

# **Water Governance in the United States - A Ship with Neither a Captain nor a Rudder**

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## **Discussion of Water Governance at 5<sup>th</sup> World Water Forum**

One of the chapters in the report on the 2009 5<sup>th</sup> World Water Forum held in Istanbul relates to *Water Governance*. That chapter highlights the following issues that are international in the sense that they reflect views from many countries.

### 1) It is time to act

If the global priority is to address water stress and all its related challenges, such as climate change, sanitation and public health, lawmakers and government leaders have to be convinced that it is time to act.

### 2) Without governance it falls apart

The biggest problem in Africa today is governance. The political and technical issues and priorities are clear. But without governance, it all falls apart.

### 3) Water affects many decisions

Many decisions taken at all levels of government both influence and depend significantly on water. Yet this connection is rarely recognized and much less acted upon.

### 4) Water is a cross-cutting issue

With increasing water shortages, good governance more than ever is essential for water management. Ministers also acknowledged that good water governance is a challenge because 'water is a cross-cutting issue.' They vowed to communicate the urgent need for action to the highest political levels. We must have a follow-up.

### 5) Water governance is complex

Clearly, the water governance challenge facing policymakers and government

leaders at all levels is complex and multifaceted. It is not just a matter of legislation or regulation.

6) Local authorities must cooperate

Local authorities collaborating in this network cannot actively work in isolation. They need to strengthen each other by working together. Tangible and sustainable results can be achieved through cooperation at the local and regional levels.

7) Corruption is a major challenge

A major challenge for all political actors at every level will be to address the problem of corruption. Corrupt practices may siphon off as much as 30% from the public water sector budgets every year, translating into a US\$48 billion loss over the next decade

8) People have a right to water

While policies matter, good governance will emerge if people demand it and fight for it-and if leaders respond. People need to be empowered. After all, water is a right.

## **Water Governance in the U.S.**

The two biggest successes in U.S. water management have been the provision of safe drinking water to most Americans, which has nearly doubled our lifespan between 1900 and 1950 and watering the West, which would have otherwise not supported agriculture and urban development.

Many of the problems cited by the 5<sup>th</sup> World Water Forum also exist in the United States, especially at the Federal level. Here are some examples:

!) The failure to address regional water problems on a timely basis

a) Katrina

Decades earlier LSU studies accurately predicted the levee failures caused by 2005 Hurricane Katrina which cost 1836 Louisiana residents' lives and over \$ 100 billion in damages; thousands are still living in trailers.

On November 18, 2009, a court ruled that the U.S. Army Corps of Engineers' mismanagement of maintenance at the Mississippi River-Gulf Outlet was directly responsible for flood damage in St. Bernard Parish and the Lower 9th Ward after Hurricane Katrina. Now there will be millions of dollars paid to people who were affected.

b) Water shortages in the Southeastern USA and California

These shortages are largely due to rapid population growth in areas short of water. Efforts to enhance interstate cooperation via compacts and other means have failed and have ended up in the courts. The courts are not equipped to deal with these problems and neither are individual federal water agencies whose functions are very specific and limited. Historically, these problems have required leadership by residents such as in the case of the TVA which brought water and energy to a very poor part of the South and the Reclamation Act which brought water to Western water-short areas to help develop agriculture in the West.

c) The need to clean up the Chesapeake Bay

This effort to give the Bay special treatment in the Federal Water Quality Act has resulted in the Bay cleanup being several decades behind other estuaries. Bad science, poor management as well as dominance politics have delayed the clean up of the Nation's largest Estuary.

d) The Federal role in interstate compacts

Many interstate compacts and Commissions have been formed to provide basin-wide approaches to water problems. The compacts on the Delaware and the Susquehanna Rivers are models of a new approach to this problem. In those two cases the compacts have such broad powers which result in sharing of the sovereignty of the member states. They also provide for the federal government to be an equal partner. Originally the Federal Commissioner was a presidential appointment, which was important because there are so many federal agencies involved with water management. This provision was changed in 1997 by Congress, presumably for budgetary reasons, and turned over the Corps of

Engineers. Since this representative does not come from the White House it has greatly weakened the Federal role.

Water management responsibilities and water professionals are scattered among many Federal agencies; a quick list would include the Corps of Engineers, the Bureau of Reclamation, various offices in EPA, the Fish and Wildlife Service; the Forest Service, the Park Service, the US Geological Survey; the National Oceanographic and Atmospheric Administration, the Bureau of Fisheries, the U.S. Coast Guard, the Natural Resources Conservation Service, the Food and Drug Administration, the Bureau of Land Management, and others. These agencies represent a huge but highly fragmented and inefficient personnel, data, research, and laboratory resource which emphasizes the reality that water represents an important element of many Federal programs ,but fails to recognize the importance of dealing with water in a unified holistic way - a way that shares resources and policies with regional, basin, state and local units of government. Efforts to overcome this problem such as CALFED, the Federal Water Resources Council and the Chesapeake Bay Program have not been successful.

