

## Public Water Policies: The Ultimate Weapons of Social Control

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### ABSTRACT

Water and public water policies are the common denominator for all life on earth no matter the culture, legal system, or location. Without fair, workable, and transparent public water policy any society is threatened with tyranny and economic destruction, especially in the arid areas now living under severe drought and the continuing threat of a long term warming trend worldwide. Some nations, their states, or other political divisions use water policy as a weapon of social control. For example, anti-growth advocates in the western United States subtly lobby against development of new water infrastructure in order to limit population growth and accomplish their agenda. Some city governments regulate growth with their planning and zoning departments using water infrastructure planning as their most powerful tool of control. National governments that want to control dissident behavior or force unwanted population away from any given geographical area use the periodic denial of water as the ultimate weapon of social control. This paper discusses the use of water policy as a means of social control using local, state, and national examples in the United States, and as an international example, Israel and its not so subtle unique hydropolitics<sup>1</sup> with Palestine.

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<sup>1</sup> Anthony Turton and Roland Henwood (editors). *Hydropolitics in the Development World: A South African Perspective*. Pretoria: University of Pretoria, 2002. 16. The authors support the use of Dr. David Easton's 1965 definition of politics which is "the authoritative allocation of values in society" but with a modification by adding water to arrive at their clear and concise definition "the authoritative allocation of values in society with respect to water" which I embrace. Further fundamental considerations are applicable in the process of political analysis, according to Turton and Henwood, "In scrutinizing [sic] his [Easton's] definition, the following becomes apparent:

- Politics is a dynamic and ongoing process.
- Central to this process is the allocation of values via laws and policies.
- This implies decision-making of some kind.
- Decision-making favours [sic] some over others.
- This implies an element of contestation as no universal set of values exists.
- These values are being applied in an authoritative manner.
- This implies contestation over the legitimacy of the authority concerned.
- This also means that some are favoured whereas others are not, so who gets what, when, where and how becomes relevant."

## INTRODUCTION

What is meant by *social control*? According to the Oxford Bibliographies, my choice, with the addition of the word *attempts*, for the most appropriate definition of this term in this paper:

Social control is the study of the mechanisms, in the form of patterns of pressure, through which society [attempts] to maintain social order and cohesion. These mechanisms establish and enforce a standard of behavior for members of a society and include a variety of components, such as shame, coercion, force, restraint, and persuasion.<sup>2</sup>

The goal of this paper is not to promote any political position in the water policy debates, but to illuminate the direct, indirect, and more subtle uses of water policy as a weapon of social control. Every reasonably thinking human being desires water to be pure, available, accessible, and affordable. Every reasonably thinking human being supports regulations to protect water quality and the hydrological environment. However, using water policy to promote other agendas without offering the entire spectrum of consequences is unfair and deceptive. Doubtlessly, the development of fair and transparent water policy includes an element of base human emotion, but using the way people feel about water to promote other agendas veiled by a water protection argument can make poor public policy. Hence, this paper will also consider the unintended, and unrealized consequences when people choose to use water policy in an attempt to accomplish other social control agendas.

## STATE AND LOCAL EXAMPLES IN TEXAS

Political groups in Texas often attempt to use water policy as a "weapon" to promote their social control agendas. Texas experiences regular droughts in varying degrees of intensity across the entire state especially west of a north south line from Dallas to Brownsville.<sup>3</sup> The most recent severe drought in Texas began in earnest statewide in 2010.<sup>4</sup> Texas makes an ideal example of groups using water policy as a weapon for social control because even in the midst of such the well-publicized latest long-term severe drought, Texas continued to enjoy an enormous population increase. Demographers predict and have done so accurately for over a decade that the state's population will double over the next 50 years.<sup>5</sup>

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<sup>2</sup> Jason Carmichael, McGill University provided this definition to the Oxford Bibliographies found at <http://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0048.xml> .

<sup>3</sup> Charles Porter. *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans*. College Station: Texas A&M University Press, 2014.

<sup>4</sup> Charles Porter. Speech to attendees at South Texas Law School's *29th Annual Real Estate Law Conference*, June 24, 2014, Houston, Texas.

<sup>5</sup> Austin Area Research Organization Luncheon December 4, 2015, attended by the author. Speaker Tom Meredith and a panel of demographers including past State of Texas demographer, Steve Murdock, agreed that the population of Texas should double by 2050. Also, see "Water for Texas: the 2012 State Water Plan." There is general consensus among all demographers that the population of Texas will grow drastically by 2050 putting tremendous pressures on all its natural resources, especially groundwater. Meredith actually predicted that the population of Austin alone would reach 8,000,000 by 2050, which is currently the population of Manhattan Island in New York.

A central Texas group recently attempted to use water as a weapon of social control in a dispute between local citizens and a private company seeking permits to move privately owned groundwater out of one groundwater conservation or regulatory district to another.<sup>6</sup> Homemade signs prepared and held proudly and emphatically by a local group used an alleged statewide water "shortage" as their weapon of social control. The signs held by this group were seen nationwide. The group's signs proclaimed this blunt and dire message - "Don't Come to Texas, Ain't No Water."<sup>7</sup> It was not a statement supported by science or true conditions but an emotional message to discourage people considering a move to Texas. The message was clear – do not even think about moving to the area because of its desperate water shortage, a blatant and irresponsible misrepresentation of the facts.

Certainly it is difficult to accurately portray the state of mind of all the members of informal groups such as these people in the "...Ain't No Water" campaign. Their actual concerns could be as simple as worrying that newly arriving neighbors would cause the local groundwater table to fall requiring rework and potentially expensive deepening of existing individual wells.<sup>8</sup> Other concerns may include the more indirect and often irritating impacts of population increase such as more traffic congestion, property tax increases due to the higher market values generated by a high demand "sellers'" real estate market,<sup>9</sup> and anticipated long waits in line to get a cup of

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<sup>6</sup> The tactic was used by people in Bastrop, Giddings and Lee Counties in 2014 and 2015 in an attempt to block transfer of groundwater out of district by Forestar Corporation (Bastrop) and Vista Ridge Partners, Ltd. (Giddings and Lee). Texas groundwater is partially regulated by local option groundwater conservation districts. There are 99 of these districts with 99 differing sets of regulations scattered around the state covering about 65% of the land area. Transfer out of district has been very controversial over the past decade with some lawsuits still pending after waiting years for the local courts to rule.

<sup>7</sup> Austin American Statesman. February 25, 2014. Members of the group I met in various speeches I made around Texas argue strongly that they are not really anti-growth, but only concerned citizens trying to protect their local water resources. I disagree that this is their simple and only motive; I stand by my opinion that their real motive was an anti-growth one - they want to stop new people from moving to Texas. I also stand by their right to voice that opinion.

<sup>8</sup> A rule of thumb for the cost of drilling a water well in Texas is \$10 per linear foot for the drilling and pipe casing only. This applies to wells drilled to depths of up to 500 feet. The casing cost can go up astronomically as the well depth increases due to pressures and geologic conditions. When I drilled a well on my farm, I wanted to go to 1,400 feet in depth; the drilling bid for \$14,000 but the casing that must be made of the strongest steel due to depth pressures, was a hard to believe additional \$60,000. My bid was from Moy Drilling, a 50 year old drilling company in Hobson, Texas. Why is the casing so expensive? For the past decade the international market demand for steel, mostly due to China's dam construction and other building activities, has pushed the cost of steel upwards. The smaller towns of Texas typically have a scrap metal yard. The days of the week these yards buy scrap metal usually are the most heavily trafficked days of the week in the town.

