

NEW DIRECTIONS IN WESTERN WATER DEVELOPMENT*

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Over the three years I have been involved in the daily workings of the political process in Washington, D.C., I have attended a variety of meetings on water and water law. Although I had some experience in the needs of the local water districts, which I had worked with in local government, much of what I absorbed during these meetings and in my position the first year was new to me. For the next few years, it seemed a lot of effort was put into getting something new accomplished in the field of water resources, but very little of it was getting anywhere. Since December 1983, we have seen these efforts come together. A lot of critical steps have been taken by the department and the administration which have added some new elements to the national water picture. Things are changing in the way we are dealing with the states when it comes to developing and quantifying their water resources--changes that are for the better.

The three key elements in these changes have been the realignment of responsibilities within the Department of the Interior, which resulted in the creation of a newly designated assistant secretary for Water and Science, the enunciation of a water project financing policy by the president, and the finalization of rules and regulations implementing the Reclamation Reform Act of 1982. Some of these changes have a more direct impact on New Mexico than others, but all will play an increasingly important role as we work with you in the future.

From the water perspective, the realignment accomplished three things. First, it brought all of the major actors in the department's water research and development teams together under the same leadership for the first time since early in this century. Interestingly enough, both the Bureau of Reclamation and the Bureau of Mines were originally

*Because Jed Christensen introduced a U.S. Bureau of Reclamation film on the Rio Grande entitled "Ribbon of Life," time did not allow for his speech. The text of that speech is presented here.

part of the U.S. Geological Survey (USGS). All three agencies are now under the same assistant secretary.

Second, it placed all of the major agencies with research responsibilities under the direction of one assistant secretary. The Bureau of Mines and the USGS both carry out pure and applied research in mineralogy, geology and geography, while the Bureau of Reclamation carries out research in concrete and other construction related matters.

Finally, the realignment united most of interior's agencies that have overseas development assistant programs. All three agencies have major overseas programs aimed at helping developing countries build resource based economies. Interior Secretary William Clark, with his background as National Security adviser and experience in the State Department, has shown particular interest in these programs. We are likely to be seeing increasing involvement by Interior Department bureaus overseas. The Three Gorges Project in China, which includes plans for the largest dam in the world that far overshadows the bulk of Coulee Dam and the height of Hoover Dam, is one of the many projects the Bureau of Reclamation will be involved in, at the request of the People's Republic of China.

Some of you might not be aware of the major functions of the USGS Water Resources Division. Previously, the survey was under the direction of the assistant secretary for Energy and Minerals. Most of the attention focused on the energy and strategic and critical minerals needs of our country. That is an important task. Unfortunately, the Water Resources Division of the USGS didn't receive the public attention it should have received under that organization. The realignment has helped bring the important work the USGS does in tracking our nation's water supply and quality situation into the mainstream of departmental decision making.

One of the products of the USGS Water Resources Division is the National Water Summary for 1983. Some of you may have seen it, and more than likely you've read about it in newspapers. The summary was initiated under Secretary James Watt, who thought it would be useful for leaders in all levels of government to have a current status report on our nation's water supply. The USGS produced this volume in less than a

year, relying on a network of more than 800 federal and nonfederal cooperators and a water resources data base that stretches back almost a century. Judging by the response we've had so far, the National Water Summary hit the mark. Newspapers in every state covered the release of the report, and the first 8,000 copies were sold out in less than two months. We are now reprinting the 1983 edition, as work continues in preparation for next year's summary. The summary was originally viewed as purely an informational document. We believe this is the best way to approach future water summaries. While it is likely that much of the policy analysis that is done by the Interior Department and other federal agencies will be based on information from the summary, the summary will continue to be an informational, not a policy document.

As the Department of the Interior, the other federal agencies that make up the Cabinet Council, and ultimately, the president, approach the task of creating federal water policy, we've found that solid, current information is invaluable in reaching a consensus. Sometimes the information needed is purely technical, but frequently decision making involves a much wider picture. During the extensive discussions held within the administration over the past three years on cost sharing policy, we had to consider the realities of the federal budget, the historical and legislative backgrounds of the dozens of federal agencies that deal in water development, and the regional impacts of certain proposed actions on the different regions of the country.

