

Political and Environmental Challenges of Border Communities: The Case of *Colonias* in South Texas

By

Nirmal Goswami, Texas A&M University-Kingsville
Joseph Jozwiak, Texas A&M University-Corpus Christi

Introduction

Traditionally, the Rio Grande Valley and the surrounding area has not much received much attention, but the 1,000- mile border region is home to 2 million people and contains the cities of Laredo, McAllen, and Brownsville, which are some of the country's fastest growing metropolitan areas. Scattered around these ever expanding urban areas are rural housing settlements called “colonias.” The inhabitants of colonias are usually low-income Mexican-Americans, many of whom have recently moved from Mexico. The origins of the colonias can be traced back to the Bracero program, which invited Mexicans, under controlled circumstances, to come to the United States to work. Further spurring colonia growth was the development of industry along the Mexican side of the Rio Grande, known as the “maquiladoras”, drawing more people to the region. The high expectations which preceded (and followed) the NAFTA Treaty also added incentives for people to move to the region. The reasons for the development of the colonias include, but are not limited to, inadequate oversight by state agencies and the Legislature, the reluctance of some local governments to serve colonias, disputes between cities and water-supply corporations regarding which entity would provide service, failure to ensure that households hook up to newly built systems and poor enforcement of rules that were supposed to prevent the spread of colonias.¹ The border region of the Rio Grande Valley is the primary location of most of the colonias in the state, although several others are scattered throughout south and south central Texas. Despite nearly a decade of local, state and federal efforts, conditions in the colonias have remained largely unchanged.

The Center for Housing and Urban Development (CHUD) at Texas A&M University, College Station estimates that there are 1,450 colonias in Texas, most of which lack paved roads and have no surface drainage systems. About half of them do not have adequate water supplies. The lack of clean water and sewage means that the incidence of health problems is high, further exacerbated by the fact that flooding is common.² Colonias tend to be located in rural areas which makes the delivery of services such as safe drinking water, basic sanitation, and electricity difficult. The median annual income is estimated at \$7,000-11,000 per household and the typical family size is 5-6 people. Educational levels are also rather low and school dropouts rates high. CHUD also asserts that colonias have increased dramatically in the last two decades. Land developers have responded to a decline in low-income housing by selling unregulated lots, affordable to the truly poor (CHUD, 1999). Buyers of these lots build homes, usually shacks of recycled materials, or dilapidated trailers or campers. The response to the problems of colonias on the part of local and state government, especially in South Texas has been slow and grudging, but during the on-going legislative session there has been movement on legislation that may assist the colonias. There are about 350,000 Texas residents who live in the colonias, no other state has so many people living in such squalid

conditions.

The Issue of Empowerment

The colonias of Texas are more settlements than communities. The implication of this is important. Settlements are a conglomeration of houses and not much more than that. Communities imply a “whole” that settlements are not. Communities imply interaction among residents and a presumed interest in both the short and long term welfare of the community. A sense of participation is an important element of a community spirit. This, we hold, is an ingredient necessary for colonia residents to achieve empowerment. This ingredient is missing in Texas colonias. We examine why this is so and what changes will need to occur for colonia residents to feel empowered. We define “empowerment” to mean the “ability of residents to substantially influence policies impacting their communities.” This paper examines the issue of empowerment and relates it to the policy arena of environmental issues and theories of environmental justice. Our paper relies heavily on previous work done by several scholars. We make particular use of the research by Ekstein (1998), Skinner (1983), Staudt (1998), Ward (1999), Wilson and Menzies (1997). This scholarship is also built upon the foundation of “collective action” literature, most notably Olson (1965).

Why Texas Colonia Residents are not Empowered

Colonia residents lack empowerment on several grounds. The paper argues that the residents are isolated geographically, economically, socially, and institutionally. Colonias, for most parts, are located in relatively isolated areas. The possible negative consequences (such as environmental problems) do not immediately impact an “established” community, such as a traditional city or town. This causes an absence of external stakeholders in the welfare of colonias. We hold that the presence of external stakeholders from established communities would provide opportunities for colonia residents to access resources, however defined. The lack of such stakeholders make colonias that much less resourceful, therefore that much less empowered. Furthermore, their geographic isolation makes it difficult, resource-wise, to create water, sewage, waste and electrical connections, especially for cash strapped local governments who have a difficult time delivering these services to their own constituents. Secondly, the relationship between socio-economic (SES) factors and political participation is well established (note). Colonia residents are among the poorest and least educated. Both of these inter-related variables have created a population which is largely politically uninitiated and inactive and thus, not empowered.

This economic isolation relates to a third area that effects the empowerment of colonia residents. The one area where residents are involved economically is in the purchase of lots upon which they build their “homes.” However, this is usually the outcome of individualized interaction between settlers and developers, where the bulk of the power in the commercial transaction lies in the hands of the developers. The lack of a need for initial collective action by the settlers impedes even the formation of informal