<sup>9</sup> Texas' most cherished social value since 1840 and even before, is a free education for children through the 12th grade financed mostly by ad valorem taxes based upon mass appraisals to render "fair market values" of real estate annually. The huge increase in population Texas has experienced in the past 5 years, a trend that shows no indication of ending soon, has increased the closed sales prices of residential properties as much as 8% annually - some regions such as Austin enjoyed an 11% increase in 2015. Until Texas citizens reach the age of 65, their property values float with the market value based on these appraisal-generated renditions annually. Traffic in some areas of Texas has become nightmarish, especially along the IH-35 corridor in central Texas. All typically available

coffee at the coffee shop or a meal from the local hamburger restaurant. The message to anyone hoping to move to Texas was crystal clear in this example: water is in such short supply that there is none available for any newcomer, so stay away from this nightmare.<sup>10</sup> The statement is a blatant lie - water for domestic use and life-sustaining consumption by people and livestock has not been unavailable or curtailed in Texas and likely will not be even in another record-setting drought such as the current one. Local regulatory districts and cities did restrict landscape watering and rightly so. But no one in Texas faced government mandated curtailment of water used for domestic and livestock purposes.

The "Ain't" group's commentary does however prove their real tactic and agenda was to play upon human beings' basic subconscious worries about survival, the need for a drink of water. "Scare" tactics such as these that take advantage of this most ancient human concern. Claiming a crisis exists in Texas' ability to provide life sustaining fresh water, is unfair and ridiculous, yet as a weapon to control population growth, this group's tactic certainly gained local and national attention without any discernment by the news reporters – they reported it as fact and in essence, let the group's statement stand as an indication of the actual water condition in water in Texas.

### **A MORE SUBTLE EXAMPLE AT A LOCAL WATER FORUM**

I witnessed another more subtle example of an attempt to use water as a tool for social control statewide at the 4th Annual Lone Star Water Forum in Brenham, Texas in October, 2012.<sup>11</sup> Well known central Texas attorney Bill Bunch, Executive Director of the Save Our

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local services can be heavily impacted from time to time, from season to season severely by expanded population resulting in long lines and delays.

<sup>10</sup> The earliest record of a group using water as a weapon of social control in Texas history occurred in December, 1731 in Villa San Fernando, Spanish Colonial village that would become the 7<sup>th</sup> largest city in the United States, San Antonio. By 1731, missionary Franciscans had established two missions on the San Antonio River, Valero (commonly known as the Alamo) in 1718 and San Jose in 1720. Upon notice of the pending arrival of three new missions and settlers from the Canary Islands, the President of the missions, Father Vergara wrote the Viceroy Juan Acuña in Mexico City that there was simply not enough water for the any of the new missionaries and their Native Americans and especially not enough for the Canary Island immigrants. On December 25, 1731, the Viceroy responded with the first written water policy in what would eventually become the state of Texas. Viceroy Acuña wrote that not only was there adequate water supplies available to the people already living there, but also for all the newly arriving settlers. He decreed that if any water shortage would happen to occur in the future, the water in the river would be shared by all, irrigation waters would be taken in turn, and the water would be conserved by all. This is the first time in Texas history that anyone tried to use water as a weapon of social control. Viceroy Acuña was correct and stood on the many eyewitness reports made from the area in the late 17<sup>th</sup> and early 18<sup>th</sup> centuries that there was an amazing amount of fresh water in the river fed from the prolific springs. One report in particular, written in 1709 after a personal visit to the area by the then President of all the Queréteran missions, Franciscan Father Isidro Felix Espinosa, said there was not only enough water for a villa on the San Antonio River, but enough for a ciudad (city). See *Spanish Water/Anglo Water* by Charles Porter, (College Station: Texas A & M University Press, 2009) and "Querétaro in Focus: the Franciscan Missionary Colleges and the Texas Missions" by Charles Porter in *Catholic Southwest, A Journal of History and Culture*, 2008, Vol. 19, pp. 9-51.

<sup>11</sup> The Lone Star Water Water Forum is a water inquiry forum organized by Brenham, Texas citizens and supported by Texas A & M University's Agri-Life Extension Office, numerous local citizen and environmental groups, the City of Brenham, St. Edward's University, and the Texas Wildlife Association. The 8th Forum will be held in 2016.

Springs Alliance in Austin (SOS Alliance),<sup>12</sup> told the audience of 250 plus that Texans were doing such a great job at water conservation that there was no real water shortage at the time nor one should be anticipated in the future. Bunch's comments not only surprised the audience and other water policy experts, but simply were not believed by anyone in the audience. In fact, his comments were a misrepresentation of the facts in 2012. The Texas Water Development Board's (TWDB) 2012 State Water Plan had just been made public. The cover letter written by TWDB Chairman Ed Vaughn could not have been clearer – in drought conditions, there was not enough water available to meet the needs of Texans in the near future and beyond.<sup>13</sup> The 2012 official state report mentioned several times that there was not enough water available in Texas to meet the state's anticipated growth over the next 50 years supported by professional expert opinions and science.

Bunch's dedicated work as a steward for water conservation in central Texas was then and still is unsurpassed by few and he deserves praise and thanks. Yet his speech that fall day in Brenham centered on only one thought, surprisingly based on a several year's old out of date comment made in a past Texas Water Development Board<sup>14</sup> report. Bunch held up a single copied page from an unspecified report showing a small line graph allegedly claiming that the state agency's official opinion was that water conservation was being accomplished so well by

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I was a speaker at four of the forums from 2012 to 2015. I also serve on the Board of Directors. I spoke that day in 2012 immediately after Bunch as he and I shared the podium. My work here is based upon my notes during his speech.

<sup>12</sup> From their website, "The Save Our Springs Alliance works to protect the Edwards Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Hill Country region and its watersheds, with special emphasis on Barton Springs. The Save Our Springs Alliance sprung to life in 1990 as a loose coalition of citizens fighting a massive development proposal for the Barton Creek watershed. On June 7, 1990, more than 1000 citizens signed up to speak to Austin city council in opposition to the planned 4,000-acre Barton Creek PUD. After an all-night meeting, council unanimously rejected the PUD, and a movement began to strengthen the 1986 Comprehensive Watersheds ordinance under the acronym SOS: "Save Our Springs". Organized in 1992 as the Save Our Springs Coalition, we wrote and petitioned for the Save Our Springs Ordinance to protect the quality of water coming off of development in the fragile Barton Springs watershed. With the voter approval of the SOS Ordinance, developers went on the attack at the court house and the Texas Capitol. We incorporated as the Save Our Springs Legal Defense Fund in 1993 to defend developers' attacks on the SOS Ordinance. Expanding our scope to include building awareness and alliances throughout the Austin area, we became the Save Our Springs Alliance in 1997. We routinely work with local conservation groups to advocate for the protection of Barton Springs and the Edwards Aquifer." See <http://www.sosalliance.org/community/about-s-o-s-alliance.html> .

