offices are now online or available for purchase on the internet through title companies. However, the desert’s longstanding status as a backwater both of San Bernardino County and of California means that records there are particularly thin and lack the kind of clarity desired for turning the land over to the government, making it an easy place to create fraudulent records.¹²

An architect who participated in speculative investments in the desert told me of a time when she was glad she’d purchased title insurance. In the early 2010s, she purchased a small lot with a decaying Small Tracts Act house for \$7500. She had been living in Joshua Tree for ten years already, and had spent much of her time investing in the hot real estate market. After she spent money to renovate the cabin on the property, the title company called—the seller she had met had been impersonating the owner or their representative. The architect’s transaction was rendered void because it was not the purported seller’s to sell, but the title insurance company paid her back the cost of the property. However, they could not recover the cost of her improvements. With luck, though, she acquired the property back from the estate later, and the only the title office had to deal with the fallout of their mistake of authorizing the sale. Everyone in real estate here has stories like this, she insists, and this is why she always buys title insurance—to protect against not only the past, but the fraudulent present.

The Past on the Ground

While the past entered the present in the processes of landownership, the chain of deeds often seemed disconnected from the land itself. Dolly, the new land trust employee, had been months on the job when I asked her if she enjoyed her work. She said that she didn’t find herself compelled by the work, but was happy to contribute to the land trust’s mission. She had hoped, she told me, that working in land acquisition would give her a better sense of (cardinal) direction

¹² For another example of attempted land transactions through fraudulent quitclaim deeds and rogue recorded documents, see Curtis 2010.

and a better understanding of where things are, something she hoped to learn during the acquisitions process. The disappointment, she said, is that she still isn't quite sure where everything is, since her job never required her go to a parcel or look at a map that included more than a couple of sections. Her knowledge of each property is tied genealogically to the former owners rather than the place itself, or even its location on a map.

Even though MDLT and TWC are interested in acquiring parcels inside monuments, wildernesses, and National Park Service units, Dolly's disappointment is a reminder that acquisitions are largely conducted through real estate documentation and fifty-column spreadsheets, not on-the-ground knowledge of the parcel. MDLT both lays claim to an anti-speculative argument based in a desire to protect the desert in perpetuity at the same time that they replicate absentee landowner practices through their emphasis on paperworked knowledge.

Such lack of desert knowledge is most evident in the Phase I environmental compliance process, known to most simply as Phase I, a process not covered under document-based title searches. Instead, Phase I applies to on-the-ground knowledge of the property. This process begins with a "User Questionnaire" sent to the seller that follows the American Society for Testing and Materials standards. The questionnaire asks the seller questions like "do you know the past uses of the property?," "do you know of spills or other chemical releases that have taken place at the property?," or "based on your knowledge and experience related to the property, are there any obvious indicators that point to the presence or likely presence of [chemical or hazardous] release at the property?" (E50 Committee n.d.). Each question is supposed to help the potential buyer assess if any hazardous material clean-up will be necessary on the property through providing information beyond the documented history of use. Rather than send the form in the mail, Peggy often reads the questions to sellers over the phone. The seller will often try to stop her as she reads the questions to them, asking her to mark 'unknown' for all of the questions. In response, Peggy will continue to read to them the rest of the questions in the hopes that they may answer differently with each new iteration. The ostensible reason for the 'unknown' answers is that speculative purchases of mostly vacant land doesn't require visiting the land, and that most landowners have never been to their parcels. Speculation is in the deed rather than property itself, rendering visits unnecessary.

When Wildlands was acquiring the Catellus lands, they were piloting the process of performing environmental compliance for wide swathes of land before the availability of fine-grained satellite imagery. From a helicopter, the contracted Phase I company would navigate to each of the corners, figuring out what was in each parcel. Mishaps made flights difficult—for example, the first flight used the wrong map projection, making their flyover a quarter-mile from the actual corners. To make sure that they were doing their jobs, Wildlands' environmental compliance employee would dump 55-gallon drums on the property that would need to be noticed by the helicopter riders and noted in order to make sure that they were on the correct parcels.

Even with GPS more aligned with satellite imagery today, MDLT still prefers performing 'boots on the ground' visits before purchasing a property, in part because this is one of the practices required to transfer land to the federal government later. These practices are primarily walking visual inspections in which it is assumed that all of the relevant information—most often dumping and OHV tracks—can be seen and located, though in most cases little is found on the

land. If something is, clean-up is often not too much worse than cleaning a title—digging up dirt from an oil-change spot, removing a 55 gallon barrel, and documenting all of it.

Rendering properties ready for the future as a federal government parcel was often navigated through the unknown—the unknowns of the Phase I survey, or of facts on the ground—but they goal for each, as it was for the title paperwork, was to make the property appear to be without history. Ironically for an organization that hopes to save land for its unique ecological contributions, their title clearing practices seek to erase the legal history of the parcel in order to the friction needed to transfer land from one owner to another.

Managing for Federal Futures

What happens to the land after it's acquired by MDLT, but before it is transferred to the federal government? In short, nothing happens during the transit in deeds. We would often talk about the lands as we monitored them—that is, looking at lands that MDLT still held, waiting for transfer to the federal government, which normally needs to pass through Congress as part of the annual Land and Wildlife Conservation Fund appropriates. In one conversation with an MDLT employee at Zzyzx, a town named by the fraudulent radio-evangelist Doc Springer, Eliana, a MDLT employee, argued that MDLT should manage land “as if it were owned by the agency that we [MDLT] is conveying it to,” contrasting her strategy to that of a previous co-worker who had wanted to treat MDLT lands like private inholdings with their own rules and regulations. To a certain extent, this was a practical concern: MDLT doesn't want to put up new signs that might advertise their lands to those who oppose the land trust. But what was more striking about Eliana's statement was how she argued that MDLT lands should be treated the same as federal lands and the regulations in that particular area, which were often critiqued for being neglected by federal officials.

While monitoring lands, we often debated what to do with objects that we found and what to do with them. For example, we'd find 'historic trash' that was likely fifty years old and therefore technically protected on federal lands, or fire rings that were illegally established in wilderness areas. Simon, a land trust employee who began working for MDLT at the same time that I started my main bout of fieldwork and was Eliana's immediate supervisor, discussed exactly this issue when we looked at a fire ring by a long-closed road on MDLT land surrounded by BLM wilderness, around a half-mile away from the open road where we had parked our car. The tall creosote bushes that kept the sandy soil from becoming part of the nearby Cadiz dunes also hid the fire ring from being viewed from the road—only Google maps (a frequently used resource for planning desert expeditions among 4WD explorers) or a desert walker would discover this it. I ask Simon if we should take the fire ring apart, a question I would frequently ask of anything we found. Here, Simon says that we shouldn't bother, since BLM wouldn't take it down anyway when they got the land. Instead, we take a photo point of it, marking it in the list of monitoring spots on the property, information that will be relayed to the BLM when the land is transferred in the future.

Future Deeds

In most cases, the transformation of the land from a private holding to conservation property and to the federal estate does little to the land itself, even as the flurry of paperwork forms around it. To take the land outside of speculation, land trusts rely on the threat of development to motivate acquiring land and subsequently selling it to the federal government. A

middle-man trafficking land from inholders to the federal government, the land trust serves an odd role in mediating the clumsiness of the federal government as well as upholding its power through transferring it land (Fairfax and Guenzler 2001).

Though the land's use often changes little, if at all, the title, when finally received by the federal government, becomes seemingly empty, a true encapsulation of what Lefebvre (1991) calls state space. In county databases, the land value drops to zero and the chain of title is eliminated. In such situations, federal land appears seemingly empty and without history, as the changes that even the land trust made to the title are erased. In this process, land trusts make private property is made into public property, changing the space and time of property. Whereas private property is defined by the idea of profit through improvements and highest and best use, public property is defined by a lack of improvements and a form of perpetuity that rejects the quick turnarounds assumed by private property. Unlike the speculative time defined by the short turnarounds that characterize most real estate temporalities, the time of the state future reaches out much farther, the promise of the state to last much longer beyond the scope of the individual lifetime or the land trust. The promise of the transit in deeds is that a form of permanence in a future deed that follows the flurry of activity that characterizes its acquisition and transfer.

The land trust also attempts to render the land into a complete puzzle, a space of only federal ownership. Such trust in the state as the ultimate holder of the land articulates a form of trust in the federal government's ability to hold lands, a trust that was maintained even in during Presidential administrations that are unfriendly to public lands projects. In these times, MDLT still chose to give the land away, believing that the land would be in just as good of hands in a federal future as it would in MDLT ownership. This belief—enshrined in part through MDLT's devotion to high land turnover rather than high physical presence on the land—came to encapsulate what 'completing' the puzzle of federal landownership looks like, even as nothing changes on the ground.

Chapter 4: Benign Neglect

I paced as I talked to Frazier, Mojave Desert Land Trust's (MDLT) lands director. We had met each other at a Native American Land Conservancy (NALC) Board meeting a week earlier, when Frazier was a guest. Coming down the hill from the Morongo Basin to Indio, Frazier talked at the meeting about how environmental organizations, including his employer, were lobbying the federal government for the creation of Mojave Trails National Monument, which was more scheme than reality in mid-2015. As Frazier explained the strategies to designate a new monument to be managed by the Bureau of Land Management (BLM) over the phone, I thought of the skepticism that NALC board members had voiced in earlier meetings when the Monument was discussed: how would the new National Monument affect land management on the ground?

The proposed National Monument was checkerboarded with NALC's lands. The NALC was not a stranger to this arrangement: they had recently partnered with the Bureau of Land Management to build fencing on checkerboarded NALC and BLM lands. Because of this partnership, NALC was not as skeptical BLM's intent as were many tribes who have criticized oil, gas, and other extraction on BLM lands (Clemmer 1985; Powell 2018). Yet NALC board members, who are heavily involved in the governing of the organization, knew the limited capacity that the Bureau of Land Management had to manage its lands. At other meetings, NALC site stewards detailed incidents and slow response times from the BLM, and the Executive Director told us about what little capacity the BLM had to help with the fencing project. Though NALC was not opposed to a new BLM-managed National Monument, board members still had questions: would Mojave Trails affect NALC's property rights or access to their checkerboarded parcels? Would a new Monument increase tourism that could negatively impact Native American cultural and sacred sites? Finally, does the Bureau of Land Management have the capacity to manage a new Monument and protect the valuable cultural resources there? The significance of potential Monument for NALC board members, then, was the reasonable fear that the Monument's higher profile could lead to greater activity without complementary increase in protection or funding to protect the Monument's future.

As I was talking with Frazier, I was thinking about how NALC kept their lands, unlike the MDLT practice, which was to sell them. I asked him why MDLT conveys land to the federal government if they know that the federal government won't take care of the lands. He responded that the BLM's management strategy is one of "benign neglect." The curious phrasing, which he repeated then as well as in later conversations, struck me then as a way to describe the BLM's skeleton bureaucracy and their inability to actively manage lands (Bradley and Ingram 1986; Skillen 2009). Benign neglect as a land management concept was, as I understood it, a failure to meet a goal of active management, not an end in and of itself (see Soulé et al. 1979; Gill et al. 2009).

But I found that the agency's benign neglect was not only a result of a lack of funding or management, or a failure of the BLM to do its job. Instead, it was a result of the public trust doctrine, a legal doctrine that became popular during the modern environmentalist movement, and interprets public lands to be held for the good of the public rather than favoring special interests or the privatization of public lands (Wilkinson 1980). While the public trust doctrine theoretically includes everyone as part of this public, it does not succeed in creating such an undifferentiated group. Rather, it is enmeshed in longer histories that concern how the public of wilderness or public lands has been made. Scholars have shown how the creation of wilderness emerged from a conservation movement that was white, middle-class, able-bodied, and male, and how this movement excluded many others,

including Black people, Latinx people, and Native Americans (Cronon 1995; R. White 1995; Merrill 2002; Kosek 2006; Bederman 2008; Finney 2014). That is, while the public trust doctrine claims to be public, the public cannot be understood without considering existing social inequalities (N. Fraser 1985). In this chapter, I trace way how the public trust doctrine shapes the formation of the public of public lands.

I argue that the public trust doctrine, in its implementation, favors federal non-action over federal action. Especially for the BLM, a chronically underfunded federal agency, this leads to the informal policy of benign neglect, which has had particularly pernicious effects on Native American cultural and sacred sites throughout the desert. I argue that benign neglect should be understood through colonial policies of indirect rule that mirror some aspects of contemporary inequalities that inhere in federal land management. Tracing land management decisions through courtrooms and on federal lands, I argue that the public trust doctrine creates a public for whom benign neglect doesn't matter, with particularly terrible effects on sacred and cultural sites.

A History of Benign Neglect

Frazier's use of the term benign neglect was memorable because it inadvertently drew on a history of the term that tied American politics to a history of colonization through the 1970 Moynihan report. Daniel Moynihan, an adviser to President Nixon, had written a memo about eliminating antipoverty programs that "the time may have come that the issue of race could benefit from a period of 'benign neglect,' " making the argument for what some called a laissez-faire approach to antipoverty programs (q. in Weisman 2010, 214). Moynihan's defenders claimed that gains made by African Americans meant that it would now be better to avoid conversations about race (Geary 2015), but benign neglect's limitations seemed obvious to critics who argued that the policy would allow for the continuing effects of racism after the end of Jim Crow (Lewis 1970; Wallace and Wallace 1998).

Benign neglect as a theory of governance depends on the assumption that colonial rulers will ensure the greatest happiness of the colonized through leaving them alone. Moynihan's idea came from Edmund Burke, though he misattributed the quote initially to the Earl of Durham. In a 1775 speech, Burke recommended a "wise and salutary neglect" of the American colonies (Geary 2015, 204; Weisman 2010, 395). Burke's argument for neglecting the colonies highlighted how England economically benefited from the colonies, arguing that England did not cause economic growth through being "watchful and suspicious" or starting a war (1894 [1775], 15). Rather, a benevolent state would choose to let the colony be: "through a wise and salutary neglect, a generous nature has been suffered to take her own way to perfection; when I see how profitable they have been to us, I feel all the pride of power sink" (ibid). Nature, here, plays the double role of the spirit of the people and the natural environment that colonists have settled and improved to create agricultural exports useful to England (14-15). Indeed, such conjoining of population, nature and wealth linked improvement and the productivity of land with the racialized status its inhabitants (Drayton 2000; Moore et al. 2003, 18; Palmer 2020), a link that Burke implies when he characterizes at least two million of America's population as "of our own European blood and color, besides at least five hundred thousand others" (Burke 1894 [1775], 8). For Burke, the European spirit of the people and the wealth of the land they inhabit is the source of economic success as he ignores the contributions of the five hundred thousand racially-defined 'others,' both African American and Native American enslaved and free peoples upon whom the early wealth of the colonies was built. Though Burke suggests an alternative to liberal insistence on universal teleology (Mehta 1999), he let underlying material inequalities—fortified through law as much as through the forms of racial capitalism that shaped labor relations and the creation of wealth in the United States (E. Williams 1944; Robinson 1983; Gilmore 2007)—persist in his

salutary neglect.

For theorists today, benign neglect sounds like ‘organized abandonment’ (Harvey 1989; Gilmore 2008), a means to describe how exclusion and disinvestment has been used to perpetuate violence. These forms of abandonment affect both people and place, as forgotten places are seen as wastelands where the people who live there and the place are considered pollutable (Voyles 2015). Abandonment also enables the differential incorporation of people into the broader system—into low-wage jobs or the system of mass incarceration, for example (Gilmore 2008; see also Marx 1867). In other words, exclusion serves as a means to force differential inclusion for some, a story that fits in broadly for groups that have been historically excluded from labor markets.

While these questions of labor have been central to understanding benign neglect in scholarship, the effects of neglect of places—and especially places considered to be “without people”—has been ignored. Here, I consider the differentiated effects that neglecting land has, what effects this neglect has for Native American tribes. Since these lands are considered public today, this is a question that stems both from wanting to understand contemporary ramifications of the foundational dispossession of Native American tribes alongside its aftermaths, what Yellowknives Dene scholar Glen Coulthard (2014, 19) analyzes as the primary and secondary effects of Native American dispossession. By focusing on these secondary effects, I demonstrate how the foundational dispossession of tribal lands and their transfer to federal ownership creates the conditions for a benign neglect and its pernicious effects through ostensibly good means.

The Bureau of Land Management is the federal agency that embodies benign neglect, according to both my conservationist interlocutors and BLM employees. Although the agency manages 247.3 million acres, approximately one-tenth of America’s land base, and the vast majority of the subsurface and off-shore drilling rights (Bureau of Land Management 2019), they are viewed as a backwater that manages low-quality and unimportant lands that are predominantly concentrated in rural areas without substantial populations. Despite the commonly held assertion that these lands are useless, they are lands exceptionally important for Native American tribes, whose alienated aboriginal territory comprise today’s BLM lands (LaDuke 2014 [1999], 146; Tsosie 2003; LaPier 2019). This makes the BLM both disproportionately important to Native American tribes at the same time that it is viewed as unimportant to the most Americans, who confuse BLM with the movement Black Lives Matter (Jibbs 2021).

The Agency of Benign Neglect

In October 2017, I arrived late to the monthly public lands roundtable in Ridgecrest, having carpooled with Talia, a chronically late employee of a large environmental organization, for the three hour drive. As the actual table was already occupied by off-highway vehicle riders who formed the majority of regular roundtable participants, we sat along the outside wall with the lone equestrian interest group representative. The wall behind us had a photograph of Jerry Perez, the then-California Director of BLM. When I asked a BLM employee about the three empty nails beside it, he explained that they would have the pictures of the President, Secretary of the Interior, and BLM Director soon. Although, at that point, both President Trump and then-Secretary Zinke were confirmed, the Government Publishing Office had not yet released their official portraits. Now a year after the election, the employee said that he wished that the Administration could hurry up and release the pictures, since visitors to the office accused him of neglecting to put up the President’s image or purposely censoring it when, in fact, he hadn’t wanted to hang something without official federal approval. Other federal offices, not wanting to wait for the official release, used an image of a scowling President Trump that had been on the White House website but not

officially released, drawing conservative criticism from those who thought the photograph was unflattering (Rein 2017).

The few news articles that addressed this piece understood the lack of Presidential photo as an extension of the lack of order in the Trump administration in contrast to the Obama administration, which had new portraits within two months of inauguration (Rein 2017). In this reading, the case of the missing Presidential photos was symptomatic of the Trump administration's attempts to hollow out federal agencies like the BLM, which didn't have a lawful director during Trump's tenure.¹

But what journalists saw as attempt to hollow out the agency were understood by BLM employees to be a shift of degree rather than of kind: they argued that the agency had been underfunded and neglected by the government for a much longer period of time. Often, BLM employees would cite that the subsurface and off-shore drilling rights made the agency bring in the second-biggest source of federal revenue behind the Internal Revenue Service to prove the organization's importance (BLM 2019). But, they'd say, there was a mismatch between what the agency brought in and what they received as funding at each of their offices. Under the Trump Administration, this took the form of a hiring freeze. Employees joked that they were staffing their mostly-empty offices with impermanent interns rather than permanent staffers. BLM interns cited the federal payscale to describe their GS-11 work as far above their GS-4 pay. Though the situation was arguably worse under the Trump Administration, BLM employees joked about their skeleton crew agency before 2016, noting how newly-emptied cubicles could be converted to binder storage, both joking (and hoping) that their slow wired Internet connection may speed up with fewer connections. BLM employees saw their situation as part of the benign neglect of the federal government, that they couldn't do their jobs because of a lack of funds.

For many BLM employees, this contemporary moment was connected intimately to the agency's founding in 1946. Created by the merger of the General Land Office and the Grazing Service, the BLM was hardly funded during its early years, in part because it was the result of interests reacting against New Deal policies that spurred federal growth (Merrill 2002, 171). It was only thirty years later, with the passage of the Federal Land Policy and Management Act of 1976 (FLPMA, pronounced flip-ma), that the agency had a federal mandate to keep and maintain federal lands (Merrill 2002, 206; Skillen 2009). Although the agency did not have a formal federal mandate, they still had obligations to process permits for oil extraction, mining, grazing, and homesteading on much of the federal estate. In many ways dependent on funds generated from permitting these projects,² some viewed BLM as a 'captured agency' that was subject to the whims of miners and grazers (Bradley and Ingram 1986, Selznick 1949). "The Bureau of Livestock and Mining," as detractors called it, was seemingly unable to fulfill other goals that would favor conservation or recreation. As a federal agency understood to be impotent and incapable, the BLM has been both critiqued and loved for its lack of capacity (Skillen 2009).

For off-high vehicle users, the BLM's lack of capacity was considered a benefit rather than a problem. After meeting him at the public lands roundtable with the missing photographs, I interviewed Terry, a white man in his 50s who started recreational four-wheeling when he graduated from college at UCLA. We met at a cafe in a mountain town uphill from his desert home. He was sipping on a beer a little before noon—"this is the only

1 The final director under Trump's tenure was found to be serving unlawfully, as he was not Senate confirmed (Cramer 2020).

2 This remains relatively true today: in the field office in Palm Springs, for example, they argued that they needed to permit renewable energy projects precisely because they did not have any off-highway vehicle areas (like, for example, Ridgecrest) to fund the field office.

place I'll have a Bud Light," he told me, by way of explanation—when he told me that he respected the BLM's mission and loved BLM lands much more than he did those belonging to the Park Service: "You know, a lot of people don't like the BLM, but I think that their job is harder because they have to do everything, unlike the Park Service, which only has to protect things....BLM [land] is freedom. I feel like someone is always watching me in a Park." As the person often referred to as the representative of the law-abiding off-highway-vehicle community, Terry's response was unsurprising in his respect for the BLM, but his response was telling in another way. He combined the BLM's multiple-use mission with the phenomenological freedom he feels on the land as a result of the lack of enforcement capacity and oversight. That is, the BLM is good precisely because they neglect the land, he argues, unlike the National Park Service lands where someone is always breathing down your neck and the land is no longer wild. Unlike the bureaucracies that are thorny precisely because they are structured to both be overly complex to navigate and to systematically ignore your demands upon them (Gupta 2012; Stout 2019), the BLM is valuable because of its red tape and inability to get things done: this, Terry argues, is freedom.