interaction among the settlers and as such Texas colonias begin with almost no social infrastructure (Ward, 1999). This absence of social infrastructure contributes to the lack of empowerment in the colonias, making it more difficult to engage in the type of collective action necessary for mediating conflict with government of any level. When problems arise between residents and landlords, economic and government power usually favor the latter, making the situation of those in the colonias more difficult. Finally, Texas colonias exist largely in an institutional vacuum. They are not really a part of a traditional city government; counties have limited authority (or interaction) with colonias. There is no clearly apparent level of government for colonia residents to turn to, nor, in many ways, are there institutions for colonias to be “united” against. As the paper notes later, counties on the border do have formal powers that allow regulation of land management and real estate, but these have not been effectively used by county officials. Informally, county officials have often worked with developers, eventually creating results that have simply exacerbated the problems. At the state level, the problems associated with colonias are multi-faceted, and are not easily solved by a single state agency. Employment and economic development issues are handled by the several state agencies concerned with economic development, such as the Texas Department of Human Services. Environmental issues are dealt with the several agencies, most notably the Water Development Board and the Natural Resources Commission. Housing is naturally the purview of the Housing Department. Efforts to raise the educational opportunities for colonia residents is handled by the Department of Education. The simple fact that Texas has refused, for the longest time, to coordinate and centralize state programs which impact colonias has been a severe barrier to amelioration of their conditions. Since the North American Free Trade Agreement (NAFTA), more money has come into the area to study environmental effects of years of neglect, which the paper argues, comes not so much from overt racism, although in South Texas this has played a major role in the past (Montejano, 1987, 1999), but is a result of a fractured state governmental system combined with a political culture that supports individualism and individualistic property rights. Finally, the paper will assess efforts by the Bush Administration and the Texas Senate to meet the challenges raised by the colonias. In particular, the paper will argue that many of the provisions in the SB 1421, passed in the Spring of 2000 and signed into law by Governor Bush, can, if properly implemented, address some of the problems faced by colonias.

Colonias, Empowerment, and the Environment

The poverty of colonias translates into inadequacies in basic services. As is often the case with “minority” areas, the environment in which people exist is severely degraded. Access to clean water, air and sewage is often difficult to achieve, largely relating to lack of economic means and exacerbated by geographic isolation. This translates immediately into lower levels of health and well being. These factors, taken in isolation would challenge any population. Taken together, they provide nearly insurmountable barriers to “advancement.”

Isolation exacerbates the delivery of all state services to the colonias, but of most concern are water and waste services. Most colonias are geographically remote from cities or towns, and as a consequence, providing essential services to these areas is physically and fiscally difficult. Many colonias simply do not

have safe drinking water, bottled water is the norm. The lack of safe drinking water is a problem compounded by the lack of sanitation facilities. Most colonias are rife with leaking septic systems and poor drainage. Despite this, efforts to bring safe drinking water to colonias have begun. However, state efforts to bring attention to water related problems received renewed interest and activity at the state level largely as a response to federal efforts. A Water Utilities director was named by the Environmental Protection Agency (EPA) as the colonias coordinator for the Texas Natural Resource Conservation Commission (TNRCC), the primary state agency responsible for environmental issues, and a specific grant was provided by the EPA to give special assistance to border drinking and waste water utilities (TNRCC, 1997b).

In its 1997 report, *Illegal Dumping Assessment of Impacts on County Governments in the Texas-Mexico Border Region*, the TNRCC found that the most likely area for illegal dumping was around with colonias. The cost of providing services to geographically remote areas and the difficulty of scheduling service to colonias were cited as the primary factors. The report also admitted that little could be done in the short term, but that it was working on plans by the Solid Waste Planning staff to support the Lower Rio Grande Valley Development Council in its efforts to develop a video that presents case studies of viable solid waste collection programs in the region's colonias. An EPA grant also helps to fund the project (TNRCC, 1997a).

Ironically, while geographic isolation prevents the delivery of services, the colonias are not isolated enough to be free from air pollution. Again, the influence of NAFTA can be seen in the state's approach to issues involving the border. As in the case of water, the lack of state effort on the border issues only highlights the importance of federal money and influence in getting programs started. In the past state efforts in assessing air quality were concentrated in the major urban areas, largely in effort to ensure that they remained in compliance with federal standards. It was only after cross-border problems were recognized as politically salient, through NAFTA, did colonia air quality become an area of study. Even then, efforts to study colonia air quality became an issue only in El Paso, in conjunction with efforts to track increased air pollution that would come with increased cross-border traffic, largely from long-haul trucking. Even with the spillover from NAFTA little has been done to improve air quality. The Texas Solid Waste and Emergency response, COG section of the Mexican government and the US EPA have all argued that efforts need to be concentrated on information gathering to help provide solutions. The primary targets to carry this effort out were the county judges and commissioners. (TNRCC, 1997b).

Traditionally, the region contains some of the poorest counties in the entire country, and the income gap between rich and poor in the region is amongst the widest, country-wide (US Census Figures,). In mid-1998 the Texas Comptroller reported that more than 25% of the residents in border counties has annual incomes of less than \$10,840 and that 38% of the area's children lived in poverty (*Los Angeles Times*, August 13, 1999). The region has a great need for employment and training, but it currently receives the least amount of support from the state, a situation that must be rectified if it is to share in the growth that the rest of the state has enjoyed over the past few years. State efforts need to ensure that state-sponsored job training is available and many suggest that government, at all levels, must deploy a variety of tax credits and incentives for creating and maintaining jobs. This needs to be supported by the creation of educational

opportunities and facilities for border residents. Unemployment figures along the border hit 8 percent, compared to the 3 percent in the rest of the state, and those that do have jobs are losing buying power when compared to other workers in the state. "Year in, year out, (the border) is dead last," in all economic indicators. Access to education, jobs and training is going to be essential to the health -- economic and physical -- of the border area" argued Representative Eliot Shapleigh, (D-El Paso)³ (*Austin American-Statesman*, March 1, 1999).

