

PUBLIC RECOGNITION OF THE NATION'S WATER PROBLEMS

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It is indeed a real privilege to be your opening speaker at the Second Annual New Mexico Water Conference.

I am delighted with this opportunity for a number of reasons. First, I am happy to participate in a program in the State of New Mexico. This is one of the few states in the United States in which I have never before taken part in a meeting, and I have looked forward to attending this conference with much interest. I am always glad to participate in water meetings because water and water resource development are my favorite subjects. The privilege of participating in a meeting with your Conference Chairman, Dr. H. R. Stucky is always appreciated. Over a decade ago we started attending meetings together in another of the great western states - the State of Montana.

Before proceeding further, I wish to congratulate those responsible for the annual water meetings in your state. They are progressive citizens who realize that water is a real problem and who desire to provide a means of public discussion and recognition of this ever-increasing problem. The theme of your conference is most appropriate, "Water For New Mexico - Your Problem and Mine." From the subject which has been assigned to me, I am sure you will not object if I broaden that theme for purposes of my presentation to, "Water For America - Your Problem and Mine."

Water is fast becoming of serious concern to every individual in America. Without fear of contradiction it can be said that water is now the number one resource problem of our country. It is becoming critical at such an accelerated pace that possibly it may crowd crop surplus from the front page within the next two decades.

Water has been a number one problem in New Mexico and other western states ever since the arrival of the first settlers. In many other parts of the nation water has been so plentiful that it has been taken for granted until recent years. Now it is of serious concern over the entire country. In fact within the past 12 months over a thousand cities and towns from coast to coast have been compelled to curtail the use of water. Ground water tables have fallen in many sections of the country in recent years, and in many areas water is now being pumped from such depths that its cost is almost prohibitive. At the present rate of water table decline, many areas will go out of production in the foreseeable future. All over the country streams no longer provide adequate supplies of usable water during critical drought periods.

What is so important about water to warrant all this attention? Why are we so concerned? It is simply because water is the most basic material known to the world. Where there is life there must be water. There is no

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organism of any kind, plant or animal, which is not highly dependent on it. A seed cannot sprout without it and even the lowest forms of desert life must have some water. It is basic in formation of the protein molecule, the fundamental material in all living matter. For every pound of dry material in a plant from 300 to 1000 pounds of water is required for its production. Animal body tissues are 70 to 90 percent water and a loss of 10 percent will result in death.

Water serve the consumptive life needs of every plant, animal and human on the earth. And it goes far beyond the simple requirements of life - it becomes the very heart of our agriculture, industry, commerce and other aspects of our highly organized economic life. Only where water supplies have been adequate and assured has civilization flourished - where it has been deficient or irregular, growth has been forestalled or entirely prevented.

Let me repeat - water has become the number one resource problem of our nation. I realize that this is a strong statement, but I believe it to be true, because water is a controlling factor in the development of our national economy, whether it be in the North, South, East or West. Without adequate water supplies our nation cannot continue to grow.

What we do about our water supplies in the future can cap our national economy near its present level, or it can serve as a gusher toward higher levels of economic growth and development. The problem is with us now and will become even more serious in future years. Experts tell us that our water demands will have doubled by 1975, a period of 18 short years.

What has caused our growing water shortages? The average annual precipitation over the nation as a whole is still 30 inches. It has neither decreased or increased since weather records have been kept. Our average daily precipitation is about 4,300 billion gallons, of which we use a little over 6 percent of the total. Still as a nation we are faced with a shortage of water. Why?

In the first place the distribution of precipitation over the nation ranges from 4 to 120 inches per year. This in itself creates many water problems, both surpluses and shortages. About 70 percent of the precipitation is returned to the air by evaporation or transpiration. This leaves us working with only 30 percent of the total. Terrific inroads have been made on this 30 percent, our working supply of water, in recent years, because of our rapidly increasing population and rising standards of living.