Yet, as much as Terry felt the so-called freedom of BLM lands because of its lack of presence and enforcement in comparison to other land managers, the agency had changed in ways that made it less-predisposed to allowing free-wheeling use of its lands. While FLPMA had represented a large shift in the agency's mission—by modifying mining claims and ending homesteading—the biggest change for recreational users like Terry was the multiple-use mission that mandated that the BLM consider the impacts of policies on not only miners and grazers, but also recreational users. FLPMA also created the rule that BLM was expected to avoid "unnecessary and undue degradation" of its lands, a criteria that only applied to BLM. This criteria—called UDD by acronym-happy lawyers—expanded legal footholds for environmental groups to oppose BLM actions on the grounds that they were too damaging. This paved the way for the later expansion of BLM's conservation mission. In 1996, the BLM was given its first national monument, Grand Staircase-Escalante. In 2000, the establishment of National Conservation Lands recognized ecologically and culturally significant Bureau of Land Management lands for special protection, and implied that the BLM could become a conservation organization rather than a purely extractive one.

The creation of the BLM as a conservation organization paralleled the rise of another trend in conservation: the contemporary land trust movement that arose from the devolution of federal responsibilities under the Reagan administration (Fairfax and Guenzler 2001). BLM's new conservation mandate, and the broader obligation of the federal government to retain rather than dispose of land, expanded opportunities and reasons for land trusts to transfer lands to the federal government because they would no longer be able to dispose of them through, say, homesteading. This process relies on the nimble land trusts to acquire land and hold it for a future federal acquisition. Using funds from the Land and Water Conservation Fund, established in 1968, the federal government would purchase land from land trusts who had themselves purchased the land from private owners.

In addition to making the government's job easier through purchasing the lands and holding them until LWCF appropriations come through from the government, land trust employees view their employers as quasipublic entities that make federal land management easier: through consolidating parcels, the government will face less challenges from fractionated ownership and the checkerboard. Further, he argued, such sales encouraged conservation. Like Dave Myers, the Wildlands Conservancy founder who later hired Frazier at Wildlands, Frazier believed that selling lands to the federal government operated as a gift, in which certain expectations came along with the land (Mauss 2000[1925]). In other words, through selling land to the federal government, conservation entities hoped that certain social

relationships would accompany the land, and that the federal government would renew their focus on conservation. Conservationists giving land expected that it would not be developed, even though such legal limits on the land did not exist.³

Frazier's faith in 'benign neglect' was related to the notion that the government—and specifically the BLM—would become a conservation entity eventually, he told me in his office at Mojave Desert Land Trust headquarters. Even under administrations unfriendly to conservation interests, Frazier insisted that MDLT must continue to convey lands to the federal government, offering this as an explanation: "If we thought that the Wilderness Act could be repealed every day, then we would never do anything." His response highlighted not only how he viewed fear as the enemy of progress, but how his faith was just as much in the system of laws that protected these lands.

But it's not the system of laws that protects the land today: it's litigation. While groups like MDLT buy land and sell it to the federal government, other conservation-oriented groups sue the government regularly. Groups like the Wilderness Society and the Center for Biological Diversity are locally famous for their adversarial positions against the government, and frequently pursue lawsuits to protect species and oppose what they see as environmentally-detrimental policies. In small world of desert conservation, staff of these organizations all know each other and meet regularly on conference calls that I participated in during my research. Through working together, they know that the most litigious among them will file suit to intervene and prevent the proposed development that organizations like MDLT fear the most.

Inaction is Better than Action

In the California desert, the most intractable legal debate has been about the West Mojave Transportation Plan (known as WEMO, pronounced we-moe) (BLM 2005). While WEMO has become somewhat well-known because of its intractability, it addresses a central concern of desert environmentalists: off-highway vehicle use and transportation planning. In the California desert, most debates about the protection of desert lands and sacred sites boil down to questions about vehicular access precisely because almost all desert use depends on driving down dirt roads. More often than not, these are relatively unmaintained roads that require high clearance and four-wheel drive. The centrality of vehicular use in the California desert is not unique, but only exacerbated by the harsh desert conditions: automobility is already central for wilderness recreation (Louter 2006). The debate over vehicular use in the California desert, then, is as much about determining where people will and can go, and how they will get there, the question that became at the core of the WEMO conflict.

The case was thorny both because it was so longstanding—the WEMO planning process officially began under the Desert Plan process completed in 1980—and because the protracted length of the conflict meant that everyone had sedimented positions on what was wrong with WEMO. Unlike them, Talia was most excited to work on WEMO. As a newcomer to the California desert, Talia was exactly the kind of person who would approach the complicated WEMO with enthusiasm, other conservationists said. Once, as we ate dinner, Talia excitedly leaned over her plate—always dangerously close to spilling food on herself in her enthusiasm for any topic—to tell me: "I don't understand why everyone has given up on WEMO. The only people still involved are crazy people and lawyers, and there are all of these OHV people there." At the Ridgecrest roundtable mentioned earlier, it was clear how participants were divided between people new to WEMO and those whose long involvement had meant that their opinions on the matter were both self-assured and hazy from the many

3 A controversy on this subject erupted in the late 2000s when solar projects were proposed in the California desert on former Catellus lands (Woody 2009).

twists and turns of the project. Few participants had been involved in WEMO since its official start in 1991, and even fewer since the plan was mandated under FLPMA in 1976. At the Ridgecrest roundtable, a BLM employee described the protracted WEMO process as “caught up in litigation,” his careful elision of the environmentalist opposition to WEMO a strategic choice meant to downplay both BLM mistakes in the planning process and the acrimonious relationship between BLM and the Center for Biological Diversity, a famously litigious environmental organization with an office in Los Angeles. As was the case with many plans for off-highway vehicle use or renewable energy in the California desert, environmental organizations had invested time in litigation to argue that the plan allowed too much development of pristine desert, and the result—multiyear litigation—was not outside the norm. What was different, Talia argued on our three hour drive home, was that the employee made litigation seem like a natural event, rather than an unusual circumstance.⁴

In the California desert, federal land managers frame their ongoing project plans in terms of the risk for litigation and will often choose to avoid federal action that must go through the review process rather than risk a lawsuit, as they told me in interviews. This preference for inaction stems in part from local histories, but more broadly from the history of environmental litigation that includes both the BLM and other land management agencies.⁵ Most environmental litigation today takes place under the auspices of the Administrative Procedure Act of 1946, which shaped administrative law, or *ad-law*, in the United States. Under APA cases, litigants argue that the agency incorrectly followed the decision-making process to make their final agency decisions, making “arbitrary and capricious” decisions. Environmental *ad-law* cases dramatically increased in the 1970s after *Sierra Club v. Morton*, in which the Sierra Club was determined to have legal standing on behalf of its members who would suffer aesthetic and environmental harms as a result of a proposed project on federal lands. In *Sierra Club*, environmentalists argued that they were defending the public against corporate interests who had wanted to propose a mine, protecting an area managed by the US Forest Service in an area known as Mineral King. Under what is now commonly known as a public trust interpretation of federal lands, the Sierra Club reasserted the right of the public against the federal government, breaking the relationship between the government and the people (see Tsosie 2003, 283). In the years since, environmental litigation is not only common, but often seems like the inevitable result of the release of a plan by the BLM or National Park Service.

Among BLM employees, WEMO was known as a particularly thorny legal problem, the least litigation-proof plan of the many that the BLM had to manage. In short, it invoked dread. The WEMO litigation, they knew, was exacerbated by factual problems at the center of the WEMO plan: that the baseline mileage of routes open to vehicles, set in 1980, was never corroborated by an inventory or listing of such routes (see *Center for Biological Diversity (CBD) v. BLM* 2009). The 2009 court case acknowledged the problem that the BLM already knew, drawing on language in a BLM report that the judge called “colorful”:

“Enter the 1982 Desert Plan amendment to the Motorized Vehicle Access Element. For the sake of time as well as my own sanity, I am not going to attempt to explain this amendment to you here. . . . In concept it represents a somewhat perverted definition of “Designated routes and trails” by attempting to identify and designate all roads and trails in the desert while maintaining a user perception of “Existing roads and trails” knowing it could never fully accomplish the first

4 Of course, there is a strong tradition in the United States of litigation being used as a tool to support consumers (Jain 2006) and ‘litigious societies’ (Merry 2010).

5 This story of this rise of environmental law comes from both my conversations with desert land managers and from auditing a course in federal land law at UC Berkeley’s law school.

task.” (DiGennaro 1987 q. in *CBD v. BLM* 8FN7, ellipsis mine).

This break from bureaucratic language indicated how unrealistic it was to have a list of trails, even early on in the planning process, as well as just how comical the failures of bureaucracy could be. The BLM knew that it was unrealistic to have a listing of the existing roads and trails, even though such listing was supposed to be the baseline for future route maps. This limit of state capacity and its aspirations toward knowledge (Scott 1998) were clear in 1987, when this report was written, but had only gotten worse by 2001, when the *CBD v. BLM* litigation began. The problem had also gotten worse because off-highway vehicle routes—often not much more than two tracks forming a dirt road over a median of desert brush—are known to ‘proliferate’ if left unwatched (BLM 1981). As tire treads wore into desert soils, new routes appeared. Over time, it became difficult to tell what was ‘original,’ or existed in 1980, and what was ‘new.’ During the long planning process—still in progress today, after thirty years—the environmentalist-led litigation has prevented formalizing a plan that would include an increased number of off-highway vehicle routes, but their plan has not prevented the continued proliferation of new routes because of lack of enforcement while the plan was made.

Though WEMO is arguably a ‘success’ for environmentalist litigation, then, it is a victory only to make the BLM’s plan conform with what environmentalists want, a smaller number of legal routes. While the case has been litigated, however, OHV routes can continue to proliferate on the ground. And perhaps most tellingly, environmental organizations have no recourse against the onslaught of new vehicle traces under contemporary environmental law, precisely because new routes made by vehicle users are not the result of federal decision-making. By not involving federal decision-making, OHV drivers—whether driving legally or illegally—fall under the broad umbrella of ‘agency discretion’ that includes both general agency inaction as well as lack of enforcement of agency rules and regulations (see *SUWA v. Norton* 2004). Federal judges often argue that inaction is reasonable because of agency discretion and the impossibility of demanding that a costly action must occur without a guarantee of sufficient federal funds.⁶ Environmentalist litigants, then, find agency inaction difficult to pursue legally because the Court can find that what appeared to be unjust inaction was in fact the agency exercising its discretion.

To avoid the possibility of litigation, an underfunded and overtaxed agency might try to not do anything. BLM employees often included in their decision-making rationale the possibility for litigation, using the specter of litigation as justification for (non)decisionmaking.⁷ In other words, it was not the BLM’s lack of funding that hindered them from doing their jobs, but rather that the consequences of taking action were much greater (and more annoying) than the consequences of not taking action. In the following section, I trace this in a case in which rule-breaking is clearly taking place, showing how a lack of funding and enforcement capacity sediments the inaction-is-better-than-action regime. I detail a comparatively rare case of witnessing first-hand federal nonenforcement of laws—rare because opportunities to catch someone ‘in the act’ of law-breaking in the desert are rare, not because laws are always followed—in order to demonstrate how enforcement works in tandem with federal inaction to define who benefits from benign neglect.

6 Environmental lawyers often comment that responses to climate change and anticipatory measures—for example, with regard to wildfire—will require action, rather than inaction. The fact that action would be required for federal lands in this context (but may not happen) is an example of the problems in the kinds of events that are recognized on federal lands as actionable, the subject of the following chapter.

7 Such a strategy is not dissimilar from strategies used by pro-segregationists who used arguments of states’ rights and nonintervention as a means to uphold Jim Crow, as discussed earlier with regard to the histories of benign neglect and organized abandonment. That is, benign neglect often serves to uphold oppression.

Discretion on the Ground

I was shaking gravel between two screens when a man in an ATV pulled up alongside the site. We—a historical restoration crew that included hired workers, a Mojave National Preserve employee, and me—were reusing the gravel as a foundation for an early twentieth-century cabin.⁸ The cabin's foundation had been slowly eroded from the East Mojave summer thunderstorms that eat at the underlying wash, and Jim, the archaeologist supervising the rebuild, estimated that the cabin would fall down after a few more storms, collapsing into a pile of wood and tarpaper after years of being ignored. Our team of five—four white men aged 30 to 55 and me—raised the house and slid in new railroad tie foundations over tamped gravel, using primarily old construction skills. We marked the new ties in the foundation with date stamps to mark the newness of the ties, a contrast with the old date nails⁹ from the 1910s and not-yet-looted cans that hinted at some of the diet of the former mining town inhabitants (including log cabin syrup, Hills Brothers coffee, tinned meat from Brazil, and marshmallow tins). While walking around, we were all surprised by how much we saw even as we knew that much had already been looted. The house's inconvenient location down a dead-end 4WD road and the Wilderness boundary that split the house down the middle meant not only increased manual labor for us, but lowered traffic and visibility to looters.¹⁰

The only person we saw during our three days of work was a man in an ATV. As he pulled up, I silently noted that the driver was breaking federal laws, since all vehicles should be street legal on its roads in the Preserve. Further, he had an open Budweiser in his cupholder and crossed a marked wilderness boundary in his vehicle. The Preserve employee there decided not to enforce the rules, later saying that enraging locals would not cause future compliance, as they could always return to the site once we had left. The ATVer talked to the men as he reminded us he was watching our progress from his home two or three miles away, questioning the value of the labor of historical restoration: "I seen your numbers [date stamps] on the walls. It's too much work for a piece of junk." He stood in the doorway, blocking my route to collect more gravel for tamping, and he asked questions of the men, figures of authority, while I waited for him to move. He walked back over to his ATV, which was colored for hunting in a forest, and matched his t-shirt that read "Hunting—An American Tradition." Quail season would start in only a couple of days.

Criticizing the government's active management of 'junk' and interventions into the federal land near his inholding, the ATVer questioned the value of federal care for old structures—one of the relatively rare cases in which benign neglect was not the approach of the federal government—at the same time that he benefited from the nonenforcement of federal laws on the use of unauthorized vehicles. His desert mirrored that of Terry's, in which the general benefit of being left alone was that he was free to do what he wanted. In other words, the lack of enforcement of federal laws, prosecutorial discretion (A. Davis 1996), benefited him specifically, as he didn't have anyone looking over his shoulder. Nonenforcement only emphasized another aspect of the desert for some off-highway vehicle drivers: that the desert was a playground that they could not damage, and that their actions

8 Though the Mojave National Preserve is managed by the National Park Service, it used to be the 'gem' of the Bureau of Land Management, and is considered to be BLM land, "but managed better," as one regular visitor to BLM lands put it to me (see also Hamlin 2003). Most relevant for this point here is that the Mojave National Preserve actually does conduct cabin restoration regularly, whereas this would not be the case on BLM lands.

9 Throughout the early twentieth century, some nails used in housing construction included the year that they were manufactured (e.g. 18 indicating 1918), and therefore assisted in determining when the house was constructed.

10 Inside federally-designated Wilderness, you are not allowed to use motorized or mechanized equipment unless you have a special permit to do so.

had no consequences (Sizek 2019).

While some aspects of neglect allowed desert visitors to travel around undisturbed, others valued that they could change the desert with few ramifications. Months before I helped on the restoration, I joined Jim, the Preserve employee who had supervised the restoration, to go check out other old mining cabins now owned by the federal government, some of which were converted into more modern hunting cabins in the 1970s when they were still privately owned. Today, those in the know—mostly hunters and retirees with 4WD vehicles on which they spend their time and expendable income—frequent the cabins, which are less than two miles from the nearest paved road. Jim drives down the road to the cabins quickly until he slows down to give his pit bull and normal car conversation-mate, Sandy, a chance to chomp at the creosote bushes that line the road and give his car small scratches known as desert pinstripping. Before the small climb across a wash to the cabin, we noted that the American flag wasn't up, and therefore that there were no current cabin residents. We were surprised—it was spring break season, a perfect time to stay in the cabin. As he showed me around, he pointed to the 'improvements' that people have made to the cabins, from the sprayed foam insulation to the newly installed (and rather expensive) wood-burning stove, both of which are easy to bring in with a truck. Jim told me that these alterations should not be made, but he knows that he's not in a position to try to prevent visitors from doing the maintenance that they want, no matter how historically inaccurate or damaging new floors or insulation might be. At least, he argued, these people are trying to keep the cabins up, even if they approach it in the wrong way. He would rather have them trying to fix the cabin up rather than vandalize it, so he turned a blind eye. He signed into the cabin's log, saying that he likes to let them know that he, a federal employee, has been here, and he called Sandy to join us as we climb back into his government rig.

Jim's surveillance of the cabins—letting visitors know he was there—was not uncommon among federal employees visiting other desert cabins or far-afield sites, and I witnessed it in many other situations. Though it was comparatively rare to find someone “in the act” of altering a cabin, employees like Jim claimed that their occasional presence in hard-to-reach places was a reminder of the force of the state and the potential for state enforcement against violators, even as employees knew how toothless their threats were. Enforcement, like in the case of the ATV rider who passed by the cabin, was always a delicate balance of choosing who to selectively enforce the law against. Thus, it required not only the luck of discovering the violation, but a decision as to whether the crime was bad enough to justify making a fuss with federal law enforcement to force action.

'Harmless' activities like retiree cabin renovation or driving in wilderness at low speeds are ignored rather than prosecuted, in contrast to the large-scale plans and litigation that took the greatest attention for federal employees. This approach to federal decision-making favors attending to big-impact policies rather than focusing on the individual actions of private citizens who are making federal lands 'theirs' through modifying cabins or deciding to ride across wilderness boundaries. This lack of repercussions for desert action does not create freedom for all, however. Benign neglect shapes federal land ownership as management that benefits the class of users for whom the land is only a resource to be extracted or managed. Benign neglect reinforces the notion that there are no obligations to the land that come with ownership; under benign neglect, land is a resource, not a relation (Carroll 2014; Palmer 2020). In the following section, I track the question of obligation to the land through the repatriation of looted petroglyphs, and how the process of theft and repatriation reveal the impacts of benign neglect.

Taking on Federal Lands

The conference room at the Chemehuevi's Cultural Center is decorated with murals of

Chemehuevi's past and present, and underneath the murals are large rocks with petroglyphs. The rocks came, Chemehuevi elder Matt Leivas tells me, when they were repossessed from a San Bernardino county employee who had collected them and used them to decorate his lawn on a private inholding adjacent to the Chemehuevi reservation. Matt argued that the man's prominent position in the county had guaranteed his immunity, in addition to the fact that the protection of archaeological sites was not a priority at the county level anyway. Matt was almost more surprised when the tribe finally got their rock art back, as he fully expected that the law would never been enforced and the rocks would taunt the tribe from the man's yard. Yet, the victory was only partial: Matt carried the memories of years of driving by the yard where they were displayed, and knew that the petroglyphs were forcibly removed from their original sites, the chisel marks on the large rocks in the conference room indicating the work needed to remove the rocks from the larger faces of which they were a part. While out with Jim at a relatively well-known rock art site months earlier, he had shown me similar chisel marks on a rock that thieves were unsuccessful in stealing, remarking on his happiness that the site remained intact, though damaged by the attempts to steal the petroglyphs. Jim knew, as Matt did, that the rocks were likely removed from federal lands. In such situations where sites are already looted, the repatriation of Native American artifacts to tribes piecemeal is the best-case scenario, though in no way ideal. Most times when I talk to Matt on the phone, he mentions his excitement that Chemehuevi may be able to acquire artifacts from a private collector in Arizona who reached out to the tribe regarding artifacts in her possession that she thinks were collected from Chemehuevi territory, offering to sell them to the tribe in a gesture of what seems to be a combination of financial interest and goodwill.

Vehicular backcountry access has long been linked to the disappearance of historic and cultural artifacts (BLM 1981), and BLM lands have often been victim to backcountry pothunting and looting, in part because of the BLM's reputation as an overburdened and understaffed agency without significant law enforcement presence. Vehicle access to archaeological sites and increased information about sites on the Internet make it easier than ever to find archaeological sites, even as prevention and enforcement haven't caught up. Although access to the desert and recreational 4WD vehicles are still mediated by class, requiring both time and money, access to the desert is arguably the easiest it's ever been with advances in car and 4WD technology. Enforcement of archaeological protection laws is already a problem since it is rare to catch someone in the action in the vast desert, and law enforcement doesn't know if something is missing at one of the many unrecorded sites in the Mojave Desert.¹¹ As a federal and 'public' space, small-scale trespassing and looting are not policed; the possibility of theft of artifacts is enabled in part through the loss of lands from tribes, in which alienation of tribal lands and their despoliation links theft of artifacts to earlier foundational dispossession.

The theft of artifacts from the desert lands already dispossessed from tribes and their accumulation by pothunters is most clear in collections at local history museums, which are repositories for collections from amateurs and locals. When I volunteered at the Coachella Valley History Museum, the museum was preparing an exhibit of Cahuilla and Chemehuevi objects in collaboration with local tribes. Though the contemporary exhibit involved the active participation of local tribes under contemporary best practices, the artifacts held by the museum in no way reflected contemporary best practices of artifact collection. To prepare for the exhibit, I was asked to match objects in a small climate-controlled room to their deeds of gift—the official record for an object entering the Museum's collection. While records of large objects—like the baskets for which Cahuilla tribes are known—were easy to match,

11 Other aspects of the desert can also make it harder to see where looting has occurred. Flash floods in washes can both reveal and hide archaeological sites, and winds can carry sand that hides traces of looting.

smaller objects like sherds of ollas and stone tools, were jumbled together in larger boxes and nearly impossible to find the appropriate record. Some collections, like large collections of pottery sherds or arrowheads, were not only hard to match to their deed of gift, but without consistent origin. These large collections were acquired from the collector's lifetime of walking in the desert and buying objects often made by artisans for purchase, and some had come from other small museums that had closed, including donations of arrowheads from a tribally-run museum on the California-Arizona border.