Texas recognized the problems associated with living conditions in the colonias, particularly the lack of affordable and safe housing. In response to this several state initiatives were undertaken. The largest state initiative, passed in 1997 was the \$13.3 million Texas Home Improvement Loan Program. The program allows low income families to borrow up to \$25,000 for home improvement and the loans can be stretched out over 20 yrs at 6.99% interest. The loans are for people who want to truly improve homes by installing water and sewer systems, kitchens, and bathrooms, "not for people who want a swimming pool." Manley, Executive Director of State Housing argued that the loans are for "basic quality of life issues." State Senator Carlos Truan noted that this is a step in the right direction, noting that there are certainly people in the colonias who desperately need better housing (*Corpus Christi Caller Times*, February 25, 1997). The question that needs to be asked is whether the state is going to lend money to improve a trailer home. This program will probably do little for the poorest of the poor. Financial reasons are the primary motivation for moving to the colonias. It needs to be remembered, observed Juan Palacios, the Texas Department of Housing and Community Affairs' (TDHCA) Colonias Initiative Manager, that many are in pursuit of the "American Dream," and he noted that there "is a lack of affordable housing within the inner cities, so colonias have become a feasible way for these people to actually own a piece of property" (*Associated Press*, February 17, 1999). Often colonias housing go for as little as \$50 down and \$100 a month.

Raw sewage is a fact of life for some residents and many families haven't had water or sewer service for years, consequently wastewater simply drains into the yard. Sewage systems usually exist in the general area, but residents aren't often hooked up, largely for financial reasons (*Austin American-Statesman*, July 15, 1998). The Small Towns Environmental Program (STEP) program, another initiative, may be of the most interest, and use, to colonia residents. The program focuses on small towns in order to assist them to get water programs and seeks to involve more cooperation between state and local officials. Efforts would be sponsored through institutionalized associations, be it governments or groups and might be something that colonias residents could effectively participate in, provided that they had associations to speak on their behalf (TNRCC, 1997c). Because of the lack of waste services, water easily collects in trash piles and old automobile tires, providing a fertile breeding ground for mosquitoes. The outbreak of dengue fever in Texas, in the summer of 1999, was concentrated in the colonias outside Laredo, where the only fatality of the outbreak lived (*Austin-American Statesman*, August 20, 1999).

Complications with the Texas legal system: "Bias" towards individualism

There are "biases" built into property rights and landholding. These play important roles for colonias

in two ways: Firstly, the relatively loose enforcement of the drawing of plats makes it difficult to regulate, something the system is loath to do from the beginning, despite calls from the governor that, “We must not allow for unscrupulous developers to prey.” (*Associated Press*, August 19, 1998). A “culture of property rights” exists which landlords use to their advantage. However, the issue, state-wide, cannot be solely cast in racial terms, although pitting Anglo landlords against Hispanic victims, is often the case in colonias.⁴ This collision of individual property rights and public spending hampers colonia specific EPA programs.

One major reason for the spread of substandard housing throughout Texas is that counties, unlike cities, have few powers under state law to regulate development. Border counties, however, do have this ability, but it is not widely used. However, use of that power is limited due to the county government’s unwillingness to regulate. Even if counties were eager to regulate, their ability to do so is limited by the degree of difficulty in actually doing it. The unwillingness to regulate is, in part, due to the influence of the powerful real estate and building industry lobby that does not want counties (outside the border areas) to get too much power, and argue that some areas of the state should remain off-limits to stringent land-use controls. Industry officials say the number of developers who build shoddy subdivisions is small and the vast majority practice sound techniques. The Texas Association of Builders opposes granting all counties the broader authority held by border counties. The local government’s ability to regulate was seriously constrained by the 1995 *Elgin Bank of Texas vs. Travis County* case. The bank wanted to sell parts of a 150-acre tract without filing a subdivision plat with the county which the county refused to do. The Court of Appeals in Austin sided with the bank, which intended for each lot to have direct access to an existing road. The court, pointing to the wording of the state’s local government legislation, ruled that a plan is required only when the landowner is dividing land “to lay out lots . . . and to lay out streets” or other public areas. The county had argued that the word “and” should be construed as having the same meaning as the word “or.” The court found this argument “absurd” and that no such result arose from the ordinary reading of “and.” Most counties have urged the Texas Legislature to revise the law to close this loophole and want lawmakers to grant broad land-use controls to counties, or at least powers equivalent to those already given to border counties. The ruling has prompted more and more developers to build subdivisions without streets. They do so by carving their tracts into parcels that look like a flag atop a pole. The house or mobile home occupies the flag section of the lot, while the pole section is a driveway leading to an existing public road. Such subdivisions have numerous closely spaced and parallel driveways leading to the road. The flag-lot approach allows developers to avoid the cost and delay associated with building streets and preparing subdivision blueprints and maps, known as plats (*Austin American-Statesman*, July 15, 1998).

These developmental practices leave government officials unaware of the subdivisions until they take shape, making it difficult to oversee drainage, water service, septic-system plans and other matters. Such subdivisions sometimes end up with inadequate septic systems, poor drainage and dirt driveways that serve as streets and become impassable by school buses and emergency vehicles. The court ruling that allows flag-lot development does not apply to areas subject to a city’s jurisdiction. Different rules also apply in the border region. The state Legislature has granted those counties much broader regulatory duties in an effort to curb the spread of substandard developments, known as colonias. For example, developers may not sell residential lots without water and sewer hookups, drainage and roads -- a requirement that does not apply

in the rest of the state (*Austin American-Statesman*, July 15, 1998).⁵

The daily operations and investigations by state agencies are also important for uncovering failures at the local government level. Much has been made of the fact that county officials in the border counties actually have greater power to regulate than those counties away from the border, and therefore one might suspect that problems could be better alleviated, or even prevented, but often this is not the case.

Empowerment and Fragmented Government

The environmental movement, as whole is subject to a considerable degree of fragmentation, both in the United States as well as globally. The environmental equity movement is even further fragmented (Bollard, 1994) displaying a relatively weak cohesion and very limited resources making empowerment difficult to achieve (as is usually the case in collective action problems). Given these limited resources the chances for empowerment are further hindered by the lack of a central entity where one can press demands. There is a double bind in Texas where the one area that you should be able to press demands isn't institutionalized, the Environmental Equity and Justice Task Force (EEJTF). Again, arguments of overt racism don't need to be made, but the unintentional effects of fractured government clearly make it more difficult for environmental equity to be realized.