At the turn of the century our country supported a population of about 75 million people. Not long ago this number had increased to 172 million and if this accelerated growth continues we will have a population of not less than 228 million by 1975. Where each individual, personally, used a few gallons of water per day fifty years ago, each person now uses approximately 150 gallons. If we include water for all purposes, every man, woman and child now requires 1500 gallons of water daily. This all adds up to unheard of demands for good quality water in amounts that almost stagger the imagination. The cause of

our present situation is nothing more than increased per capita requirements and an ever increasing population.

Water is matter - and in accordance with the laws of nature it can neither be created or destroyed. Therefore, we cannot look forward to increasing the total supply of water. We will have adequate water supply to meet the needs of our people only by making the best possible use of the water we have. This is the problem with which we are faced. It is up to us as individuals, groups and organizations to solve this problem in a manner which will be in keeping with our traditional democratic form of government.

We have been looking at the physical side of water problem. Let us turn our attention for a moment to some of the legal aspects of this ever-changing picture. The legal problems are now becoming just as apparent as the physical problems and no doubt the future will see many changes in our former concepts regarding the law of water. This will be true over the entire nation but will be especially true in the states east of the 98th Meridian where necessity and economic needs will rewrite the water laws just as they wrote the doctrine of prior appropriation into the law of the West.

As we make the necessary legal changes we must be most cautious to achieve progress without the loss of vested rights and without further intrusion of the federal government into the affairs of our citizens.

Many former legal concepts are already being challenged and many new questions are arising as a result of the critical water problems facing our country. Let's look at some of them -

There has been an age-old conception that the owner of land owns from the center of the earth to the top of the sky, and therefore, the water under his land.

Will this concept be abandoned and the land owner required to obtain a right to the use of water under his own land?

Diffused surface water has always been considered to be the property of the land owner. Will an owner continue to have a right to store this type of water?

Will distant cities be allowed by some legal process to appropriate water from under farm land and haul it away for their use?

Will public need be sufficient to justify the diversion of a stream to another valley, thus compelling the sharing of water with other areas?

What rights accrue to the builder of a dam who impounds water on a stream? Must lower lying land owners pay him for water he releases? What if the builder was the Federal government?

If the builder of a dam impounds water behind his dam which would otherwise be wasted, does he become the owner of the water? What may he do with

the water? May he sell it? To whom?

Who is to determine which use of water is most important and the relative ranking of water uses? Who will have authority to change this determination once it is made?

How much government control of water are we willing to agree to? Complete control of major rivers? Of the tributaries? Of the creeks that feed the tributaries? What about the small watershed reservoirs and the farm ponds which also contribute to the total water supply?

Must the public be allowed access to water impoundments on private lands.

How far up the river will we allow the "Commerce Clause" to stretch? It is moving under government control toward the top of the watershed - where and how will we stop it?

How far are we willing to go with the presently expounded theory of federal ownership of water? How can we keep this theory from being accepted?

What place does the conservation of water for recreational purposes have? Is this a beneficial use? Is the use of water for fish and wildlife more important than agricultural and industrial uses? Who is to say?

What is the appropriate legal approach to compel municipalities, public agencies or the Sovereign States themselves to perform their duty in eliminating stream pollution? (The legal problem relating to industry is not too difficult).

These are only a few of the legal questions as they relate to water that are being asked across America today by those familiar with water problems. These questions must be answered but as of today there are few firm answers to any of them.

The answers to some of these questions will have very real affects upon the future economy of our nation and upon the governmental structure of the country.

If we are inclined to wonder why many of these questions haven't been answered or why our water problems are so numerous we have only to look at our national policies and programs for water resource development. Perhaps it would be more appropriate to say, "Our lack of national water policies and our overlapping, duplicating and conflicting programs for water resource development."

Forty three federal agencies have responsibilities of one extent or another in this field. Twenty five agencies have a major concern in water resources and power and the remaining 18 are concerned to a lesser degree. Most of these agencies are in the Departments of Interior, Agriculture,

Defense and Health, Education and Welfare. In addition there are a number of independent agencies such as the Federal Power Commission and the Tennessee Valley Authority.

