

A Preliminary Introduction Prior To The Essay

A TWENTIETH CENTURY ESSAY
A MODEL IN DISTRESS
THE GENESIS - THE END - THE REBIRTH
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THE WATER RESOURCES PLANNING ACT OF 1965 (AS REVISED)

Helped by the mid-19th century writings of Marsh, the evolution of the modern ideas about the conservation of natural resources found voice in the 1908 policies sought by President Theodore Roosevelt. These policies rested in part on the utilitarian ideas voiced by Jeremy Bentham in 1776 that guided the 19th century English Reform Movement toward the conservation of human resources through public health measures. Both were linked to the revolution in human values, exemplified by the Constitution of the United States in 1789.

GENESIS

Water, vital to human life and all living things, took on more of a utilitarian value in the last quarter of the 19th century. The new found capacity to protect the public from epidemic disease, a result of the findings of Louis Pasteur of the germ theory of disease, changed the way human's thought about water. New science and technology further changed the human condition. The steam engine, electric energy from falling water, expanded water transportation, safe drinking water, control of pollution and floods and the capacity to store water in reservoirs for later use for irrigation and other purposes were elements, when combined by the President, brought about a new view of the value of the rivers of the Nation. The President expressed his vision by reporting the need "to use every river to it's fullest as it flows from the mountains to the oceans".

To implement this vision, the President proposed in 1908 the formation of an Inland Waterways Commission, the forerunner of a National Water Commission, with authority to pursue this utilitarian view. No positive response from the Congress occurred until 1917 when, under the leadership of Senator Francis G Newlands of Nevada, a National Water Commission was instituted. Its life, however, was short. In it's place the Congress created the Federal Power Commission. The importance of providing a national policy to govern the use of hydro-electric energy was high on the Congressional agenda. The wide power granted the Power Commission in 1920 was thought to compensate for the authority of the National Water Commission, and that Commission was repealed.

The Federal role in the management of the nation's waterways was precarious during most of the 19th century. The Marshall court in 1824 provided a crucial basis for Federal action in Gibbon's v Ogden by linking such action to the Commerce Clause of the

Constitution. An Act of the same year authorized clearing the Ohio River to facilitate navigation. The Federal role of assisting water navigation was clarified by this decision.

The policy of federal aid to internal improvements was not universally approved. Jefferson was opposed without explicit Constitutional approval. Gallatin was in favor, leaving to the Congress to decide the allocation of aid. Lincoln, from the west, was much in favor. Polk's veto of aid was vigorous. But the disruptions caused by the Civil War made it clear that only the Federal government had the resources and the capacity to provide the assistance needed to improve navigation and control floods on the nation's waterways. President Grant, knowing first hand of the importance of rivers, and having both the money and the trained personnel after the War, established the Mississippi River Commission in 1879, the first national institution to give specific attention to this matter. Concurrently, without specific authority, flood control linked to navigation was added as a component of the Federal Role. But the Congress, still undecided, waited until 1917 to provide the first direct appropriation for flood control. In the interim, Congress had added to the Federal role by authorizing the 1902 Reclamation Act.

Thus, the administration of President Theodore Roosevelt came to power with acknowledged Federal roles in navigation, flood control, irrigated agriculture, hydro-electric power, public health through water pollution research, and interstate quarantine of water borne diseases as cholera and typhoid fever. New management regimes had to be invented to bring these tasks under control. The move toward a National Water Commission with comprehensive authority to use more effectively the rivers of the nation "as they flowed from the mountains to the oceans" was a vision supported by much logic.

From 1920 to 1965 the Congress followed two parallel paths to bring about new management practices over the nation's waterways.

The First Path :

For 100 years since 1824, the Congress and the nation had learned how to use the services of one of its valued agents, the Army Corps of Engineers. For half that period, the military academy, nearly solely, had produced the technically trained persons capable of managing the needed tasks. During that time, the Congress had learned how to put into effect Gallatin's views, rather than Jefferson's: Gallatin had said, in effect, that "the allocation of projects and resources could best be left to the debate on the floor of the Congress". The Congress had accepted this guide and had learned, through committee process and floor procedure qualified by executive interests and Court limitations, how to use this role in the development of the nation and the satisfaction of its needs. As time went on, new additions were made to the Federal role, new assignments were made to agencies other than the Corps of Engineers, new committees and subcommittee's were established and the power spectrum within the Congress was widely dispersed. The arrangement had grown like Topsy. Yet, this was a familiar role and despite growing criticism it was not easily replaced.