Records of the locations of museum objects were often washes and areas by road intersections—locations for which it was not clear whether or not the collector of the items owned the land and where collectors might actively produce such ambiguity to avoid being accused of illegally collecting artifacts. In most cases, museum staff assumed that collectors thought the land was 'just desert,' shorthand for the local version of *terra nullius*. In the Coachella Valley, collectors were taking from the checkerboarded private and reservation lands, the home of Cahuilla bands (Agua Caliente, Augustine, Cabazon, Torres-Martinez) and Chemehuevi (Twentynine Palms Band). Each mile by mile square, then, had a different owner, but it was typically hard to see the boundaries between them, making it so that collectors—or, less generously, pothunters—to claim that they were taking the artifacts from privately owned land. Others would claim that they were 'saving' artifacts from potentially malicious others or the natural elements. The collection of artifacts is also what Yu'pik scholar Shari Huhndorf calls "going native," or "possessing Native America and obscuring the conquest" (2001, 201), when collectors would convince themselves that Native peoples were disappearing in the early twentieth century. Collectors then understood taking objects as 'saving' them from those with bad intent, and further claiming them as white American patrimony (see also P. Deloria 1998). These claims mask taking through benevolence, rendering stealing into saving (see also Morini 2019). Dividing objects from their social relations that make them, Métis scholar Zoe Todd (2016) argues, is part of the settler colonial project that made it easier for whites to make claims on Native lands.

The Coachella Valley History Museum could seem to simply be a reflection of the times, and therefore the expectation would be that such looting had stopped today. However, the difference today is that the objects would be refused for collection by the Museum rather than not collected at all. When I volunteered in acquisitions at the Twentynine Palms Historical Society, volunteers would often turn away certain kinds of historical objects that were no longer attached to a place or seen as potentially significant for the Museum's collection, as was frequently the case for shards of purple glass, a manganese-infused glass from before World War I that becomes purple after long sun exposure. While the acquisition volunteers were right to refuse these items, their refusal didn't mean that the objects were returned to where they were collected. Torn from their sites of origin, cultural items were no longer archaeologically useful for understanding the place from where they were removed, nor, in the case of Native artifacts, kept in a way that maintains the integrity of the place. Further, the objects, removed from their homes and peoples, remained in the hands of their private collector rather than repatriated to the tribes to which they belong. Struggles over the repatriation of museum objects under the Native American Graves and Repatriation Act (NAGPRA) highlight this conflict, as tribes often wait years for the repatriation of objects and face significant hurdles in repatriation (Fine-Dare 2002).

Problems under NAGPRA are one indication of a broader problem on federal lands. Government-to-government consultation provisions are meant to both recognize tribal sovereignty and serve as a partial legal remedy to how federally owned lands are really tribal lands, a means of recognizing difference in the liberal state (Povinelli 2011). However, it is rarely the case that tribes feel satisfied with government-to-government consultation

processes (see, e.g. Martin 2001). Rebecca Tsosie, a legal scholar of Yaqui descent, argues that Native American tribes are often treated as if they are members of the public on federal lands. This is partly a result of the same public trust doctrine that enabled for greater claims on federal lands from the general public under litigation like *Sierra Club v. Morton*. While increasing the ability of the general public to oppose changes to federal lands—especially against extractive companies that were said to have undue influence—these same decisions erased distinctions between different stakeholders on federal lands. A fundamentally liberal approach to governance, legal decisions adjudicate differences in the courtroom by pitting individuals against the government, a way of making all claims equal under the law.

The continuing inability of settler states to meaningfully recognize alterity has been a common topic for anthropologists and Native American and Indigenous Studies scholars (Cattellino 2008; Coulthard 2007; Povinelli 2002; A. Simpson 2014), but in this case what stands out is the way that the non-recognition of alterity is routed through the discovery of a new ‘public’ who is defined only against the interests that used to capture federal agencies. That is, rather than the certain segments of the public having a particular purchase on federal land management as a result of their grazing or mining activities (the captured agency), here, the members of the public that benefit the most from federal policy are those who simply do not mind the conditions of benign neglect that have come along with BLM’s inability to do anything, the agency of benign neglect.

Benign Intentions

If trust is “the confident expectation of the benign intentions by another agent” (Dunn 1998, 74), then it ties together the benevolent intent of government to the outcomes of its actions. In the case of benign neglect, outcomes emerge as a result of legal structures that make agency inaction easier than agency action, thereby making the non-management of federal lands easier than their active management. Such inaction has pernicious effects, I have argued, on Native lands, as the theft of artifacts from Native sacred sites is intimately related to federal inaction as well as to feelings of public ‘ownership’ of federal lands propagated through benign neglect.

The feelings of trust in government and freedom on public lands emerge in part from a sense of privilege for the same group who feel entitled to take Native American objects from public lands. In contrast, as longstanding subjects of the US colonial enterprise, the benign intent of the government has never been assumed, as tribes have long opposed federal government—and more specifically Bureau of Indian Affairs—policy and management (V. Deloria 1988; LaDuke 2014 [1999]; Churchill 2003). Without having trust in government, tribal members like Matt, the Chemehuevi elder, are put into a position of buying back their own patrimony from illicit collectors, a form of affirmative—rather than transformative (N. Fraser 1995)—politics already premised on dual Native American dispossession: first from their land, and then subsequent erasure of the relations inscribed into it. Like the repossession of desert land by the Native American Land Conservancy discussed, this puts tribes in an “odd position” in which they are forced to buy back their relations.

At an NALC meeting, we were discussing yet another federal program meant to reshape the desert at a large scale: the DRECP (Desert Renewable Energy Conservation Plan), a large-scale renewable energy plan proposed on public lands in the California desert. Aside from the slow pace of the meeting and the distinctiveness of the tribal boardroom—decorated with photographs and artifacts of the Twentynine Palms Band of Mission Indians—the meeting was mostly profoundly normal for a non-profit. The agenda consisted of a discussion of finances, upcoming events, and motions to spend money. In our discussion of the DRECP, one would reasonably expect the discussion to be just as staid, but our discussion of the plan and its impacts were interrupted by an emotional argument from Matt, one of the

board members. “We are tired of sacrificing,” he says, his voice sounding worn. “We sacrificed our land and [Colorado River] water for Southern California already. We don’t want to sacrifice any more.” Linking current proposals to past sacrifices that his and other Colorado River tribes had already made for coastal Californians, I was reminded of the other times that Matt had mentioned the unwilling sacrifices his tribe had made: Parker Dam, which formed Lake Havasu, inundating most of the Chemehuevi Reservation and making their shoreline federal property; the Ivanpah solar project, which turned part of Chemehuevi and Mojave aboriginal territory into solar fields; and Ward Valley, a proposed (and unbuilt) low-level nuclear storage site that had threatened sacred sites only a valley away from Chemehuevi, Mojave and Colorado River Indian Tribes reservations (Kuletz 1998). The memories of conflicts over these proposed projects configured moments of federal action as secondary forms of tribal dispossession that followed from the initial loss of Native lands and the violence that accompanied it.

The implications of benign neglect of the federal government, of course, was that tribes would no longer retain the same sovereign claims over this alienated land at Ivanpah, Ward Valley, and Lake Havasu. While the tribe may be able to oppose proposals of federal action—like the earlier iteration of the Ivanpah project, a coal-burning power plant in the 1970s, or the Ward Valley project—the slow erosion of desert soils and village sites by pothunters and recreationists were not only less preventable, but less legally enforceable. That is, as claims to increased rights over federal lands were growing for some imagined general public—along the lines of ‘equality’ under Congressional statutes—the same project served to erode the sovereign claims of difference that would best protect sacred sites from incursions of the same people who felt entitled to take from the sites. Enforcing claims of equality under the law, then, served not to promote equality but instead to harm Native American tribes through forms of neglect rather than intervention, a new way to consider the outsized role of law in Native American life (Biolsi 2001). Benign neglect, then, both exacerbates and maintains the conditions of foundational inequality on which federal land were founded: the dispossession of Native lands.

Chapter 5: Telling without Telling

“You can’t let people know it’s out there. They will go out there,” Bill, a white Native American Land Conservancy (NALC) board member, said. “It almost sounds like paranoia but it’s not,” Bill continued, describing the NALC’s reluctance to share detailed information about sacred sites¹ and locations of their landholdings with the non-Indian public. What Bill told me in that interview was a sentiment that was shared by Native and non-Native board members of the land trust alike, and frequently came up in discussions about their properties. Founded to protect and preserve sacred sites and culturally-important lands for Cahuilla and Chemehuevi peoples in Southeastern California in 1998, the small intertribal and multicultural organization prides itself not only for buying culturally-important lands to protect them, but doing their best to actively manage them by hiring site stewards and conducting land management projects that ranged from ecological restoration to historical interpretation and signage.

When I started working for NALC in 2012, Board members believed that something had changed from the time when they purchased their flagship preserve in the Old Woman Mountains. When they first saw the land in 1998, it seemed like the Preserve was far from everything. The boundaries of their checkerboarded lands were unmarked, and one only reached the preserve by traveling down a series of 4WD dirt roads on a route marked by a spraypainted 55-gallon drum, railroad tracks, and power lines. In contrast, today the Preserve suddenly seemed too close to the Coachella Valley and Los Angeles, which Bill blamed on the rise of technology: “With the Internet and Google Maps, people feel more emboldened to go out there.” His fear was not only that people might try to go out there and get lost or stuck in a sandy wash, but that such emboldened visitors might damage one of the many sacred sites in the California desert.

Bill’s not-quite-paranoia reflects a broader debate heard in tribal governments and Tribal Historic Preservation Offices: how do tribes and tribal organizations like NALC protect sacred sites on off-reservation lands, and lands that are open to the non-Indian public? This question is a way to consider a paradox of sacred site management: the best protection of sacred sites in the California desert is through hiding information about the sacred sites from the public, yet NALC and organizations like it exist to publicize the Native histories and presence. Following from conversations with NALC interlocutors, I call their practices of protecting sacred sites *telling without telling*. Both this paradox, which arises through the benign neglect mentioned in the previous chapter, and its solution in telling without telling, have implications for considering the concept of ethnographic refusal as well as anthropological methods more broadly. In other words, how does one research and write about something that you cannot and should not discuss?

Refusal on the Landscape

The concept of ethnographic refusal considers the relationship between researcher and subject, and just as importantly *how* researchers can work with and for communities without

1 Here, I use sacred sites as a shorthand to refer to places to which Chemehuevis, Cahuillas and Mojaves have a connection. This is an intentionally vague term that refers to a broad class of religious sites, village sites, ceremonial places, petroglyphs and rock art, among other things and places. Because sacred sites are protected under US law, it is also a recognizable legal language for protecting places and landscapes important to tribes, even though what makes a sacred site is contested legally (Miller 1998; McDonald 2004; Albert 2008; Barclay and Steele 2020). However, these debates have mostly been within the legal world, trying to understand what legally falls under the category of a protected sacred site, whereas here I’m interested in the practical concerns. Debates about the protection of sacred sites have also occurred elsewhere, notably in Australia (Whittaker 1994), and solutions to protection have included other forms of restricted access, including digital archives (Povinelli 2011).

reproducing historical harms. This ethical concerns how not only how anthropologists relate with their interlocutors, but also the effects of anthropological writing in the world. While anthropological writing serves to create nuanced ethnography that undermines ideas of primitivity, anthropologist Michel-Rolph Trouillot (1991) has asked whether the conditions of producing that research simply produce a traditional notion of anthropology, reinforcing the so-called “savage slot.” Two decades later, anthropologists have asked whether the object of anthropology has shifted away from the “savage slot” and instead to the “suffering slot” (Robbins 2013), a figure marked by trauma and victimhood rather than by primitivity.²

Both of these concepts ask about the effects of research in the world and how anthropologists shape the objects of their research, a concern that is particularly important for Indigenous communities. As Unanga scholar Eve Tuck (2009) argues in her analysis of damage-centered research, research about trauma often reproduces it. Audra Simpson (Mohawk), building on Tuck’s work in the context of anthropological research, asks whether and in what ways historical anthropological norms that have often tried to tell ‘everything,’ are not only inadequate to describe the Mohawk community at Kahnawà:ke, but are actively damaging inasmuch as they seek to “discursively contain” Indigeneity within a savage slot (Simpson 2014, 105). She likens discursive containment to territorial containment, arguing that anthropologists and policymakers have sought to partition the landscape into allotments and reservations. Simpson calls her ethnographic refusal a mode of territorial refusal, what she describes as a “space of method, critique, and construction in *contemporary* ethnographies of Native North America” (2014, 102, emphasis hers). While her usage refers to a discursively constructed field of knowledge through a territorial metaphor, here I am interested in the literal ground of Indigenous territory in the California desert. That is, I consider the question of refusal on the land itself. I focus on fences, a technology often used to enclose the landscape into privately owned lands and disclose this knowledge.

I begin by discussing how NALC considers its role in sacred site protection as a contradiction between the obligation to tribes and the non-Indian public, and the different views that settler society holds of land as property rather than as a relation. While the question of sharing information about sacred sites appears to only be about decisions to share information or not, I argue that it is deeply grounded in the landscape as well. Telling without telling is NALC’s solution, which asserts Native relationality to the land without requiring that the details of such relationships with places are given to a non-Indian public.

“A Strange Creature”

Reflecting on the broader situation of the NALC, Board President Michael Madrigal (Cahuilla) called the organization a “strange creature” because of its obligations both to Native Americans and to the general public, to both sacred site protection and environmental conservation. As a nonprofit that both serves the non-Indian public and tribes, NALC occupies an ambivalent position caught between these two mandates. As Board members knew, in order to do best by tribes, they needed to hide certain information from the general public. In other words, telling non-Indians more about Native life is not the solution to sacred site protection. At the same time, as a non-profit, the organization serves the public, both because of the impossibility of entirely separating their land from the federal lands around them and because of the grants they use to support their work. In fact, the conditions of many of their grants—for fences, restoration, and site monitoring—require public access to their lands. Practically, it would also be difficult to entirely restrict access to NALC’s lands, as public right-of-ways cross their parcels, and constructing miles of fencelines both impractical

2 See Fassin and Rechtman 2009 as to how trauma comes to an object of study during the 1990s. Other takes on the “slot” include the “tribal slot,” used to critique how the Indonesian government flattens differences between Indigenous groups (T. Li 2000).

and undesirable. While this tension between getting grant money and fulfilling the mission of the organization is common across nonprofit organizations, the tensions in NALC's work come specifically from the long histories of the relationship between Native lands and public lands.

Madrigal's understanding of NALC as a "strange creature" also reflects broader conversations about how to manage so-called 'public lands' that were dispossessed from tribes. In the cases of many National Parks, the US government and settlers forced tribes off of scenic lands to make them into wildernesses without people, or kept individual tribal members as museum pieces or attractions within the park, as in the case of Ahwahnechee people in what is now called Yosemite National Park (Spence 1999). In places like the California desert, tribes were not necessarily actively removed from what became public lands or forced to stay on reservations in the same ways as elsewhere. However, the appearance of public lands—and the attempts to 'dispose' of them into private hands—meant that tribes were legally dispossessed from their lands through a process that Meredith Alberta Palmer (2020) calls the rendering of settler sovereign landscapes. In other words, through the creation of property and government, the US sought to organize both people and landscapes they supported the claims of settlers over Native and Black others (Harris 1993; Edney 1997; Blomley 1998, 2003b).

Even the language of public lands assume that everyone has equal claim to them and equal say in how they are governed, despite their differing relationships to the land. While settler society often treats land as property, Indigenous peoples insist that land cannot be reduced to commodified property.³ Thus, to treat the public and Native Americans as equal stakeholders is to erase their differing relationships with land. In her analysis of the 'public trust' policy and the 'Indian trust doctrine,' Rebecca Tsosie, a legal scholar of Yaqui descent, argues that government agencies often treat complex Tribal interests on public lands as only a religious interest, or "an interest in 'sacred sites protection' " (2003, 271). The government reduces tribes to only another interest group, akin to off-highway vehicle enthusiasts, hikers, or environmentalists. In so doing, the government considers tribal interests—that of a sovereign nation, with an entire worldview and an ongoing set of relationships with the land—to a mere interest in sacred site protection. This reduction also belittles the government-to-government relationship between the federal government and tribes, making "the foundational bargain" of treaties into much smaller interest in how land is governed (272). By treating tribes only as interest groups, the federal government reduces tribal sovereignty something equivalent to the interest that a nonprofit, municipal government, or company could have in the same place. Further, the federal government often defines Native American interest narrowly through the language of sacred sites, used to demarcate only areas specifically relevant for religious events, rather than the Indigenous usage that is often much more capacious and refers to a broad set of sites that could include places like village sites as well as sacred mountains. In all cases, federal legal constructions seek to contain Native interest to small areas, cutting off relationships between places through protecting only one or another.

In government-to-government consultation with tribes, land managers will ask where sacred site locations are in order to avoid them during planned development. But such consultations often don't turn out as the government might expect, both because of centuries of mistrust between the federal government and tribes as well as a well-founded fear that revealing locations of sacred places and villages sites won't protect them. In a study of federal consultation processes with Southern Paiute Tribes in the Arizona, California, and Nevada deserts, Richard Stoffle and Michael Evans interviewed a Kaibab Paiute elder who

3 See e.g. LaDuke 2014 [1999]; Goeman 2015; Pasternak 2017; Palmer 2020.

refused to reveal the locations of trails to federal employees who asked for them, “because once known they could be followed to hitherto undiscovered traditional Indian camps” (1990, 96). The elder refused the logic behind the government’s question to ask him to identify sacred sites, and the underlying premise that sharing information about sacred sites will protect it. In refusing to talk about this area, he also refused what Stoffle and Evans call the logic of “cultural triage,” or the idea that some parts of the landscape should be saved more than others. The elder instead refuses to delimit one area as that which should be protected, refusing to partition the landscape, and instead insisting that it all is sacred.

The Kaibab elder’s refusal mirrors the ethnographic refusal that Audra Simpson (2014) discusses, in which his *not telling* is just as important for theorizing as would be his disclosure. Focusing on not knowing, Simpson purposefully denies her readers of data that has characterized historical studies of Iroquois people, both refusing the forms of expansive ethnographic rendering that made anthropology as well as the forms of discursive containment used to make tribes legible or understandable. These are refused on the ground that they often serve to simplify tribes, draw conclusions about communities, or are sensationalizing (Tuck and Yang 2014, 815). They are also refused on the grounds that it is not appropriate to share this knowledge with the federal government, or it could be that he—as an individual—does not feel like he has the right to share this information that could harm the sites.

In the following section, I follow this fear of discursive containment—or, to be more succinct, telling—through specifically looking at the NALC’s approach to disclosing information about their Mamápukaib, the Old Woman Mountains Preserve, on the Internet.

Refusal on the Internet

For Bill and most of the other NALC board members, the Internet was to be approached with trepidation. Initially, I thought that the organization’s Internet presence—which already appeared to be ten years out of date when I first started working for them—was a result of a generational divide between me and the organization’s Board members, most of whom are older than 60. Yet, as I came to work with the organization more, I found our differences arose from how we thought about what the Internet could do for the organization. While I had thought about NALC and its website redesign as a means of distributing information freely to raise money for a small nonprofit, the organization thought about the Internet in terms of control and the fear of exposing too much information—in the form of scientific studies, archaeological information, or georeferenced locations—that could increase exposure and risk to sacred sites.

At the time when I talked to Bill and other NALC Board members, this debate—about what to do on the Internet—was especially important in the context of the intertwined emergence of Google Maps and smart phones, technologies that seemed to promise widespread instant access to the California desert in a way that paper maps had not. Further, easily accessed regions of the California desert like Joshua Tree National Park had experienced a massive increase in tourism in the 2010s, making the organization fearful that tourists would soon look to the desert beyond Joshua Tree and further into the desert (Dagan et al. 2018). An increase in tourism, the Board feared, would coincide with vandalism to areas that had before seemed too far.

This relationship between increased information about desert places and the potential damage to sacred sites seemed obvious to NALC board members. Several times during my time at NALC, the organization would find that someone had posted information about their Preserve on the Internet. Subsequently, we would debate as to whether the post was inappropriate, and what rights the organization had to ask for the post to disappear, if any. While working for the organization in 2015, I stumbled across one of these posts on Death

Valley Jim's blog, which served as a counterpart to his guidebook series. Though Jim's website is now defunct as per court order, back then, it advertised not only how to get to the organization's Preserve, but sensitive archaeological and cultural information about the place.

Death Valley Jim's name, at first glance, is a way to mark him as of the place: adopting a somewhat local placename is a means to place himself, his own way associating himself with the desert, claiming desert authority, and asserting nativeness to the desert. His moniker was also an echo of Death Valley Scotty, a prospector and famous con man of the early twentieth century who had promised investors that he'd found gold, but instead used their money to build a giant castle that is now in Death Valley National Park (National Park Service 2015). Death Valley Jim, however, was Scotty's modern counterpart: a punk rocker with a septum piercing and a pair of neck tattoos reading "Live fast" and "Die young" (Nazaryan 2016, 35-36). Before becoming a full time blogger and desert tour guide, he ran a small punk rock label with his then-wife.