<sup>13</sup> Bunch mentioned 2007 in his speech as the date of the graph. However, the Texas Water Development Board's 2012 State Water Plan had just been made public. The cover letter written by TWDB Chairman Ed Vaughn could not have been clearer – in drought conditions, there was not enough water available to meet the needs of Texans. The 2012 official state report mentioned several times that there was not enough water available in Texas to meet the state's anticipated growth over the next 50 years. The TWDB by state law must write an updated State Water Plan every five years.

<sup>14</sup> From their website, "The Texas Water Development Board's (TWDB) mission is: To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas." See <http://www.twdb.texas.gov/about/index.asp#twdb-history> .

Texans that there was no need for the state to focus on finding new water resources for the future. To put it simply, Bunch's message was that Texans were conserving themselves out of any future water worries - Texans had plenty of water for the state's future. Again, a message using water as a weapon for social control. Why did he take this approach? Bunch not only works to protect water resources for over two decades in central Texas, but also works less openly to control population growth by restricting new development in watersheds and aquifer recharge zones. His opinion that day was not based upon credible science – he offered no scientific support for his opinion.

Bunch's remarks contained a hidden agenda for his ongoing anti-growth position – try to limit growth in Texas by persuading the people there was no real shortage of water in the state therefore no new water resources for the future were needed to be considered or put into place by Texas government. His remarks were a feeble attempt to begin to change the public discourse to discourage future population growth in the state with his full knowledge and hope that future water shortages would be made worse by poor planning by state government. If the state did not develop a plan for new water resources then population growth would doubtlessly have to slow statewide. What responsible person or company would move to a Texas without water? What institution would invest in Texas state of municipal bonds?

### **LOCAL ORDINANCES AND REGULATORY PROPOSALS TO LIMIT GROWTH USING WATER POLICY AS A WEAPON**

Bunch's Save Our Springs Alliance was originally formed in 1990. It is another local example of a grassroots movement to attempt to exert social control using water issues as the main weapon. The group authored and promoted Austin's Save Our Springs Ordinance (SOS Ordinance) of 1992. The city held an election in August 1992 and the SOS initiative, as the future ordinance was originally called, passed overwhelmingly with 64% of the voters approving the idea.<sup>15</sup> The ordinance promulgated stringent low-density controls on almost 100 square miles of the near downtown southern and the western areas of the city. The ordinance accomplished this by limiting allowable "impervious cover"<sup>16</sup> for any new development to only 15% of total land area in the recharge zone, 20% in the contributing zone for Barton Creek, and 25% for the remaining portion of the contributing zone.<sup>17</sup> The impervious cover restriction ostensibly was to protect the recharge zone of the source aquifer of Austin's landmark Barton Springs thereby protecting the springs themselves.<sup>18</sup> The impervious cover restriction in the ordinance effectively

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<sup>15</sup> Texas Water Resources Institute - New Waves - The Research Newsletter, Volume 5, Number 3, October 1992.

<sup>16</sup> According to the City of Austin Municipal Code 25-8-1-10, "IMPERVIOUS COVER means the total area of any surface that prevents the infiltration of water into the ground, such as roads, parking areas, concrete, and buildings."

<sup>17</sup> This is the generally accepted maximum for research, but based on set backs, compatibility requirements, and other conditions, the impervious cover limitation may drop to less than the posted percentages of allowable impervious cover.

<sup>18</sup> Barton Springs is a natural set of springs just south of the Colorado River in downtown Austin. There are four springs that create the "springs" and has been a favorite swimming area for time eternal. It is the centerpiece of the 358 acre Zilker Park now the venue for Austin City Limits, a worldwide festival of live music. Barton Springs Swimming Pool is 3 acres in size and has a natural limestone and gravel bottom filled with very cold spring water. It

limited growth to such an extent that most new and proposed development in the SOS jurisdictional area basically stopped – few new homes were built and new commercial properties were all but eliminated. The typical new residential subdivisions that were built post-SOS had such low density that the bulk of the new homes offered for sale were unaffordable to all but the wealthiest of Austinites.

An unintended and not publicly debated consequence of the SOS Ordinance was to reduce the ad valorem tax base by billions of dollars across the ordinance's boundaries resulting in, 24 years later, tens of millions of fewer dollars for schools, hospitals, and other public services.<sup>19</sup> Beginning with the Republic of Texas (1836-1845), when Texas was an independent nation, and continuing to this day, a free public school education through high school has been one of Texans' most sacred social values. When large areas of land are so limited by impervious cover restrictions such as those set by the SOS Ordinance that they cannot be normally developed, the general revenue available to fund education creates a basic social value conflict that must be responsibly and carefully debated. The debate must consider all financial, environmental, and other issues based on science and fact not emotions and coercion. Appendix 1 to this paper is an analysis of the impact of impervious cover limitations on the after-development value a small typical commercial property (either retail or office) on only a six acre tract in the SOS Ordinance area.

Many people questioned then and still do today whether Barton Springs and its recharge zones were actually enhanced and protected by the ordinance.<sup>20</sup> In fact, in an August 3, 2012 interview, David Butts a SOS campaign strategist and original supporter said:

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is home to the endangered Barton Springs Salamander. In the 1920s the city dammed Barton Creek just below the springs to create the famous swimming pool. In the 1940s the city built the bathhouses that remain in use today.

<sup>19</sup> Austin's combined ad valorem tax rate hovers around \$2.43 per \$100 valuation; the Austin Independent School District tax makes up about \$1.25 of this overall rate. Over the first 20 years, assume at least one billion dollars of gross valuation was lost due to impervious cover limitations. At the combined tax rate, the amount of tax revenue lost annually equals \$24,300,000. Considered over a 24 year period, *with no increase in market value*, the total minimum estimated revenue loss is \$583,200,000. ***The community and city council supported SOS and had every right to decide to choose that course.*** However, sadly, no one fully realized the long term impact on tax revenue for this ordinance. With today's technology, science could prove the effectiveness of the ordinance in protecting the springs. It certainly has not helped the creeks; my water class is shocked each semester when they test the water in the area creeks –the water contains unacceptable coliform bacteria levels from leaking sewage lines and other pollutant sources. Considering the huge population growth in Austin since 1992, in spite of the SOS ordinance, a more likely estimate of the tax revenue loss easily exceeds one billion dollars.

<sup>20</sup> Mayor Thom Farrell of the City of Rollingwood, a city surrounded by Austin and potentially impacted by Austin's extra territorial jurisdiction, told me Rollingwood ran tests into their SOS boundaries by inserting dye into the underground Karst-type aquifer recharge locations. The dye did not eventually emerge in Barton Springs, but in Deep Eddy, a spring across the Colorado River. Other groups fought the ordinance to no avail. Since under Texas law guaranteeing the police power of municipalities, zoning ordinances and zoning overlays are not considered "takings" by government in which "just compensation" would be due affected landowners. According to UT Law School Researchers Thomas McGarity, Sanford Levinson, Douglas Laycock, and Jordan Steiker interviewed at the time of the ordinance's birth for the Texas Water Research Institute's October 1992 newsletter, "... the SOS Ordinance is not a taking because it allows single family homes and other projects to be developed."