Thus, while comprehensive institutional and planning initiatives were being proposed and rejected since Newland's first proposal, the Congress pursued and tested a variety of more modest planning and development policies. Developments that were undertaken under these various policies could not have been accomplished without the essential support of the affected states and were responsive, for the most part, to legitimate state and local concerns. Over time, these policies were substantially improved, reaching out toward comprehensive, coordinated development of the nation's water and related natural and environmental resources.

The method followed by the Congress was to bring out new laws for identified problems as demanded by the times: assign these laws to existing or new agencies based on their appraisal of the existing government structure; and allocate resources based upon some consideration of overall national and regional demands. The policies recognized the separate nature of selected tasks, such as the needs of the arid West; the humid East; the coastal regions; pollution, floods and droughts; and state and local needs. In all these policies, there continued to be a gradual and increasingly strong attempt on the part of Congress and the executive agencies to meet the ideals of comprehensive and integrated management.

Over the years and to the present day, the controlling center of the nation's water and related natural and environmental resources programs that had large interstate components resided in the Congress and its committees. The agents are the executive branch departments. Except for the TVA and a few special cases, no third party coordinating entity has been provided with adequate authority to change, bypass or share the methodology used - and desired - by these foci of authority.

By the late 1980's, through a varied array of intermediate leaderships, but concluding finally under congressional decision making, the states and the federal agencies have succeeded in formulating and carrying out programs aimed at comprehensive development for the major interstate water basins of the Columbia, Central Valley, Missouri, Colorado, Rio Grande, Arkansas, Mississippi, Ohio, Delaware, Savannah, Tennessee, Great Lakes, the rivers of the Atlantic and Gulf states and elsewhere, as in the Central Arizona and Central Utah development programs. How, then, is this first path to be assessed?

The conclusion of this Essay is that the process that led to these accomplishments must be given high marks. It concludes also that conservation and environmental values have been respected increasingly through fishery enhancement, endangered species concern, wetlands protection, and scenic and wild river conservation. The record does not show that the process has always been efficient, made no mistakes, been equitable and responsive to all interests, and has been humane and concerned for all affected publics or natural systems. Finally, it cautions that in recent years it has become commonplace to accept or formulate assessment criteria that deny reality-the world as it was in times past, and the social acts and values that, while not universally acclaimed, were nevertheless widely accepted in an evolving democratic society. Under these rules some current critics

of water, land, and environmental policies have used today's values to judge the past, and these judgments have not been helpful.

The Second Path

There was, however, a growing understanding of the value to follow a second path that was in keeping with the Teddy Roosevelt vision, and the report of his Inland Waterways Commission (that recommended, " prompt and vigorous action" by the States and the Federal Government to develop comprehensive plans for all the Nation's river basins). Its value was examined and tested in several forums during the 1930's and 1940's.

Cooperation among the federal agencies together with the states produced remarkable results (basin identification and data, issue identification and analysis, broadly framed basin programs and project needs) under the framework of the National Resources Committee and the National Resources Planning Board during the 1930's.

When the NRPB was abolished in the early 1940's, the major federal agencies, recognizing the values that had ensued from these cooperative efforts, proceeded to establish a counterpart under the title of the Federal Interagency River Basin Committee (FIARBC). (Establishing FIARBC was not totally altruistic: the Corps of Engineers and the Bureau of Reclamation had come under intense national scrutiny and criticism in the preceding years as competitors in the design of the Missouri Basin Development program. In addition to the Federal Committee, two field committees were established; one, the Missouri Basin Interagency Committee (MBIAC); the second, the Columbia Basin Interagency Committee (CBIAC). When the first comprehensive Federal Water Pollution Control Act was passed in 1948, the Congress had included in that Act, under Section 3, a requirement to develop comprehensive plans for the control of water pollution.

In 1950 The President's (Truman) Water Resources Policy Commission Report provided a major thrust to the implementation of basin-wide cooperation and coordination of Federal agency plans and programs including the establishment of River Basin institutions. In three volumes, it presented, V 1. a policy report; V 2, Ten Rivers In America's Future, a massive review of status and issues; V 3. a treatise on American Water Law including cases and descriptions of planning and management practices.

Between 1950-1960 Congress experimented with a variety of ad hoc river basin commissions for the development of comprehensive basin-wide water and related land resources plans. These included the Arkansas-White-Red River basins; the New York-New England River Basins Commission; The Southeast River Basins Commission and others. No direct action was taken by the Congress to approve or disapprove such plans, or to provide for plan implementation.