The task force was created at the behest of the Texas Water Commission and the Texas Air Control Board and is an informal gathering of statewide group of industry, citizen and community groups, as well as government and non-government agencies. The goal of the task force was to create a wide-ranging list of topics that they felt the TNRCC could do better on. The list was composed in 1993 and the responses were published in 1997. An examination of the report shows the fractured nature of responses and that, colonia problems do not fall into the clearly delineated bureaucratic compartments. Agencies, including TNRCC, the Texas Department of Health, the Office of Public Assistance (OPA) and a myriad of local bodies as well as a host of federal institutions like the EPA and the Department of Housing and Urban Development (HUD) are all involved. The effect of this is a fragmentation of efforts which, on one the hand, makes it easy to compartmentalize problems but also makes it difficult to create an overall assessment of the problem.

The efforts of the TNRCC are largely reactive and passive, rather than proactive and preventative. While some of the efforts of the TNRCC fit closely with some precepts related to empowerment, at the same time they assume access to resources that may not be available to many colonia residents. The TNRCC is working hard to collect and make available information, but the type of environmental data they are collecting in many cases does not have direct application to colonias. Industry emissions and toxic release inventories are tremendously important data to maintain and make available, this is a priority for urban areas, although in the later case this can be of use for regulation of the maquiladoras.⁵ Information and access is important, but what this does is make the government accessible for those that have the appropriate technology. Obviously this is not a solution for the colonias, who do not have, on the average,

ready access to computers which would allow them to search out information that might be of use to them. Even though the OPA is sure to have a Spanish speaker on duty at all times, again the lack of phone service is also a severe hindrance to getting information to the state. This is a reactive and passive action on the part of the OPA and the TNRCC. Another point to be made from the Task Force report is that it underscores the technological advancement and the ease of access of these informational sources.

One of the areas that there is concern with, or where the TNRCC feels that it is lagging, in a critique of its own performances, is sending representatives out to the field to either meet the citizens, pass out information, or collect data. Another important initiative that the TNRCC is attempting is to increase the awareness of environmental equity issues amongst the TNRCC staff in an attempt to “deal with these issues with greater foresight” (1997b). The majority of their effort is to conduct training exercises for local government officials and community members regarding environmental and health effects. To fulfill these objectives they have created the Local Government Assistance Program (LGA) to fill a void for “government” entities that deal with the TNRCC. The seven staff members are there to provide technical assistance to local government entities across all media and the LGA staff have been at conferences and workshops conducted by the Texas Municipal League, the Texas Association of Counties, the Texas Association of Regional Councils (TARC), the Regional Association of County Judges and Commissioners and others in an attempt to reach as many local officials as possible (1997b). What is interesting about these efforts is the fact that they are targeted at local officials, rather than attempting to deal with the people directly. The Environmental Equity section of the Office of Public Assistance has been established as a focal point of contact for the community and plans to expand community education are being developed in an effort to assist community groups and to provide citizens access to the state’s regulatory bodies. The Environmental Equity staff is called upon to help the community understand the agency’s processes and the operations of the facility in question. Unfortunately, while these efforts seem to be well intentioned and certainly necessary, it seems that most of the attention the OPA gives out is helping people understand the permitting process. Also, innovative ways to move information out seems to be lacking. The Office of Policy and Regulatory Development (OPRD), in the future, plans to work with environmental equity section of the OPA to choose most appropriate ways to get information out, but most efforts seem not to be the high tech solutions offered to the public at large.

While enhanced efforts are currently being planned, the TNRCC is promoting its success in dispute resolutions on the environmental equity front. Here, the TNRCC and its environmental equity staff are acting as a liaison between industry and community, and, in particular, emphasizing determining what the issues are important and establishing dialogues between the affected parties towards developing mutually acceptable solutions through the use of alternative dispute resolution (ADR). In 1996 126 cases were settled through mediation, which lowers the cost of regulation to the agency. The staff seeks to alleviate problems that might escalate to contested hearings, class action suits, Title VI complaints or other legal issues.⁶ This often saves dollars and time, and most importantly helps promote cooperation within the community. However, this informal resolution of contested cases needs to be looked at critically, especially given the resource differentials that exist between the parties, where industry is often able to provide more “expert” evidence and where the government is looking for resolution rather than a court hearing, often the last recourse in

environmental equity disputes (Bullard, 1994).