After years of discussion within and among the agencies that regularly deal in water development (and admittedly with a good deal of confusion in Congress and among the water-using public who were keeping a close tab on what was being proposed), the president has issued a statement that outlines this administration's policies. As we have pointed out since the president made his views known in a letter to Senator Paul Laxalt early this year, Secretary William Clark, Assistant Secretary Bill Gianelli, and Director David Stockman all set administration policy in their different positions. However, only one person can declare the policy of the administration on any given issue--President Ronald Reagan. The discussions that have gone on before

are all preliminary. The administration's policy has been clearly set and we intend to follow it.

Essentially, the policy that the president set has two major components. First, it requires each agency to negotiate nonfederal financing for each water development project it undertakes. I'm certain many of you are aware of the discussions within the administration and within Congress regarding fixed formulas for cost sharing. Because the existing financing mechanisms used by water development agencies such as the Corps of Engineers, the Soil Conservation Service and the Bureau of Reclamation are so different, trying to fit all of the differing programs into one fixed formula simply doesn't work. For example, Corps of Engineers' projects don't require repayment contracts with the beneficiaries to recover the capital costs, but Bureau of Reclamation projects do. Projects built by the Soil Conservation Service already require that the nonflood control aspects of each project be paid for up front by the beneficiaries. The end result of a fixed formula approach to cost sharing would be an inequitable program. Beneficiaries who aren't currently required to guarantee the return of their project funds to the U.S. Treasury certainly would have to be more responsive and provide an increased amount of funds. However, those who already provide repayment would be burdened with additional payment responsibilities. Clearly, that is not the fairest approach to the problem. The approach adopted by the administration will still require greater financial participation by all water users, but it doesn't unfairly penalize one group of water users to the benefit of another.

The president's policy also recognizes the vast differences that exist between agencies, not only in their financing arrangements, but also in their entire responsibilities. While this might seem a fine point with little bearing on the question of financing, it does have some real impact in the West.

Let's look at two specific areas of Interior Department responsibilities. Because the legislation creating the Bureau of Reclamation essentially makes it a western agency, its projects are built in what you might call public land states. Some of the benefits of our

projects go to the public lands. Now, if a fixed formula were to be applied, who would pay the required nonfederal contribution for the benefits that accrue to public lands? The answer is probably nobody. The end result, under a fairly strict interpretation of the policy that has been discussed and is still currently part of legislation before Congress, would be no project. Without the fixed level of nonfederal funding, a project simply wouldn't get built.

In other instances, Bureau of Reclamation projects provide benefits to Indian communities. Congress already has enacted legislation that says that certain project features are to be built without cost to the Indians. If a fixed formula were to be applied, who would pick up the nonfederal portion covering the Indian benefits? Again, the end result would be no project.

The second major component of the president's letter was his statement regarding Safety of Dams work at federal dams. The president said Safety of Dams work at federal dams was a federal responsibility. Although this may seem like a statement of the obvious, several members of Congress and some interest groups didn't see things the same way. They forgot that the mandate to bring unsafe dams up to the proper level of safety didn't come as a request from western water users. It came by a decision of the federal government.

The safety problems at federal dams are not results of poor operation and maintenance practices. Instead, they have discovered as newly available hydrologic and geologic studies have revealed problems at dams previously thought to be safe.

As an alternative to safety modifications at these dams, some have suggested holding the reservoir water levels artificially low. I don't need to point out to you the results of such an action. Not only does it ignore the fact that valid contracts exist for the delivery of water from these projects, it isn't a very wise use of your resources. Lowering water levels would result in an artificial drought in many areas of the West.

The president did state that if new benefits resulted from the Safety of Dams work, the project beneficiaries would be expected to pay for

those new benefits. That is reasonable and proper. Westerners have steadily demonstrated their willingness to meet the financial requirements necessary to develop water supplies, and we expect that they will continue to do so in the future.