Did we save Barton Springs? I think the jury is still out. I believe we gave Barton Springs and the aquifer a better chance of survival. The weakening of SOS and the accelerating rate of growth raises serious doubts, though.<sup>21</sup>

The ordinance did not stop or limit Austin's overall growth in the least. People continue to move to Austin in droves to enjoy its economy, its music, its festivals, and its strong reputation for respect of the environment.<sup>22</sup> The developers met the demand for housing and commercial development by avoiding the Saves Our Springs' areas and simply "sprawled" out in all directions. The City Council of Austin, so concerned with impervious cover issues in 1992 later changed its mind and decided a marked increase in downtown development was desirable. In 2007, the city council to increase downtown development took a position in the exact opposite direction of impervious cover limitations by increasing the impervious cover allowable to 100% by creating a new downtown geographical area zoning category, "Downtown Multi-Use" or DMU zoning.<sup>23</sup> To say the least the elected leaders succeeded in directing huge volumes of growth downtown,<sup>24</sup> but along with it came the thorny issue of gentrification<sup>25</sup> of near town neighborhoods, especially those just east of downtown, traditionally African American and Latino/Mexican neighborhoods.<sup>26</sup> The city used re-zoning to expand downtown because it was less expensive for the city to tie new developments into existing storm and sanitary sewage, electricity trunk lines, and other already in-place infrastructure.<sup>27</sup> Millions of square feet of mostly high rise condominium units have been built and sold in downtown Austin in the past 8 years thanks in a large degree to the change in the opposite direction about impervious cover restrictions downtown taken by city leaders 25 years after the SOS Ordinance.

Bunch's position during the time of the Save Our Springs debate was clear and exactly the opposite of his position in Brenham in 2012. Conservation then, at least in the proposed SOS

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<sup>21</sup> "Memoirs of a Movement". The Austin Chronicle, August 3, 2012. His comments on the "weakening" are highly prejudicial. I can testify to the consequences on property I owned on SH 71 in Oak Hill. One property in the SOS zone, 6 acres, which was zoned commercial, due to the SOS impervious limitation, was not large enough to even develop a badly needed emergency clinic of only 4,000 square feet.

<sup>22</sup> Another unintended consequence of Austin's aggressive environmental positions is to actually have the opposite effect on population growth - it increased growth as much by reputation of a "special green" city.

<sup>23</sup> Austin City Council C14-2015-0093 - November 12, 2015, "The DMU Zoning District allows 100% impervious cover."

<sup>24</sup> Austin has had an explosion of multi-family high rise condominiums and apartment properties built downtown since the DMU zoning has been in place. Hotels, office buildings, retail - all accompany the millions of square feet of new development.

<sup>25</sup> Webster defines gentrification as "the process of renewal and rebuilding accompanying the influx of middle-class or affluent people into deteriorating areas that often displaces poorer residents." Many inner city neighborhoods in Austin would strongly argue their neighborhood was not "deteriorating" and I agree.

<sup>26</sup> See 2010 census of Austin, Texas.

<sup>27</sup> I served as Chairman of the Board of the Austin Board of Realtors in 2007. City officials and professionals such as architects and engineers made it clear to me this was a major reason for the new DMU zoning.



area of Austin, would not be enough to protect the aquifer hence the group's proposal to restrict growth. It was a very effective way to limit development, the SOS group's basic goal.<sup>28</sup>

Bunch and the SOS Alliance were not alone in this local approach using water as a weapon of social control. SOS ideas likely influenced another central Texas group to use water as a weapon to control growth. For several years, various environmental groups proposed that the Edwards Aquifer Authority (EAA) limit all impervious cover across their jurisdictional boundaries to less than 20%; some even to limit impervious to 15%.<sup>29</sup> The EAA is a special groundwater regulatory district whose jurisdiction covers 8,800 square miles<sup>30</sup> or 5,632,000 acres of the Edward's aquifer footprint in south central Texas. The EAA allocates groundwater withdrawals, requires meters on irrigation wells and registration of all wells including those classified as commercial or as domestic/livestock. According to an environmental group, the Greater Edwards Aquifer Alliance, their "Edwards Aquifer Protection Plan" included this exhibit, "Recommended Minimum Water Quality Regulations":

Impervious cover limitations are essential to preserve the natural quality, quantity, and timing of flow into streams and springs. We recommend an impervious cover limit of 10% of net site area in the recharge zone and 15% in the contributing zone.<sup>31</sup>

The vast majority of Texans agree that protecting groundwater sources in the state is desirable. However blanket limitations on growth and real estate development over 8,800 square miles without scientific support thereby consciously ignoring the vast diversity of conditions in the aquifer recharge and contributing zones in the area, is unfair to existing landowners and unwise as public policy. A blanket approach such as this would have dramatic unintended consequences for generations of future Texans, negatively impacting public school education's general revenue for the mostly rural population living inside the EAA boundaries. Yet, no one seems to take the tax base impact seriously, even the impacted public school superintendents.

Bunch's unsupported misrepresentations at the Lone Star Water Forum, the SOS Ordinance in Austin, and the proposals of the groups attempting to protect the Edwards Aquifer are examples of patterns of pressure through which society attempts to maintain social order and cohesion. The groups supporting the impervious cover limitations use persuasion through the normal political process in Texas and it is their right to do so. However, they also used shame, coercion, force and restraint in the promotion of their position. Their overall message of shame is obviously clear as an underlying theme of all their rhetoric; shame on the development of "pristine" nature by "evil corporate developers."

This message of "shame on you" was directed to Jim Bob Moffett's Freeport-McMoRan Corporation in its proposed Barton Creek area 4,000 acre development in 1990. Beginning that year and lasting for the years after the SOS ordinance passed into law, Moffett was personally

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<sup>28</sup> "The SOS Ordinance Turns 20". The Austin Chronicle, August 3, 2012. "... green activists who crafted the SOS ordinance to limit the amount of development allowed within the Edwards Aquifer recharge and contributing zones."

<sup>29</sup> "Reforms for Aquifer Protection". Aquifer Guardians in Urban Areas, San Antonio, Texas, August 7, 2005.

<sup>30</sup> www.edwardsaquifer.org. See Aquifer Education tab.

<sup>31</sup> "Edwards Aquifer Protection Plan". The Greater Edwards Aquifer Alliance. Exhibit B. No date was shown on the document, but it is currently an active proposal. See [aquiferguardians.org](http://aquiferguardians.org). Basically all of the 8,800 square miles of EAA jurisdiction are recharge or contributing zones.

vilified in the local, state, and national press and attacked continuously due to his development plans for the land his corporation owned.<sup>32</sup> The groups such as the SOS Alliance and other citizens against the Barton Creek proposal used coercion and force as evidenced no more clearly than the day they trapped Moffett in a construction trailer on site. In the summer of 1992, the protesters physically tried to push the trailer off its foundation with Moffett inside.<sup>33</sup> A comment typical of the attitude of many in the group supporting the SOS ordinance then was made by Nicolo Festa, a neighbor in the area: “Let Moffett and his like go peddle their *poisoned wares* elsewhere.”<sup>34</sup> The site plan of the proposed 4,000 acre Barton Creek Estates development included a golf course, clubhouse, and single family residential building sites of low density (under 3 homes per acre) and the homes were planned to be offered for sale in the upper ranges of market prices at the time. Is it true and fair to characterize a golf course accompanying a low density single family home development as “*poisoned wares*”?