The major water resource agencies have been the Corps of Engineers, Bureau of Reclamation and the Soil Conservation Service. To these now have to be added the Agricultural Conservation Program Service, the Great Plains Conservation Program and the Conservation Reserve of the Soil Bank.

The Corps was established in 1824, Reclamation in 1902, Forest Service 1905 and the Soil Conservation Service in 1935, and the others in recent years.

A close look at the program of these agencies reveals a picture of inter-agency rivalry and overlapping and duplication. Conflicts between the Corps of Engineers and the Soil Conservation Service are especially prevalent at the present time as a result of the Corps serious opposition to the Watershed Protection and Flood Prevention Program.

Unfortunately, water resource development programs have become so large and so important to every Congressional District that much of the program has become a political football - a pork-barrel program. This is especially true with the program of the Corps of Engineers and to a lesser extent with the Reclamation program. With the demand for these developments by local groups, many who feel they are getting something for nothing, and with the constant support of the hundreds of agency employees who are out to sell their program, the water resource development programs have grown to their present stature in an almost completely uncoordinated manner.

The Corps of Engineers presently have authorized projects which they estimate to cost \$9 billion dollars and they are pleading with Congress for approval of additional project authorizations which by their own calculations will cost approximately \$1.5 billion. The history of Corps of Engineer projects shows that they eventually cost approximately 2½ times the original estimated cost. The Corps carries on their own operation and maintenance program from appropriated funds. They estimate that over a 50-year period the operation and maintenance cost will be equal to the original cost of construction. On this basis, the projects presently authorized, plus those for which the Corps is requesting authorization, will place a future commitment on the tax payers of this country of over \$40 billion. This represents a future tax of over \$1000 for every family in America just to pay for the Corps of Engineers program which is presently authorized but unconstructed plus the program for which they are presently requesting authorization.

In addition to this the Bureau of Reclamation has authorized water resource projects estimated to cost over \$3.3 billion.

This gives you some idea of the way certain phases of our water resources development program has gotten out of control. There is little wonder that the President's Advisory Committee on Water Resource Policy reported, "The greatest single weakness in the federal government's activities in the field of water resource development is the lack of cooperation and coordination of the federal agencies with each other and with states and local interests." Responsibility is split among many groups, each pretty much going their own way, with no agency authorized to determine the policies, make decisions and give the supervision that is, and will be, required if water resource development is to meet our nation's needs.

This situation will continue to grow even more serious unless legislative steps are taken to bring about a better coordinated program between Federal agencies, interstate organizations, state and local agencies and organizations and individuals for the development of our nation's water resources.

The American Farm Bureau Federation and a number of other national organizations have devoted a great deal of attention to possible legislative proposals that might help bring about the desired objectives in water resource development. A number of proposals have been drafted and discussed with the Administration, Congressional Committees, individual members of Congress and agency personnel. It has been found most difficult to draft legislation that would accomplish the objectives sought and still have a possible chance of becoming law.

We now have a draft of a bill, based on long standing policies of the American Farm Bureau Federation, which we hope will be introduced early in the next session of Congress. The voting delegates to our annual meeting next month could change our policies relating to water resource development and thus require changes in the proposed bill. However, since our organization has had these general policies for over a decade, significant changes are not apt to be made. The purpose of the proposal is to further cooperative action by state and federal agencies in planning the conservation, development and use of water resources in major interstate rivers and their tributaries, to establish an Interstate Rivers Commission advisory to the Congress and to authorize the establishment of Water Resource Committees for interstate rivers and their tributaries.

The proposal would establish an Interstate Rivers Commission as an independent advisory agency to the Congress. The Commission would consist of five professionally qualified persons in the field of water resource management. The Commission members would be appointed by the President with the consent of the Senate, and one member would be designated by the President as chairman and principal executive officer of the Commission. The term of office of the Commission members would be five years.