But, we also expect that things will be changing a bit too. We can plan on seeing greater participation in project planning and design as the local beneficiaries work with us in the development of their projects to ensure that their funds are being spent the way they feel they should be. There also will be other changes in the way the Bureau of Reclamation handles its day-to-day responsibilities. As a result of the Reclamation Reform Act of 1982, many of those changes already are underway.

Because much of the impetus for reform of the Reclamation Act of 1902 came from farmers in California, many westerners have tended to view the Reform Act as a purely California issue. Nothing could be further from the truth. Parts of the new law will have an effect on every one of the reclamation states. Rather than give a section-by-section analysis of the major elements of the new law, I'd like to highlight the areas that will have an impact on New Mexico.

One of the biggest changes will be in the area of leasing practices that have been common to reclamation farmers throughout the West. In the past, unlimited leasing was allowed. The new law makes some changes in that practice, and also specifies the terms and forms of acceptable leases. Instead of verbal agreements, which I understand are quite common, all leases must now be in writing. Leases for perennial crops may be written for a term of up to 25 years. All other types of cropland are limited to 10-year leases.

The issue of leasing is at the root of the most controversial part of the 1982 Reclamation Reform Act. Although most of you should be familiar with the more elementary parts of the law, it might be useful to give you a quick review of the choices open to districts and individuals. Basically, the new law allows an individual to receive irrigation water for up to 960 acres of owned land. Water delivered to leased lands above the 960-acre cap will carry a full-cost component. One section of the

law extends the application of Class 1 Equivalency to districts that choose to come under the new limits. We also have provided rules that allow individuals who make an irrevocable election to come under the new law with the opportunity to apply equivalency formulas to their operations, under certain circumstances.

The new law does allow individuals and districts to elect which of the limitations they will accept, the 160-acre limitation of the 1902 Act or the 960-acre limit of the 1982 Act. However, the 1982 Reclamation Reform Act maintains that full cost, which is essentially an interest component, must be charged for water delivered to leased lands above the 160-acre limit if a district decides to maintain the provisions of the old law.

As you might imagine, that part of the law has provoked considerable controversy. The Department of the Interior, after extensive study of the comments provided on that section of the law by water users and legislators alike, has concluded that it may well have the practical effect of abrogating contractual rights. As a result, we have proposed legislation to repeal that section of the law, commonly known as the "hammer clause."

The new certification and reporting requirements of the law also have raised considerable controversy. The certification provision, which applies only to districts with new or amended contracts, outlines requirements for the water districts to furnish certificates from the landowners and leaseholders within their areas stating that they are in compliance with 1982 reclamation law. Obviously, there needs to be some method of ensuring that 1982 reclamation law is being followed. Congress decided that, for districts coming under the new law, certification was the best way of doing that.

There will be districts, however, which will choose not to request the new law's expanded acreage limitation. The self-implementing provisions of the law give the secretary the right to request that each district supply a reasonable amount of information to ensure that the applicable provisions of 1982 reclamation law are being followed.

Congress made it clear that it wants the limitations enforced and gave us the authority to do so. Frankly, the certification and reporting

requirements of the law are the best methods we have for checking compliance without incurring huge costs to the federal government. We do not intend to complicate the daily business of the districts, or saddle them with needless, expensive paperwork in implementing the law. We have exempted small noncommercial farms from these requirements. We also have done considerable pretesting of the forms and responded to the problems that have been identified by the users. We believe we have ironed out the problems in our proposed forms, which should be fairly simple to fill out. The certification forms are due out shortly, and the reporting forms will follow in a little over a month.

The changes that have been finalized over the past few months are beginning to shape the way Washington deals with western water. It is important to stress that it is the West's water, but its just as important to realize that Washington does play a role. If western water users choose not to actively participate in the legislative process, their concerns and needs may well go unanswered. It took a lot of cooperation to make reclamation reform a reality. We will need that same cooperation from western water users as we attempt to complete the legislative process and fully incorporate the president's cost sharing policy into the existing financial framework of federal water law. The recent house action on Safety of Dams work was just one step. It was a step in the right direction, but we will need to take many more steps together as we work to keep water flowing to the lands and people who need it.