Water as a weapon of social control is exemplified by the SOS Ordinance, a weapon based not upon on credible science but on speculation, emotion, and stereotypical attitudes. When one of the SOS’ own original spokespersons some 20 years later declares “... the jury’s still out” on whether his group saved Barton Springs, the true tactic of the SOS supporters was made clear - to use water as a weapon of social control to stop population growth.

### A NATIONAL EXAMPLE – “THE WATERS OF THE UNITED STATES” RULE

An example of water as a tool of social control on a national level occurred in the United States on May 27, 2015. The Environmental Protection Agency (EPA) Administrator, Gina McCarthy, announced the proposed “Waters of the United States” rule to “clarify” 1972’s Clean Water Act, a controversial proposal that many members of Congress, property rights groups, and almost the entire agriculture industry claimed would put all surface and other waters under the full and total control of the agency.<sup>35</sup> According to a press release offered by Philip Ellis, President of the Cattlemen’s Beef Association, “Today, the Agency [EPA] finalized its ‘Waters of the United States’ proposed rule, which unilaterally strips private property rights and adds hundreds of thousands of stream miles and acres of land to federal jurisdiction.”<sup>36</sup> After review of the wording of the proposed rule, it appears to this author the language is ambiguous, vague, and confusing in a capricious effort by the agency to expand the jurisdiction of the Clean Water Act to include potentially every drop of surface water in the United States.<sup>37</sup>

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<sup>32</sup> "The SOS Ordinance Turns 20". The Austin Chronicle, August 3, 2012. A June 7, 1990 all-night City Council meeting in Austin included 900 people speaking against the development.

<sup>33</sup> I personally witnessed the protest and physical attack on the construction trailer.

<sup>34</sup> Jenny Rice. *Distant Publics: Rhetoric and the Subject of Development Crisis*. (Pittsburgh: University of Pittsburgh Press, 2012) 76.

<sup>35</sup> Environmental Protection Agency press conference, Washington, D.C., May 27, 2015.

<sup>36</sup> Philip Ellis, President of the National Cattlemen's Beef Association, comments on AgWeb of the Farm Journal, May 27, 2015.

<sup>37</sup> Exceptions in the rule include wastewater treatment ponds, some "ditches" (undefined in the rule), and gullies, rills, and non-wetland swales.

North Dakota Federal Judge Ralph Erickson stayed the proposed rule on August 27, 2015 but his stay was only applicable in 13 states. North Dakota Attorney General Wayne Stenehjem said of Judge Erickson's stay, "I am very pleased by today's ruling, which protects the state and its citizens from the serious harm presented by this unprecedented federal usurpation of the state's authority."<sup>38</sup> Shortly thereafter, Judge Erickson's stay was appealed by the EPA and on October 9, 2015, in a 2-1 ruling, the Sixth Federal Circuit of Appeals delivered a ruling that protected and expanded Judge Erickson's stay to the entire United States. Some background about the EPA and the Clean Water Act is necessary for a complete understanding of the context of this effort to use water as a weapon of social control by one of the most powerful agencies in the United States government.

The EPA was established on December 2, 1970; one of the duties of the agency was to protect "water". The Clean Water Act of 1972 was enacted as an attempt to better define the precise jurisdiction over which "waters" the EPA and their colleague agency, the U.S. Army Corps of Engineers would regulate. Shortly after the Clean Water Act was passed in 1972, a variety of lawsuits resulted in several court rulings that along with the opinion of legal scholars decreed that the Clean Water Act's jurisdiction was limited to major navigable rivers only. Agricultural interests claimed then and continue to claim now that the jurisdiction of the EPA under the terms of the Clean Water Act did not include tributaries of major navigable streams or creeks and smaller streams, and definitely not farmers' stock tanks or earth moving to create irrigation systems on private land. Throughout 2015, many people and stakeholder groups complained that the EPA illegally used social media to promote the proposed ruling before even offering it for debate in Congress or the public forum. Other complaints against the EPA rule alleged lack of transparency by the agency intentions in the proposed rule. The EPA Administrator was accused of refusing to answer inquiries by media, stakeholders, and even members of Congress.

In answer to formal complaints, on December 14, 2015, the General Accounting Office (GAO) of the United States officially addressed the EPA's use of social media in this matter by ruling that "... [the EPA] engaged in "covert propaganda" and violated federal law when it blitzed social media to urge the public to back an Obama administration rule intended to better protect the nation's streams and surface water."<sup>39</sup> The GAO ruling stirred anger and consternation inside the EPA and is currently under appeal.

While there is no doubt the EPA has some jurisdiction over navigable waters, the now GAO-declared illegal actions coupled with the stays by a federal judge supported and expanded by the Federal Sixth Circuit of Appeals, are national examples an attempt to use water as a weapon of social control. If the concerns of agricultural interests and the individual states are valid, the impact on individual property owners could very well be never before required stringent federal permit acquisition for the most basic activities, usurpation<sup>40</sup> of state surface water laws and state and local regulatory agency jurisdictions, and decades of federal lawsuits over property rights. A farmer that is required to obtain a federal permit from the EPA or the US Army Corps of Engineers before moving soil to divert water into livestock ponds and irrigation

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<sup>38</sup> North Dakota State Attorney General's Office News Release, August 27, 2015.

<sup>39</sup> "EPA Broke Law With Social Media Push for Water Rule, Auditor Finds." New York Times, December 15, 2015.

<sup>40</sup> "Usurpation" means taking someone's power or property by force.

ditches, would be subject to a potentially punitive level of social control by an all but omnipotent federal agencies.

The EPA's behavior, fits several elements of our definition of social control. The 400 meetings they held across the country to promote their proposed new rule along with their social media blitz are examples of mechanisms in the form of patterns of pressure to maintain the agency's internal interpretation of their desired normative social order and cohesion. The GAO officially ruled that the EPA's actions were illegal, meaning that the EPA used coercion as one of their mechanisms of social control. Should the EPA act in the manner in which agricultural stakeholders anticipate that of obtaining permits prior to moving soil for stock tanks or irrigation purposes, the EPA would likely use force and restraint, yet another mechanism of social control, to enforce the regulations. Clearly it is the EPA's duty to protect our waters under the Clean Water Act, which of course all reasonably thinking citizens would applaud, however, using illegal tactics to promulgate any rule without following the due process of law, proves the EPA's intent was much more than mere protection of our water; it was a pronounced effort at social control using water as a weapon.

### **AN INTERNATIONAL EXAMPLE – WATER CONFLICTS BETWEEN ISRAEL AND PALESTINE**

Perhaps the penultimate example of water policy as a means of social control is the well-publicized long term Israeli - Palestinian argument over access to water. This intent of this paper is not to propose a solution to this multi-faceted problem nor is it attempt to determine the true motivations by the parties involved. Over the past twenty years volumes of work have been written about the hydropolitics between Israel and Palestine. It is common and accepted knowledge worldwide that Israel holds control and power over Palestinian access to water in the Gaza Strip and even more so in the West Bank, especially since the 1967 Israeli occupation. Yet an unbiased look at the facts show that *both sides* use water policy as a weapon for their attempts at social control. The debate between them is so polarized it is difficult to discern the truth of the situation. Faced with this challenge, an eyewitness report proves helpful.