Jim was also inspired by a more recent prospector and miner: Fred Hahn,⁴ the co-owner of a Yermo-based specialty rock mining company. Hahn's guidebooks of the late 1990s and early 2000s were classics for the local historical society set, along with other limited-run vanity press books that advertised desert sites to Jeepers and 4WD caravans. Hahn illustrated his books with images of the desert, some with him standing triumphantly in a short-sleeve plaid shirt, jeans with a big belt buckle, work boots, and a cowboy hat. Unlike that of other guides of the same era that tried to stick to the facts, Hahn added personal stories and his own curiosities to the guides, detailing his speculations as to not only what places used to be, but what they might reveal—hidden treasure, hauntings, and secret societies. Hahn's books—and television appearances on *Visiting with Huell Howser*, a PBS travel show—are filled with this kind of commentary and discussion of the mysterious Mojave (*Huell Learns About Lucerne Valley's Rich Mining History* 2006). When I went out on trips with local historians to visit some of the sites, they knew his commentaries by heart, telling me on the way if they thought Hahn was right or not in his comments on the location we would visit.

Death Valley Jim's post on the NALC's Preserve began, like many of his posts, with a description of how he came to the place: "I plotted my route as I usually do with the help of Google Earth, having never ventured into this portion of the Mojave, I wasn't aware of road closures, and private roads" (accessed 2015). Jim's use of Google Earth was unsurprising, as it reflected how many 'desert rats' told me they found new places where they hadn't ventured. While Jim had portrayed himself as an adventurer who knew the desert like the back of his hand, it was also unsurprising that he hadn't known about the Old Woman Mountains: the mountain range is just beyond the reach of the heart of the Mojave. Jim's post detailed his experience at the Preserve, including running into one of NALC's paid site monitors, Tom. Jim described Tom in the post as "the kind of guy you'd sit down and share a beer with," although Tom, a Vietnam War vet with a mountain man beard, had been sober since the 1990s.

When I first saw this blog post online, I panicked, despite Tom's reassuring presence. My fears were exacerbated when I read through the comments, seeing one comment that asked when this site would be included in one of his books and Jim's response: "the next one." I knew that each book included detailed information about each site like GPS locations and instructions on how to get there. When I talked to Board members and NALC staff about the issue, we debated about the rights that the organization might have to ask Death Valley Jim to take down the post about their privately-owned lands or remove certain sensitive aspects from his postings.

4 This is not his real name, which I have removed in order to protect the locations of cultural sites.

Our immediate response—as well as those of NALC Board members and employees—reflected Wendy Chun’s (2005) analysis of control-freedom and the fantasies of both freedom and surveillance on the internet, which she argues “blind us to the ways in which those very technologies operate or fail to operate” (3). Through highlighting how debates about control over the internet manifest in a paranoid obsession about *who* puts information into circulation, she shows how the obsession with the internet reflects understandings of power.⁵ The *who*, Death Valley Jim, becomes centered in our paranoia, which is underlaid by the knowledge that the power to enforce against wrongdoing is “rotten and inadequate, always decaying” (Chun 2005, 268). For the protection of sacred sites, I argue, what is at stake is not only the rotten and inadequate power of the state to control information on the Internet, but the way that such a lack of power articulates with the federal government’s inability to enforce laws against pothunting and looting.

The inadequacy of federal agencies’ power to protect sacred sites, and federal lands more broadly, was a constant theme of my fieldwork. Federal employees would often boast of the scale of their purview in millions of acres. Comparing the millions of acres under their jurisdiction to the (much smaller) purview of other land managers, federal employees used the joke to explain the impossibility of their mandates to protect cultural sites, enforce federal regulations, or complete their federal mandates. Underlying this common joke was the knowledge that little could be done on federal lands, and, more specifically, that certain kinds of active management or monitoring strategies were nearly impossible given budgetary constraints and counterproductive in terms of their legal ramifications, what I called in the previous chapter benign neglect.

The inadequacy of federal power to enforce against wrongdoing is evident in the denouement of Death Valley Jim’s story. In 2020, he was banned from several desert National Parks after leading tours illegally, or without a permit (Sahagun 2020). On these tours, he led people to relatively unknown archaeological sites, a practice that is illegal for federal employees or tour permittees. Under the Archaeological Resources Protection Act (ARPA) of 1979, land managers must hold information about cultural resources and archaeological sites unless revealing their location will not do them harm (McManamon 1991). Tours like Death Valley Jim’s wouldn’t have been approved because there would be no reason to reveal the location of the sites, and would unnecessarily endanger them for no reason. ARPA relies on the logic that not telling is one of the best ways to protect a site, and that telling—by showing tourists around, for example—is what endangers the site the most.

After the court case, Death Valley Jim was not only banned from desert national parks, but he was required to stop selling his books and take down his website (Sahagun 2020).⁶ Though the case was not about Death Valley Jim’s books, Jim’s active online presence and media coverage about him made federal officials aware of him long before the federal lawsuit against him. His name would frequently come up in discussions of sacred and historical site protection, in part because he had made himself synonymous with adventuring in the desert as the most prominent desert rat on the internet. But, when he was convicted, the case depended on a very small violation: holding tours without a permit. The case had nothing to do with whether he was actually caught red-handed stealing artifacts or leading people to them, which is nearly impossible to prove. While pointing to the weaknesses in enforcing the protection of archaeological sites, this case also resolved the debate that NALC

5 Chun’s analysis extends that of Richard Barbrook and Andy Cameron’s (1995) “The Californian Ideology,” in which they argue that the digital utopianism of 1990s California encompassed both sides of the political aisle, both yuppies and hippies, through its promise of technological freedom.

6 This seems like an inadequate punishment for the potential harm he could have caused, but the fact that this was the penalty sought speaks to weaknesses of federal laws and enforcement in looting and archaeological protections more than it does to the magnitude of Jim’s crimes.

had five years earlier. Back then, the organization decided not to reach out to Jim or ask him to take down the postings, but the questions around what the organization should share on the Internet remained a staple conversation among board members and employees.

Telling Without Telling

At the same time as NALC suffered from being unable to control the way that information about sacred sites circulated on the Internet, they also wanted people to know about the Preserve so that they know about contemporary Tribal efforts to maintain and protect sacred sites in the Mojave. The trick, as one of NALC's site stewards, Jeff, put it as we sat at the Preserve one sunny and windy afternoon, is that "we want to tell people about it [the Old Woman Mountains Preserve] without telling them about it." That is, NALC wants to tell people about their sites, but doesn't want to lead potential wrongdoers—pothunters and looters—to these same places for fear of their destruction. The problem with the circulation of information about sacred sites is that the same information used to prove contemporary and historical Native presence can also reveal the locations of sacred sites to wrongdoers. To tell someone about Mamápukaib without telling them about it is to assert that the place—along with the attendant Native relationalities—are there, but refusing to elaborate further.

The Board frequently posed the problem of telling in terms of a question: as one board member, Rebecca Kugel, of Ojibwe descent, put it, the question of the Preserve and the NALC was always "how much public use did we want?" Her question reflected not only the trepidation that I had always had in sharing too much information about the organization and its land, but the way that the NALC Board expressed their own reluctance to share information with a non-Indian public and their own uncertainty as to the best way to answer this question. This tension, like that of NALC as a "strange creature" is about the obligations that the organization has to both the non-Indian public and to Native American tribes, and, in the case of the latter, how the organization tries to tell without telling through their land management decisions.

What Fences Tell

The danger of telling is a problem common to private owners like the Native American Land Conservancy as well as the landowner whose lands surround the NALC's land: the Bureau of Land Management. The federal agency is known as a backwater of federal government, an organization originally charged with supposedly worthless "surplus" lands when it was formed in 1946. BLM lands are far-reaching: in the California desert alone, they own eleven million of the twenty-five million acres, more than any other landowner, federal or private (BLM n.d.). Yet, they manage it with a staff significantly smaller than the National Park Service, and are unable—as I detailed in the previous chapter—to adequately monitor their lands and archaeological sites. In contrast, NALC hires site monitors to protect their sites, but this is both an expensive and uncommon practice among desert land managers. While to other organizations, maintaining a site monitor seemed like a luxury, NALC tended instead to view it as a backbone of the organization's work, deciding to keep a site monitor as one of few contractors who worked for the organization. Other organizations would say they could solve the same problems through technological means: signs and fences would be put up to keep people on the road.

Historically, fences embodied the labor of improving a parcel, serving as symbols of the transformation from wilderness to private property. Fences are symbols that tell "not simply ownership, but specifically private ownership of land," Patricia Seed writes of the historical use of fences as enclosures in the United States (1995, 20). This private ownership from which the non-Indian public could be excluded was distinguished from forms of public ownership or the commons that were shared, as well as from wilderness—a category that often subsumed Indigenous peoples as part of the land. Fences were meant to set apart certain

areas of land as private—or belonging to some—rather than belonging to everyone. These enclosures of public spaces reordered social, economic, and legal relations between property-owners and the newly dispossessed (Blomley 2007; Whyte 2007; Griffin 2013). Fences were both the physical barrier and symbol that constituted this exclusion.

In the United States, the symbology of the fence—and particularly of the white picket fence—is a powerful fiction that unites together the American Dream, property ownership, and whiteness, what Sikivu Hutchinson (2014, 622) calls “an idyllic zone in which black people were... airbrushed out of the picture.” This power to exclude through the fence reflects other forms of exclusion, as Cheryl Harris (1993, 1714) has powerfully argued in her analysis of what she calls the “conceptual nucleus” of whiteness and property. Harris’ analysis points to the linkages between forms of racialized exclusion and the creation of private property. In the case of the cadastral system, theories of racial difference directly ordered territory as the Anglo-Saxon acre became the mode of measuring and ordering territory as belonging to white Americans while making the same impossible for Indigenous peoples (Palmer 2020, 795). Ideas about the relationship between land, labor, and whiteness made some landscapes into “non-Indian” ones, precisely because they were understood as lands that could be owned only individually and not collectively (794).

The co-constitution of improved land and improved people were equally important for rendering land into settlements in the American West, as fences and their power to exclude become a powerful means of expressing the forms of dispossession experienced by Native Americans, and how fences became symbols and realities of painful divisions between people and their traditional territory (McNickle 1978; Silko 1986; Netz 2004; Bennett and Abbott 2017). Fences are both reflections of white appropriation at the same time that they mark the exclusion of Indigenous peoples from their own lands. This double move—between fences as symbols of Native exclusion and that enable white appropriation—is what I discuss in the following section.

Going Native on Public Lands

BLM officials told me that fences were indicators of value to pothunters and looters on public lands. As we sat in an office complex in Moreno Valley, an archaeologist described a fence more than one hundred miles away at a well-known military site from World War II.⁷ The fence surrounds a popularly visited part of General Patton’s Desert Training Center, a five million acre training camp used during World War II to prepare for the north African front (Baty and Maddox 2004). Today, this fence is meant to prevent vehicles from driving on the camp and to preserve some of the remnants of this training camp, including historic pathways lined with stones and the two open-air chapels, the latter of which being the only permanent structures constructed for the camp. But for the BLM archaeologist in charge of that area, the fences only ironically served their purpose in protecting the site, as they both protected the area from vehicular traffic and attracted interest from looters. He told me that he doesn’t even bother looking for artifacts inside the fenceline anymore, as he knows that the site has been so thoroughly combed through by pothunters, looters, and avocational collectors that he won’t find anything there. Instead, he said, he has to look outside the fenceline if he wants to find any artifacts to document.

The enclosing fence was marked by a deep irony. The original logic of using the fence as protection is undercut by the ways that the fence demarcates an area as ‘special’ or ‘valuable’ to looters. In the case of private lands, fences are often understood as a sign of ownership, a symbolic “keep out.” But on these public lands, fences serve as an attraction that distinguishes one area from the surrounding landscape, a form of differentiation that is

7 I purposely use this site as an example because it does not bring any risks to any locations to cultural and sacred sites.

attractive to looters, who often view federal lands as their playground (Sizek 2019). The fence, by enclosing a certain area and clearly demarcating it, disclosed the location of artifacts.

Though artifact collection from federal lands is illegal, protections for artifact collection are hard to implement and rarely enforced. Under laws like the ARPA, it's difficult to prosecute looters, and more challenging still to find low-level looters who are not seeking to make profits from their findings. Contemporary critics of pothunting have argued that looters often don't know or care about laws in place to protect archaeological or historical sites, and further argue that they don't know the magnitude of their actions (Sotomayor 2016). Further, for many "low end" looters (Hallowell-Zimmer 2003), lucrative sales of artifacts or sale to museums or collectors is not the goal.⁸

"Low end" looters collect artifacts not only to have fun, but to place themselves in history and construct their own forms of belonging to the landscape and to form social connections with other artifact hunters (Colwell-Chanthaphonh 2004; Hart and Chilton 2014). In the desert, for example, artifact hunters would regularly donate their collections to small local museums for free, even when they were told their pieces would not be on display or marked officially with their names. The joy of collecting was similar to those who followed Death Valley Jim or Fred Hahn's guidebooks: getting "goosebumps" in old tracks on a road. "Just think about all of the people who passed through here," one of my interlocutors told me on a tour through old "pioneer trails" in the desert. Such collection, as Ojibwe scholar Jean O'Brien (2010) argues, is part of the way that settlers place themselves in the landscape through making themselves into the proper owners and curators of history.

This is especially the case for those pothunters who collect Native American artifacts, whose collection helps them believe that they have become the proper inhabitants and curators of the desert landscape (McGuire 1992; O'Brien 2010; Lepselter 2016). The appropriation of Indianness is a foundation of whiteness in America and a form of imperialist nostalgia that forcefully disappears Indians (Rosaldo 1989; P. Deloria 1998). Even as forms of appropriating Indianness or 'going native' reveal ambivalent feelings about modernity, they support forms of white paternalism and masculinist dominance (Huhndorf 2001). That is, to collect artifacts in the desert is to find one's place in the landscape as much as it is to find oneself, to make settlers at home in America.

The appropriation of Indianness through taking artifacts points to how sharing knowledge about a landscape can endanger it—or, in other words, how disclosure on the Internet or at the place itself can lead to the problem of marking value. In the final section, I move beyond questions of how drawing attention to a place can endanger it to instead consider how landscape interventions can protect sacred sites without enclosing them. How do you make a fence that doesn't tell? In the final section, I argue that the perfect fence is the as-if fence: one that doesn't enclose an area from the rest of the landscape, a fence that neither marks as valuable nor provokes resistance. Drawing on a discussion at a NALC board meeting and my experience site monitoring, I show how a certain kind of fence can be the solution to the problem of ethnographic refusal posed at the beginning of the chapter.

As-If Fences

At a NALC board meeting in 2015, the organization reviewed the results of a new multiyear restoration and fencing project and the celebratory event and blessing that followed the completion of construction. As we reviewed the event, each of the Board members reflected on their experience at the event in turn. As one of the board members, Sean Milanovich, an Agua Caliente (Cahuilla) tribal member, began to reflect on his experience, his tone was different from the other descriptions that had noted either some of the

8 For more on high-end looting, see T. King 1991 and Messenger 1999.

shortcomings in planning or the relative success of the event despite the last-minute changes. He didn't emphasize the bureaucratic and the technical. He began by speaking about his fear: he worried that the new fencing—already constructed—would change the character of the place and cut off the connections between the mountains and other places. He asked, “what does it mean to fence the openness of the Old Woman Mountains?” His worry was alleviated when he saw the fences because they didn't enclose or cut anything off.

Sean's comments pointed to the violence that fences can do to Indigenous territory by splitting the landscape, what Salish Kootenai author D'Arcy McNickle (1978, 229) called “the monstrous custom of applying straight lines and right angles to the earth.” Sean's comments pointed to exactly this problem—the way that he feared that fences would cut off connections to the landscape, effectively reenacting Indigenous dispossession. He wanted the fence to allow him to maintain connections and reciprocity with the land, as well as to maintain connections between places (Todd 2016; Massey 1994). Yet, Sean also knew practically how fences would serve a purpose by preventing off-road travel in an area that was culturally sensitive. He was trying to both consider the fence as a potential problem that could cut off his forms of relating to the landscape as well as the fence as a solution that might help protect culturally sensitive areas. That is, he wanted—and found, in NALC's fencing project—a fence that could tell without telling. These fences, as I will suggest below, are made in a way to avoid drawing attention to them, so as to not enclose and therefore not disclose the exact location of sacred sites.

Created through a partnership with the Bureau of Land Management, the fences met BLM regulations: they had wooden posts bookending the smaller metal T-posts that held two rows of barbless wire in place. The fences paralleled the road, and their purpose was to prevent off-highway vehicles (including cars, motorcycles, and ATVs) from turning off of the road on NALC's property and up the wash to a box canyon on BLM lands for trapping bobcats. By following only some parts of the roadway, they didn't entirely cut off access to the landscape, and instead only focused on the points when people were most likely to go off-road.

While NALC made fences with BLM that refused to enclose, one of their site monitors, Tom, was making a new kind of fence. As we drove out to look at them, Tom talked the whole time, later telling me that I was nice to talk to—probably because I didn't say much. When we finally arrived at the Preserve, he pointed at the landmarks I already knew with his tanned arm, his faded tattoo commemorating his military service. He boasted of his ingenious designs for a new kind of fence as we sat under Big Tree, aptly named for being the best source of shade along the dirt road for miles. Like other desert rats, he was always creating designs for new things, calling people in Needles to see if he could secure old telephone poles that could be reused or browsing the Internet from his home in an eight-person town for designs for a bulletproof boxcar that he'd like to put out on the Preserve.

Tom saw his new design as nothing short of a revolution. “After the partnership with BLM was done,” he told me, “I made some new fences. Nothing more than T-post stakes in a wash.” The thin metal T-posts, unlike the regulation fences, were not joined with barbless wire. He asked me if I noticed that there are no barbless wires running between the fences, but his question was only rhetorical.

He continued: “what really works are my as-if fences. They aren't real fences,” because real fences had cables to connect them. But “it works just as good if not better than the regulation fences,” he said referring to the BLM fences that had followed federal guidelines. His fences are better, he argued, because they don't have the same problems as other fences or gates. The as-if fences reduce Tom's own labor, as he never has to repair them with found wire or pieces of metal (as he does other fences if the wires are cut or broken), but

they also showcase what he views as his own brilliance.

Tom thinks that the as-if fences work both because they don't require upkeep and because they guide, rather than present a barrier to OHV riders. They are an extreme example of NALC's fences that refuse to enclose. Tom, like everyone who works in the desert, knows that a fence won't stop the most motivated people from accessing an area where they want to go. Instead, the fence's audience is the kind of visitor who doesn't know where they're going, the kind of people who may not notice the as-if fences at all unless they seemed like obvious markers of value. He thinks that the as-if fences work because they don't create a target to hit and instead provide an illusion that you can't go in that direction. At the same time that Tom is convinced of the fences' effectiveness, however, it is hard to tell exactly how well they work, in part because the forms of surveillance that NALC or the BLM have in this area in the desert are insufficient for tracking what happens. The vast majority of cases of looting or vandalism in the desert are discovered after the fact, if at all, so the question is whether and how the fences can anticipate and prevent the future damage.

Tom viewed his as-if fences as a shortcut for his own labor, a potential means to do less work. But it aligned with Sean's insistence on fences that don't enclose, that refuse to disconnect people from landscapes or places from each other. What the as-if fences do, like the fences NALC made before them, is mark Native presence on the landscape without disclosing where and what those relationships might be; they ask questions about the relationship between disclosing more information and the drive for producing more knowledge as a means to continue relationships with the land. That is, the fences are an object that help to consider how to assert Native presence—through NALC signage—without acceding to the demand for more information. The fences consider the intersection of representational territory key to theories of refusal with the grounded territory of Native lands. Yet, further, they consider how to approach—and insist—upon Native lifeways in the desert, considering what needs to be shared with a non-Native public. The question of “how much public use do we want?” is answered through the fence, which asserts the importance of and documents care for the landscape, even as it refuses to make it into enclosed property. The fence's failure to enclose makes it into a fence that neither encloses nor discloses, not delineating an object of study or something of value. In other words, the fence acts as a means to not only avoid, but refuse propriety's sense of place.

Chapter 6: Regulatory Alchemy

“When he came back from the Cadiz tour, he seemed infatuated with the project. I asked him if he drank the water.” Mike was recounting his friend’s visit to Cadiz years earlier as part of a trip organized by Transition Joshua Tree, a permaculture and climate change activism organization. His friend had been hoodwinked by Cadiz Inc, Mike told me, when on a tour of the agricultural operations of the company with other Transition Joshua Tree members. Mike suspected that his friend had fallen for the company’s sustainable language about the farm, when everyone else knew that the company’s real plan was a groundwater project that would take desert groundwater to the California coast. As part of their tour, Cadiz gave attendees water, as they had been known to do while marketing their project in the 1990s (Carraher 1998). Drinking the water, then, was both Cadiz’s sales strategy and an expression that crystallized suspicions about the Cadiz project: was it really as good as they promised?

When he told me this story, Mike and I were attending a “Mappy Hour” hosted by the Mojave Desert Land Trust, a semi-regular event when twenty or thirty Morongo Basin residents would drop in to squeeze into MDLT’s all-purpose meeting room in Joshua Tree, California, and learn something about a given theme. The theme of this hour was nominally “Water in the Desert,” but it seemed obvious that this meeting would focus on a more specific issue: Cadiz Inc’s proposed water project which was an eighty-mile drive northeast of MDLT’s headquarters in the Morongo Basin.

Cadiz, a natural resources company, is the largest private landowner in California’s eastern Mojave, with 45,000 total acres (and 34,000 of those in the Cadiz Valley) (Cadiz Inc. n.d.b). They hold legal rights to the water that underlie their significant landholdings as well the federal lands that surround their land, and they hope to sell their water to the California coast, some two hundred miles away. The simplest explanation of the project plan is that it would suck water out of the desert aquifer, clean it, and transport it through a pipeline and the Colorado River aqueduct, to the coast. The most recent iteration of the project, begun in 2011, would service the Santa Margarita Water District in Orange County. The proposed project had seemed to come to a halt by the end of the Obama era, but, in 2017, the Trump administration had promised to bring back this proposed private project as part of its infrastructure plans (Stringfellow and Sizek 2018). Today, the project seems doomed under the Biden administration (Hiltzik 2021; Wigglesworth and James 2021).

