PRESENTED BY GILBERT G. STAMM, COMMISSIONER OF RECLAMATION,
AT A MEETING OF THE ASSOCIATION OF WESTERN STATE ENGINEERS,
ORCUS ISLAND, September 25, 1975

Since the Federal Reclamation program was established in 1902, engineers, scientists, and administrators in the Bureau have worked closely with State engineers throughout the West on problems and challenges relating to the development, operation, and management of western water resources. The benefits to people, locally and nationally, direct and indirect, have been very impressive. Perhaps few of you realize the full extent of benefits -- but that's another subject.

We in Reclamation and you in your individual States continue to share many common problems, both specific and general. And no one believes more than I that we must establish and maintain mutual trust, and we must work together to solve the problems.

So I must thank Glen Fiedler for inviting me and members of my staff to become members of the Association this year, and for inviting me here. I understand that this may be the first time a Commissioner of Reclamation has addressed a meeting of the Association of Western State Engineers. If true, I hope it will not be the last.

I am well aware that one of the major concerns of State Engineers involves State water law, State water rights, and the fear of Federal infringement or attempts to infringe on those rights. I understand you devoted much of yesterday afternoon to that subject.

I am aware also that few people know more about State water law than State Engineers, so I do not intend to expose the limits of my knowledge by going into too great detail concerning the specifics of State water law.

Instead I would like to discuss with you the role of the Federal Government, the States, and the local people in solving the many issues facing water resource developers--including the knotty problem of water rights--in our common effort to ensure water availability for all projected beneficial needs.

I would like to give you my concept of what those roles should be. First, the role of the Federal Government as I see it.

The Federal Government has a responsibility for the common interest of society in general. The Executive Branch and the Congress determine national policy--on energy, on food, on environmental protection--within the framework of broad national goals and our free enterprise system. The Congress provides the statutory authority for Federal programs and the obligation parameters for implementation.
As to those problems relating to interstate waters, the Federal Government should assume the leadership for regionwide planning and coordination of efforts and programs for water resource development. Interstate water basins don't recognize political boundaries - State lines. State compacts usually become the mechanism for allocation among States.

The Federal Government, through agencies such as the Bureau of Reclamation, which have been set up for this purpose, should also assume the leadership in bringing various interest groups together in a strong and effective public involvement program so that all points of view are adequately and equitably represented and considered.

The Congress, through the legislative and appropriations processes, has the responsibility for deciding whether and what additional federally funded public works facilities are needed and justified to provide water to accomplish the national goals. The planning process for a given project usually begins at the local or State level when a need is identified, and a request is made to formulate a plan for facilities to meet that need. Feasibility studies can be undertaken only with prior approval of the Congress. Thus everyone has an opportunity to be heard beforehand. Reimbursability is a keystone of the Federal Reclamation program. Since 1902 about 87 percent of the total cost of Bureau of Reclamation facilities has been in the reimbursable category--much with interest.

The Congress has the power to authorize and fund programs for augmenting water supplies where feasible and where needed. I'm speaking here of such programs as weather modification, desalting of geothermal brines, seawater, and other water resources, development of ground water resources, recycling and all other programs which increase the availability of water supply for the benefit of people.

Finally, the Federal Government has an overriding responsibility to make certain that our national resources are not exploited to the detriment of society but rather are developed and used wisely. Implementation of that responsibility is usually shared with the States or is assigned to the States where it rests unless the States should fail to assume the obligation. Federal involvement usually takes the form of establishing national legislative framework for conservation efforts and environmental protection.

However, in this role and process, I do not feel that the Federal Government should infringe on longstanding rights of the States to allocate their water entitlements. Again, I should mention failure to establish such entitlements can cause problems--and is doing so today in the Missouri Basin.
We have recently completed a series of studies on the availability of water for energy in the West. Those studies anticipate that non-Federal entities obtaining leases, permits, or other rights to develop Federal energy resources will obtain the water necessary for development of such resources under State procedures.

We recognize that the ultimate right to store, divert, and utilize water in accordance with applications made pursuant to State law is one of the key elements of past, present, and future development in the West.

Each State has the duty to determine under its own statutes how its unappropriated water is to be used.

Therefore, the States must assume the leadership role in evaluating existing water rights with the objective of reconciling present water uses with water right applications. In particular, emphasis should be placed by the States on resolving the problems of abandoned, duplicative, excessive, and inactive rights, and on increasing the efficiency of water use. In Colorado, for example, the books show over appropriation, but the record of use shows not all water is used.