To attempt to determine a better view of the actual water relationship between Israel and Palestine, Amani Mousa,<sup>41</sup> a visiting West Bank Palestinian graduate student attending St. Edward's University in Austin, was interviewed. During the interview, Amani did not display any vindictive or angry attitude about the water situation with the Israelis at her home in the West Bank. She approaches the difficulties with water at home with disappointment of course, but with an admirable degree of acceptance as well. She realizes fully that she lives in an occupied land. Her only real frustration was with the process it takes to accomplish routine tasks at home without oddly occurring delays or obstacles placed in the way of what we in America would consider everyday normal life. For example, Amani said there are reasons to enter into Jerusalem from time to time and sometimes she waits hours at one gate only to then enter and arrive at another gate that has closed for the day without any notice to the earlier gatekeepers.<sup>42</sup> Each day seems to offer a new challenge to living a "normal" life. Her passport lists her as a person without any nationality, causing her delays and headaches in travel.

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<sup>41</sup> Live interview between the author and Amani Mousa on Sunday, November 8, 2015 in Austin, Texas.

<sup>42</sup> Ibid.

Amani has an inquiring mind, is dedicated to her education, and has exhibited servant leadership as a student in Austin's St. Edward's University community. Amani is a peer-reviewed academically published author writing in both her native language and in English. Her comments in the interview were credible and unbiased. Overall as to water availability, she anticipates little will change at her home and that her family will continue to have limited access to water.<sup>43</sup>

Amani said her neighbors are all but entirely dependent on Israel's Mekorot<sup>44</sup> national water company for their daily water. There is little reliability for water deliveries – some days at home she had access to water, others none at all. In fact, sometimes water was not available to her for several days. She said her father manages the extended family cistern which he tries to keep full when he can when the Israeli provider makes water available. (Interestingly, her family shares the cistern with her uncles and cousins without a written agreement as to use or amount used. All users agree to follow her father as allocator of water to the families without dispute.) Responding to a question about new water wells as a potential source of water, Amani said permits to dig any water wells had to be obtained from both Palestinian and Israeli authorities. She indicated that it was almost impossible to gain both regulatory group's approval, a comment supported strongly by this author's research from other sources. Asked about the quality of the water her family receives when they do get it, Amani said it varies; at times the water appears clean and pure and at other times it is a brownish liquid that they drink and use anyway. Her father pays the water bills so she was not sure of the cost and has no frame of reference for the price except that her father considers the price too high, yet he rarely complains. Amani's family lands were confiscated by the Israelis without compensation years ago – they had been farmers for as long as anyone could remember in her family history, farming their family owned lands.<sup>45</sup> Amani's comments are congruent with the literature of the Palestinians and many third party outside observers. Her comments were in diametric opposition to the water literature of the Israelis; the Israeli side as a whole praises and promotes the fine job Israel has done in providing pure water to the Palestinians reliably, on time, and in adequate quantities.

A very brief primer on the basics of water is helpful to better understand the shared nature of water in Israel and Palestine. Water is held in three geological containers worldwide, surface water in watercourses, groundwater held underground in aquifers and pools, and diffused surface water or water that flows across the ground and is captured in stock tanks, reservoirs, cisterns, and other both natural and manmade containers before it reaches a watercourse. There is but one hydrologic cycle on our planet as water changes its state from the ocean to land via evaporation to condense in the atmosphere then to fall on the ground as precipitation. As the precipitation reaches the ground, at times it travels across the surface, sometimes goes underground into aquifers and underground streams fed by recharge zones and surface watercourses, then reemerges in springs to feed surface watercourses, continuously moving from

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<sup>43</sup> Ibid.

<sup>44</sup> Per Wikipedia, Mekorot (Hebrew: מקורות, lit. "Sources") is the national water company of Israel and the country's top agency for water management.[1] Founded in 1937, it supplies Israel with 90% of its drinking water and operates a cross-country water supply network known as the National Water Carrier. Mekorot and its subsidiaries have partnered with numerous countries around the world in areas including desalination and water management.

<sup>45</sup> Ibid.

geological container to geological container on its one mission at all times – seeking a return to sea level to begin its cycle again.

Serious complications usually occur when nations share transboundary surface water and transboundary aquifers, outcomes more often not favor the upstream party. Water ignores political boundaries, yet political boundaries and power determine water policies often times with no regards to the natural hydrologic cycle.<sup>46</sup> The geological containers of water in Israel and Palestine are not only shared between them, but some are also shared with Jordan.<sup>47</sup>

According to a United States based non-profit, The Water Resources Action Project (WRAP):

The primary sources of water in Israel, West Bank, and Jordan are a combination of surface water rivers and seas, groundwater reservoirs, and desalinization plants. Surface water accounts for 30% of Israel's supply, totaling 550 million m<sup>3</sup>/year (MCM/yr) [million cubic meters per year]. Major sources of surface water include the Sea of Galilee and the Jordan River. However, the Jordan River has become polluted and has lost 90% of its normal flow (Belt). Israel also sits on a series of major aquifers, which yield 850 MCM/yr. Furthermore, Israel has initiated a major project to develop several large desalination plants with the capacity to supply approximately 500 MCM/yr by 2015.<sup>48</sup>

Add the undeniable fact that worldwide humans damage water not only with fertilizer and herbicide run off from agribusiness activities, storm water runoff from streets and pavement, and industrial pollution, but also with human waste, commonly referred to as “sanitary”<sup>49</sup> sewage. The disposal of human waste is a serious point of contention between Israel and Palestine.

Israel’s technological achievements in water earn and deserve worldwide praise. The Israelis consider water precious, exhibiting a starkly different attitude to water than many or maybe even most Americans do. The Israelis have maximized the use of both surface and groundwater, making the “desert bloom” for decades. A new book written by Seth M. Siegel, *Israel’s Solution for a Water-starved World: Let There Be Water*, is a fine source for the history of Israel’s water development from 1937 to 2015. In recent years according to Siegel,

In about ten years, beginning shortly after the new century, Israel went from scarcity of water and fear of drought to abundance and independence from climate conditions. This dramatic change was made possible by the seventy years that preceded it in which a cadre of often

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<sup>46</sup> See Charles Porter, *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans*. (College Station: Texas A & M University Press, 2014) 7-15. Also see <http://water.usgs.gov/edu/watercycle.html>, the United States Department of the Interior – U.S. Geological Survey for more information about the hydrologic cycle. Many states in the United States do not manage their water resources according to the hydrologic cycle such as Texas that manages surface water via one state agency and groundwater by 99 independent local regulatory districts called Groundwater Conservation Districts (GCD). In fact, groundwater in some areas of Texas is still not regulated by any agency since the choice to establish regulations are up to local elections. In very limited areas, the state may declare an area to be a Priority Groundwater Management Area but it still takes an act of the legislature to establish any new GCD, usually a hotly contested decision.

<sup>47</sup> The Jordan River is the main surface watercourse shared but there are also several shared aquifers as well. Israel claims ownership of the surface and groundwater much to the dismay of Palestine.