In 1960 the Senate Select Committee on National Water Resources, chaired by Senator Kerr of Oklahoma, made several critical recommendations. These were:

1. The Federal Government, in cooperation with the States, should prepare and keep up to date plans for comprehensive water development and management of all major river basins in the United states..... .

2. The Federal Government should (set) up a ten year program of grants to the States (to stimulate more active participation by States)for water resources planning.
3. The Federal Government should undertake a coordinated scientific research program on water.....
4. The Federal Government should prepare biennially an assessment of the water supply demand outlook for each of the water resource regions of the United States
5. The Federal Government in cooperation with the States should take...steps to encourage efficiency in water development and use.

Based on recommendations of President's Eisenhower and Kennedy, bills were introduced from 1961 to 1964 leading to the establishment of the Water Resources Planning Act of 1965. (The Water Resources Research Act had been approved separately in 1964.) In the debate on the Act, Senator Clinton Anderson, the floor leader for the legislation and a respected student of the water history of the nation had said, " The nation had for 55 years unsuccessfully sought a formula for comprehensive river basin planning " "In the intervening years, many approaches have been attempted. No general planning mechanism has been adopted."

Thus, from 1920 to 1965 the Congress seemed committed to the idea of managing the nation's water resources in a comprehensive manner, within the general framework proposed by President Theodore Roosevelt.

(a significant fact, seldom referenced to this major policy was the meaning of "comprehensive" as defined by the Supreme Court. As given in volume 3 of the Water Resources Policy Commission Report;(p 491)

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The Supreme Court of the United States had said that "navigable waters are subject to national planning and control in the broad regulation of commerce granted the Federal Government." It is for Congress alone, the Court pointed out, to decide whether a particular project "by itself or as a part of a more comprehensive scheme" will have such a beneficial effect on the arteries of interstate commerce as to warrant it.

Notwithstanding the passage of the Water Resources Planning Act of 1965, programs supporting basin-wide water and related land resources plans continued to be authorized by Congress using the processes familiar to them as described in path one above. Using as their agents the Army Corps of Engineers, the Bureau of Reclamation and the Soil Conservation Service and others; and following the classical process of project selection and authorization, Congress remained the central force in the development of these national resources. And that responsibility is where it still rests today.

The Water Resources Planning Act of 1965 was viewed, with few exceptions, as providing a process well in keeping with the long term trend of the nation to seek a better model to plan and manage a vital and irreplaceable resource. It was active for 16 years until it was inactivated by the Reagan Administration in 1981. Its responsibilities, activities and reasons given for inactivation are provided next.

The End

The Water Resources Planning Act had six major components:

1. Provided for the creation of the Water Resources Council composed of the Secretaries of Federal Departments having a substantial interest in water and land resources. The Secretary of the Interior was assigned as the permanent chair. Provided further for observer status for other Executive branch agencies as the Office of Management and Budget, Department of Justice. Provided for a Staff Director and staff to carry out Council activities.
2. Provided for a national assessment of the nation's water supply-demand at periodic intervals to provide an important basis for determining national water needs and related policies;
3. Provided the authorization and the mechanisms for the establishment of joint federal /state river basin commissions by the President in cooperation with the governor's of affected states;
4. Authorized the river basin Commissions to develop comprehensive, coordinated, joint plans (CCJP's) to guide the development of basin-wide water and related land resources plans;
5. Required the formulation of common evaluation standards to guide the planning processes and the selection of future implementing projects;
6. Provided Federal support to state governments through matching grants to strengthen state capacity for plan participation.

Progress under the Act included:

Two national assessments of the nation's water resources were produced: one in 1968, the second in 1978.

Seven river basin commissions were established by the President and the governor's for:

- Northeast river basins
- Ohio river basin
- Great Lakes Basin
- Upper Mississippi river basin
- Missouri Souris river basins
- Pacific Northwest river basins

National coverage for basin planning was enhanced by the existence of the Delaware and Susquehanna Federal-State river basins compact commissions; by the reports previously prepared for the Southeast river basins; the Arkansas-White-Red river basins, and the Texas river basins., and by the continued existence of the Southwest river basins technical committee.

A complex set of principles and standards for application with respect to national economic goals; environmental goals, and for consideration of regional benefits and social well being goals were produced and utilized in the planning processes carried out under the Act.

