

A PERSPECTIVE FROM THE CHAIR OF THE WESTERN WATER POLICY REVIEW ADVISORY COMMISSION

Denise D. Fort

Professor of Law

University of New Mexico School of Law

The Western Water Policy Review Advisory Commission has just concluded its report to the President and Congress, *Water in the West: The Challenge for the Next Century*. I appreciate the invitation to reflect on the changing nature of water resources and the relevance of universities and researchers to these changes, because the Commission process plunged me into the meeting place between public concerns and the work of scholars.

There is no guiding authority for how national commissions conduct their work. At the inception of the Commission, I was surprised to find that federal officials assumed that the Commission would hold hearings and solicit public input, and then write its report in a series of meetings, working from the background that each Commission member brought to issues, but not make explicit use of the literature or consultation of the scholars in the field. Although it is difficult to tell how most national commissions operate, my impression is that this model is most commonplace. I propounded a decidedly different approach, emphasizing the compilation of written reports, both as a basis for Commission decision making, and as providing resources for members of the public who might be less interested (or impressed) by the conclusions that the Commission drew in its report than in the information that we gathered. In our work plan, we devised a process that combined public participation, including numerous meetings across the west, as well as the contributions of researchers, in the form of symposia on selected topics (aquatic ecosystems, tribal rights, and others) and the solicitation of over twenty-five research papers. University faculty members were represented on the Commission (three law professors) and among these researchers. Additionally, we were fortunate to have the assistance of excellent researchers, such as Professor Dan Tarlock, to assist in drafting chapters of the Commission report. This approach opened a dialogue between Commission members and the academy. The interface had its rocky moments, but in this note I'll discuss my

impressions of critical areas in which there did not appear to be as much interest by thinkers in the academy.

RESEARCH THEMES

Our report identified "sustainability" as the principle against which federal water resource programs should be evaluated. The notion that this principle (as amorphous as it is) should be the lodestar for society's decision making is commonplace in many public policy settings, but is not the controlling principle of western water law or federal policy. Thus, our review of how the federal government's activities serve this principle launched us on a critique that risked deviance from the status quo. Those who have the privileges of academic freedom bestowed by universities have a unique opportunity to address unpopular and disturbing questions. The pressures to raise research funds, to serve the research agendas of federal funders, and to calm anxious administrators, on the other hand, exist in tension with the promise offered by our positions. In this paper I'll reflect on the implications sustainability might have for research and scholarship, raising some of the "radical" questions that occurred to me during the course of our process. They are also broad questions, with broad generalizations proffered in support of these questions. Chris Lant's observations about the research reflected in journals accords exactly with my experience and is an invitation to water scholars to consider what we have to offer to those who are shaping public policy.

The western United States is undergoing a dramatic demographic transformation. Rather than being diffused across the landscape, as one might expect of the "rural west", this population growth is occurring in a series of urban archipelagos, according to a report prepared for the Commission by two agency researchers. (Case and Alward, 1997). What is absolutely remarkable about these patterns of growth is how unconstrained our location of homes and industries is by the presence or lack of water. Salt Lake City, Albuquerque, Reno,

Denver, and other cities are slated to boom, with the assumption made that pipelines, water reuse, transfers of water from agriculture, pricing, and a whole panoply of mechanisms will provide a solid base upon which to build these cities. Have we transcended an understanding of sustainability in which resources are presumed to be tied to a region? Will technology bring breakthrough desalinization techniques that will make groundwater and ocean waters ample for human needs? A radical critique of this belief is implied in the work of historians such as Donald Worster (Worster, 1985), but it is an area where a hearty, cross disciplinary discussion would be immensely relevant.