All proposed water resource projects involving federal participation, the estimated cost of which exceeded \$5 million, would be transmitted to the Commission. The Commission would review such projects and

prepare reports to the Congress and to the President setting forth the Commission's recommendations relative to economic justifications and engineering feasibility, the allocation of costs, reimbursement from beneficiaries, whether or not the proposed project would be an efficient and comprehensive development of the resource in the public interest and other information provided for by Act of Congress.

In addition the proposal would provide congressional consent to an agreement between the appropriate state governments and the federal government to establish a Water Resources Committee for any interstate river and its tributaries. The President would be authorized to consult with the Governors of the states involved to further the negotiation of such agreements. Each committee would consist of a nonvoting chairman, appointed by the President with the consent of the Senate, a representative of each federal department having water resources responsibilities and a representative or representatives from each state appointed by the Governor. The number of state representatives would be at least equal to the number of representatives of federal departments.

The agreement establishing a Water Resources Committee for an interstate river may contain provisions as follows:

1. The functions the Committee shall perform, which may include any or all of the following:
 - a. To serve as the principal and continuing agency for the voluntary coordination of the activities of state and federal agencies with responsibility for water resource programs - and particularly with respect to planning and development activities.
 - b. To prepare and keep up to date a plan for the development of the river and its tributaries and to publish such plan.
 - c. To review and develop recommendations relative to any proposed water resource development or project on the river or its tributaries which involves a total expenditure of \$1 million or more and to publish such recommendations.
 - d. To prepare and publish, and submit to the President, the Congress, the Governors and legislatures of the states involved an annual report relating to the administration, conservation, development and use of the water resource of the river and its tributaries.
2. The financing of the Committee functions, the employment of personnel and related administrative matters.

The Commission and any Committee organized under this proposal would be required to refrain from any activity designed

to obtain the enactment of either state or federal legislation except that they might publish their recommendations and other material and appear before any duly constituted state or federal legislative or executive body to present their views and recommendations relating to the development and use of water resources.

The federal agencies having responsibility in the field of water resource management would be authorized and directed to cooperate with the Interstate Rivers Commission and with any Water Resources Committee. They would also consult with the Commission or Committee with respect to the administration of water resource programs and submit any project plans or major revisions thereof for review.

We are of the opinion that the enactment of this proposal would go a long way toward bringing about better coordination and cooperation between all levels of government and the public in the development of the Nation's water resources.

No doubt some would say that the proposal does not go far enough toward elimination of many of the undesirable aspects of present water resource development programs. While this may be true it probably goes as far as any legislative proposal in this regard with a chance of enactment. Powerful forces are in operation in this country to prevent the passage of legislation that would in any way slow down large federal water resources projects. The mammoth federal lobby is not the least of these forces.

Perhaps some of you are asking why the protection of water rights obtained under state law has been left entirely out of this proposal. That is a good question because the protection of individual water rights is the most important phase of needed water legislation facing our nation. It was not included in this proposal because the subject is adequately covered in Senator Barrett's S. 863 - the Western Water Rights Settlement Act Proposal.

For the benefit of those who may not be acquainted with the background leading to the introduction of this proposal in Congress and what has happened relating to this subject in recent months, let me summarize the problems that exist relative to the protection of water rights obtained under state law.

Senator Barrett's bill was introduced as a result of the controversy over the decision of the United States Supreme Court in the so-called Pelton Dam case in Oregon. For nearly a century prior to that decision it was the established rule that Western water rights were determined by state law.

Under the Desert Land Act of 1877 the Congress determined that the public lands of the western states should be patented apart from the waters located thereon and that the water would be reserved for the use of the

public under the laws of the states. As you know the economy of the public land states has been built upon that theory and policy.

