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# Let's Dismantle (Largely but Not Fully) the Federal Water Resource Development Establishment, or the Apostasy of a Longstanding Water Development Federalist

## Keywords

Water Law, Environmental Law, Regulation

# **Let's Dismantle (Largely but not Fully) the Federal Water Resource Development Establishment, or The Apostasy of a Longstanding Water Development Federalist\***

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I now live in Fort Collins, Colorado, a rapidly expanding city of some 50,000 people, and I serve as a member of the Fort Collins Water Board, in addition to teaching and doing research with respect to water and related land resource uses at Colorado State University. Thus, in recent years, I have been observing federal-state-local relations with regard to water from a diametrically opposite perspective than that provided by my many, previous years of federal service in Washington, D.C. The views which follow endeavor to reconcile my research findings, observations, and experiences from both perspectives.

## **I. SUPPORT FOR FEDERAL DEVELOPMENT DYING**

To begin, I will make this general observation, with which others may want to strongly differ: The federal water development program is politically dying, if not already dead. In recent years, federal development programs have doubled (not even keeping pace with inflation in construction costs) while federally-assisted state and local programs, largely for wastewater management, have increased 16-fold. Clearly, national value priorities have changed.

The recent emergence of major federal responsibility for water quality was accomplished by the Water Pollution Control Acts of the last decade. With hardly a dissenting Congressional vote, the primary force in water pollution control was removed during the 1960s from the state to the federal level. This new federal responsibility was strongly supported by public opinion, as indicated by many opinion polls. No such public opinion, or even solid interest group enthusiasm, calls loudly enough to be heard these days for federal water and related land development.

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The last really big authorizations to the Bureau of Reclamation for federal water development in the West were those for the Central Arizona Project in 1968 and, earlier in the 1960s, for the Garrison Diversion and Oahe projects in North Dakota and South Dakota, respectively. These three big projects stemmed from implicit political understandings of decades before. They appear now as being pursued with something less than ecstatic political enthusiasm, even within the areas which they are presumed to benefit directly.

Similar observations could be made, generally, with respect to the water development programs of the Corps of Engineers and the Soil Conservation Service.

How might one explain this decline in national political support for federal water development projects? Let us discuss a number of possible interrelated explanations.

*A. Opposition of Office of Management and Budget*

There is no question that the institutional position of the Office of Management and Budget and its predecessor, the Bureau of the Budget, has been to oppose somehow all federal water development projects. Regardless of the political party of the President, this has been the institutional position for over 20 years. Many arguments and devices have been used over the years to implement this position. These include diversionary tactics such as encouragement of the establishment of national water commissions, suggesting unfeasible cost-sharing or reimbursement schemes, and insisting upon politically untenable benefit-cost standards. I can recall no federal water development project (including federally-assisted watershed projects of the Soil Conservation Service) that these budget agencies have strongly supported. This institutional position of this well-entrenched professional staff-arm of the President has undoubtedly helped to bring about political malaise, but cannot really explain it.

*B. Environmental Movement*

The rise in political legitimacy during the 1960s of wild and scenic rivers as an alternative use of rivers, along with other environmental concerns with rivers and lakes, has openly, forcefully, and successfully challenged the traditional federal water development programs. But the environmentalists would have been forced to compromise with federal

water development much more than they have, if national political vitality in support of development were still abroad in the land. The environmentalists have contributed to this loss in vitality, but their strength does not fully explain it.

*C. Decline of Federal Role in the Development of the West*

The United States was developed from East to West. The origins of the water development functions of both the Corps of Engineers in the early 19th century and the Bureau of Reclamation at the end of the 19th century stem from national concern for development of the West, first to the Mississippi River and then through the arid West to the Pacific. Both programs stemmed politically from the desire to support agriculture: the interests of what were seen as pioneering, reliable, individualist farmers and ranchers. This support was given by the federalist Republican Party of Abraham Lincoln to the navigation program of the Corps of Engineers and by the federalist Republican Party of Theodore Roosevelt to irrigation development by the Bureau of Reclamation. The federalist Democratic Party of Franklin Roosevelt put a largely bipartisan federalist stamp upon water resources development, except with respect to federal public power development.