Closely linked to the phenomenal growth of the west's population is the implicit belief that agricultural water will provide all the water that cities need. Agriculture's centrality is established by its dominant position: it consumes 90% of all water consumed in the west. It also dominates the political debate over water in the west: agricultural users are better organized and have the most at stake in any discussion of the future. The Commission experienced the full force of this dominance and was assailed for an "anti-agricultural tone" in its report. But, regrettably, the harsh rhetoric, which seemed more concerned with loyalty than the substance of the report's comments about agriculture, obfuscates deeper questions about the role of western agriculture.

The problem is this: our planet's population, and our nation's, is rushing towards an unimagined burden on all of the support systems for human life. (Brown and Kane, 1994). While food is now inexpensive in the United States, many farmers believe that we risk disaster as lands are converted to other uses and water put to higher economic values. (One could conclude that federal water policies play a minor role in this conversion, but agricultural interests argue that they are a critical component.) Thus, the argument runs, the status quo cannot be disturbed without threatening future food supplies. (Unfortunately, the corollary seems to be that anyone who suggests otherwise deserves the full opprobrium of the west. The dissenting remarks filed by Patrick O'Toole, a member of the Commission, illustrate the point.) At its heart, this argument contains a challenge to the market economy and to economic thinking, because it questions whether the free operation of the market will cause the world to starve in the not-so-distant future.

The belief that the market can help is succinctly articulated by Kenneth Fredrick, an economist with Resources for the Future: "The costs of using water will rise in the future; only the nature of the costs is in doubt. When water is underpriced for uses such as irrigation and

waste disposal, more of society's costs take the form of deteriorating aquatic ecosystems, loss of instream values, restrictions on development resulting from the inability to secure adequate water supplies, and perhaps more frequent interruptions in service. On the other hand, when the costs are borne by users who have incentives to conserve and opportunities to sell water rights, then the resource is used more efficiently, the highest-value uses are assured of an adequate supply, and the nation derives greater net benefits from its resources. By facilitating and reducing the costs of adapting to changing supply and demand conditions, this approach also would provide a renewed realization that there is plenty of water to meet everyone's demands." (Frederick, 1991).

More scathingly, Thomas Power, an economist at the University of Montana, wrote: "Scarcity is a misleading economic characterization of water in the West-it's like saying that because bananas cannot grow outdoors in northern climates there is a scarcity of warmth there. Gigantic public projects could create heated domes in Minnesota to grow bananas, oranges, and cotton....Trying to grow alfalfa in the desert with imported water when that can be done without irrigation in another location may create the appearance of scarcity, but it is not economic scarcity, it is politically contrived scarcity." (Power, 1996). (Environmentalists also recoil at characterizing the west as having a scarcity of water: "Water, water, water....There is no shortage of water in the desert but exactly the right amount, a perfect ratio of water to rock, of water to sand, insuring that wide, free, open, generous spacing among plants and animals, homes and towns and cities, which makes the arid West so different from any other part of the nation. There is no lack of water here, unless you try to establish a city where no city should be." (Abbey, 1968.))

Ironically, environmentalists are among the dissenters from the wisdom of mainstream economic principles. Few environmentalists believe that the market will bring us to a sustainable future, with our unprecedented rate of species extinction, societal inability to tackle fundamental issues of energy use, distribution of resources, and the familiar litany of environmental threats. I suspect that many of us pause as we read of the Bass Brothers speculating in water, as though it were just another mineral. (In New Mexico, we have a bumper sticker, "agua es vida".)

The agnostics in the debate over the promise or threat of the free market find few places where the fervent and politically dominant beliefs of organized agriculture will permit this discussion to occur. Because of agriculture's centrality to water policy, policy makers at all levels need to engage with this fundamental debate. I think that the

commodification of water will happen much more rapidly than we have grasped, with large scale capital moving into an arena that has been localized until now. Western agriculture, as the preeminent rights holder, will both control and be affected by this new force. Dialogue among the research community about the implications of these developments would be enlightening and advance the political debate.

