

RURAL TO URBAN WATER TRANSFERS: PROTECTING THE PUBLIC WELFARE

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INTRODUCTION

New and expanding urban uses of water in today's new era of reallocation and transfers threaten to undermine some important community values associated with water. Current mechanisms employed to transfer water from rural to urban areas often erode the courtesies that have underpinned the spirit of sharing, trust, and mutual adjustment that has been essential to water matters in an arid land. Further, the means chosen to transfer water away from rural areas has threatened valued rural cultures and lifestyles. In this presentation, I will explain how and why some public welfare values have come to be threatened and what these values are, and then suggest some possible avenues through which protection of these values might be assured.

CHANGING FORUMS FOR WATER DECISIONS

Flawed though the decision-making process clearly was in the era when large scale federal water development was relied upon to serve new and expanding uses, the political process required to legitimate projects contained some mechanisms that no longer exist to protect public welfare values. For instance, areas of origin in water transfers could block projects that failed to protect their interests. If people did not feel they had a voice in decisions or an adequate share in the benefits, they could oppose the project. As Congressman Wayne Aspinall, who was a master of old style water politics used to explain it, regions desiring a water project needed to forge a united front at the grass roots and the agreement needed to be projected to state and federal levels. Opposition at any level could well signify defeat. Proponents of projects were needed to build support in a variety of settings. Disgruntled interest groups had multiple opportunities to block

projects. The forums in which decisions were made about water were typically dominated by a few fairly narrow interests, but the competition among available projects was such that opposed projects were shoved out of the pipeline leading to authorization and funding. There was every incentive for project sponsors to bargain with interests groups claiming a stake in the project.

Now that the development era is over, the rural and urban interest groups, who used to combine in coalitions behind water development projects are frequently pitted against one another in competition for a limited water supply. The contest is uneven and, more importantly, is being played out in ways that may be damaging to public welfare and long-term stability in water management. Not only do urban areas have the predominance of economic and political power, they also are highly organized. Municipal water departments are usually insulated from public accountability and operate as semi-autonomous businesses. In contrast, the parties with whom they bargain in water sales are often individual farmers. Even if such farmers get a satisfactory price for their water, the rural area residents not party to the transaction experience loss of tax base, a decline in economic productivity and loss of control over decisions about the future for which water is a fundamental asset. Yet in a market framework where a city bargains with individual farmers, there is no forum in which broader rural community interests can be brought to bear on decisions.

WATER COURTESIES

In an arid region, water decision rules include the observance of a number of mutual courtesies

that assure a relatively smooth process of allocation. A good neighbor is one who put his or her headgate down on time. Water is not wasted. Maintenance of the irrigation system is a community obligation. No one in a desert goes without water for domestic use, and nomadic desert tribes from the earliest times have rigidly observed the courtesy of maintaining common wells and extending travellers immunity from attack at oasis sites. It runs against time-honored courtesies to hoard water or to deprive others of use unnecessarily. The sharing of shortages in times of drought is an institution firmly established in informal practice.

Elwood Mead (commissioner of the Bureau of Reclamation from 1924 - 1936) said that until such mutual obligations were accepted at the turn of the century "there was either murder or suicide in the heart of every member of Western irrigation communities." Western water wars have become the stuff of history and story books because of the mutual trust water users have that the system will operate "fairly" to protect everyone's interest. Without this mutual trust, none of the forms of interaction, including government regulation and market transactions, can take place.

The manner in which a number of rural to urban water transactions have come about in recent years has tended to undermine the mutual courtesies or spirit of comity in water. Rather than having prior information or opportunity to comment upon and act with regard to water transfers, rural residents find out about water transfers after decisions have been made. They are presented with a *fait accompli*. It is inferred from the generally behind the scenes negotiations that neither thorough consideration of third party or community impacts nor community sentiment has been taken into account. Because the members of rural communities or their representatives are usually not invited to participate in transfer decisions from the beginning of the process, it is not surprising that rural communities doubt that community values related to water will be taken into account.

COMMUNITY VALUES ASSOCIATED WITH WATER

The contemporary emphasis in water policy evaluation is upon efficiency, and the commodity value of water is highly salient. In Water and Poverty in the Southwest, Lee Brown and I argue that water has a broader and more fundamental community value that is closely tied to public

welfare. It is not possible within the time constraints of this brief presentation to explore thoroughly, as we do in the book, the components of community values. I can, however, list some concepts, and give a general notion of their meaning.

Opportunity

In the West, if land has a water right it has a future, even if currently populated only by sagebrush, tumbleweed and prairie dogs. A place without water is believed to be done for, regardless of its other assets. To have a future, members of the community must believe that there is a way to satisfy their core community values. In some rural areas, water use by agriculture is essential to the community's vision of itself and its future. The independence and self-reliance of the individual farmer, the laid-back rural lifestyle, the lack of government controls and regulations, and closeness to the land and its productivity are essential to the community's vision of itself and its future. Ample, inexpensive water that can be used in agriculture is fundamental to the pursuit of these values, and the loss of water is the foreclosure of the community's option to realize these values.

Dependability and Security

Maintaining a secure supply of water has been a driving objective in western water politics. "First in time, first in right" grew out of the need for people to know that their access to water was going to be sufficiently secure to warrant investment. If access to water is believed to be insecure, not only will businesses and residents not move into a community, but people will be loath to make the public commitments necessary to keep county and town governments and school boards running.

Participation and Control

Historically, water has been far too important to communities to entrust its availability and management to decision-makers or forums removed from local participation and control. According to Maass and Anderson, who studied six irrigation communities in the U. S. and Spain, even when water projects were constructed by national bureaucracies, locals aggressively asserted their authority over actual project operations. Rural areas are following a long tradition when they resist incorporation into regional water management organizations in which they can be easily outvoted. The

Rural To Urban Water Transfers: Protecting The Public Welfare

organizations often must depend upon urban areas for water supplies.

MECHANISMS FOR PROTECTING COMMUNITY VALUES IN WATER

The reallocation of water through markets offers enormous advantages in terms of flexibility and efficiency. It would not be advisable even if it were possible to satisfy growing urban uses of water through new water development. However, market mechanisms may be accompanied by public procedures to protect the public welfare and community values. New Mexico Statute 72-12B requires that the public welfare standard be incorporated into permitting procedures involving appropriations, transfers and changes of location of water use. This law provides the vehicle and framework through which the state can go beyond the simple requirement of beneficial use to look at broader environmental and social implications of water allocations. Ample precedent for this development exists in other states, but even if no other state had yet moved in this direction, New Mexico's long history at the forefront of water management provides its own example for innovation in water law when the public interest requires.