Non-Profit Advocacy

Bringing together all parties to a dispute can be useful to its resolution and certainly necessary, but is not sufficient to understand empowerment. An examination of the activities of non-governmental organizations is necessary in order to more fully grasp just how empowerment works and why state efforts can be seen as lagging, but not totally absent. The Office of Colonia Initiatives (OCI) was established within TDHCA in June 1996 and is responsible for coordinating legislative initiatives involving border issues and manages a portion of the Department's existing programs targeted for colonias. These programs include housing finance and mortgage revenue bond set-asides, community development block grants and self-help centers, as well as the implementation of legislation effecting the colonias (Senate Bill 336; House Bill 1001; and Senate Bill 1509). Building on and expanding state efforts is the Texas Low Income Housing Information Service (TxLIHIS), a statewide nonprofit founded in 1988 whose task is to support low-income Texans' efforts to achieve decent, affordable home in a quality neighborhood. In the fall of 1995, the TxLIHIS entered into a partnership with University of Texas at Austin Urban Issues Program to conduct research on the housing needs of people living in Texas colonias and work with colonia residents to undertake housing programs of their own. The TxLIHIS argues that the achievement of this goal lies in the involvement and empowerment of the actions of committed individual citizens and through community initiatives of nonprofit organizations. As such, their efforts work to overcome obstacles to obtaining resources for housing development and community improvement and the TxLIHIS' work includes assisting residents to form groups that can sponsor housing programs, especially self-help housing programs. The TxLIHIS is also the staff for the Border Low Income Housing Coalition (Border Coalition), which brings together people who are concerned about colonia housing. With a membership more than 350 housing consumers, advocates, providers, and government officials, Border Coalition members work together to develop solutions to the problems of colonias with regular meetings held in Cameron, Hidalgo, Starr, Webb, Maverick, Dimmit, Zavala, and El Paso counties. The Coalition has provided assistance and support to five self-help housing construction centers in border counties, and has worked with state agency staff to overcome resolve obstacles allowing the issuance of tax-exempt bonds which covered colonia residents' high-priced real estate contracts to low-interest mortgages (TxLIHIS, 1997).

An addition to the Border Coalition work, TxLIHIS works with five other colonias-based community development non-profit organizations: Sparks Housing in El Paso County, Las Americas in Cameron County, Proyecto Azteca in Hidalgo County, Colonias Unidas in Starr County, and La Gloria Development Corporation in Webb County. Known as Iniciativa Frontera (Spanish for "Border Initiative"), this project trains leaders from selected colonias in policy development and community development, especially in implementing self-help housing programs. Work undertaken or completed in 1996 included the completion of 20 self-help houses, for an overall total of 80 homes, in Proyecto Azteca, as well as helping in the awarding of a US Rural Development 523 Self-Help contract. In Sparks an assessment of community needs was completed, a necessary preliminary step in designing a housing program as well as the

completion of a new community center, built with volunteer labor. As an empowerment model for self-help housing, Proyecto Azteca organized teams of three to five families to build their own houses, and through combined efforts, the families are able to build three-bedroom homes for about \$16,000 each. This self-help approach has enabled families with incomes well below the poverty level to build their own homes, which also met local building codes. In La Gloria the Coalition has worked to build plumbing in houses previously lacking, organized efforts to replace deeply rutted streets and faulty, undersized sewer mains and enrolled more than 200 residents in citizenship classes in Las Americas, as well as holding citizenship classes in Colonias Unidas and Sparks.

Also active in efforts to assist colonia residents has been the Valley Interfaith. The organization has ties to the Catholic Church and has a network of leaders in colonias and nearby cities. State Senator Truan lauded their efforts, “that’s where I have seen the most constructive leadership in South Texas and along the border” (*Austin American-Statesman*, August 19, 1998). It was responsible for bringing the Water Works, another nonprofit organization, in to assist in the completion of a water and sewer project. Valley Interfaith organized community residents to jointly take out a low-interest community loan made by Water Works and North Alamo Water Supply Company to finance the project. The residents will repay the \$10,000 in installments of \$10 per month (*Austin American-Statesman*, April 15, 1998). The loans helped residents build a 1,000-foot water line, pay for new meters and replace outhouses and cesspools with county approved septic tanks. Commenting earlier on proposed projects, Sister Judy Donovan, lead organizer for Valley Interfaith said that “Homeowners clearly need assistance in hooking up,” and that “we want to work with the Water Development Board to find a solution[s].” (*Austin American-Statesman*, November 13, 1998). And in 1999 several officials warned that the problems cannot all be solved in Austin and that nonprofit groups, self-help centers and other community organizations are essential (*Associated Press*, August 19, 1998). Other smaller organizations working in El Paso is the AYUDA advocacy group, which works in the San Elizario area on El Paso's southeast side, and the El Paso Interreligious Sponsoring Organization, which has noted that there has been major improvement, but some colonias are still falling through the cracks (*Associated Press*, May 22, 1999).

Renewed State Activity

The importance the Bush administration placed on the colonia issue impacted significantly on the legislative process. In discussing colonias in 1998, House Speaker Pete Laney while recognizing that problems need to be solved, noted that when the original bill was passed in 1989 nobody thought that it wouldn't be “difficult, expensive and complicated.” Laney went on to mention that “a lot of the members of the Legislature are not affected directly, so it’s not big on their radar scope” (*Austin American-Statesman*., July 15, 1998). Prior to the renewed interest in the colonias, efforts to improve the situations in the colonias at the state level had met with mixed results. Some efforts are pending, and some have been blocked. Proposed in 1997 and finally passed was legislation proposed by State Representative Irma Rangel (D-Kingsville) and Senator Carlos Truan was an amendment to the 1989 law that prohibits new utility connection in colonias. The measure would allow people who legally buy land in colonias to

receive utilities even though the plat may not be accepted by the county. In early 1999, local El Nopal residents and Water Works joined forces to build new water lines approved by the county and the water was turned on for the first time March 28. Prior to this the colonia depended on wells which needed to be re-dug on a yearly basis as they often filled with sand. The residents must pay for their own water because the colonia is considered private property and is not registered as a county subdivision. The residents had their doubts when the idea of going through Water Works to improve their water delivery system was first brought up. "There have been so many promises that we weren't sure whether to believe it or not," said Alicia Sanchez. "I began to believe it when I saw the construction men coming here to work" (*Austin American-Statesman*, April 15, 1998).