<sup>48</sup> WRAP. "A Comparative Study of Water Data Across Israel, West Bank and Jordan." December 2013.

<sup>49</sup> “Sanitary” sewage – one of our language’s oxymorons.

brilliant engineers, scientists, and policy makers developed Israel's water-related expertise, technology, and infrastructure.<sup>50</sup>

Israel's water programs succeed through the never ending pursuit of new ideas, use of up to date technologies, and establishment of water management and allocation policies that have enhanced ***Israeli citizen's*** access to water so successfully that Israel was able to declare itself, according to Siegel, "water independent from weather" in October 2013.<sup>51</sup> The Palestinian view is that the only people whose water resource was enhanced were the Israelis.

Does Israel use water as a weapon of social control over the Palestinians? Absolutely, but a fairer answer gleaned from review of the myriad of articles written about the subject over the past 20 years is that ***both*** the Israelis and Palestinians consider water to be one of their most potent weapons in their attempts at social control. Israel holds the upper hand as far as the physical supply of water to Palestine at this time and has for decades. The two sides of the debate are diametrically opposed in their viewpoints of the water situation. Most of the arguments in this debate are conducted by truly credible experts of all disciplines from each side making it very difficult to determine the "whole truth, and nothing but the truth" in the Israeli-Palestinian water conflict.

Siegel on the one hand opines that "One major impediment to resolving water issues between Israel and the Palestinians is that – after many years – the Palestinian Authority (PA) has decided to make use of water as a tool to reinforce political claims against Israel, rather than working with Israel to find pragmatic solutions to Palestinian water needs."<sup>52</sup> He thinks rivalry between the Palestinian Authority, supposedly the governing body of the West Bank and Gaza Strip, and Hamas exacerbate the situation for all sides and may be a basic cause of the politicization of the water issue.<sup>53</sup> The viewpoint of Professor Haim Gvirtzman of the Hebrew of Jerusalem aligns with Siegel. His executive summary in a paper he wrote published by the Begin-Sadat Center for Strategic Studies represents an accurate summary of the basic Israeli position on the water dispute:

Water shortages in the Palestinian Authority are the result of Palestinian policies that deliberately waste water and destroy the regional water ecology. The Palestinians refuse to develop their own significant underground water resources, build a seawater desalination plant, fix massive leakage from their municipal water pipes, build sewage treatment plants, irrigate land with treated sewage effluents or modern water-saving devices, or bill their own citizens for consumer water usage, leading to enormous waste. At the same time, they drill illegally into Israel's water resources, and send their sewage flowing into the valleys and streams of central Israel. ***In short, the Palestinian Authority is using water as a weapon against the State of Israel*** [emphasis added]. It is not

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<sup>50</sup> Seth M. Siegel. *Israel's Solution for a Water-starved World: Let There Be Water*. (New York: St. Marten's Press, 2015) 235.

<sup>51</sup> Ibid. ix-x. So far I have been unable to find the person or organization or agency in Israel that specifically made this declaration.

<sup>52</sup> Ibid. 175-176.

<sup>53</sup> Ibid. Does Hamas' stance that Israel should not exist cause the PA to be confrontational with Israel over water? Do internal pressures between the PA and Hamas result in deliberate non-cooperation with Israel over water? Siegel asks very germane questions and opines that it is "a key area" of the PA's choice to not cooperate.

interested in practical solutions to solve the Palestinian people's water shortages, but rather perpetuation of the shortages and the besmirching of Israel.<sup>54</sup>

Further in his report, Prof. Gvirtzman writes, "The Palestinians live in the shadow of the State of Israel, a world superpower in terms of water technologies. Consequently, the Palestinians enjoy a *relative Garden of Eden* [emphasis added]."<sup>55</sup> Amani gave no indication whatsoever that she would at all agree that the West Bank was a *Garden of Eden* due to Israel's fair water policies.

On the other hand, according to the Palestine Liberation Organization Negotiations Affairs Department (PLONAD) in direct disagreement with Siegel and Prof. Gvirtzman: Since its 1967 occupation of the oPt [occupied Palestinian territories], Israel has completely controlled our water resources and deprived us of access to a sufficient share of water, in violation of international law. Instead, Israel has used our water resources for its illegal settlements and its own population, forcing our communities to purchase water from Israeli companies at high commercial prices.<sup>56</sup>

The PLONAD claims the Israelis use 86% of the available fresh water resources and keep the Palestinians from developing water resources in their own territories which results in only 60 liters per capita per day for a Palestinian, well under the 100 liters per capita per day recommended by the World Health Organization.<sup>57</sup> Keep in mind that Israel occupies the Palestinian territories and as occupiers have all the power.

According to Mark Zeitoun of the University of East Anglia in his book *Power and Water in the Middle East: The Hidden Politics of the Palestinian-Israel Water Conflict*, power is the key to control of water between the parties. Of Israeli control, Zeitoun concludes:

... while their [Israel's] control was contested in the decades following 1948, it was essentially beyond contention after 1967. It evolved following the 1995 Oslo II Agreement into a pervasive and hegemonic form that endures today, with distinct forms of power enabling each stage in the evolution of Israel's dominance.<sup>58</sup>

Zeitoun's and PLONAD's opinions do coincide exactly with Amani's eyewitness experience at her home in the West Bank. One expert outsider's viewpoint helps further illuminate the situation.

Elisabeth Koek author of "Water for One People Only: Discriminatory Access and 'Water Apartheid' in the OPT" provides this opinion:

Since 1967, Israel has exerted considerable military and political efforts, including the establishment of settlements, to illegally exercise sovereign rights over Palestinian water resources... This integration was significantly advanced in 1982 by the transfer of

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<sup>54</sup> Prof. Haimi Gvirtzman. "The Truth Behind the Palestinian Water Libels". BESA Center Perspectives Paper No. 238, February 24, 2014. Published by the Begin-Sadat Center for Strategic Studies and found at <http://besacenter.org/perspectives-papers/truth-behind-palestinian-water-libels/>.

<sup>55</sup> Ibid. 5.

<sup>56</sup> <http://nad-plo.org/etemplate.php?id=179&more=1#1>.

<sup>57</sup> Ibid.

<sup>58</sup> Mark Zeitoun. *Power and Water in the Middle East: The Hidden Politics of the Palestinian-Israel Water Conflict*. (London: I.B. Tauris & Co Ltd, 2012). 2.



ownership of Palestinian water infrastructure in the West Bank to Israel's national water company 'Mekorot' which has forced Palestinians to rely on the company to meet their annual water needs... 'Mekorot' routinely reduces Palestinian supply – sometimes by as much as 50 per cent – during the summer months in order to meet consumption needs in the [Israeli] settlements.<sup>59</sup>

Ms. Koek's paper supports Amani's eyewitness report to me as well.

As to the future of the conflict, Koek sees hope for a fair conclusion only if the parties follow international legal norms since Israel will continue to dominate Palestine at the negotiating table.<sup>60</sup> Zeitoun sums up his book with the opinion that the only hope for Palestinians, especially in the West Bank, is to rely on *privately owned desalination units* for reliable water. Yet, how can any Palestinian owned company find financing for the project, assuming it could gain the needed permits to build and operate a desalination plant? Equally as difficult as finding financing would be, could the Palestinian people afford the cost of the infrastructure and the ongoing operation and maintenance of the system? As important as environmental sustainability is to any new water system, especially a desalination plant with its headaches of disposing of the briny by product of filtering out salts, a new water system must be *financially sustainable* as well.