e) The problem of confusing and contradictory water laws

- 1) Eastern states use the riparian law, which is designed to hold water users responsible for returning water undiminished in quality and quantity.
- 2) In the Western states state law is based on the prior appropriation principle that is based on the first-come, first-served principle. Since, for example, the Federal Water Pollution Control act is based on the riparian principle this creates problems in Western states.
- 3) Land and water use are linked in many local, states and federal laws Such as wetlands, floodplain zoning, laws governing sewage and storm water management and many others. This causes great confusion, many unresolved problems and conflicts.
- 4) Some areas of water management such as wetlands do require laws but are administered by regulations and laws that do not address the complexity of the subject.

These areas require study, research and resolution in ways that will simplify

the language of the laws and regulations

- f) The lack of research in the Science, Engineering and Policy elements of water management is a serious problem.

There are many areas which require research in order to move the Nation to greater success in water management. I will mention only two topics here. One is to learn from other jurisdictions how they have handled the multi-jurisdictional problems and here the experience of the European community, the Mexican government, the Dutch, the French, as well as others might be of considerable value.

Our own experience in the United States will also shed light on our successes and failures but efforts to address the problem of water management more comprehensively have certainly not been successful.

- 2) We have been unable to fix the problem of "Too many cooks spoil the pie."

In the United States a large number of Federal agencies and congressional committees share responsibility for water management. Well over a century of efforts to coordinate water management at the Federal level have failed.

In the United States efforts to overcome these issues by establishing national commissions have not been successful.

There have been many such commissions in the past. The process began with the Waterways Commission bill sponsored by Senator Newlands of Nevada in 1902. In 1908 the Inland Waterways Commission issued a draft report that emphasized coordinated multipurpose development of our waterways but General MacKenzie, the Chief of Engineers refused to sign the report because it called for a coordinated program.

Then came Section 3 of the Rivers and Harbors Act of 1925 that authorized the Corps of Engineers and the Federal Power Commission to study our streams and report on navigation, waterpower, flood control and irrigation.

As part of the New Deal Harold Ickes created the National Resources Planning Board in 1933; it was terminated in 1943.

In 1950 there was a report of the President's Water Resources Policy Commission. It covered a broad range of topics including program planning, evaluation, basic data, financing programs, reimbursement, water resources management, land reclamation, water supply, waterway transportation, hydroelectric power, fish, wildlife and recreation and research.

Senator Robert Kerr of Oklahoma in 1960 wrote a book about the subject with an introduction by then Senator Lyndon Johnson who said: "To the nation collectively, the growing water crisis is just as urgent as it was to me personally when my family was stranded; and my property menaced. In fact, I am of the opinion that water management is a decisive tool in our mighty struggle for national security and world peace. The best control of this precious resource is the key to progress here and elsewhere."

In 1965 the Water Resources Council consisting of the heads of five federal agencies was established by passage of the Water Resources Planning Act. The act authorized financial assistance to the states for water and related land resources planning. The Act also established River Basin Commissions of members from federal, state and basin agencies to plan but the commissions had no power to implement the plans.

1972 saw the passage of the Federal Water Pollution Control Act which was limited to water quality but it gave broad powers to the Federal government to implement and enforce the control of pollution of the Nation's waters. This act supplemented and superseded the role of the states most of which already had implemented programs in this field.

In 1998 the Western Water Policy Review Advisory Commission issued its very comprehensive report which was triggered by 'staggering growth projections' and the observation "that current federal water policy suffers from unclear and conflicting goals implemented by a maze of agencies and programs. Lack of policy clarity and coordination resulting in gridlock was a consistent theme of public testimony and scholarly research. We have concluded that these problems cannot be resolved piecemeal but, rather,

must be addressed by fundamental changes in institutional structure and government process."

Beyond these very important and crystal-clear observations, the author (an Easterner) must also remind the reader that in addition to what has been said, the present Federal subsidy for Western water comes in part from the Federal taxes paid by Easterners.

The sad fact is that these reports answered many of the Federal water policy questions that have been raised repeatedly in the past. They have not been implemented because neither the President nor the Congress was interested in doing so. One problem is the dispersion of responsibility for water, not only among administrative agencies, but also among Congressional committees. Another is that control of water is linked to important political and economic interests. If the job is to be done successfully, it should be in a sequential fashion to try to develop consensus on a basic policy framework before a commission goes to work on the details.

Water is a key element of all our endeavors, municipal life, economic activity, transportation, agriculture, recreation, land-use, energy, public health and so on. The Nation's history on this topic tells us that merely assigning this task to an independent commission will not work. If the Federal government really means to orchestrate its water management in a more effective way than Congress and the President must first agree on some basic goals which must include a much strengthened focus for water management in the Executive Branch and Congress as well as wholly new relationship with states and basin agencies.