The impetus for the expanded efforts to enhance the living conditions in the colonias can be traced back to the high visibility visits made by State Secretaries of Texas Al Gonzales and Elton Bomer to the border area in late 1998 and early 1999. Governor George W. Bush, House Speaker Pete Laney and other elected officials pledged in 1999 to correct shortcomings in the \$479 million program, first passed in 1989, which was intended to provide water and sewer services in the poorest areas of Texas. "We don't want anybody living in conditions the likes of which some people face in the colonias of Texas," Bush said. "This is an issue we'd like to see solved," and further argued that no one should doubt the commitment of government to provide services in colonias. "I would say the progress is good -- not great, not excellent, but good -- certainly not poor," he suggested. But he said more needs to be done -- for example, to ensure that households are connected to water and sewer systems once they are constructed (*Associated Press*, August 19, 1998). U.S. Senator Kay Bailey Hutchison weighed in on the issue in early 1999, stating that she strongly supports a state bill that would prevent similar housing developments in the future. Mrs. Hutchison claimed that said she has long lobbied for aid to the colonias and had sponsored legislation to bring \$300 million in federal funds for their improvement. Remembering past visits to the colonias, she said that it was essential to upgrade the quality of life there to what we have come to expect in the state, noting that the "living conditions I saw in the colonias were unlike any I had ever seen in the United States." She continued by noting that for every \$1 the state spends aiding colonias is matched by \$5 in federal funds but money alone would not help the situation and ended by saying that "it is ridiculous to spend that money if we are just going to continue allowing more colonias to be built as we speak" (*Associated Press*, February 17, 1999).

Devolution of power: "Empowerment" or Burden Shifting

As the legislative session progressed in the spring of 1999, bipartisan support was built in the Legislature for improving colonia conditions, and several bills were under consideration. The most sweeping proposal was an omnibus bill sponsored by Senator Eddie Lucio Jr. (D-Brownsville) who chairs the Special Senate Committee on Border Affairs. This legislation gave counties and state agencies new tools and powers, including development inspectors, engineering oversight, wider enforcement authority and a team of ombudsmen to function as troubleshooters (*Austin American-Statesman*, March 19, 1999). Other legislators, including Senator Carlos Truan, (D-Corpus Christi) and Representative Fred Hill, (R-Richardson) also approved of giving more authority to the Texas Water Development Board.

Representative Ron Lewis (D-Mauriceville) introduced a measure to grant counties broader powers to regulate water, roads and sewers. Other legislation filed suggested that a county Planning Commission needed to be established in certain counties within 50 miles of the border to help halt the growth of colonias. “By creating County Planning Commissions, we are giving counties a stronger oversight so that the creation of colonias will be stopped,” said Representative Henry Cuellar (*Associated Press*, February 17, 1999). The need for new regulations was clear to Hays County commissioners more than a year before. They had adopted a bold set of development and subdivision rules in an effort to prevent flag lots and other substandard development. However, as the most recent legislative proposals point out, the rules rested on thin legal ice (*Austin American-Statesman*, July 15, 1998).⁷

In State Senate Bill 1421, an omnibus measure concerning substandard border developments known as colonias, was passed in spring of 1999. The bill allows for several important changes in how the state allows for regulation of the colonias. The reforms fall under two general areas, one concerning getting services to the people and the second concerning the rules and organization of state agencies. The bill would allow counties to hire subdivision inspectors and charge fees to cover the cost. In order to assist colonias residents acquire water and waste water (also electricity) service current rules that allow for their hookups in existing subdivisions would be relaxed for those colonias that do not meet road-width standards and other regulations where compliance would be extremely difficult or costly. In part, this has come about as a result of the EPA relaxing its standards. In order to lower costs and save the residents money, a rule that requires plumbing work in certain areas be done only by licensed plumbers would be waived.

As far as allowing colonia residents access to basic water services, some steps have been made. Here, the ability of the state to arrange resources to problem solve can be much more effective than those of advocacy groups. While the efforts of non-profits like InterValley Faith and Border WaterWorks cannot be underestimated, the ability of government entities to access resources cannot be ignored. In the case of the colonias, the ability of the state government to coordinate bureaucracies and tap into development aid is seen in Secretary Bomer’s efforts to use the Texas Water Development Board, the Texas Department of Housing and Community Affairs and the North American Development Bank to assist in the construction of water and sewage lines to 13 border counties, with special emphasis on El Paso county. The “Texas Plan” would hookup about 25,000 households and around 100,000 people to water and sewer main lines already built or under way. “The Texas Plan promises dramatic improvements in the quality of life for more than 100,000 Texans who live in the border region,” Bomer said. “The Texas Plan also shows how state agencies can work together to operate more like a business than a bureaucracy” (*Austin American-Statesman*, May 18, 1999). The North American Development Bank (Nadbank) is a binational agency based in San Antonio which finances border improvements in Mexico and the United States under the North American Free Trade Agreement. Bomer’s request is the first by an American state for Nadbank aid; previous requests have come from the local level. The Nadbank is a binational agency and its grant money comes from the Environmental Protection Agency. As part of the process, the Border Environment Cooperation Commission, based in Juarez, Mexico, would certify the engineering and environmental specifications for the proposed connection plan.

As far as a re-organization, expansion, and rationalization of state efforts, the bill allows for counties

to establish planning commissions to regulate new development but does stop short of granting the commissions zoning powers as well as broadens the power of the state attorney general's office to enforce subdivision rules. It also allows for the Texas Water Development Board to assign territories for water and sewer services to the most capable city, water district or other entity applying for the right, ending jurisdictional disputes that in some cases have dragged on for years. The TWDB can also take over a project if local officials dawdle. The bill also requires that the TWDB oversee the local governments' selection of engineering companies for water and sewer projects. If they determine that engineering plans are inadequate, the TWDB can dismiss companies, hire new companies or do the work itself.