Zeitoun's dire prediction is that the Palestinian agricultural sector will "dry up slowly, as whatever good water remaining is devoted to the cities. The intensity of the water conflict will increase along with the inequity... ." <sup>61</sup> The power imbalance will probably remain in favor of Israel.

As a certified and experienced mediator in Texas real estate and family law disputes for over 25 years, it is the opinion of this author that unless the power imbalance between the parties is somehow mitigated, a mediated settlement (any treaty is basically a mediated or negotiated settlement, a settlement in which the disputants own and make the decisions) is all but impossible to reach.<sup>62</sup> Since there is no applicable and effective supra-legal authority<sup>63</sup> other than

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<sup>59</sup> Elisabeth Koek. "Water for One People Only: Discriminatory Access and 'Water Apartheid' in the OPT". (Ramallah – West Bank – Palestine: Al-Haq) 2013. 16-17. Elisabeth Koek is a Legal Researcher with Al-Haq and holds an LLM in Public International Law from King's College London and an LLM in Corporate Law from the University of Leiden.

<sup>60</sup> Ibid. 20.

<sup>61</sup> Zeitoun. 164.

<sup>62</sup> The author is a certified mediator in the state of Texas with a special additional Family Law Mediator designation. He has mediated over 100 disputes in Texas real estate since 1994 and served for ten years as Ombudsman for the Texas Association of Realtors handling up to 16 cases annually. The Travis County Dispute Resolution Center awarded the author the "Peacemaker Award for Business" in 2007. The author's Texas Real Estate Commission continuing education credit course "Mediate, Arbitrate, Litigate" won the Best Continuing Education Course in the State of Texas in 2005. One of the most difficult challenges to a successful outcome in a mediation is finding a balance of power between the parties, especially in family law cases.

<sup>63</sup> "Supra-legal" authority is a term the author defines as a jurisdictional authority over two nation states or subdivisions of government. For example, the United States federal government has "supra-legal" authority over often-contested jurisdictions of its member states. Since there is in reality no supra-legal authority between nation

that of Israel with jurisdiction over the dispute, unless the parties agree and appoint an outside authority that has the courage, power, and will to enforce any such agreement, it appears that the parties are hopelessly deadlocked. Yet with the many publicized predictions that the Palestinian population will grow at a faster rate than the Israeli population, a serious and terrible collision filled with more human tragedy looms with the water dispute as the proximate cause.<sup>64</sup>

## CONCLUSION

Defining social control briefly as the study of patterns of pressure through which society maintains order and cohesion, water proves to be one of the most effective, and possibly dastardly, weapons of social control worldwide. From Austin, Texas to the Israel and Palestine, water policy used as an emotional tool to accomplish other hidden or veiled agendas of control over population growth, political success, and economic expansion, is quite often a “must have” weapon in the arsenal of any group’s efforts to control society’s behavior. At times, the emotional power of the issue creates unrealized basic value conflicts as illustrated in Austin’s SOS Ordinance. No reasonably thinking person wants water to be short in quantity, bad in quality, or its marvelous attributes such as natural springs, creeks, and rivers to be contaminated by human growth or activity. However, emotions must be eliminated and hidden agendas must be made transparent and forthrightly debated so as to avoid unintended terrible consequences. Deliberate efforts by any dominant group to suppress a people using water policy as a weapon is not only inhumane but in the long term, likely detrimental to the dominant society if in no other way than to earn them a reputation worldwide as unfair and even despicable in the eyes of the reasonably thinking and behaving world. In a globalized economy, interconnected today and apparently in our foreseeable future as never before in history, no nation can hope to thrive or maybe even survive with that kind of reputation.

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states unless they agree to it by treaty and then honor their commitment, international water disputes are by nature convoluted and at times, seem to be doomed to decades of confrontation.

<sup>64</sup> <http://www.ibtimes.co.uk/will-palestinians-outnumber-israeli-jews-by-2016-1481628> . Quoting from this article, “Professor Arnon Soffer from the geography department at the University of Haifa told the Jerusalem Post that ‘today the percentage of Jews is 52% and in 2024 it will be just 48%’. Another academic, Professor Sergio DellaPergola of Hebrew University, said that ‘the unquestionably documented fact is that the Arab population in our area is growing and will continue to grow for several years at a pace faster than the Jewish population’. In 2011, DellaPergola argued that the Jewish population would no longer be a majority around 2015.” Earlier in the article, the authors opined, “The worst nightmare for Zionists and nationalists – that of an Israeli state where an ethnic minority rules over a majority, raising echoes of Apartheid-like system – seems to be approaching at an unrelenting pace.” Even the demographics are in dispute as other sources disagree as to the rate of growth. Even if the rate of population growth is as one-sided in favor of the Palestinians as some claim, by 2050 I find no projection that does not keep the Israelis in at least the majority even though the gap would be closed to 55% Israeli and 45% Palestinian. “Proximate cause” is defined by the State Bar of Texas as: 1. A proximate cause is a substantial factor, that [in a natural and continuous sequence,] brings about an event and without which the event would not have occurred; and 2. A proximate cause is foreseeable. “Foreseeable” means that a person using ordinary care would have reasonably anticipated that his acts or failure to act would have caused the event or some similar event. There may be more than one proximate cause of an event.



**APPENDIX 1**

**Typical Retail Center or Office Building Valuation Comparison of Normal 65% Impervious Cover Allowable to 15% Allowable**

	<u>65% Impervious Cover</u>	<u>15% Impervious Cover</u>
Tract Size - 6 acres =	261,360 sq. ft.	261,360 sq. ft.
Allowable impervious cover	169,884 sq. ft.	39,204 sq. ft.
Rentable square footage of any building = 37.5% of land equals a building size of	63,707 sq. ft.	14,702 sq. ft.
Annual Net Operating Income Potential \$20/sq.ft.	\$1,274,140	\$ 294,040
Capitalization of NOI at 8% rate, indicated value	\$15,926,750	\$3,675,500

Difference in Indicated Market Value = \$15,926,750 - \$3,675,500 = \$12,251,250 or \$2,041,875 per acre.

Loss of Ad Valorem Tax Revenue by Schools, Hospitals, and Other Public Services at a combined ad valorem tax rate of \$2.43 per \$100 valuation =

**\$297,705 annually or \$49,618 per acre.**

Loss of Ad Valorem Tax Revenue over 20 years (assuming no increase in market value) =

**\$5,954,100 or \$ 992,350 per acre.**

Please keep in mind the above example is only a very small tract - 6 acres.

I estimate potential retail sites in the 15% impervious cover allowable SOS Ordinance Area to comprise at least 600 acres. (The SOS 15% area comprises approximately 25 square miles or 16,000 acres; 600 acres is only 3.75%, a very conservative estimate for a population of almost 1,000,000 in a city such as Austin.)

Accordingly, the total potential lost ad valorem tax revenue across the 15% restricted area becomes:

**\$29,770,500 per year or  
\$595,410,000 over 20 years.**