The formulation of comprehensive, coordinated joint plans were produced under various forms in the different regions based upon regional needs. The range of the planning format varied from a 27 volume framework plan for the Great Lakes to special reports for sub-regions of the basins such as that for Lake Champlain within the Northeast Basins region.

The Federal financial support program to encourage state participation was of substantial success, with variations determined by the degree of problems and the states historic posture with respect to water resource needs. A State of the States Report issued by the Water Resources Council in 1980 produced, for the first time, a compilation of state capacity for water management, and provided a guide for ways to strengthen state effort.

For sixteen years the United States Federal System comprised of the Federal government, the fifty states and their local communities had, for the first time, been able to participate in a combined effort to bring more rationality to the nation's water and related planning process. As we have indicated, the problems that arose were to be found in the details. For some in the Congress and in its power structure, for some in the executive agencies, including the Executive Office of the President, for some in the States, and for some who had a philosophic concern about any role of the Federal Government, the actual and potential change implied by the Water Resources Planning Act was hazardous. The evolutionary steps that have been defined in this Essay represented a national effort over, as Senator Anderson reported, a fifty year period to achieve a better sense of direction for the nation in relation to one of it's most treasured resources. It was not without its difficulties.

Under the direction of the Secretary of the Interior, the Reagan administration had found cause to bring this experience to an end. This Essay has found the paper by professor John D. Leshy on Natural Resource Policy in a 1984 report of a conference sponsored by the Urban Institute, Natural Resources and the Environment: The Reagan Approach , edited by Paul R Portney, to contain the best analysis of the reasoning of that administration's actions in regard to Natural Resources. Hearings and reports have been examined to a degree to further establish this reasoning. The following notes present some of these findings.

Responses about and Critiques of the Water Resources Planning Act

In September, 1981, river basin commissions under the Water Resources Planning Act were terminated and the budget submitted for the next year provided no funds for the Water Resources Council, river basin commissions and grants to state water planning agencies.

Congress, however, expressed views different from that of the administration. Committee's in both the House and Senate voted favorably to present bills to their respective floors reaffirming but revising the terminated programs, including the elimination of CCJP's. The bills presented , however, were not enacted.

The dichotomy between the two paths the Essay has described above was never more clear than the decisions made by the Congress and the administration several years after the termination of the Water Resources Planning Act. Not having been able in 1981 to reaffirm and revise the Act in further support of the formula for comprehensive river basin planning called for by the Act, the Congress and the Executive branch continued, concurrently and without argument, its long term practice of supporting and authorizing its major water and related natural and environmental agencies and agents to plan and carry out the programs and projects it thought necessary for the nation's benefit. So that, for example, Title IX, Section 909 of the Resources Development Act of 1986 authorized to be appropriated "for the prosecution of the comprehensive plan of development of each river basin... referred to below...such sums as are necessary ...to complete the plan of development". The list referred to included some 22 river basins throughout the nation. It is clear that Congress retained a hold on the real world-to satisfy problems- even as it explored alternate means of getting the nation's work done. It must also be recognized that while it had reservations about the Water Resources Planning Act the Reagan administration concurred with the Congress in getting on with what was proposed. in the '86 Act.

In summing up this issue the Essay finds the application of generally approved concepts, such as comprehensive, coordinated, multi-purpose, basin-wide planning or comprehensive, coordinated joint planning processes, has resulted in a major issue with national implications.

The application of the concepts severely hampered by conflicts that have historic roots; are traceable to the diffusion of agency technical assignments and authorities; reflect differences in laws, capacities and will of members of the Federal System; result from interagency competition and that are tied to power struggles inside the Congress and between the Congress and the executive branch.

Restated, the conflicts result from:

- a clearly implied desire on the part of the Congress to find ways to utilize the concepts, while at the same time Congress, in the real world, fund projects separately by line item - a process not necessarily supportive of comprehensive river basin management;
- differences in recognizing the role of the states and state water laws as major guiding forces in the management and allocation of the nation's water resources;
- the reluctance of government or agency members of regional or river basin authorities to yield necessary authority to a common agency to make difficult decisions and to resolve conflicting demands for scarce resources;
- wide differences in state capacity to implement the principle of primary state responsibility for water resource planning, development, and regulation;
- in the absence of federal leadership, the inability of members of the Federal System to agree on means to achieve a more comprehensive and coordinated approach for water and related resource planning and management at all levels of government;
- the lack of effective action by the Congress and most of the states to implement the coordination of water quantity and water quality programs and projects;

- differences among agencies, both federal and state, about the allocation of program responsibilities, and the related conflicts among legislative committees in support of the specific agencies responsive to them;
- differences about process and procedure, and the resulting allocation of power between the executive branch and Congress over water and related resource project selection, allocation and approval;
- differences in the degree of cooperation and coordination necessary to plan and manage resource programs;
- lack of adequate assessment processes to provide information necessary for intelligent planning and management decisions;
- philosophic differences about the roles of the members of the Federal System rather than a pragmatic appraisal of opportunities to solve problems confronting the nation.