That task is not an easy one. Many apparent conflicts, both in the letter and in the spirit of the law, must be resolved. For example, in one State we find a 1917 water code which allocates water on a first come, first served basis, and a 1971 Water Resource Act which says that water must be allocated "to obtain the maximum benefit." In some States we find that irrigators are actually discouraged from investing money in facilities which would save water because under the laws of those States any water that might be saved cannot be utilized by the irrigators who save it, but instead must be allocated to those next in line to receive water under the States' priority systems.

I shall leave the resolution of such delicate problems for you to ponder and go on to a discussion of the position of the Bureau of Reclamation in regard to State water rights.

Section 8 of the 1902 Reclamation Act says: "Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State...relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws..." Law is not an exact science--viewpoints have varied as to the fine meaning of Section 8.
Since 1902 the Bureau has consistently taken the position that it will obtain under State law its rights to store and divert water for its projects recommended for congressional authorization. In fact, steps should be taken to obtain necessary water rights prior to the conduct of detailed studies, and in most cases this has been done, but certainly the water supply for a given project must be tied down prior to congressional authorization. It would be foolish to do otherwise. Much time and money could be lost by interim filings. Procedures, of course, differ by States. We have recognized the doctrine of first in time, first in right.

However, we do maintain the position that once we have filed for water rights pursuant to State law, and through appropriate subsequent procedures, which vary among States, have obtained the right to use designated blocs of water for designated purposes, the States cannot unilaterally dictate daily operations of the Federal facilities, nor unilaterally dictate future changes in authorized uses. Nor could the Bureau adopt changes which would contravene statutory intent or obligation. This prerogative is reserved to the Congress of the United States. Legislative modification or amendment certainly is possible, however; when agreement can be reached on the justification therefor.

Within statutory limitations we frequently have considerable operational flexibility to the extent that we have such flexibility without jeopardizing authorized functions, we exercise that flexibility to the fullest to maximize the total benefits that can be derived.

For example, many early projects were authorized for irrigation only, and the full cost is being or has been paid by the irrigators. Nevertheless, from the earliest days of snow surveys when snow pack data were obtained by days of periodic snowshoeing into the high elevations of the watersheds, we have operated storage facilities for flood control as well as irrigation as long as the flood control operation did not jeopardize the irrigation function.

I can assure you that Reclamation has no plan, intention, nor desire to usurp the right of States to apportion their unappropriated water by function and chronology. The only conflicts which might arise, as far as we are concerned, are where a State desires to retain continuing jurisdiction over water rights for the purpose of dictating day-to-day operation of Federal facilities or altering functional uses beyond the flexibility we have under prevailing statutory authority. Litigation in several cases involving the Section 8 language has established or sustained the Federal position in this regard.
I would like to discuss for a moment the Reservation Doctrine or the proposed Federal reservation legislation, a subject which was discussed in detail earlier today. The Bureau of Reclamation has never advocated adoption of the reservation doctrine. If such a doctrine were adopted by legislation, we feel it could have adverse effects on the Reclamation program as well as on numerous non-Federal projects.

Until now I have been discussing the State and Federal roles in water resource development. I'd like to finish my remarks with a discussion of the role of the local people, the user groups and those who are affected by, and ultimately pay for, water resource development in the West.

I feel strongly that local people should play an active role in deciding the priorities for water allocation by participation early in and throughout the planning process.

But the role played by all participants--Federal, State, and local--must be a responsible role, recognizing national as well as regional priorities and long-term as well as short-term objectives.

At the local level as well as at the national level, there are differences of opinion concerning objectives and the priorities assigned them. Legitimate arguments can be advanced concerning the priorities that should be assigned to differing objectives such as the development and allocation of more water for the production of food...or to increase our energy production...or for municipal and industrial use...or to enhance our fish and wildlife resources...or to increase recreational opportunities. But too often such arguments concerning priorities degenerate into ugly confrontations between competing interests.

We have problems, yes. We have obligations to our local communities, to our States, and to our regions. But we also have obligations to our Nation, or society in general, in both the short and long term--and it serves none of these interests well to provoke a water conflict between Washington, D.C., and the West, or between energy and agriculture, or between responsible development and environmental preservation. Those problems can be solved if we work together. But they cannot be solved by those whose only interest is promoting confrontation and obstruction. Let us jointly determine not to be forced into polarized positions by those who spend much of their time and effort figuring out ways to become obstacles to the solution of the serious issues we face today...problems such as providing more energy, meeting increased demand for more food, and protecting the environment. Those problems are often discussed separately, but they cannot be solved separately. We must work together to find solutions which meet our local and regional interests, and the interests of the nation today and tomorrow as well.
I am convinced such solutions can be found. For example, I can certainly understand the concern of individual States and local residents that water for energy might be taken at the expense of agriculture, but I don't believe this will come to pass to any serious extent. The apparent competition could turn out to be beneficial for agriculture. In most of our Western States the available supplies of water which will eventually be needed for agriculture and other uses, exclusive of energy, have not been fully developed and may not be for many years. Development now for energy use to meet an interim demand could actually facilitate and hasten the day that a controlled water supply would become available for agriculture.