Quite apart from political response to the interests of our former national agricultural and rural majority, these federal programs could be justified more generally by the substantial failure (except for the early Erie Canal) of state navigational promotion efforts with federal land-grant support during the Canal Era, 1817-1838, and by the great difficulties encountered in nonfederal public and private irrigation development in the arid West in the latter part of the 19th century. Federal responsibility for planning, financing, constructing, operating, and maintaining navigation and irrigation projects was justified at the times of their origins by: (a) the superior financial capability of the federal government to finance projects whose benefits would accrue over a long period of time; and (b) the ability of the federal government to utilize most effectively the very scarce engineering and other scientific talent available to the Nation until more recent times.

Both of these justifications for federal direct responsibility are no longer valid. To the extent federal financial help is needed for nonfederal water development agencies, grants and

loans can be made as is now the common practice in other areas of governmental concern. With the plethora of expert consulting engineering firms now available to states and local governments, to say nothing of their own increased professional personnel aided by financial grants under Title III of the Water Resources Planning Act since 1966 and expanded expertise in state land-grant universities by use of funds provided under the Water Resources Planning Research Act since 1965, federal professional expertise is no longer as essential as it once was.

All of this adds up to the fact that Western development no longer lights fires of political imagination, even in the West. The West is now as developed in large part as the East. And the Western states no longer provide a bloc within the Congress unequivocally dedicated to federally-promoted Western development.

#### *D. Needed Federal Development Largely Accomplished*

Among the interrelated factors that help to explain the decline in political support for federal water development projects is also the fact that the federal job has largely been accomplished. Probably this fact is generally perceived by many public leaders as well as by people generally.

The main stems of the Columbia, Colorado, Missouri, Ohio, Tennessee, Mississippi, Arkansas, Rio Grande rivers, and probably some others, have already been developed, more or less fully. Moreover, except for engineering dreams of large-scale continental water transfer, the potential large-scale irrigation schemes of the West have been, or are now being, accomplished.

#### *E. Emergence of the National Urban Majority*

Finally, among the interrelated factors that help to explain the decline in political support of water resource development projects is the political emergence of a national urban majority. Agriculture and other resource development concerns are not a major interest of this relatively new national majority; they are foreign to it.

In the area of domestic policy, the urban majority is primarily concerned with urban problems: housing, transportation, health, welfare, air and water pollution, urban open space and recreation areas, energy, etc. Its concern with the rural and natural hinterland, expressed effectively now for some 10 or

more years, is that of the environmental movement. Urban people, not rural people, strongly support establishment of wilderness areas, national parks, wild and scenic rivers, and fish and wildlife enhancement.

The federal response to urban problems has not been a federalist response of direct public service such as that of the Corps of Engineers and the Bureau of Reclamation. The federal response has been categorical financial grants-in-aid to state and local governments and, more recently, block grants and general revenue sharing. Grantsmanship is now the dominant mode of federal-state-local relations.

Comprehensive major river basin plans for federal development of water and related land resources are foreign to "urban and regional plans" of urban professionals (both in and out of universities) and most of the urban public. They are two worlds apart. The emergence of the urban majority, nationally, and increasingly in each state (*e.g.*, recently in Colorado), indicates that this anachronism needs to be faced frontally and overcome at the level of national policy. But, in so facing this problem, it needs to be remembered that water resource development is still needed in this nation, particularly that which is intrastate.

## II. WATER DEVELOPMENT STILL NEEDED

Urban water management is clearly a need for the long-term future. Such management includes for many urban areas development of new domestic and industrial water supplies. For all areas it includes wastewater management and reuse of water to the greatest practicable extent. Urban flood plain management, including development of flood protection works in appropriate circumstances, is also a clear need for the future. Both urban water management and urban flood plain management are major urban public concerns.

The extent to which these needs and public concerns will require assumption by states of direct state responsibilities, as a service to two or more urban communities or for river basin management, will vary from state to state.

North Dakota, South Dakota, Nebraska, and Idaho are, possibly, the only states in the West with the economic need for new irrigation projects and with the agricultural-rural majorities which would support state planning, financing, con-

struction, and operation and maintenance of state or special public-district irrigation works.

The longrun viability of rural watershed protection schemes of the Soil Conservation Service is not clear. No doubt it varies substantially from state to state. If this financial-assistance program were converted by the Congress to the more usual grant-in-aid form, with the technical personnel being state, rather than federal, employees, then the response of each state would correlate, presumably, with the degree of agricultural-rural political power in each state.