I never met anyone—other than those employed by Cadiz—who liked the project. In my interviews and participant observation with Native American tribes, local historical societies, environmental nonprofits, and dirt bikers, I was surprised to see how Cadiz’s opponents otherwise spanned the gamut—Trumpers, libertarians, regulationists, and environmentalists. Yet they shared the sensibility that something was wrong with this project that proposed to take water, as many would say incredulously, “from a desert?!?!?” To observers like Mike, who were suspicious of corporate interests in the Mojave Desert, the revival of the project seemed like a corrupt alliance between the federal government and the Cadiz corporation, what scholars have called “regulatory capture.” MDLT and other environmental groups had long opposed the project, claiming both that it was unethical to drain a desert aquifer for the benefit of a city, and that the project would endanger local flora and fauna by decreasing the water table near one of the most prominent local springs.

This chapter, then, is about how a plan for a project so popularly reviled remains alive

despite widespread criticism. This project stays alive through what I call *regulatory alchemy*, a concept that describes how water—and the water cycle—become profit through laws and regulations specific to the US property regime and California groundwater law, both of which frame the value of subsurface water in terms of the temporality of natural processes. My use of the term is directly inspired by geographer George Henderson (1999, xi), who analyzes nineteenth century California novels as bourgeois attempts to theorize agricultural economies, a “densely expressive outlet for the expression of alchemic desires.” Applying his method to films and regulatory paperwork, I use regulatory alchemy to describe the intersection of profit, science, and nature within regulations and laws.

While Henderson was interested primarily in the transformation of nature to capital in a Marxian (1976 [1867]) framing, I expand the understanding of alchemy to consider the intertwined relationships between state power, capital formations, and science. Rather than alchemy disappearing with the rational state, then, I instead argue that it has persisted and transformed. In this way, I follow analyses like that of Jean and John Comaroff, who consider millennial capitalism through its promise of making something from nothing through “alchemic techniques [that] defy reason in promising unnaturally large profits” (2000, 313), that of Michael Taussig (1997, 18), who examines the true and forged as “flip-sides of stately being.” Finally, I draw on the consensus in the history of science about the interlinked nature of the disciplines of alchemy and chemistry as a means to understand scientific regulatory processes as themselves potentially alchemical (Principe 2000).

But here, I’m interested less in the obviously occult, and instead in the regulatory aspects of law and how they double and construct nature. I analyze documents like Environmental Impact Reports and Securities and Exchange Commission filings attempt to enact the alchemy of capital. Here, I follow nature-society geographers and environmental anthropologists who examine legal and regulatory regimes that produce ideas of nature as they create opportunities for profit-making in resource extraction. Environmental impact reporting processes are sites of complex struggles for power and knowledge, as shown both in large and small-scale mining projects (Stuart Kirsch 2014; F. Li 2015; Spiegel 2017). Environmental impact reporting is also a struggle over the scale of analysis, and particularly the multiscale impacts of projects (Andrews and McCarthy 2014). For the Cadiz project, both the environmental impact reporting and temporal and geographical scales of the project are at stake in regulatory documents, as are the nature of property and profit-making (Kay 2016, 2018). My research adds to this analysis by showing how profits are made through regulation.

After briefly describing the history of Cadiz Inc as one of trying to turn nature into capital, this chapter proceeds in three parts. First, continuing from the introduction, I use film as an entry point into popular understandings of how the Cadiz project makes nature into profits. Roman Polanski’s (1974) *Chinatown* and Paul Thomas Anderson’s (2007) *There Will Be Blood* show not only the country-city resource politics of the Cadiz project, but the assumed conspiratorial relationship between corporations landowners and government regulators. I then turn to the specifics of California groundwater law that underlie the possibilities of Cadiz’s profit-making, arguing that what is precisely so strange about the Cadiz case is how it is legally permissible within the confines of California groundwater law. Rather than a conspiracy, then, Cadiz is an example of how regulation is supposed to work. Finally, examining representations of underground wealth in Cadiz’s environmental impact reporting, I argue that the alchemy of the project—how Cadiz makes money from natural resources—comes not from locating and

extracting resources, but rather from speculating how much groundwater recharge there will be in the future, and representing this future water in regulatory documents.

I begin with the forty-year history of the Cadiz project that has yet to result in a successful sale of water to the coast. Tens of thousands of pages of environmental reporting, scientific study, and profit-making that have not resulted in a physical project. Their current profits and stock prices as a publicly-traded company come only from their plans and the speculative economies of water in California.

The Plan

In 1983, financier Keith Brackpool and geologist Mark Liggett founded Aridtech, a predecessor of Cadiz Inc, with new technology, capital, and a dream of water. New satellite imaging had revealed what looked like a hydrologically disconnected aquifer in the middle of nowhere, and they hoped to tap it (Aridtech Inc 1987). The Fenner Basin Aquifer underlies a remote valley in the Mojave desert, next to a railroad line but with few neighbors. Cadiz used to be a town, a water stop in a string of alphabetically named towns—the ABC towns—along the Atchinson, Topeka and Santa Fe line. However, all of the ABC towns had largely de-populated after I-40 was built in the 1950s, bypassing Route 66 (Sizek 2021b). The few people who visited the ABC towns were Route 66 tourists or those desperate for gas between Needles and Barstow. The company bought 30,000 noncontiguous acres in the area between 1983 and 1986, mostly from the railroad's checkerboarded land grants. The land that Cadiz bought was part of a flat, wide basin. Their property is bounded by distant mountains, a salt mining operation (owned by the redundantly named National Chloride Company of America), and the Cadiz sand dunes.

Cadiz's Securities and Exchange Commission filings from that time list a dizzying number of names in joint ventures, corporate takeovers and subdivisions (Aridtech Inc 1987). Tracking the names shows the development of the company's different projects and reveals how corporations hedged bets and sought short-term gains through dividing their ventures during the 1980s (Ho 2009; Lazonick and O'Sullivan 2000). The first company listed was the Olenellus Group, whose name was derived from an ancient trilobite that inhabited North America, reflecting the company's focus on geologic exploration. Aridtech, the umbrella organization dedicated to water development, soon bought them out once Aridtech seemed commercially successful. Shortly thereafter, Aridtech formed the Cadiz Valley Development Corporation, which held the lands that Pacific Agricultural Services would farm, using groundwater from the aquifer below to create a new agricultural venture for this part of the desert. While the style of splitting corporate enterprises was related to 1980s corporate strategies, each of the enterprises represented a mode of extractive capitalism in Southern California: mining, agriculture, and water.

Since the mid-1990s, Cadiz has pursued groundwater extraction as the basis of all of their operations, even using their SEC filings to frame their purchase of raisin giant Sun World not as an agricultural acquisition, but instead as a means to get groundwater (Stringfellow and Sizek 2018). Though the company has repeatedly stressed that their project as agricultural in their public statements, as I have argued elsewhere (Sizek 2018), it was always about groundwater.

The Cinema of Water Mining

Film, and especially *Chinatown* (Polanski 1974), has long been used to imagine water politics in California. The 1974 film directed by Roman Polanski and starring Jack Nicholson was constantly—though only fleetingly—referenced whenever I brought up the Cadiz project to desert locals in the Morongo Basin, Needles and on the Chemehuevi Reservation. Cadiz

opponents used the film to understand Cadiz's project—and potential profits—through a lens of unfair country-city relationships, collusion between government and private companies, and the politicization of water provision in California. While *Chinatown* captures the feeling of desert-dwellers toward Cadiz, I argue that it is insufficient to understand the nature of California groundwater politics, for which I turn to *There Will Be Blood* (Anderson 2007).

In *Chinatown*, a film inspired by the Owens Valley water wars, the intersection of water and real estate is at the center of a noir setup. A mysterious cabal drains reservoirs to make farmers sell their land at artificially low values, allowing land speculators to purchase the prime land in order to sell it to water pipeline builders. Film scholars and historians have argued that *Chinatown* is a poor stand-in for the actual construction of the Los Angeles Aqueduct (Andersen 2004; Erie and Brackman 2006). However, the film's shortcomings as historical docudrama have not undermined the resonant truth of the film that remains with desert dwellers, who use it as proof that something is strange when municipalities, companies and real estate are entangled in water transfers (cf. Lepselter 2016). My interlocutors would invoke the film to suggest a comparison: I would say something about the Cadiz project to someone who hadn't been following the story before, and they would return with the rhetorical question "like *Chinatown*?"

The ubiquity of *Chinatown* references among desert dwellers reflected how the movie resonated with their experience and feelings of neglect and abuse from cities and country-city relationships (R. Williams 1973). Critics—ranging from environmentalists to local historians to politically-engaged citizens to people who had never heard of the project—argued that the project was about California "coastal elites" who were taking advantage of the California desert without considering the effects of this project on local ecology and people. This critique was couched in a locally specific way: Desert locals claimed that Cadiz, like other desert project proponents, thought that the desert was a wasteland where socially and environmentally degrading projects like nuclear waste dumps and solar projects could happen without consequence (Kuletz 1998; Voyles 2015). *Chinatown*, then, was a sensibility, a means of expressing how desert-dwellers thought that the project was being controlled in the city without their input.

Chinatown reflects desert residents' sense that government and private interests were colluding against a general public. Originally released in the era of Watergate, the Vietnam War, and environmentalism, the 1974 film also reflected the growing sensibility, contra Progressive science and water management, that water provision was no longer only a technical problem of getting water from one place to another, but a political problem (Gottlieb 1988). When water became political, what had been a solid "Iron Triangle" of water bureaucracy, elected officials, and local water users was broken (McCool 1994). Critics argued that municipal and federal water agencies were 'captured' by private interests (Selznick 1949). This accusation of 'agency capture' was one of the impetuses for the consideration of public interest in federal government processes, and the growing environmental movement in the 1960s and 1970s. Later, desert residents extended this critique to include the new environmental compliance companies that consulted them under new environmental laws (Cotgrove and Duff 1981). And indeed, what *Chinatown* signaled, for those who used it as a critique of the Cadiz project, was that something was wrong with government and capitalism when it seemed easy for a city company to take water "from a desert?!?!?" to the California coast.

Chinatown's noir references affected viewers, and the film reflects the feeling of being betrayed and forgotten. But the film remains a superficial analysis of a water project, what is so

key to a groundwater project: its underground world. The aquifer and the profits to be made from it, I argue, are better understood through *There Will Be Blood* (Anderson 2007). The film shares a similarly dark premise with *Chinatown* and is based on Upton Sinclair's (1927) *Oil!*, a novel that had at its center the Teapot Dome scandal, in which petroleum companies bribed government officials to be granted leases to oilfields in Wyoming and Southern California at artificially low rates and without competitive bidding. What this film provides, I argue, is not a look into the world of corruption, but rather a theory of how mysterious oilfields—and more broadly, ideas about nature—are made into profits.

In the film, Daniel Day-Lewis plays the fictional Daniel Plainview, a former silver miner who becomes an oilman. After greasing the palms of local officials to gain access to the oilfield and purchase the land above it, he drains the oil field and becomes fantastically wealthy.¹ At the end of the film (spoiler alert!), when his nemesis Eli offers to sell him the last property in the oil field as he had wanted years before, he reveals that he has already gotten the oil underneath it. He uses the metaphor of a milkshake and an extraordinarily long straw: “My straw reaches acrooooooss the room, and starts to drink your milkshake. I drink your milkshake! I drink it up!” Plainview's pronouncement—that he has gotten all of the oil from the underground field—seems to suck life from Eli. The film ends with Plainview killing Eli with a bowling pin in his mansion's bowling alley, the scene referencing his excessive wealth accumulated through oil at the expense of his morality.²

Plainview's oil rigs suck an underground pool of oil shared among many properties, including the oil under the land that he does not purchase. Like an oilfield, aquifers are often shared among many aboveground owners who can each lay claim to the water beneath them. If one owner thinks that the others have taken more than their fair share, they can sue through a process called adjudication. In the adjudication process, a judge divides the water in the aquifer, apportioning some to each overlying landowner by how much land they own. In so doing, the court attempts to make what is often described as an “invisible resource” that provides up to one half of water used in California into a visible and divisible one (López-Vera 2012; Hundley 2001). Through dividing water among landowners whose lands overlie the aquifer, adjudication resolves the secret of underground water into clearly delineated amounts. This is what anthropologist Emily Brooks (2017) calls “number narratives,” an estimation of how much water is left, how much pumping is in excess of recharge rates, and how much time overlying owners have before they run out. These new numbered realities come to structure the lives of overlying owners, adjudicating new social relations between them when aquifers are overdrafted (Gray and Gibson 2013).

As in *There Will Be Blood's* oil fields, renegotiating relationships between aboveground owners often happens too late, only after an overpumping “crisis” (Sax 2003, 274). In California, each crisis is solved aquifer by aquifer, as adjudications take place only after one overlying owner sues another. This patchwork of adjudication, with some aquifers adjudicated and others not, was supposed to be resolved through the 2014 passage of the Sustainable Groundwater Management Act (SGMA), which was intended to force the adjudication of overdrafted basins. However, SGMA does not apply to low-priority basins like the Fenner Basin, where the Cadiz project lies.

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- 1 In *Oil!*, access to oil has everything to do with the road, as the scene that opens the novel is a father and son duo driving down a new paved road.
 - 2 In *Oil!*, however, the central conflict of the book is the “disharmonies between capital and labor” (Sinclair 1927, 163), the relationship between J. Arnold Ross (the father of the main character) and his oil workers.

The adjudication process frames the solution of the overdrafted aquifer as one of property: that is, the solution to overdraft is to consider *how much* water each party gets. This solution requires “necessitating ‘king-philosophers’ or ‘goddam bureaucrats’ to define and adjust property rights to commodity conditions, while at the same time rejecting the interference of public involvement” (Emel, Roberts, and Sauri 1992, 47). The problem this solution presents—in which an authoritative voice must determine the proper allocation of resources but that such an authoritative voice is distrusted by the public—is at the crux of the real political scandals on which both *Chinatown* and *There Will Be Blood* are based, in which corrupt officials and private interests work together against the interests of the public. Further, this view presents the conundrum that both Cadiz and its opponents face as the Cadiz project progresses: that, in the search for answers, no one trusts the authoritative voices that purport to know how much water is in the aquifer or how much water can be taken out.

Mistrust is at the center of both how local residents understand the project, and what seems to be the trouble with Cadiz (Stringfellow and Sizek 2018). Yet, the scheme for company’s profit comes not from collusion or corruption, but instead through legal and regulatory underpinnings in groundwater law that make *There Will Be Blood*’s milkshake possible. By turning away from the accusations of political corruption that have plagued the Cadiz project, here I am seeking to understand California groundwater law and its relation to surface ownership. This points to the way that projects like Plainview’s oil rigs or Cadiz’s planned pumps—though perhaps underpinned or influenced by corruption—are perfectly legal means to produce nature to make money.

Making Money from Groundwater

The right to groundwater in California is a property right in which ownership of the overlying land grants rights to the water beneath (Gardner, Moore, and Walker 1997). In the adjudication process, this property right in water is divided among the overlying owners, who each are given their own slice of the aquifer pie. However, unlike oil, in which underground resources are somewhat finite (Bridge 2010), groundwater is unusual precisely because of the temporality of its recharge, a process through which groundwater enters the basin through precipitation and percolation as well as exits it. For most groundwater managers, the goal of groundwater allocation is to ensure that the rate of extraction does not dramatically exceed the recharge rate, so as to prevent irreversible effects of overdrafting the aquifer like land subsidence and water contamination. As Karen Bakker (2010) argues in her analysis of water privatization, specific properties of water shape how it enters the market, and this specificity of groundwater recharge and California groundwater law—distinctive from groundwater regimes in other states (Sax 2003)—is my focus for the remainder of this chapter.

How is the adjudication of groundwater—a division of property rights—addressed through groundwater regulations? I argue that groundwater regulations make groundwater understood through aquifer recharge, and therefore in terms of a temporal form of property. While this interpretation is partly inspired by classic treatments of land as property that treat land as a fictitious commodity whose value comes from future rents (Harvey 1982), my focus is narrowly construed around predictions of how much water there will be in the future. Like predictions of peak oil or commodity futures, assertions about the water cycle are not about how much water there is, but how much there will be. In regulatory alchemy—the process through which Cadiz turns water into money in their environmental impact reporting under the California Environmental Quality Act—the temporality of groundwater and recharge in the water cycle

become central to Cadiz's profits.

The story of California groundwater law begins with *Katz v. Walkinshaw* (1903), a California State Supreme Court case in which the state broke with the idea of groundwater as an absolute property right in favor of correlative rights, in which overlying owners have a property interest in the water below (Blomquist 1992). While this case shifted away from an absolute right to water underground, it defined the standards to judge whether water users were appropriately using water (Sax 2003). The California Constitution defines "beneficial use" both to describe appropriate water uses and place a cap on how much water can be taken out of an aquifer each year, but the California Courts eventually restricted beneficial use by adding the additional criteria of reasonable use. Beneficial use defines water use in terms of human activity, which is shorthand for a definition that includes household and agricultural uses, and has been expanded to include wetlands or environmental uses. Reasonable use, a subset of beneficial use, judges whether the method of water use is efficient or excessively wasteful (Cantor 2017). For example, in agriculture, older methods of flood irrigation became an unreasonable use once pivot irrigation became widespread. While beneficial use is a more stable category, reasonable use is a moving target that has changed dramatically as technology changes (Emel and Brooks 1988).

In adjudication processes, reasonable use defines how much water each individual landowner can claim as determined by proposed use. Alida Cantor (2017), examining Southern California's Salton Sea, argues that reasonable use depends on ideas of efficiency in water use. When water use becomes more efficient, the category of reasonable use shrinks in comparison to the larger beneficial use. As water is saved through more efficient use, more water becomes available for other uses. Cantor asks: "Who is entitled to the savings?" (1208).

For groundwater in California, savings in water efficiency can go to the overlying owner through being designated as "surplus." In *Los Angeles v. San Fernando* (1975), the California Supreme Court defined surplus as "when the amount of water being extracted from it is less than the maximum that could be withdrawn without adverse effects on the basin's long term supply" (quoted in Weber 1994, 681). Unlike reasonable use, a determination made relative to the spatial rights of overlying owners, the definition of surplus is fundamentally temporal, defined relative to long term supply of a basin, an estimate made through comparing groundwater recharge—how much water enters into an aquifer each year through rainfall and snowmelt—with water use. This definition of surplus depends on this idea of "safe yield," a legal definition that is unintelligible to hydrogeologists who find the term to be an oxymoron because there is no scientific basis for determining what "safe" extraction might be (Weber 1994). Surplus, then, is whatever recharge exceeds the safe yield, a definition that combines ideas in law and science through regulation.

So-called surplus water, unlike reasonable use water, does not need to be applied to the land above. Instead, it can be appropriated for other uses and sent elsewhere, as was popular in projects proposed after the 1976-77 drought. Often considered the first major drought of the modern era, the 1976-1977 California drought was so severe that the State Water Project could not provide all of its contracted water to its users, and both agricultural and municipal users had to accept substantial cuts of 60% and 10%, respectively (Santos and Godwin 1978, 39). As farmers and municipalities contended with the loss of water available to them, they turned to groundwater as a temporary solution to their surface water shortages.

"In a drought, groundwater is like money in a bank," law professor Gregory Weber (1994, 658) wrote. Though Weber was referring to the way that groundwater accumulates over time, water speculators took this statement much more literally. Water speculators saw an

opportunity in the drought, and a new crop of speculators started buying agricultural land in the Central Valley not to farm, but instead to gain rights to the water underneath the land with hopes to sell it to thirsty municipalities for high returns (Green 2012). In the early 1980s, new legislation eased barriers to transfer water between districts, reinvigorating water speculation (Gaffney 1997). The hunt for groundwater and investment in groundwater transfer continued during the 1980s, as groundwater rich areas exported water through regulations that seemed underdeveloped to water experts (Weber 1994).

Cadiz was one of these investors. When Cadiz, then known as Aridtech, started their project in the Mojave Desert in 1983, they were situating their profit within the legal and regulatory structures of groundwater as they sought to find what looked like a hydrologically disconnected aquifer under the desert floor. Their project to purchase the land above the aquifer, have property rights to the land below, and later sell the water that they had been keeping “in storage” was a speculative venture premised in the pricing of future water in comparison to what the land cost today (Santa Margarita Water District 2011). Their claim to water was enhanced by property law, as the other major overlying owner of the land was the federal government, an entity that rarely pushes for their water rights.³

The initial premise of Cadiz’s profit, then, was based in the legal and regulatory frameworks of reasonable use and surplus, which define groundwater extraction through not only the property rights of overlying owners but through understandings of recharge and the temporalities of groundwater. In the following section, I turn to how Cadiz Inc frames its own project as potentially profitable through trying to increase the amount of surplus water available through regulatory means, looking at their Securities and Exchange Commission filings and environmental impact reporting to trace their regulatory alchemy.

Regulatory Alchemy: How Natural Processes Become Money

Cadiz’s potential profits depend on how much water they can take out of the aquifer that underlies their property, or, in the words of California groundwater law, how much of the water is surplus. Surplus, as discussed earlier, can come from both water ‘waste’ and from larger estimates of groundwater recharge, both of which increase the amount of beneficial use groundwater available to Cadiz. Numbered projections, made in regulatory documents like Environmental Impact Statements, are the baseline that determines the profit estimates that Cadiz can write in their Securities and Exchange Commission filings. These regulatory documents are both audits, in which public agencies judge the statements Cadiz makes (Power 1991), and narrations of profit that reveal the corporation’s understandings of natural processes. In examining these documents, I draw on critical approaches to SEC filings and Environmental Impact Reporting (Maurer and Martin 2012; Spiegel 2017) as a means to understand how Cadiz understands their project to be an intervention to regulate what they see as a loss of water in the water cycle.

Environmental impact reporting and regulatory processes are a central component of almost any land-based project from road-building to house construction, and one that often requires expertise from various compliance companies.⁴ These companies secure regulatory approval under laws like the National Environmental Policy Act (NEPA, for federal lands) and

3 Most of the land that Cadiz owns is checkerboarded with federal lands. The source of this statement about federal water adjudication are interview with Frazier Haney and David Lamfrom.