The facilities used to develop the water needed for coal gasification and liquefaction, and for oil shale processing, will be available to provide water for irrigation and other uses many decades after the fossil fuel supplies are exhausted or, more likely, become obsolete because of newer, more economic, or more acceptable means for meeting our ever-growing energy needs. It is well for us to remember that the energy fuels are extractable and exhaustable--but water is a renewable resource, and if wisely developed and properly managed will serve mankind in perpetuity.

With proper planning, the water used for energy today will be available for crops tomorrow. And if we can develop effective programs of total water management, conservation, and augmentation, there is no reason for anyone to suffer from lack of water. Lest I sound too optimistic, let me add, if we do not develop means for efficient and effective development and management of our water supplies, we could well face water crises in a number of western water basins, even in eastern basins. In fact, they could dwarf the impact of the energy crisis.

So I say to water users in all the Western States; and all potential water users--let's work together. I mean this sincerely and completely. All cards face up. All pros and cons exposed. I don't condone tricky, cute, or devious means to accomplish special interest objectives. Men of good faith can find a good balance. We can have water for energy and water for agriculture, and we can do these things without damage to the spectacular environment of the Western States.

To do so takes a little old-fashioned imagination, innovation, and cooperation--and listening with open minds to the other fellow's point of view.

Development has been the essential ingredient in establishing the strong, stable economic base of this great Nation. Development of our water resources is still essential to the future well-being of the Nation, but future development must be balanced in concert with carefully thought out conservation measures to make sure that the renewable resources of land and water do in fact serve mankind in perpetuity and that our great environmental heritage is protected in the process. We pledge our resources to assist in this laudable objective.

Thank you.
September 8, 1975

Mr. Gilbert G. Stamm
Commissioner of Reclamation
U. S. Department of the Interior
C Street between 18th and 19th Streets N.W.
Washington, D.C. 20240

Dear Mr. Stamm:

I was pleased to receive your letter of August 27 and most flattered by your acceptance of my invitation to attend the annual conference of our Association. If your schedule will allow and if you enjoy outdoor salmon bakes, you may wish to arrive in time for the evening social activities on September 24. The resort has promised me this will be a gourmet's delight--and for the price it had better be.

You are aware that I inquired through Norm Moore as to whether you might also accept an invitation to address our membership and guests at the luncheon on September 25. It is my understanding that, notwithstanding the tardiness of such an invitation, you are willing to do so. At this time I do wish to extend such an invitation and am most hopeful your schedule will firm up in a manner to allow you to participate in our program.

As a speaker, we wish for you to be our guest. Although I would appreciate notice as to your expected time of arrival and departure, registration fees are not necessary. You should make your room reservation directly with the resort. Also, I would appreciate receipt of a resume suitable for purpose of your introduction at your earliest opportunity.

I have attempted to set a general theme for our conference as "Western Water Law Concepts--Are They Changing?" If you have views in this regard from your vantage point as Commissioner, they would be most welcomed. However, please feel free to select the thrust of any remarks you wish to make.
Again, I am most delighted and appreciative of your willingness to attend and participate in our conference. If I can assist you in any way in your travel arrangements, please do not hesitate to advise.

Sincerely,

Glen H. Fiedler, President

GHF:bj
August 13, 1975

Mr. Gilbert G. Stamm  
Commissioner of Reclamation  
U. S. Department of the Interior  
C Street between 18th and 19th Sts. N.W.  
Washington, D.C. 20240

Dear Mr. Stamm:

It is my pleasure to direct the enclosed material to you as the principal Federal Associate Member to our Association representing the U. S. Bureau of Reclamation. I am hopeful that this material is self-explanatory and will assist you in your planning for and scheduling the attendance of members of your staff at the September meeting.

Our membership would be extremely honored if your schedule will allow your attendance. It appears that 17 of the 19 western states will be represented and there should be ample opportunity to discuss common problems, interests and concerns in an informal (and hopefully pleasant) setting.

By copy of this letter an invitation is also extended to those members of your staff as were identified in Mr. Ed Sullivan's letter to me of July 2, 1975. A copy of the announcement package, including registration forms, is also being directed on this date to those individuals.

Should you or your staff have questions, comments or suggestions concerning the conference, please do not hesitate to contact me.

Sincerely,

Glen H. Fiedler, President

GHF:bj

Enclosures
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