The ability to pass the bill over the objections of some developers is significant. This challenges the power of real estate developers in the Valley. As the bill was under discussion in the Senate, the 10 year old requirement, known as the "build-it-or-bond-it rule," which ordered developers to either install a septic system or provide a financial guarantee, such as a bond or a letter of credit, that border counties could use to pay for a septic system if the developer folded, was objected to by developers. "It becomes a very expensive financial burden," argued Henry Flores, a lobbyist representing the Valley Association for Quality Development, a trade association for developers in the Valley. Such a bond "might have to be maintained for years, or even indefinitely, until a buyer of a lot starts building a house" (*Austin American-Statesman*, May 4, 1999). Arguing against the amendment to the bill were several non-profit organizations, including the Water Works, who argued that the residents would be solely responsible for building a septic system, those same residents who are the most unlikely ones to be able to realize a bank loan to build one. Amy Johnson, Water Works' lawyer, told the House Land and Resource Management Committee that her group would urge that the bill be defeated if developers got their way on septic rules. Supporting her position was John Henneberger, a member of the Border Low Income Housing Coalition, who argued that the "build it or bond it" provision was essential to keeping the proliferation of substandard living conditions like the colonias from happening again (*Austin American-Statesman*, May 4, 1999).

And finally, in an effort to help coordinate state and local efforts, the bill authorizes the governor to designate a state agency, such as the secretary of state's office, to coordinate colonia initiatives by various state and local agencies as well as creating, subject to an appropriation estimated at \$300,000 a year, positions for six colonia ombudsmen to serve as trouble-shooters in border counties (*Austin American-Statesman*, April 7, 1999). This is an important step, as previous debates over the creation of efforts to coordinate agency operations foundered on this very point. In 1997 Sen. Truan's efforts to better coordinate state agency efforts through the creation of a system or regional contacts explicitly devoted to transmitting information on colonias was killed by a gubernatorial veto. The bill was vetoed, according to Bush spokesperson, to keep government small. Truan argued that partisan politics were to blame, arguing that the GOP governor did not want to see Attorney General Dan Morales, a Democrat, head the coordinating agency (*Corpus Christi Caller Times*, March 29, 1997, June 25, 1997). In September of 1999 the six colonia ombudsmen were appointed and are based in Cameron, Hidalgo, Webb, Starr, El Paso, and Maverick Counties. In announcing their appointment, Bomer noted that "on the scene" supervision was needed to solve colonia problems "these six ombudsmen will be my eyes and ears on the border and ensure that our problem-solving efforts are coordinated and effective" (*Associated Press*,

September 1, 1999). At this same time, Scott Storment was appointed as Coordinator of Colonia initiatives for the State of Texas.

Conclusions

“Awareness about problems in the colonias and the bipartisan motivation to do something about it appears to be at an all-time high,” noted Secretary of State Elton Bomer on the various bills circulating in the Legislature, and added that “I have an incredible sense of optimism about the relief that will come to colonias residents if this legislation is passed into law” (*Austin American-Statesman*, March 19, 1999). As Sen. Elliot Shapleigh sees it, his colleagues can no longer afford to pay lip service to border issues. He added that nobody expects a single magic bullet or cure can be found overnight and that it will take “two, three, four sessions before we reach true equity” (*Austin American-Statesman*, March 1, 1999).

Just as Shapleigh noted that no cure could be found overnight, it also needs to be mentioned that there are often unintended effects in politics, and the case of legislation over the support of colonias bears this out. In considerable contrast to the conditions found in most colonias, where basic services are desperately sought out, Ingleside on the Bay has recently been declared a colonia. Here one can find a marina, a private beach club, and dozens of \$100,000 homes. Most houses are well-kept brick structures on neat, shaded lots. The average home is valued at \$75,515. Many are owned by retirees on fixed incomes, or by blue-collar workers at the nearby Ingleside Naval Station. By most objective measures, Ingleside on the Bay is not poor. According to the Department of Human Services, only one household out of 276 here is receiving welfare, and only six receive food stamps. “Just from that indicator, it's not a low-income area at all. Some areas in the Valley have 10 percent of the people on welfare and a third on food stamps,” said Michael Uhrbrock, a Texas Department of Human Services spokesman (*San Antonio Express*, June 20, 1999). But because the per capita annual income of more than 60% of the population was below \$13,763, it was made eligible for programs that supported colonias. As such, Ingleside is eligible to receive a \$2.6 million grant. “The results of the survey conclude with 95 percent certainty that the average per-capita income for the project area is between \$10,634 and \$13,82, which met the income eligibility requirement,” TWDB announced in July. “We beat it with flying colors. I guess it couldn't be any sweeter as far as we're concerned,” said Dick Ehmann, a city councilman and longtime resident (*San Antonio Express*, July 14, 1999). Former Texas Representative Alejandro Moreno, who sponsored the original colonias bill, said Ingleside on the Bay was not what lawmakers had in mind back in 1989. “This certainly doesn't sound like the type of project we intended when the legislation was approved,” and he added that he found it “strange when there are much more needy communities that are waiting to get funding. The thing was set up so the neediest would receive the largest grants” (*San Antonio Express*, June 20, 1999).