4 Cadiz lists six EIR authors: Environmental Science Associates (main author), RBF Consultants, CH2MHill, Paleo Solutions, Inc., Circle Mountains Biological Consultants, Inc, and GEOSCIENCES Support Services, Inc (Santa Margarita Water District 2011).

its California equivalent, the California Environmental Quality Act (CEQA, for privately held lands) (Stuart Kirsch 2014). In CEQA documents, Cadiz explains the scientific reasoning behind their groundwater project, and in the Securities and Exchange Commission (SEC) filings, they explain how this planned water extraction will translate into profits. These SEC yearly filings are publicly available and filed with the federal government, and allow a publicly-traded company to provide a basic overview of their plans for the future and outline their plans for profit to potential stockbuyers.

As seen in their regulatory documents, Cadiz changed their narrative of the project from one in which nature saved water to one in which nature wasted water when they switched from a surplus-and-storage model in the 1990s to a wellfield project in the 2010s. This shift, I argue, is one of regulatory alchemy in which they make natural processes seem inefficient in order to produce profit.

In the 1990s, Cadiz proposed a project that was similar to other popular initiatives at the time: to use the aquifer as underground storage for Colorado River water during years of surplus flow in the river (Kletzing 1987). In this model, the profit from the project came from what the company framed as the advantages of “storing” water in an aquifer underground rather than in a surface-level reservoir (Cadiz Inc. 2007, 2). Aquifer storage would prevent contamination and minimize evaporation, while ensuring that water from times of surplus would be available during later times of dearth, they claimed. In the future, when water prices increased, they would be able to sell the water for more money than they had initially used to buy the land. The underground bowl, or aquifer-as-storage, model that the company envisioned was like other framings of nature as infrastructure, since the aquifer was simply a bowl that kept water for people (Ballesterio 2019). However, this 1990s iteration of the project failed when the Los Angeles-based Metropolitan Water District (which had been contracted to receive the water) decided that the project was too expensive and politically sensitive to support.⁵

For several years after the project lost its partnership with the Metropolitan Water District, the company continued to frame the value of the project and its plan through the advantages of the aquifer as an underground bowl. In 2010, Cadiz changed their narrative: they stop referencing how the aquifer prevents the evaporation of stored water, and that the aquifer-as-storage prevents water loss. Instead, they argue that natural processes *waste* water that the project would *save*. Water in the system, Cadiz Inc says in their 2010 SEC filing, is “presently being *wasted* to evaporation at the Bristol and Cadiz Dry Lakes” (3, emphasis mine). Whereas before, they claimed that the aquifer was saving water by preventing the kind of evaporation that is part of a reservoir storage system, this new reading articulated the aquifer and water cycle as wasting water, documented in a new report from CH2M Hill, an engineering and environmental compliance company that the company uses for its environmental impact reporting. The new report, released officially in July 2012, was already in the hands of Cadiz Inc officials when they were filing with the SEC in March.

This switch—from the aquifer as storing water to wasting water—requires further explanation to understand the scientific claim the company is making, and how the company narrates the aquifer’s problem as one of the temporalities of the water cycle itself. On their

5 One of the scandals that directly implicated the project was a finding that Cadiz owner Keith Brackpool had been a major supporter of Governor Gray Davis (Clifford and Perry 2000). Similarly other California desert projects in the 1990s were stalled due to corruption, including the proposed Bolo landfill near Cadiz (Carraher 1998).

website, Cadiz uses this infographic (see Fig. 5) to explain how water is wasted by the aquifer. In the most basic sense, this image is one of the water cycle, in which rain falls on the ground,⁶ runs down the mountains and into a basin, where it percolates into the aquifer, what the company had initially described as “storage.” This image is a depiction of a natural process that they hope to save—by preventing and intercepting water that might evaporate by decreasing the groundwater level.

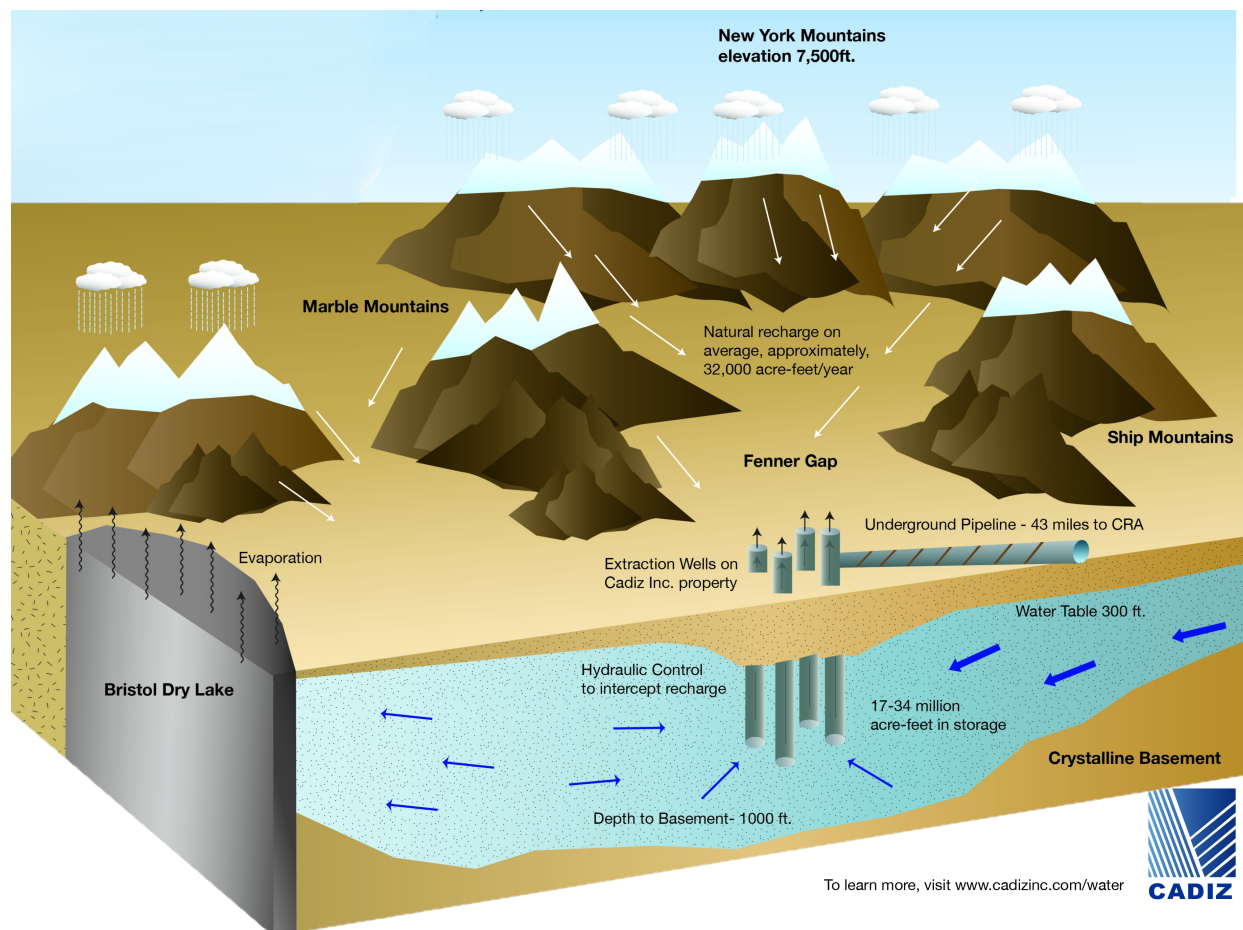


Fig. 5: Cadiz's Diagram of Water Loss (Cadiz n.d.a).

While water enters into the aquifer through precipitation and travel down through Fenner Gap, water loss comes from the evaporative draw from Bristol Dry Lake, on the left side of the image. During the last Ice Age, Bristol Dry Lake was wet, but today it is a salt-encrusted surface with a high water table. The salt-encrusted surface comes from the evaporation of water through the crust, as the salts and minerals dissolved in the water are left behind. Immediately below the lakebed is a layer of salty brine, water too salty to drink. Through piping water out of the aquifer and lowering the water table so that water cannot evaporate, the company argues that it will prevent water from evaporating through the dry lakebed, or becoming briney. Thus, their claim to ‘capture’ or ‘intercept’ water before it is ‘lost’ to evaporation (Cadiz Inc. 2011; Santa Margarita Water District 2011) frames the existence of water evaporation as a ‘wasteful’ process.

6 The infographic also misleads by implying that it snows in the Marble and Ship Mountains, which is quite rare.

By ‘intercepting’ this water, Cadiz is appropriating water that they argue would be otherwise lost to evaporation. They can therefore claim that they increase the recharge rate for the aquifer, and thus the amount of surplus in excess of safe yield. By accounting for the water loss through evaporation, the company can claim that previous recharge numbers did not account for all water exiting the system. By framing the water cycle as wasteful, Cadiz’s statements resonate with colonial strategies in which nature was viewed as wasteful in order to appropriate and claim it, what geographers have shown is a strategy for enclosing commons and pushing for greater intervention into nature (Gidwani 2013; Cantor 2017). While such strategies often mirror Progressive-era understandings of engineering and efficiency critiqued by *Chinatown*, they also resonate with other troublesome representations of nature. This strategy of positing nature as wasteful also resonates with what scholars Valerie Kuletz (1998) and Traci Voyles (2015) have called wastelanding: the social production of desert natures and peoples as wastelands that can be destroyed without consequence.

Presenting a new version of the water cycle and its waste, the company claims that their project is a “new, sustainable water supply for Project participants without adversely impacting the aquifer system or the desert environment” (Cadiz Inc. 2011, 46). Here, the language of sustainability mirrors that of alchemy—to make something from nothing with no adverse effects. To a certain extent, this is the capitalist dream of sustainability, a phrase that the company has used in their own marketing to describe the project: “to be true to our philosophy of sustainability... our innovative Cadiz Valley Water Project conserves water not only by capturing water that otherwise would have been wasted to evaporation, but also by storing water with almost no evaporative loss” (Cadiz Inc. n.d. c). This making something from nothing—or something from a new understanding of a natural process—is at the heart of regulatory alchemy, a mode of making profits from ideas about how nature works and translating these ideas into numbers that produce profit.

Cadiz’s regulatory alchemy is most visible in their regulatory documents that estimate groundwater recharge. A 2012 letter from the Mojave National Preserve, the nearest National Park Service unit to the Cadiz project, reveals the vast discrepancy between Cadiz’s estimates and other investigators in a chart that lists the recharge rates found by different investigators (Dubois 2012). The chart features columns of estimated recharge rates: investigators who had been funded by Cadiz Inc, and all other investigators, which include academic hydrologists and the federal government. The range of estimates for recharge rates differ dramatically across the two groups of investigators, averaging 4,100 acre-feet/year for non-Cadiz investigators to 30,500 acre-feet/year for Cadiz investigators. This dramatic difference leads Mojave National Preserve Superintendent Stephanie DuBois to write in an official CEQA letter that the company’s “estimates of the annual recharge (and discharge) for the Cadiz project watershed in the range of 30,000 AFY are not reasonable and should not even be considered” (3), noting that scientific agencies with no financial stakes in the project’s future success thought that the recharge amounts would be significantly less. Her note points to the absurdity of Cadiz’s claims from the standpoint of a federal official who can neither officially support nor criticize the project.

Cadiz’s estimates are nearly ten times greater than any other investigator, and subsequently, these different recharge rates provide drastically different visions of the project. As part of the 2010s iteration of the project, the company plans to take 50,000 acre-feet/year over a fifty year period, resulting in a drawdown of 975,000 acre-feet from the aquifer if the recharge rate is 34,000 acre-feet a year. In contrast, if the recharge rate is the much lower 4,100 acre-

feet/year, then the total drawdown from the Cadiz project would be around two and a half times that amount: 2,295,000 acre-feet. Environmentalists fear that this much greater drawdown could have irreversible effects on springs that may share the aquifer with Cadiz as well as other negative environmental impacts (Zdon et al. 2018). While environmentalists have challenged the project in its multiple iterations through the California Environmental Quality Act (CEQA) process, these challenges have remained unsuccessful (Coon 2016).

These dramatic differences in number narratives (Brooks 2017) reveal more than the financial interests of Cadiz, but rather how the company structures their regulatory approach—both through their analysis of water cycle’s temporality and their presumed influence over the company conducting the research. Beyond mere regulatory capture, regulatory alchemy transforms natural processes into capital through numerical means during the processes of environmental compliance and financial reporting processes. Such a transformation of nature into money, I suggest, is not only about number narratives that make a project seem feasible, but about the construction of time and cyclical natural processes in which natural processes—both in their advantages and disadvantages—become a source of capitalist gain.

Conclusion

In this chapter, I began with the common view of Cadiz’s water project as a *Chinatown*-type conspiracy, tracing how the country-city politics embodied in this critique captured the feeling of what the project would do to the desert while obfuscating the perfectly legal underpinnings of the Cadiz project. Then tracing the legal means that Cadiz is able to make its project work—from the California court’s interpretations of beneficial and reasonable use to the company’s environmental compliance paperwork—I argued that Cadiz’s planned road to profit is regulatory alchemy. Both encompassing how legal and financial documentation remakes understandings of natural processes, regulatory alchemy shows how portrayals of nature becomes profit. Cadiz’s alchemy—both the regulatory documents that make tangible their plans to make profit from groundwater and their depictions of the water cycle that make water appear as ‘wasted’ in the water cycle—is made through a scientific depiction of nature and the temporalities of natural processes, not through collusion between government officials and water barons. The source of Cadiz’s profit is depictions of nature in regulatory documents.

Regulatory alchemy, then, considers the relationship between state, science, and profit both inspired by and distinct from the ways that alchemy is used to describe dreams of capital accumulation from nothing or through some form of corruption or collusion. Rather than a *Chinatown* corruption story, this is about the underground riches imagined in *There Will Be Blood*. This alchemy is about producing the ideas of endless surplus water to appropriate, the manufacturing of plenty for times of dearth. In this way, regulatory alchemy helps to move beyond allegations of fraud, instead asking about the specificity and materiality of what is being regulated, and how exactly science, profits, and the state are made through regulation.

Chapter 7: Zombie Infrastructure

When I drove to Tom's house, I went around the signs that told me the road was closed. Some of the bridges along Route 66 had washed out, and the county closed thirty miles of the road that traveled through his small California desert town (Route 66 News 2017). After the washouts, the only people who traveled the Mother Road are Tom and the other seven residents. Tom, a seventy-year old white man, didn't mind. He moved to the tiny town to get away from people and be closer to his job, which was site monitoring in the mountains at the Native American Land Conservancy's (NALC) preserve twenty miles away. Tom worked for the intertribal nonprofit as a site monitor after he sold them land his family had purchased from the railroad in the 1910s. I met Tom through my own work for NALC that began in 2012.

As we sat on his back porch, a train rumbled through his backyard. Tom liked train-watching, and he told me that the railroad was a reminder of a better time. Though trains invoked nostalgia, they tracked the present. He remembered watching the military build-up after 9/11 through the train-transported equipment bound for southern California bases. Tom, a veteran, found the train-watching interesting, but found other railroad connections troubling. Just a couple of railroad water stops away, Cadiz was to be the site of a new groundwater extraction project, which he feared would make his well run dry as well as the springs in the Old Woman Mountains, where NALC's preserve is located. The project would take water from the desert aquifer through a to-be-constructed pipeline that would travel alongside a rarely-used railroad short line, connecting to the Colorado River aqueduct and taking the water to the California coast. Tom thought it was just like all of the other projects that had been proposed in the desert—like the Ward Valley nuclear dump and the Bolo landfill, projects that were vehemently opposed by Mojaves, Chemehuevis, and other desert tribes as well as white residents like Tom (Klasky 1997; Carraher 1998). Cadiz was just another project animated from the idea that the desert is a wasteland, a dead place that seemed like it couldn't be affected by extraction or degradation (Kuletz 1998; Voyles 2015). The newest iteration of the Cadiz project has many enemies, including the NALC. In 2021, the Native American Land Conservancy was part of a lawsuit opposing a last-minute right-of-way issued by the Trump administration, arguing that the Bureau of Land Management "did not comply with the required process" to meaningfully consult tribes on their traditional territory (NPCA 2021). This newest lawsuit reflects decades of legal battles against the project, but seems irrelevant during the Biden administration, which seems to have doomed the project. In this chapter, I follow the Cadiz project to argue that the project's contemporary reappearance depends on a zombie infrastructure, or the reanimation of both legal and material substrates to make a new iteration of the project possible. In so doing, Cadiz Inc reanimates histories of dispossession, monstrosity, and colonialism.

My argument, in short, is that the life of the Cadiz project—which would take water from an aquifer and subsequently transport it to the California coast—depends on reviving the legal rights and body of a little-used railroad short line. Cadiz Inc, the company proposing the project, needs to bring the railroad's legal infrastructure back to life for a new purpose. Routing the politics of a contemporary infrastructure project through the railroad, I argue, allows for a new way of looking at the politics of infrastructure at the intersection of law and monstrosity: zombie infrastructure. I use this concept to elaborate what activists call zombie projects, to show the life and death of infrastructure, and to reveal how contemporary capitalist projects depend on repurposing older forms of capitalist investment and, in so doing, resurface histories of dispossession of labor and land. Though the railroad used to be a monopolistic octopus, today it is a zombie reanimated by another company for a new

purpose.

In what follows, I trace the life, apparent death, and rebirth of an Atchinson, Topeka and Santa Fe spur line, analyzing the metaphors of liveliness and monstrosity that have animated both contemporary discussions of the corporate persons of Cadiz Inc and the railroad company that preceded it more than a century earlier. My contemporary ethnographic research complements literary, archival, and legal documents that detail the rise and fall of the railroad as a matter of life and death. The chapter tacks between the understanding of the railroad as an economic and metaphoric engine of desert life and as the rapacious capitalist consumer of desert lives before I turn to understanding the railroad today, as a seemingly empty vessel made to serve new purposes by a new master.

The Zombie and the Railroad

Project opponents call projects like Cadiz ‘zombie projects,’ referring to their reappearance after apparent death. Cadiz, like many other California water projects, was born during a California drought more than forty years ago, and is a zombie because it “come[s] back to life when people worry about drought” (Everts q. in Waldman 2014). Cadiz Inc has returned with new project iterations incessantly, as activists involved in the long campaigns against the project attested. Employees at the National Parks Conservation Association (NPCA)—who coordinated much of the action against Cadiz—opposed the various iterations of the project for more than twenty years. Along with groups like the Native American Land Conservancy, Mojave Desert Land Trust, and the Sierra Club, NPCA lobbied at the statehouse and in Washington, D.C., packed water district meetings, and filed lawsuits to oppose the Cadiz project.

Activists were obsessed with the project’s death. In summer 2020, a Zoom meeting celebrated what project opponents had hoped would be the final nail in the project’s coffin, a bill that passed through the California statehouse months earlier. The people on the call—a mix of environmental organization employees and environmental activists in the Coachella Valley, Los Angeles, and the Morongo Basin—used death metaphors to refer to the project and eponymous corporate person (Bashkow 2014; Walenta 2015): “we’re close to killing Cadiz,” “Cadiz is dead.” These metaphors of corporate personhood were normal in these campaigns, as everyone had talked about the project’s nine lives and life-after-death during more than 25 years of opposition. Even in a situation in which the project seems unlikely to succeed today, commentators today use language to indicate that a final blow might be “a stake through its heart,” showing the way that the Cadiz project brings vampiric and zombie imaginaries to mind (Hiltzik 2021).

The corporate body often shifted between the company, its CEO, and the projects the company undertook. These interrelated corporate bodies were assumed in these conversations—activists hoped that killing the project would result in the company’s final bankruptcy, ending the CEO’s career. The corporate person of Cadiz Inc was both a proposed project and an evil corporation, what David, an environmental activist on the Zoom meeting, called a “truly worthy adversary, who are also evil geniuses [*sic*].” Even David’s confusion between the company as a singular adversary and a collection of evil geniuses hints at the messiness of the corporate entity, its personhood, and the collection of project iterations that had accumulated since the 1980s. It embodies what Jayme Walenta (2015, 546), in her analysis of the Enron case, calls the “challenge to determine where the human body of the former CEOs ended and the corporate body... began.” Yet, more proximately, David was referring to the battles between environmentalists and the Cadiz project, and how Cadiz seemed to rescue its project from death through new agreements with water districts and obscure interpretations of old railroad laws. Activists like David simply called Cadiz a zombie because the project seemed undead, but my concept of zombie infrastructure relies on a deeper reading of the

project's life as dependent on reanimating railroad infrastructure for a new purpose. I argue that the railroad is a monstrous zombie reanimated in the service of Cadiz Inc, its new master.

As a metaphor, the zombie draws on the same power that J K Gibson-Graham (1996) show in their analysis of the economy, in which body metaphors naturalize and order the economy as an entity beyond our control. Jayme Walenta's (2015, 557) analysis of the corporate body furthers this point, revealing how corporate body metaphors are contested sites over who can access the rights of corporate personhood with implications for understanding "a corporation [that] is always in the process of becoming." These critical approaches reveal the work that different metaphors of corporate and capitalist monstrosity can do for understanding the railroad, the original corporate person under the 1886 *Santa Clara v. Southern Pacific Railroad Company* court case.¹ Through using the zombie, I understand Cadiz Inc's corporate personhood in the afterlife of a project of empire (Stoler 2008), a reworking of the conditions under which the railroad was made: land grants and right-of-ways given to the railroad through dispossessing Chemehuevi, Mojave and Serrano tribes.