A second fundamental issue that begs an original look is that of federalism in water policy. Federalism is a topic that is engaging legal and political science scholars in increasing numbers, including the associated topic of federalism in environmental administration. In western water the federal government's role as a major funder of water related areas has largely gone unquestioned, although specific projects are disputed. National spending for water related outlays by the federal government totaled about ten billion dollars in 1997. The expenditures of the Corps and Bureau on water projects has become a familiar part of our landscape, unchallenged except for controversial projects. The expanded federal power represented by the programs of the New Deal and the social assumptions underlying the War on Poverty are undergoing review in the political arena. Are the water agencies preserving the infrastructure of the West, or an outdated reminder of national power that now maintains Congressional seats? The most influential water history of this generation is Cadillac Desert (Reisner, 1986). Its chronicle of pork barrel politics has left a legacy in which federal beneficence meets a cynical audience. On the other hand, the checks and balances lent by federal agencies to water management in the west also is becoming part of our contemporary understanding. This is especially true where tribal rights and environmental protection are concerned. Radical voices (whether from the right or the left) did not come forward to question the infrastructure related functions of these federal agencies. The federalism issues are raised by proposals for privatization of Bureau of Reclamation and federal power facilities. We also found it difficult to find appraisals of the role that Congressional committee structures play in perpetuating these arrangements, although an appendix was prepared for us by the Library of Congress that provides an extremely useful guide to how these committees are structured.

The closely related topic is that of "subsidies"- a charged word in water circles. The question of how federal monies are provided to different interest groups, the public benefits provided in exchange for that support, and the policy aspects of continuing subsidies are a dominant issue in western water. Subsidies have periodically been examined by scholars, but perhaps interest in them is

colored by the judgment that Congress is not interested in modifying them. Some of the most interesting recent publications, however, have come from Washington, D.C. Taking from the Taxpayer: Public Subsidies for Natural Resource Development (U.S. House of Representatives, 1994) is one such report; the General Accounting Office's Bureau of Reclamation: Information on Allocation and Repayment of Costs of Constructing Water Projects, is another. (U.S. General Accounting Office, 1996).

The final issue I'll mention is that of agency organization. Senator Hatfield, the sponsor of the legislation creating the Commission, was particularly concerned with the number of agencies, and the many levels of government (federal, state, tribal, local) with responsibilities that affected the management of the Columbia River. Anyone who is a proponent of action, who desires to change the status quo in any respect, has to navigate among these many interests, with the possibility that a single entity can block the proposal. The Commission's hearings echoed the theme of "gridlock", "fragmented", "contradictory mandates", "dysfunctional", and like terms. We did not find a great deal of work in which this phenomenon of modern bureaucratic life was examined, although there is some relevant research. The Commission recommended coordination of agencies, rather than the consolidation (and elimination) that some sought. (Interestingly, none of the dissenting members of the Commission advanced any proposals concerning these areas during the course of the Commission's deliberations.) There are many paths through which this topic could be approached, and I would simply note that it is one about which there is much public concern.

REFLECTIONS ON THE WATER RESEARCH COMMUNITY

Water resource managers and the associated academic fields are often discussed as though there were a single community, albeit one that is comprised of many different disciplines. Returning fresh from the wars of water policy review, I would ask if we are a community with deep fractures in our world view. I would say that as a member of the community, and acknowledge that division can lead to creativity and insights, but that glossing over these disagreements will lessen the benefits of these disagreements.

One fracture occurs over whether ecological sustainability should be a cardinal principle, or whether it is appropriately dealt with in a list of special interest concerns. For many years, water management was largely one dimensional, with results that still surround

us. Yet, at the municipal level, where many of us work, the issues of finding water supplies are still viewed as one-pointed. For students in engineering schools, environmental studies may be limited to sanitary engineering, with no mention of the ecological role of rivers. Books and articles are regularly published about water resources management that ignore these issues. In contrast, our study of the budgets of the Corps and the Bureau of Reclamation in the West indicated that over half their budgets are being spent on environmental purposes.