The Essay concludes this part of the discussion about planning techniques by recognizing that at present there seems to be little likelihood of resolving the identified conflicts or achieving much more than an acceptance of the real world, defined primarily by whatever compromises can be effected among Congress, the President's Executive Office and the states.

The Essay, however, holds the view that the nation will be better off if it can devise ways in the near future to manage its resources in a more logical manner. In fact, the future demands that this be done if we are to be capable of meeting our growing needs. World competition should have shown that management sloppiness can no longer be condoned. It is time for the nation to make the hard decisions within government to effect substantially improved techniques for the management of water and related resources.

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THE REBIRTH

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THE WATER RESOURCES PLANNING ACT OF 1965 (AS REVISED OR REPLACED)

This concluding part of the Essay contains general principles, guidelines or specifications of institutions that can support the United States Federal System (comprising the Federal government, the States, the Local governments and the Tribal governments) to achieve improved planning and management of the Nation's water and related natural and environmental resources. A limited discussion (largely because of space) supplements these views.

The first two parts of the Essay have examined the long history within which the Nation evolved its present posture and concern for its water resources. It has described something of the character and intensity of the debates that have taken and are taking place. Knowing that, the debate will continue into the future. We are attempting here to open the door in a limited way to ideas that have proposed, and are proposing, change knowing that much more elaboration will be needed.

We accept, as a basis for this presentation, the views expressed by a former chairman of the Water Resources Council in the year prior to its demise,

- "...I believe that the demand for planning...regional or unified river basin management of water resources will continue to increase..."

- "It simply makes too much sense in this day of scarce resources, increasing competition for water, and increasing environmental concerns to not look at the consequences before we undertake a management decision, whether it is the construction of a dam, designation of a flood plain area, or the promulgation of a new ambient water quality standard;...especially...the western United States will demand sound economic, engineering and environmental planning...before development of these water resources for energy and other purposes".

-**"We will attempt more comprehensive unified river basin planning than in the past-whether we like it or not".**

-**"I propose... we accept the world as it is with regard to water resources...make the necessary changes in our notion of planning...recognize existing constraints rather than...attempt(ing) to make these institutions fit our notion of planning' .**

Principles, Guidelines, Specifications

1. A national independent Commission, patterned after the United States Advisory Commission on Intergovernmental Relations, be established concerned with water and related natural and environmental resources. Responsibilities of the Commission should include, but not be limited to:

A. Advise and assist in policy formulation, policy review and policy coordination and reconciliation;

B. Maintain a continuing study and prepare an assessment biennially or at such intervals as the Commission may determine of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States;

C. Establish principles, standards and procedures for the evaluation of water and related natural and environmental resource programs and projects;

D. Utilize personnel, technical and research resources of Federal agencies in connection with activities when directed by appropriate authority'

E. Facilitate the study and applicability of ground water-surface water conjunctive use; of the integration of water quality and water quantity resources; and of the interbasin transfer of water resources;

F. Provide assistance to State governments for participation in water resources planning and management;

G. When requested by proper authority, Initiate and manage regional water and related natural and environmental planning studies. For this purpose the Commission is authorized to call upon the resources of any appropriate Federal Agency; to develop cooperative arrangements with other members of the Federal System and with Canada and Mexico as required.

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-TO COMPENSATE FOR DISCUSSION AND AMPLIFICATION CONSIDER
APPENDICES TO BE DERIVED FROM OTHER DOCUMENTS SUCH AS THE
NATURAL RESOURCES JOURNAL ARTICLE BY DWORSKY, ALLEE, AND
NORTH, THE LETTER TO CAVENAUGH, HEARINGS, AND OTHERS
-CONSIDER HOW TO USE THIS ESSAY, IF AT ALL, IN RELATION TO
CLASS WRITINGS