Postcolonial scholarship often draws on ghostly figures to explain how colonial traces become reanimated in the present. For example, Jean and John Comaroff (2002) argue that the figure of the zombie in South Africa draws on xenophobic fears at the same moment that it reanimates colonial pasts in a moment of shifting contemporary labor patterns under neoliberal capital. For them, the zombie is a figure that can help explain the present through navigating through the past, how historical racialized labor relations haunt the present. I argue that even what appears to be without human labor today—water seeping from a well in the Cadiz Valley—depends on the racialized dispossession and labor regimes that the construction of the railroad required, making the railroad's reinvigoration today an apt use of the zombie metaphor. The zombie, as anthropologist Zora Neale Hurston (1938) described it in Haiti, is a body reanimated from the grave without a soul, an empty vessel that labors for its bocor (master) without thinking. The zombie was formed in the context of ongoing US colonial presence in Haiti, a means of understanding legacies of racialized and enslaved labor. In extending the use of the word zombie to railroad infrastructure, I consider how infrastructure indexes the state's relationship to its denizens (Ficek 2018) and reflect on what Manu Karuka (2019, 42) calls railroad colonialism, in which the colonial state attempts "to confine myriad possible futures into the death threat of imperialism." In zombie infrastructure, the already-imperial railroad is the zombie that is being reanimated by a new bocor: Cadiz Inc. In this way, I take seriously Hurston's framework of the zombie and apply it to a seemingly dead infrastructure—the transcontinental spur line—that is reanimated by a new master.

The life of the railroad today, though distinct from its past as a mechanism of territorial expansion and empire-building to create a transit teleology, depends on both the physical and legal bodies of the railroad. The latter is a legal infrastructure—a railroad right-of-way, a property status between easement and property—that needs to become reanimated for the Cadiz project to be successful. In short, Cadiz Inc wants to build a pipeline along the infrequently used railroad spur line. To avoid permitting and costly environmental regulation that could delay the project and its profitability, they need a certain legal determination in which the spur line's right-of-way is determined to be more akin to property rather than an easement (right of access). With such a legal determination, Cadiz can easily use the right-of-way for their pipeline, and hopefully eliminate the possibility of opposition based in pipeline politics (Barry 2013). Cadiz needs the railroad's octopus past to make a zombie present.

1 See Walenta 2015 for a more detailed analysis of this court case and its implications for corporate personhood.

The history of the railroad is central to understanding Cadiz's projects to revive the right-of-way today.² In the nineteenth century, the railroad held promise as a great connector and symbol of the aesthetics of modernity. "What is the railroad to do for *us*? — this railroad that we have looked for, hoped for, prayed for so long?" Henry George (1868) famously asked of the transcontinentals that would later arrive in California, showing how infrastructural projects harbor hope and dreams as well as augur future settlement (Larkin 2013; Wilson and Bayón 2017). But today, I argue that the question is less about the promise of infrastructure, and more about how the same still-functioning infrastructure has changed in a context in which settlement has almost entirely failed. What has the railroad become? While trains used to index aspirations of modernity and the acceleration of space and time (Bear 2007; Stoler 2008), today they are considered quaint objects of nostalgia (Stevenson 2018; Strangleman 2002). Neither ruins (DeSilvey and Edensor 2013) nor unfinished or unbuilt infrastructure (Anand et al. 2018; Carse and Kneas 2019), railroads are both a defunct form of passenger travel and the bedrock of contemporary freight transportation in the United States (Wolmar 2012). And some railroad lines, like the Arizona & California line that Cadiz hopes to use for their project, are traces of the past, rarely used spur lines that used to be tentacles of the powerful transcontinentals.

The Railroad Dream

Infrastructure came from a French word that was adopted into English to describe the material—rocks and railroad ties—on which railroad tracks rested (Carse 2014). That is, infrastructure originally meant "the organizational work required before railroad tracks could be laid" (Carse 2016, 34). When adopted into mainstream use in English in the post-World War II era, infrastructure represented projects of military expansion and international development. Among social scientists, infrastructure has been understood as a site of optimistic dreams of modernist progress, enlightenment, and affective attachments to these abstract ideas (Larkin 2013). Infrastructures feed dreams of connection and capital (Wilson and Bayón 2017), even as we imagine futures beyond infrastructure's inevitable collapse (Carter and Acker 2020). Yet, just as development projects in Africa often reflected the colonial projects that preceded them (Cooper 2010), railroads-as-infrastructure reveal their military and imperial pasts even as they represent dreams of progress.

In the United States, the railroad was part of a broader military and imperial project. To briefly summarize: the transcontinental project built on previous military and financial goals of integrating the American West into a white nation (Angevine 2004; Karuka 2019). As a financial project, the transcontinentals critically depended on land grants, which were to be sold to settlers, providing revenue to the railroads. At the same time, these checkerboards anticipated future settlement that never became a reality in the California desert. Additionally, in many cases, land grants preceded the establishment of tribal reservations, proving that the US government's priority was the railroad and creating reservations like Agua Caliente, in the Coachella Valley, into checkerboards (Ainsworth 1965; Sutton 1967). The railroad recruited Diné and Chinese labor to build the railroad lines (Drover 1985), and built a railroad station atop the town of Needles, the home of the Mojave people, and where the Fort Mojave Reservation is today.

Needles was one of many towns along the railroad meant for white settlement. The company's dream was that white settlers would buy the land along the line, so they named the water stops in alphabetically appealing names—what I call the ABC towns (Gudde 1945). Amboy, Bristol, Cadiz, Danby, Edson, Fenner, Goffs, Homer, Ibex and Java punctuated the

2 Note that, unlike the remainder of the dissertation, the issue at stake here is the railroad right-of-way, the 200-foot strip along the railroad, not the fee simple railroad land grants. These are different legal statuses, and the gray area of the railroad right-of-way is the principle question for the Cadiz case here.

rail line as water stops ten miles apart (Myrick 1963, 766). Their order, like a numbered grid, implied that the desert was already surveyed and made to be empty for white settlers, but the railroad land grants were and still are Chemehuevi, Mojave, and Serrano lands (Trafzer 2015). The named towns encoded desires that the railroad's sale of lands would bring not only railroad profits, but organized settlement, what I call transit teleology. This railroad line would operate like other roads that had promised infrastructural connection to big cities elsewhere (Harvey and Knox 2015). But the names failed to attract new settlers or government interest, leaving the desert a wasteland beyond settler colonial dreams—a place where Chemehuevis, Serranos and Mojaves could escape to be beyond government control.

Though railroads ruled the nineteenth century, very few were constructed after World War I (Headrick 1988, 49-50). Although few new lines were constructed and many were abandoned, railroads retained their importance. Neither a ruin that commemorates a past nor a past form of infrastructure in need of a retrofit, railroads were still central to freight transportation even as they ceded their importance as passenger transportation (Wolmar 2012). The railroad lines also determined the routes of other forms of transportation, by making both legal and physical routes for new infrastructure. That is, railroad infrastructure became the basis of future projects, and today highways, power lines, and natural gas pipelines all follow their paths.

The odd position of the railroad today—both essential to contemporary transcontinental transportation, but no longer retaining the monopolistic power it once had—is the tension that animates the remainder of this chapter. What matters, for the success of the Cadiz project, is what the railroad has become. In what follows, I track the railroad monster through its metaphors, from its incarnation as the all-powerful octopus in the nineteenth century through its slow cession of importance throughout the twentieth century.

The Railroad Monstrosity

When the railroad came to the California desert, it crossed the expanse that had previously challenged those who had hoped to reach the coast. Railroad historian David Myrick (1963, 762,766) later described the desert as “wild and desolate country, treacherous to man or beast,” as he recalled the sandstorms that Chinese-American railroad workers worked through when other workers stopped. What was built as the Atlantic and Pacific by Chinese-American labor became part of the Atchinson Topeka and Santa Fe (ATSF) line maintained with Diné labor imported from the Arizona and New Mexico territories (Chang 2019; Drover 1985). While the railroad's construction depended on the labor of racialized others, for whites, the railroad promised prosperity (Karuka 2019; H. George 1868) and the reordering of time and space offered an opportunity to upend past social relations (Freeman 1999, MacDougall 2006).

The flip side of the railroad's promise of connection was the sinister collapse of space and time that scholars later called “action at a distance” (MacDougall 2006). This action at a distance described more than the railroad's speed: it also revealed how the railroad had far-reaching influence over politics and the economy. Political cartoonist G. Frederick Keller (1882) captured the anti-railroad monopoly stance in his 1882 cartoon, “The Curse of California” (see figure 6, below). The cartoon depicted the railroad as a monstrous octopus whose tentacled grip spanned the state of California, strangling miners, stage lines, and grain farmers. The background includes a cemetery dedicated to railroad deaths, including one for the Mussel Slough tragedy, a deadly standoff between Southern Pacific railroad officials and locals over railroad land grant prices. Keller's cartoon presaged the 1886 *Santa Clara* case that declared the corporation as a corporate body (Walenta 2015), and framed the railroad as a monster that inspired one of the most famous novels about turn-of-the-century California: Frank Norris' (1994 [1901]) *The Octopus*.

Frank Norris' novel centers on the conflict between grain farmers and the railroad, what seems like a conflict over land. For Norris, it was a conflict not necessarily over land, but over wheat, what he thought was the lifeblood of the novel (Starr, 1986: vii). Norris' obsession with the crop was supposed to become a three-volume realist trilogy that covered growing wheat (*The Octopus*), distributing and selling it (*The Pit*), and consuming it (the unwritten *The Wolf*) (ibid). In *The Octopus*, the railroad is a parasitic middleman who raises freight prices and land rents to make profits.

In one passage, Norris described how the railroad sucks the life from the towns, feeding itself like a parasite.

"The map was white, and it seemed as if all the colour which should have gone to vivify the various counties, towns, and cities marked upon it had been absorbed by that huge, sprawling organism, with its ruddy arteries converging to a central point. It was as though the state had been sucked white and colourless, and against this pallid background the red arteries of the monster stood out, swollen with life-blood, reaching out to infinity, gorged to bursting; an excrescence, a gigantic parasite fattening upon the lifeblood of an entire commonwealth." (Norris 1994 [1901], 289)

Norris' vivid description of the railroad as a blood-sucking organism would have been familiar to his readers, who were used to seeing depictions of monopolistic corporations and churches as octopuses. Sinister and powerful, the octopus was known to many as the 'devil-fish' (Hugo 2002 [1866]). At the time, many—including Victor Hugo, who is often credited with bringing the octopus into public view in his 1866 *Toilers of the Sea*—saw the creature as vicious and blood-sucking. The octopus shared characteristics with vampires and inspired the hydra, the latter of which Norris also used to describe the railroad monster (Lee 1875, xiv-xv; Norris 1994 [1901], 370). The octopus was so powerful as a metaphor to describe the railroad because it was a spatial and infrastructural metaphor that revealed the extent of the railroad's transportation monopoly. The octopus' limbs also were analytically potent to describe the new railroad spur lines that began to appear to support new mining ventures or connect together separate railroad lines.

The cunning, blood-sucking vampire was the natural counterpart to the sneaky, predatory octopus. Only a year after Hugo introduced the bloodthirsty octopus, Marx's 1867 *Capital, Volume I* depicted capital as vampiric: "Capital is dead labor which, vampire-like, lives only by sucking living labor" (Marx 1976 [1867]). The vampire appeared in "The Working Day," describing how capitalists seek to extend the working day in order to reap



Fig. 6: "The Curse of California" (Keller 1882).

more benefits from the worker's labor, an experience familiar to Chinese-American and Diné workers on railroad lines. Later, scholars understood the vampiric monstrosity of capital as the miserly nature of the capitalist (Moretti 2005 [1983], 94) as well as a metaphor for the relationship between the living and the dead under capital, in which the accumulated forms of past wealth control the present in a magnification of the *ancien regime* (Neocleous 2003). Beyond the sucking of value, then, the vampire served as a metaphor for understanding how social relations from the dead come to rule the living through the persistence of old social forms into the present. To live in the time of monsters, as Žižek (2010) has (mis)translated Gramsci, is to be in a crisis in which "the old is dying and the new cannot be born," a time during which "morbid phenomena...come to pass" (Gramsci 1992, 32-33).

Monstrosity expressed the far-reaching changes that began with the railroad's arrival while consolidating the railroad's influence into a single body. Even though the vampire didn't capture the spatial extent of the railroad's regime, *The Octopus* drew on blood-sucking metaphors to articulate how he thought the railroad was controlling the grain farmers who his novel followed. Norris largely ignored, however, the racialized labor used to build and maintain the railroad, the work gangs whose labor was most similar to Marx's description of nineteenth century labor sucked by corporate vampires. Norris, though somewhat sympathetic to the plight of a Native American figure in *The Octopus*, was also a nationalist and Anglo-Saxonist whose work slid into anti-Semitism (Goldsmith 1967), making it unsurprising that he ignored the labor of racialized others who built and maintained the railroad.

While the idea of the railroad as an octopus was popular, some of Norris' contemporaries questioned if the railroad octopus did have a stranglehold over California politics (Deverell 1994, 142). Historians today also question whether railroaders were cunning octopuses or just bumbling "men in octopus suits" who were motivated by pettiness and vengeance as much as they were by company profit and efficiency (White 2011, 230).

Although the railroad may not have been as obviously sinister as people like Norris had presented it as being, railroads' influence over future transportation infrastructure can't be disputed. The railroad octopus grew new limbs until World War I, connecting industries like mines to freight transportation as well as lines to each other. In 1910, a new spur line connected Cadiz—on the ATSF line—to other transcontinentals in Parker, Arizona (Myrick 1963). Though little is known about the spur line today, it was briefly active, and connected passengers from Phoenix to Los Angeles or San Francisco throughout the 1930s (Myrick 2001). However, this passenger line was decommissioned in 1955, as former passengers instead drove their cars (ibid). While the spur line brought with it no infrastructure, the railroad lines became the basis for new transportation infrastructure, like the establishment of Route 66 along the main ATSF line in the California desert. In the next section, I chronicle the apparent death of the railroad—that is, what happens when the railroad is no longer the monopolistic octopus, and what happens to the small towns that had existed to support the railroad line.

The Death of the Monopolistic Octopus

The ABC towns along the railroad line were built to support the railroad and encourage settlement in the Mojave, but Tom thought that the railroad only made the desert into a transportation hub, not a place to live, what I call a space of transit. We drove through the Piute [*sic*] Mountains, so named for their connection to Chemehuevi—a branch of Southern Paiutes—aboriginal territory. On the drive down a series of unmaintained roads, Tom told me about how it used to be during his 1950s childhood, back when he visited his grandparents in the desert. His grandparents drove a Cadillac down these roads because they were maintained by the county, unlike today's rough 4WD road. Back then, the cafes along

Route 66 were still thriving, but they would soon start struggling when I-40 was constructed to ease the demands on transportation in the region. To grade the new route for I-40, the government initially planned to use an atomic bomb, a reflection of the way that the new interstates were explicitly military, national security, and public works projects, as well as the status of the desert as wasteland (Scott Kirsch 2005). As car travel wore away at the railroad's old monopoly on transportation, it seemed like the railroad was losing its grip on the California desert and its industries.

Tom told me that the ABC towns started dying back when I-40 was constructed, and that Californians found the area only to be a place to travel through and exploit rather than a place of value. A newspaper columnist in the 1950s and 1960s referred to the region as the "magic triangle" or "lonesome triangle" whose borders were defined by transportation routes, terms picked up by scholars who said that the ABC towns were only pit stops for what was transported through them (Bard 1972). The "magic triangle" defined by its transportation erased the desert's history, making it seem like no one—including Chemehuevis and Mojaves who lived there—could have prospered in such a wasteland. To the American public, the ABC towns epitomized rural disconnection. In 1977, Johnny Carson invited the whole town of Essex (then, 50 people; today, 8) to a live taping of the show because the town had no television signal to watch it at home (Quinn 1977). Today, Tom felt disconnected from the rest of the state—the city people, he disparagingly called them—who he thought set out to ruin his home by proposing landfills, nuclear waste storage, and groundwater extraction projects in his backyard.

The myriad projects proposed in the 1980s depended on the same railroad that Tom enjoyed watching in his backyard, and arose through a change in railroad management away from an octopus or monopoly style and toward short-term profits in the 1980s (Gibson and Horvath 1983; Lazonick and O'Sullivan 2000). Rather than maintain the many railroad lines that had been constructed a century earlier, railroad companies kept their main lines and sold off short lines for short-term profit. In the desert, ATSF sold off its shortlines, including the one that connected Cadiz to Parker. The spur lines became part of new shortline conglomerates who bought up many seldom-used shortlines for short haul freight. The mainline remained part of ATSF, but the profit-making strategy for the mainline was also shifting to favor freight contracts for new projects. The Bolo landfill, proposed by Waste Management Inc and ATSF, would use the railroad line and old railroad land grants for waste transportation and storage, but rely on the expertise of WMI to design and operate the landfill (Carragher 1998). The project, what one might call a literal wastelanding of the desert premised in land grant checkerboarded landownership (Voyles 2015), failed amid WMI's many corruption scandals in the late 1990s. Yet Bolo still reflected a shift to this new corporate profit-making strategy in which short-term profits ruled, signaling the end of the octopus era and what Tom saw as investment in the California desert.

To Tom, the shortline sale and Bolo project were signs that no one wanted to make the desert a better place to live by improving it. When Cadiz Inc. bought 30,000 acres of checkerboarded railroad land grant in 1983, Tom said that he thought that they would be farming—what he saw as a beneficial use of the land after years of neglect. Drawing on his own ideas of improvement, Tom justified Cadiz's experiments growing citrus and grapes as making the desert better, putting the land to good use rather than leaving it to its own devices. 'Making the desert bloom' through irrigation projects has a long history in California and elsewhere (James 1906; A. George 1979), and such modernist aspirations to redirect and divert water for agriculture were the basis of extensive dam and irrigation projects on California's rivers (Hundley 2001).

But it was often the case that such improvement was for speculative profit, not for its

own sake. In the 1880s, land speculators preyed upon Easterners in the desert land rush in the Western Mojave by planting olive trees or hanging oranges from the branches of Joshua trees to dupe city people, symbolize the land's farming potential, and manifest sellers' long-term commitment to the land, only to let the trees die after all of the land had been purchased (Lothrop 1993, 277). In these cases, improvement was not a good faith effort to make the desert agricultural, but rather a speculative investment to ensnare unsuspecting homesteaders or investors.

While Tom had initially believed that Cadiz was going to improve the desert land, his opinion quickly changed when the company revealed its scheme to take water from the aquifer to the coast. After he saw the pumping numbers that the company proposed, he began to worry about his groundwater and the plants and animals that depended on local springs. "Cay-dizz shouldn't be taking out desert water," he said, marking his preference for the Anglicized pronunciation of the Spanish name, a mark of rural locality in the California desert. He feared that the well at his ABC house would dry up with a lower groundwater table, and that the springs would dry up. The springs, which support bighorn sheep, bobcats, and mountain lions in the harsh desert, were well-known by Tom from his acidhead days after the Vietnam War. He worried for not only the animals, but for the cultural survival of tribes.

Tribes in the area have opposed the Cadiz project (C. Wood n.d.; Madrigal 2016, 2018). In the 2021 lawsuit against Cadiz, NALC argues that the project would destroy water sources important for tribes that "continue to visit, gather, and utilize these special areas in the desert for our cultural survival" (NPCA 2021). The intertribal land trust's comment, which emphasizes continued Indigenous presence on desert land, also refuses the idea that colonization is complete or successful (Simpson 2014).

Tom's skepticism of the government and corporations was reflected in his sense that his (few) neighbors had been bought out by Cadiz in order to support the company's ambitions.³ "They can't buy me out," he confidently told me, though he suspected that the county had already been bought out by lobbyists for the corporation. Tom's sense was that corporate actors and the government were working together to make projects like Cadiz happen against the interests of ordinary people like him (for a similar case, see Lepselter 2016). His sense—that something was wrong—seemed to be a more extreme version of what I had heard from so many others about the Cadiz water project: that it would just be the newest Chinatown. For Cadiz opponents, Roman Polanski's (1974) *Chinatown* represented all that was wrong in water provision in California. Though Californians often take the film as only a slightly fictionalized rendering of the construction of the Los Angeles Aqueduct (Andersen 2004; Erie and Brackman 2006), the film instead shows the sensibility that Californians like Tom have, that there is a cabal of power brokers who decide what really happens while ordinary people are left out.

The Cadiz project had also been through multiple iterations, furthering the sense—to Tom and others—that it was a zombie project that would never go away. Before the newest iteration, the company had proposed a partnership with the LA Metropolitan Water District in a groundwater storage project before political will fell away from the project in 2000 after a campaign contributions scandal (Clifford and Perry 2000). The end of this project, and Cadiz's revenue losses in other ventures (including specialty citrus and raisins, which they pursued starting in the 1990s), seemed never to doom the corporation. To Tom and environmentalists, Cadiz was just an undead zombie.

3 I have not been able to substantiate Tom's claim that Cadiz bought people out, but allegations of corruption were true in the 1990s Waste Management Inc Bolo landfill project, in which WMI created a sham organization that purported to represent Fenner, Amboy, Cadiz, and Essex residents that favored the project (Carraher 1998).

Legal and Zombie Infrastructures

The continued life of the Cadiz project has most recently depended on reinvigorating part of the railroad octopus, an ATSF spur line between Cadiz and Parker, AZ, now owned by a shortline conglomerate. This spur line—known as the Arizona and California, or A&C—in order to connect Parker to the ATSF mainline, and was constructed between 1905 and 1910, near the end of the octopus era (Waters 1950). After railroad consolidation and the sale of the line to a short line conglomerate, today the line is seldom used, merely transporting 20,000 railroad cars from Arizona to Barstow during a year, averaging less than one train a day (BNSF 2019). While the railroad line is largely irrelevant, it has become a centerpiece in the debate over Cadiz because the company plans to move the water in a pipeline alongside the railroad right-of-way. Like other cases of pipeline politics in which transporting extracted materials becomes the political point of contention (Barry 2013), the debate over the pipeline that would convey water from the Cadiz project site to the Colorado River Aqueduct has become a centerpiece of conflict. Like other projects “built on the literal ground of historical patterns of land grabs” (Pasternak and Dafnos 2017, 740), pipeline politics build on history of dispossession and racialized labor that I’ve described. In contrast to other projects, though, this pipeline conflict does not concern the extent of federal government power (eminent domain) or the specter of environmental catastrophe through pipeline spills as in the case of the Dakota Access Pipeline. Instead, this conflict is about the limits of the railroad’s political and economic power under the Railway Right of Way Act of 1875, and the extent to which the railroad line can be repurposed to new ends. Or, in the metaphors of the zombie, the question is how and to what extent Cadiz Inc can act as a bocor to bring the old railroad back to life as zombie infrastructure.