A second crevice opens around the question of how water management decisions are made. A recent article entitled, "Whatever Happened to Politics? Washington is Not Where It's At" (Wills, 1998) described the loss of power by the "wise men", lost to intellectuals and a new meritocracy, and how a few are now seeking to restore the fallen order. The words ring in my ear, for just a few years ago a faculty member sought to establish such a conclave to provide "objective" information about the state's water. As a nation, our respect for the old elites that directed key areas of policy has faded. Wills concludes, "Now a generation that experienced the deep social reevaluations of the 60's is the one that can cope with the ongoing consequences of that reorientation. Politics in this new sense is alive and well- indeed too lively for some people's nerves. And there are no wise men around to salve things for us. We may have to rely on wise women."

As much as I like his last suggestion, the message for water resource educators is a different one. The dynamics on our Commission reminded me that no one was content to allow a staff of experts to shape policy recommendations. Decision making in communities over water often is rancorous, passionate, and rowdy. Our students go forth into fora where neither experts, nor those who hold political power can expect deference to their opinions based on their titles. And, the academy itself has undercut the notion of objective science reflecting a single reality. We have to expect that water management will become more and more reflective of our increasingly diverse society. Those who find the new processes too political will probably be happier in support, rather than frontline positions.

I refer to this as another crevice, because I don't believe that its impact has been taken to heart in the field of water education yet. We are still seeking to overcome our disciplinary strictures to permit environmental and water resource management to be taught across disciplinary lines, while the nonacademic world looks on us with disbelief at our dilatory pace. The science and engineering fields have yet to recruit and retain women,

or racial and ethnic minorities, in numbers that reflect our presence in this country. The leadership of the water related organizations outside of the universities is still largely homogeneous.

The active involvement of researchers with water managers and policy makers should inform our research agendas and serve the public interest. Scholars have a rare freedom to serve a long range conception of the public good, by exploring uncomfortable issues and raising uncomfortable questions. Happily, a good number of our colleagues do so.

REFERENCES

- Abbey, Edward, 1968, *Desert Solitaire: A Season in the Wilderness*, Ballantine Books, New York.
- Brown, Lester and Kane, Hal, 1994, *Full House: Reassessing the Earth's Population Carrying Capacity*, W.W. Norton & Co., New York.
- Case, Pamela and Alward, Gregory, 1997, *Patterns of Demographic, Economic, and Value Change Trends in the Western United States: Implications for Water Use and Management*, Western Water Policy Review Advisory Commission, Denver, CO.
- Frederick, Kenneth and Roger Sedjo, eds., 1991, *America's Renewable Resources: Historical Trends and Current Challenges*, Resources for the Future, Washington, D.C.
- Power, Thomas, 1996, *Lost Landscapes and Failed Economies: The Search for a Value of Place*, Island Press, Washington, D.C.
- Reisner, Marc, 1986, *Cadillac Desert: The American West and Its Disappearing Water*, Viking, New York.
- U.S. Congress, Majority Staff Report of the Subcommittee on Oversight and Investigations of the Committee on Natural Resources of the U.S. House of Representatives, 103rd Cong., 2d Sess. 1994, *Taking from the Taxpayer: Public Subsidies for Natural Resource Development*, U.S. G.P.O., Washington, D.C.

U.S. General Accounting Office, Bureau of Reclamation:
Information on Allocation and Repayment of Costs
of Constructing Water Projects, 1996.

Wills, Gary. Whatever Happened to Politics?
Washington is Not Where It's At, New York Times
Magazine, Jan.25, 1998, 26-29.

Worster, Donald, 1985, Rivers of Empire, Water, Aridity
& the Growth of the American West, Pantheon
Books, New York.

BIOGRAPHICAL SKETCH

Professor Fort is a member of the faculty at the University of New Mexico School of Law. She served as chair of the Western Water Policy Review Advisory Commission and is a member of the Natural Research Council's Water, Science and Technology Board. Her legal career included positions in environmental administration and governmental finance.