Not only are intrastate water developments needed in the future, some interstate water developments will also be needed. Continued federal responsibility for such new interstate navigation developments as are needed and politically viable is clear. Major elements of flood management on interstate rivers is also clearly federal.

What is not clear is the need and political viability of major federal urban water management schemes for interstate areas. The Corps of Engineers has tried valiantly to explore whether it has a viable role in urban water management in its Northeast Water Supply Study and other such studies. A hard question, for example, is this: Would a federally planned, financed, constructed, and operated wholesale water supply and pollution treatment scheme for multistate Metropolitan New York be politically viable? If not there, then where? Certainly not Denver or San Francisco.

Other relevant questions regarding interstate situations are these:

1. Is the responsibility that the federal government has recently assumed for water quality enhancement on the Colorado River unique? It could be.
2. Are the federal-interstate compact commissions on the Delaware and Susquehanna Rivers really viable as agencies to plan, finance, construct, and operate needed management works? They are not as yet.
3. Are the future domestic and foreign demands for American agricultural products such as to require development by the federal government of large water-transfer schemes for new irrigation development or for rescue of agricultural areas



that are mining their groundwaters, for example, West Texas? I doubt it.

### III. NEW FEDERAL-STATE-LOCAL SYSTEM

If the foregoing analysis is basically accepted, then obviously fundamental changes are needed in the authorization of federal, state, and local responsibilities with respect to water.

The most important strategic action that the Congress needs to take is to repeal the authorizations of the Corps of Engineers and Bureau of Reclamation to plan, finance, construct, operate, and maintain further intrastate projects. This action should include deauthorization of the intrastate projects within the \$30 billion and \$8 billion of authorized, but unfunded projects that the Corps of Engineers and the Bureau of Reclamation, respectively, are said to have at the present time. The Congress should also repeal the authorization of the Soil Conservation Service to plan and supervise construction, etc., of small watershed protection projects. Finally, the Congress should repeal the Small Reclamation Projects Act.

These Congressional actions would clearly place basic decisional responsibility for intrastate water development upon state governments. State governments would then have to reappraise the division of responsibility for action between state governments and local governments. To make this change practicable, the Congress should authorize a program of block grants and loans to aid states in undertaking the types of projects formerly undertaken by the federal agencies.

Though the operational clarity of the distinction between intrastate and interstate is obviously critical to the working out of this proposal, working out this distinction in careful detail cannot be attempted here. Suffice it to say that in my judgment it is capable of being operationally made.

Under this proposal the federal government would have responsibility for planning, financing, constructing, operating, and maintaining interstate projects, except for those undertaken by federal-interstate compact commissions. Because federal, interstate, and intrastate concerns with water and related land use will continue, mechanisms for federal-state coordination and comprehensive planning will be needed in the future. The Congress, therefore, should study the present roles of

federal-state river basin commissions created under Title II of the Water Resources Planning Act of 1965, the federal-interstate compact commissions on the Delaware and Susquehanna, the several federal regional commissions modelled on the Appalachian Regional Commission, and the federal executive councils created by the Executive Branch. In addition, it should study the basic procedures involved in federal-state-local relations embodied in Office of Management and Budget Circular A-95 as well as those directly in the water field. The upshot of such study should be Congressional reconciliation of these mechanisms and procedures in law.

These proposals could overcome the very substantial frustration that exists today in meeting water development needs. State people who have made a career of promoting federal projects at federal expense, and opposing (implicitly if not explicitly) state assumption of responsibility including financing, will need to shift their activities. The need for carrying out these proposals is sufficiently great to justify Congressional consideration as soon as this may be practicable.

#### IV. CONCLUSION

These proposals are radical. They involve radical changes in major institutions of government, and for people in them with whom I have long been associated. However, the importance to society of academic freedom (including tenure) is not just that an incumbent professor possess it but that he use it as he sees the need. I have now used it as I see the need.

I expect that from many quarters my apostasy in this paper will not be well-received—to say the least. Long-standing friendships that I value may be broken up. Nevertheless, I believe these proposals are worthy of real debate. If my present views can be successfully refuted and buried, so much the better. My own original faith in water development federalism will be vindicated. But if my views are not successfully refuted, or better proposals are not forthcoming, then let us get on with the task of further designing a new system of federal-state-local water and related land jurisdictions that makes professional sense and has political vitality for the future.