The debate over Cadiz’s pipeline hinges on the interpretation of the legal rights that the right-of-way confers. Unlike the railroad land grants, which were given in fee simple title or complete ownership, the Supreme Court has consistently declared that railroad right-of-ways are in a gray area between property and easement (Thayer 2015). *Where* right-of-ways fall on this scale is less clear. While the boundaries of the rights a right-of-way confers is muddled, it is obvious who benefits from interpretations that favor one side or the other. If the right-of-way is determined to be more like property, then railroads can more easily subdivide their rights and conduct projects alongside the right-of-way. In contrast, a right-of-way more like an easement benefits the federal government, who retains greater rights over the land that they own underneath the right-of-way.

While land grants given to the railroad were theirs as private property and could be freely sold (as in, for example, NALC’s land or the ABC towns), the limits of ownership for the railroad right-of-way is less clear. Technically, a railroad right-of-way occupies a gray legal area between an easement and fee property, between only a right to access and a private property right that implies greater access and control. In the octopus days, railroad companies often treated right-of-ways as absolutely owned parcels, and divided the rights in their easements to allow for telegraph lines to be constructed in the late nineteenth century.

Though the government initially allowed for the construction of communications infrastructure along railroad right-of-ways, the Supreme Court later rejected attempts to make railroad right-of-ways seem like true property. In *Great Northern Railway Co. vs. United States* (1942), the Supreme Court decided that the between-easement-and-fee status of the right-of-way did not include the right to subsurface minerals. In tandem with the rise of environmental regulation in the 1970s, court cases further limited the scope of what a railroad could do with its right-of-way. In *Home on the Range v. AT&T Corporation* (2005), a district court determined that the railroad could not subdivide the railroad right-of-way to allow for the construction of a fiber optic cable along the subsurface. The court argued that the railroad

couldn't subdivide its easement without regulatory oversight from the federal government because the proposed use was outside of the scope of the original easement: that is, a railroad purpose.

The criteria of "railroad purpose" has become increasingly important in these cases, especially as railroads are given less flexibility in what they can do with their right-of-ways (Thayer 2015). For Cadiz, arguing that their water pipeline fulfills a railroad purpose could help avoid regulatory demands, and therefore much of their pro-pipeline argument was premised on how the waterpipeline would be useful for the rarely-operated railroad. The company argued that the pipeline would provide a sprinkler system that would fight potential fires along the railroad line, a problem that is atypical for the desert line and normally solved by sand (Kenna 2015). Under Cadiz's interpretation, the pipeline could serve a railroad purpose—fire suppression—and thereby skip the regulatory processes that might otherwise be necessary to approve the construction of a new pipeline on federal lands.

Environmentalists and regulators alike have questioned whether Cadiz's water pipeline is only incidentally related to the railroad, or if the pipeline would truly serve a railroad purpose. A 2015 letter from Bureau of Land Management puts it in this way: "groundwater capture and use, not fire suppression, drives the design of the [water pipeline]" (Kenna 2015, 4). In tandem with an Obama-era Department of the Interior Solicitor's opinion (M-370125) from 2011, this letter solidified the criteria of railroad purpose as determining whether a new development along a right-of-way was valid. The Obama-era solicitor's opinion emphasized a legal doctrine in which easements given by the federal government are construed against the grantee, meaning that the federal government retains more control over the easement.

Six years later, the Trump Administration acting Solicitor revoked this guidance in a new memo (M-37048), arguing that the courts have erred in requiring a railroad purpose for railroad right-of-way development. He argued that any incidental benefit the railroad might receive from the project is sufficient to approve the project and that a strictly construed railroad purpose is unnecessary (BLM 2020). In January 2021 before leaving office, the Trump Administration approved the right-of-way, which is now being challenged by a lawsuit from NALC and NPCA (NPCA 2021). This act de-emphasized the role that the federal government has in regulatory projects, consonant with other policies to roll back federal regulation under the Trump Administration. In 2022, the Biden administration released a new Solicitor's opinion on the subject, which reversed the Trump-era decision, claiming that the previous decision "misinterprets the 1875 Act by applying incorrect canons of statutory construction and misconstruing or ignoring federal court decisions to find that railroad companies received the right to use, or authorize third parties to use, their easement for any purpose as long as such uses do not interfere with railroad operations" (R. Anderson 2022, 1). Such a strong rebuke of the previous decision, in many ways, confirmed that Biden administration would seek to reverse Trump era policies.

While the shift in federal policy around the definition of railroad purpose coincides neatly with regulationist and anti-regulationist approaches to governing, the pipeline debate ultimately hinges on the interpretation of a nineteenth-century railroad law and its application to a little-used shortline today. The question is: what power and influence the railroad maintains from its octopus days in which the corporation wielded great economic and political power? Can Cadiz revive the railroad's old legal apparatus and bring back the railroad as a zombie for new purposes?

The liminal status of the railroad right-of-way is a livingdead zombie infrastructure, one that is no longer animated by the political and economic power of the railroad octopus but attempts to re-enliven old uses of the railroad for new purposes and corporations. Like the

zombie brought back to life after apparent death to labor for a bocor, the right-of-way today is brought back to perform a purpose different from what it was originally meant to do, in support of a new project. It is this feature that makes the Cadiz a zombie project, in which Cadiz Inc is the bocor that tries to reanimate the railroad on the old legal and physical infrastructure of the spur line between Cadiz and Parker.

A Railroad to Nowhere

David, a Latino anti-Cadiz activist working for one of the major green nonprofits, told me about his half-joking plan to protest the Cadiz pipeline. He'd walk the little-used railroad tracks parallel to the proposed pipeline carrying a cardboard cut-out of a train, asking any passers-by how to get to Burning Man. His joke highlighted the absurdity of profit-seeking city people coming to the desert and the lack of desert know-how that seemed to characterize the Cadiz project from the beginning.

An actual protest would be politically useless: David knew that he'd find only ravens and jackrabbits, and not even a single train. While he imagined the protest as a satirical take on the country-city relationships that characterized the project, it was also his critique of the railroad's role in the Cadiz project. The cardboard cutout, and the train that it represented, was simply bringing back the train as a flimsy version of its former self, nothing like the railroad octopus that once ruled the Mojave.

The cardboard cut-out train was a joke about something that Cadiz had planned to do in order to make their water pipeline into a railroad purpose: build the Cadiz Southeastern Railway (CSER). The new railway is not much more than a website that advertises the future historic steam train operation with artist-rendered drawings (Cadiz Southeastern Railway n.d.). The new railway project recalls an older look and feel of the desert, advertised to nostalgic railroad enthusiasts.

CSER's vision was to support the Cadiz project by demanding a water pipeline, and a use for the seldom-used railway that would then need to be controlled by Cadiz, Inc. In tandem, both CSER and the pipeline could serve to strengthen Cadiz's broader claim to the railroad right-of-way, and thus make it easier to build the pipeline alongside it. Yet this project, with its rarely-updated website, seems to be more of a fantasy than a reality, something that a Bureau of Land Management official noted when commenting on the status of the right-of-way when he asked "if it [the Cadiz Southeastern Railway] is a reasonably foreseeable activity or merely speculative" (Kenna 2015).

The CSER is tied to the fate of the Cadiz Inc water project. CSER, ideally, would provide a legal shelter under which the pipeline could more easily go forward, under the auspices of the new railway and a railroad purpose. In the mixed metaphors of the turn of the century, one might call the CSER a Trojan iron horse, which midwives a profitable pipeline into existence through sneaking the railroad octopus back in, like in a 1909 political cartoon showing an octopus sneaking into a statehouse via Trojan horse (Bradley 1909). The way for Cadiz to sneak in their own project—through CSER—is a turn toward the past in the form of a steam-engine tourist train.

On the CSER website, Cadiz posted a thirty-second launch video for the train. Following standard footage that Cadiz Inc often uses to represent itself—a shot of a desert sunrise over agricultural fields and water that gushes from a pump—the video then shows a steam engine running on a short section of disconnected track, a road to nowhere.

Conclusion

When Henry George (1868) asked "What is the railroad to do for *us*?," he was asking about the effects that the railroad might have on income inequality in California, and how the lines might transform the lives of everyday people. What would new infrastructure bring? Tom's hopefulness for Cadiz's plans evaporated after he learned that their agricultural plans

were less about improving the land and more about securing access to the water underneath. In a statement, Chemehuevi Tribal Chairman Charles Wood (n.d.) says: “Our Tribe knows that the Cadiz project is not a conservation project and its aggressive pumping of water fails to save water for our children, grandchildren up to the Seventh Generation.” Pointing to the intergenerational importance of protecting water in the California desert, Wood reflects on way that railroad colonialism and wastelanding are enrolled in Cadiz’s project of short-term profits.

The tourist train, like the farm or the water project, is simply going to drain the California desert dry to color the lines of the railroad like the octopus Frank Norris described, to cause greater intergenerational damage. Rather than promise new success in the desert, the train is only a hollow vessel, a zombie, meant to bring a new dominating form of corporate capital into the desert through an old one. That is, the railroad is no longer the fearsome octopus, but instead only a zombie reanimated by the bocor of Cadiz Inc. Even as the Cadiz project appears to be in permanent limbo—or even death—under the Biden administration (Wigglesworth and James 2021), it still reveals the legal technicalities upon which such projects rest.

Taking seriously the metaphors of monstrosity (Schlosser 2016) does more than examine what Sarah Juliet Lauro (2017, x) calls the “semiotic fecundity” of the zombie as a figure of the “rapacious hunger of a capitalistic and increasingly corporate society.” Zombie infrastructure references a material and legal substrate on which the pipeline would rest, and how new extractive projects not only build on, but rework their underpinnings into new forms. In this way, zombie infrastructure adds to understandings of how infrastructures are changing, shifting, degrading, and being remade. Yet finally, and perhaps most importantly, zombie infrastructure recalls the tangled aftermaths of railroad colonialism at the same time that it considers the zombie underpinnings of American empire. By surfacing the railroad’s past at the center of a water project, it considers today’s projects still rely on histories of Chinese-American and Diné labor and the project of dispossessing Chemehuevis, Mojaves, and Serranos of their land.

Epilogue: Loved to Death

By the time I completed fieldwork in 2019, the Morongo Basin (home of the towns of Yucca Valley, Joshua Tree, and Twentynine Palms) had become a mainstream vacation spot. When I reported on a music festival in 2017, a white concert-goer wearing a bolo tie told me, in no uncertain terms, that the California dream in other parts of the state was over: “I wanted to move to San Francisco, but it’s ruined now. I want to be here while Joshua Tree is still intact, before someone can tell me ‘you missed out.’” (Sizek 2017a). In an obvious way, she evinced a kind of FOMO, fear of missing out, an Instagram phrase that had been taken up into popular discourse (Buglass et al. 2018). She wanted to be on the front edge of the trend, rather than to be in a place that was already done. San Francisco, from 2013-2017, had become the most intensely gentrified city in the United States (Richardson, Mitchell, and Edelebi 2020). The dream of California, for her, was no longer situated on the one-hundred-mile wide strip of coast (McWilliams 1973), which was ‘ruined,’ no longer on the up-and-up. In contrast, Joshua Tree was still pristine, still intact, and not yet ruined by too many people or overtourism.

To Morongo Basin locals, however, increased tourism—blamed on Instagram, a rise in digital nomadism (Bozzi 2020), and increasing presence of the Joshua tree and its eponymous town in media and advertising (Sizek 2017b; see also Knepper 2017; Manley 2018; Young 2018)—was ruining their lives. Friends complained about the ways that the AirBnB economy had affected life in and around the north side of Joshua Tree National Park, mirroring concerns about AirBnB gentrification elsewhere (Wachsmuth and Weisler 2018). They feared that AirBnB would further exacerbate rural gentrification (Sahagun 2018), and that ordinary people would soon be priced out of the rental and housing markets where they had lived for decades, or that retirees who moved to the desert would no longer be able to afford it (Bryson and Wyckoff 2010; Darling 2005; Hines 2010). These anxieties only worsened during the pandemic, when new remote workers moved to the desert (Parvini 2022). For some, these anxieties were marked by deep hypocrisy: like the newcomers, they too had lived in Los Angeles before they moved to the desert.

Yet, Morongo Basin residents, solidly located in the western Mojave, saw themselves as only the front edge of rural gentrification, a process that would inevitably engulf places farther afield. When I talked to a cashier at a grocery store on a quiet weekday afternoon, I told him that I had been out at Amboy earlier that day, an hour and a half northeast of the Morongo Basin. He joked with me— “That’s where they’ll move next, after Yucca [Valley] fills up.” His joke reflected anxieties about city people coming to the desert, but it was also, of course a prophecy: that which had already come to the Morongo Basin was going to spread to Amboy in the East Mojave.

And what had already come to Joshua Tree was dire. Seeing reports that visitation to Joshua Tree doubled within a five year period (National Park Service 2020), reporters asked if Joshua Tree National Park was being “loved to death,” (Guerin 2017; Knepper 2017), and federal employees warned that the visitation levels were unsustainable for their staff budgets and infrastructure. Though some cheered the newfound love of the desert and what it might mean for environmental advocacy work, many found the negative impacts of their daily life to be worse. When asked about negative changes from increased tourism, locals cited long lines of cars on the weekend at the Joshua Tree entrance to the Park complemented by a plague of unburied poop and unpermitted camping. That is, they found that new love for the desert did not equate to better behavior in it, as Instagram shaming groups popped up to counter the Park’s newfound popularity on the platform (Clarke 2017). These problems only worsened when a 2019 government shutdown meant that gates to Parks stayed open, even as

staff were not paid to maintain it, and tourists ran amok (Donaghey 2019). In 2018, I participated in an inter-park project across Joshua Tree, Mojave National Preserve, and Death Valley that considered what could be done to prepare the two more remote parks for the inevitable onslaught of tourists (Dagan et al. 2018). While Death Valley and Mojave National Preserve staff questioned whether their parks would ever become as desirable as Joshua Tree, the dictate we received was clear: This was a project to try to anticipate when city slickers would arrive in the desert, and determine how to prepare the more farther-afield and poorly-staffed units for city people who might expect better paved roads, more services, and better cell phone reception.

For land managers, part of the question was whether and to what extent they should create more services—‘if you build it, they will come,’ some said ominously. In conversations with NALC board members, this was often the question considering what had been the far-out Mamápukaib. If the Preserve was advertised, they feared, people would go out there. Mamápukaib is not Disneyland, they would insist, and is not a place for an inexperienced desert visitor. Pointing to famous cases of desert disappearances (Associated Press 2009), they argued that advertising the desert would lead to injuries and deaths by GoogleMaps, and perhaps sink into the sand without four-wheel drive or get stuck on spot made for high clearance vehicles, as they were known to do in Joshua Tree. But it wasn’t only that concern: they also worried that the desert would become overrun like Disneyland. They didn’t want the desert to become, as Disneyland famously has, a hyperreal place where the entire appeal is to become lost in the crowd (Baudrillard 1983 [1981]). Ironically, the promise of the desert, even in the Instagram era, had been that there was no crowd, that you would be able to have your own space away from the city.

This ironic turn, in which the desert made so appealing for its lack of humans seems now to be saturated—and potentially ruined—by humans, is the contemporary version of the transformation from wasteland to wonderland. The mirage and tricks of the light that John C. Van Dyke apocryphally wrote about in 1901 are today Instagram filters and the haze of air pollution. The separation of wasteland and wonderland used to be a difference between extractive projects and finding oneself in the wilderness; today, however, the plague of people walking off-trail replicates the impacts to plants and soil crusts from earlier eras of off-highway vehicles. The thin line between the effects of wastelanding from a project like Cadiz and being “loved to death” by tourists seems to no longer exist. The costs of extractive projects of the extractive desert seem to mirror that of overtourism: that is, both the wasteland and the wonderland produce negative environmental effects for a land where it’s still thought that no one could live.

Beyond the Wasteland and Wonderland

What I have suggested in this dissertation is that an ethnographic investigation of land, its property regimes, and people’s relationship with it reveal a story more complex than that of a mere wasteland or wonderland of the California desert. In the first three chapters, I tracked the stories that people tell of the foretold transformations of the California desert through landownership. Through transit teleologies, I examined the failed project of producing the desert as a space in transit from Indian lands to the property of white settlers through the checkerboard. I argued that the checkerboard’s failure to produce meaningful changes on the ground and white settlement made the desert from a lands in transit to a space of transit, where presumably no one could live. Such an understanding of the desert had implications for Native American tribes, who, in settler imaginations, were limited to the space of the reservation. Through off-reservation repossession, however, NALC today has both worked within and unsettled expectations of settler society as they reacquire checkerboarded land. Their story—at once a boring story of land acquisition as it reveals the

paradoxes of settler society—revealed how and in what ways an understanding of the legal affordances of land as property are necessary to consider the ways that land is supposed to change. Such legal maneuvers in land pointed to not only the way that the land is made by history, but that law—and property law—are emplaced and at myriad scales. In the case of MDLT’s purchases, the necessity of law’s past becomes more obvious, as land’s federal futures are shaped through changing the land’s legal past and erasing the histories that inhere in titles in them.

What these land ownership patterns have meant for contemporary land managers was what animated my discussions of benign neglect and telling without telling, both of which are means of trying to understand what land management looks like in a place that is considered by many to be a place not worth protecting. While benign neglect highlighted the ways that colonial regimes of difference became reworked through contemporary environmental law and interpretation of the public trust doctrine, telling without telling asked methodological and practical questions about how to insist on long histories of Native American presence in the California desert without endangering them. These chapters considered what to do about the forms of land ownership the checkerboard and attempts to manage it have brought into being, the aftermaths of the checkerboard on the ground today.

In the final two chapters, I reinterpreted a contemporary extractive project through its cultural pasts. While a century-old question about the railroad right-of-ways haunts a desert project’s future, Cadiz Inc’s project is also beset by much more culturally-specific pasts, from *Chinatown* to the railroad octopus and its modern incarnation as a zombie. In one way, I simply insisted that a “local” project is made through translocal connections to the country-city relationship between the desert and Los Angeles and through the work of Department of the Interior solicitors who make legal decisions that reverberate across railroad ties. In another, this indicates the intersection of law and culture, the broad point made by legal anthropologists that the law not only exists in the realm of the government, but on the ground and in the minds of people. Finally, I insisted that what is to be learned from legal metaphors and understandings extends far beyond a distinction between the law and its local understandings, but rather to consider how the law—and the regulatory apparatus that has sprung up around the growth of environmental law more specifically—are made through these misunderstandings and gaps, ignorance and a lack of enforcement as much as knowledge. It is for this reason that benign neglect resonates with regulatory alchemy, as both reflect a broader historical moment in which regulation no longer fulfills its promise of pushing back against the destruction of the environment, if it ever did.

These questions about law and society are also arguably happening at the edge of society: Cadiz, a town named for a Spanish city (Schoffstall 2014, 50) is one of a set of small ABC towns in one of the most rural parts of the United States. Though thousands bypass Cadiz on the I-40 each day, the town itself is not much more than a sign and Cadiz Inc’s business. Like Mamápukaib, the Mojave National Preserve, and the other locales of this dissertation, these are places seemingly far from people and the California dream. Yet, unlike rurality in California studies that has focused on its agricultural or timber production and thus on issues of labor (R. Walker 2004; Mitchell 1996), I have shown how ideas about California have been made through even unproductive land in the California desert. That is, the Other California is not only the Central Valley (Gilmore and Gilmore 2003), but the desert.

The desert, what one might call the other other California, is a curious subject for an ethnography. The peoples of this desert—the Cahuilla, Chemehuevi, Mojave and Serrano—are not coterminous with the East Mojave’s boundaries. To make this dissertation not only about them is not to question their Indigeneity and claims to the desert, but rather to consider the work required to make Indian lands into federally-owned ones, and federally-owned lands

into so-called public property. That is, my work—which began with working the Native American Land Conservancy—is to understand the politics of Indigeneity in articulation with settler society’s checkerboard, the dominant spatial metaphor of the East Mojave. To consider Indigenous politics in articulation with the checkerboard is to ask another question about the relationship between space and time, or as Kul Wicasa scholar Nick Estes (2019) argues, “our history is the future.” I consider the checkerboard as a kaleidoscopic map of contingencies, possibilities, and dead-ends rather than a deterministic future.

The checkerboard is both an orienting frame for envisioning the desert and a mode of making it appear colonizable, but it didn’t succeed in making desert colonization happen. The checkerboard instead became a terrain for struggle in the desert, a place where boundaries are negotiated through creating fences. The desert too became a place where the boundaries of the public were debated, and where mainstream land trusts considered what they thought public lands should look like, and in so doing, erase the pasts of the land. The checkerboard enabled the Native American Land Conservancy could take back lands piece by piece, a means of taking back parts of the desert into Indigenous hands. The checkerboard—in its tedious paperwork and emplaced history—provides ways of thinking beyond the subdivision of land and the production of abstract space as the inevitable expansion of capital.

Instead, the checkerboard’s murky boundaries reveal the failure of the settler order in the California desert and the way that landownership alone cannot save the desert. The checkerboard, rather than producing order, reveals the limits of settler sovereign landscapes and of habits developed in humid climates. The checkerboard’s failure reminds that the California desert is more than a wasteland or a wonderland; it is a place of life.

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