The Pelton Dam decision cast grave doubts and uncertainty upon the validity of the water law principles accepted throughout the West. In this case the court held that the applicant for a license to build a power dam did not have to comply with the laws of the State of Oregon because the dam was located on reserve lands of the United States. In effect this was saying that the Western states had control over the waters on the unreserved public domain lands, but not on the reserved public lands. Naturally, there was immediate fear that the same rule could well be applied to the Forest Reserves from which comes 65 percent of all irrigated water used in the West.

This subject is even further confused by the attitude of the federal government in the litigation between Arizona and California over the distribution of the waters of the Colorado River. In this case the federal government is rather clearly contending that it is the owner and may do as it pleases with the waters of western streams regardless of the rights of the states or individuals. It argues that the United States acquired the Southwest from Mexico and that the United States therefore became the owner of that territory, including both the land and the water and that it has never transferred title of the water, so therefore still owns it. It is further argued that under Article VI, Section 3, of the Federal Constitution the federal government may make "all needful rules and regulations respecting the territory and other property belonging to the United States."

The contention is also being made by the federal government that under the "Commerce Clause" of the Constitution the waters of the Colorado are navigable, or could be made navigable by the expenditure of funds, and are therefore under exclusive jurisdiction of the federal government.

The claim is also being made that waters required for the development of now undeveloped desert public lands may proceed if the government so decides without any heed to existing rights required under the laws of the States.

It is further claimed that if the government sees fit, recreation facilities on government lands, including reserves for migratory waterfowl, by reason of government ownership of the water, may take precedence over the appropriative water rights of individuals acquired under the laws of the States.

These are extremely dangerous theories and especially when one stops to think that there is very little land area in the United States that was not once owned by the federal government. It is obvious that sustaining of any such theory is totally destructive of supposed property rights which have existed for many years.

Senator Barrett's proposal S. 863, undertakes to set at rest forever the theory and doctrine of federal ownership of water. It does so by providing that -

"in connection with federal programs, projects or activities, no federal agency or employee of the government shall interfere with the exercise of any right to the use of water for the beneficial purposes theretofore acquired under and recognized by State custom or law, except when authorized by federal law and upon payment of just compensation therefore"

and further providing that,

"subject to existing rights all unappropriated navigable and non-navigable ground and surface waters are preserved for appropriation and use by the public pursuant to State law."

and further providing that all federal agencies may acquire rights thereto only in conformity with the laws of the States, except under the power of eminent domain when expressly so authorized by Congress.

S. 863 has been before Congress during the past two sessions and in spite of support from practically every group with the exception of the United States Justice Department the bill has never reached the floor of either House or Senate. There are some indications at the present time that the Justice Department may possibly modify their opposition to the Western Water Rights Settlement Act proposal which may provide an opportunity for its enactment during the next session of Congress.

These are only a few aspects of the nation's many and varied water problems that are in need of public recognition. They are some of the more important phases of the problems and some that need public attention in the immediate future.

Our citizens must demand immediate action on some of the fundamental problems in the field of water resources, especially as they relate to the federalization of the waters of the United States. Until this is settled all other aspects of the nation's water problems are in vain.

You and I, as well as all other individuals and groups in this country have a tremendous stake in the future development of our nation's water resources. These resources must and will be developed for the benefit of our nation and its citizens.

I believe the most important question ahead in this regard is - How will these resources be developed? Will it be by local and state organizations and private interest? by the federal government? or by a well balanced combination of these various groups?

During the past two decades we have seen a concentration of more and more power in the hands of the federal government. It is well known that the concentration of power in a centralized government leads to loss of freedom. Once power is so concentrated it can be monopolized by those who might want to use it. When power is divided this cannot happen - just stop to think how true this could be in the field of water resources. Remember, they who control the water resources of America, control America.

I believe we can assure the control of our nation's water resource in the right hands if we keep the responsibility for the development as close to home as possible, keep the financial contribution of individuals and local, state and federal governments at a level in keeping with the benefits which each derives from the development; and if we refuse to turn over to the federal government jobs which can be done more efficiently by individuals, private organizations or local or state governments.

It has been an honor to participate on your program. My best wishes to all of you for a most successful conference.