Most members of a special Senate committee on border affairs said that they generally support the Bush administration's plan to support extending water and sewer services to poor border neighborhoods, but they also noted that more attention needed to be paid to affordable housing, jobs and education (*Austin*

American-Statesman, February 26, 1999). In Bomer's testimony before the committee, Sen. Lucio interrupted Bomer's testimony to urge a broader focus. "It's not enough to require better building codes," Lucio said. Sen. Eliot Shapleigh, seconded Lucio's comments, noting that "we can regulate all we want," Shapleigh said. "We can enforce all we want. We can extend services all we want. But if we don't work on the financing end, I'm afraid we're just going to move the problem however many miles it would take folks to get there" *Austin American-Statesman* February 26, 1999). He went on to note that basic housing in the border region costs \$40,000 but that most families have income to afford only a \$25,000 house. Lucio picked up on Shapleigh's theme, "it is also just as important to realize that, as long as the border region remains the most impoverished and unemployed, that the misery associated with poor living conditions will continue" (*Austin American-Statesman* February 26, 1999). Efforts such as SB 1421 may help in improving the worst conditions in the colonias, something that unified and coordinated state action can do, in conjunction with efforts of non-profit advocacy groups who have supported the residents of the colonias. Bringing together state, federal and international resources and actors in a coordinated manner will tremendously enhance the environmental and social conditions of the colonias, possibly empowering them in their efforts to achieve equity. However, the questions of effective implementation remain, and as the example of Ingleside by the Bay points out, there is no assurance that this will always be done. The cumulative challenges faced by colonia residents are formidable and unlikely to be surmounted if they remain unempowered. The factors responsible for depriving colonias of political empowerment have to change. There are no immediate indicators to suggest that colonia residents are on the verge of wielding any significant political influence.

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ENDNOTES

1. It is almost as if a system of malicious neglect where some bizarre bargain exists where the people are allowed to stay there as it is too difficult to “extract” the legals from illegals and that the unspoken bargain is that they cannot be afforded services for the privilege of staying.

2. See the flooding that lead to severe dislocations in Nueces county in 1997 and the devastating floods near Laredo where scores of individuals were killed.

3. Shapleigh went on to argue that the border has “has the youngest and fastest-growing populations. Yet, there are more higher education programs in one county -- Lubbock -- than in the 43-county (border) region.”

4. The implications of the state's buyer-beware policy on rural land development took Janet Williams, Amy Norwood and other residents of the 35 South Ranches subdivision by surprise. The subdivision is a flag-lot development of about 60 mobile homes in a former pasture five miles east of Kyle and 20 miles south of Austin. The developer informed them and other buyers that each would be responsible for building a private driveway. But the buyers had no idea how much time, work and money it would take to tame the black clay soil east of Interstate 35. Norwood estimated that she has spent more than \$3,000 on gravel, tractor rentals and fuel. She and a friend did the work themselves. The job is only half finished. Still, her driveway, which is more than 1,000 feet long, is far superior to the rutted paths leading to her neighbors' mobile homes. Norwood has also excavated a channel across her yard to divert runoff that was

eroding the drain field of her septic system. Williams' car has become mired in mud several times when rain made her driveway impassable. That has caused her to miss work. Norwood, whose driveway runs next to Williams', has given her neighbor permission to use the better route. Other neighbors are using it too. About a dozen households in the subdivision have problems with their septic systems, in some cases as a result of improper installation by the developer, according to the Hays County Environmental Health Department. Erosion gullies have formed in drain fields, and the soil is often damp and foul-smelling, residents say. "I walked out there one day last summer and I sank up to my knees," Williams said. "It just swallowed me." Norwood said odors come and go. "On some days you can smell it up through the drains in the house, like when you brush your teeth," she said. "I bought this place because it was going to be my dream home. It hasn't turned out that way. "It makes me feel almost embarrassed that I allowed myself to be taken advantage of. But if there were other laws and regulations, maybe it wouldn't happen to somebody else."

5. In a real sense there is a wide difference between the environmental equity questions and concerns of the urban areas, which also tend to disproportionately affect African-Americans and the issues of concern to the colonias. This even further fragments the pressure that environmental equity groups, environmental groups and general advocacy groups for “people of color.”

6. Office of Public Assistance (TNRCC, Environmental Equity August 18, 1997)
Authorizing Actions and Agreements

Title VI of the Civil Rights Act of 1964:

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in all federally assisted programs. Title VI §2000D states that: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The regulations of Title VI apply not only to intentional discrimination but also to policies and practices that have a discriminatory effect. 42 U.S.C. §2000d-1 states that: A recipient shall not use criteria or methods of administering its program which has the effect of subjecting individuals to discrimination because of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex. In the spirit of compliance with this regulation, federal programs are evaluating their policies to ensure the elimination of practices that may be neutral on their face but discriminatory in their effect. The United States Environmental Protection Agency's (EPA), Office of Civil Rights (OCR) is charged with enforcing Title VI of the Civil Rights Act of 1964. In carrying out these duties, OCR processes Title VI complaints filed with the EPA, including those with environmental justice concerns. EPA has received approximately 27 complaints since September, 1993, which is when it received its first complaint. Of the 27 complaints, 16 are under consideration or have been accepted for review, and 11 have been deemed not eligible.

Since the TNRCC receives federal funding, it must adhere to Title VI of the Civil Rights Act of 1964.

Also important is US Federal Executive Order 12898:

On February 11, 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," to focus federal attention on the environmental and human health conditions in minority communities and low-income communities. The Executive Order directs federal agencies to develop, by March 24, 1995, an Environmental Justice Strategy that identifies and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations. This strategy was published by the EPA in April 1995. Because many of the TNRCC's programs are driven by EPA grant funding, including the work of the Environmental Equity Section, the strategy developed by EPA will affect TNRCC activities relative to environmental equity

7. The flag-lot approach keeps officials in the dark until it is too late to manage growth, he said. "We find out about it when houses are on the ground and people are living there and they apply for a septic tank permit," Barton said. "That's a pretty uncomfortable position if they're in a flood plain or the lot's too small for a septic tank." Hays is one of the state's fastest-growing counties, with a population that soared from 65,000 in 1990 to nearly 100,000 today. The population is projected to rise as high as

165,000 by 2010, with most of that growth occurring outside cities' jurisdictions (Austin American-Statesman, July 15, 1998)