NEW AND PENDING WATER LEGISLATION

ADDRESS CLIFFORD H. STONE, DIRECTOR
COLORADO WATER CONSERVATION BOARD AT NATIONAL RECLAMATION
ASSOCIATION CONVENTION

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A full treatment of the subject "New and Pending Water Legislation" would require more time than has been assigned to me on this program. It involves the approach to many problems of water utilization and conservation by Federal and State governments. A mere listing of laws which have been passed or of those which are proposed and a recital of their salient provisions would serve no useful purpose here nor justify the hearing of this convention.

The proposed legislation that would create Federal Authorities to direct, supervise and control water development and conservation of natural resources in recent months has aroused the greatest interest. Although not yet considered by any Congressional committee, these proposals have invoked heated discussion. The passage of such legislation will affect vitally the future welfare of the people of the West where vast natural resources - land, water, mineral and recreation, with their related potential industrial advancement - remain largely undeveloped. Policies involved strike at the very roots of the economic and social well-being of a people who live and must carve out their livelihood in a land where a river and its proper utilization and control are necessities of agricultural development. Principles involved concern the recognition of respective powers of a dual (Federal and State) form of government.

Although having social, economic and political aspects in the broad sense, these legislative proposals are not in any way related to partisan politics. But it is proper that the members of an organization such as the National Reclamation Association, dealing with problems of water and land development, should be concerned and voice their views.

It should be understood at the outset that in this discussion, or so far as any position taken by this Association is concerned, the question of private versus public power is not involved. We propose to approach the problem from the point of view of what is necessary and advisable, consistent with a reasonable national interest, to preserve, protect and develop water and land resources of the arid and semi-arid west.

It should be recognized, too, that for many years agencies of the government, such as the Bureau of Reclamation, have constructed federally financed projects with hydro-electric power production as a function, that both private and public bodies have purchased and distributed power so produced; that under the present policy and the Reclamation law of 1939,
public bodies have preferential call upon this electrical energy; and
that under the present policy and in the case of all recent reclamation
projects, the government retains control of the power. It should be
recognized further that the proceeds therefrom have made possible many
highly desirable irrigation structures which otherwise would not be
feasible.

Advocates of Authority legislation fail to recognize these facts.
They present their proposition as if there were not existent an expanding
and tested program of water development providing irrigation, flood control
and cheap power. They offer Regional Authorities as the only means by
which these beneficent results may be attained. They propose a new
plan, founded on a different policy, and designed to replace, if not in
theory, in practice, existing agencies of government long engaged in this
field of endeavor. They sponsor legislation fraught with grave questions
of centralized Federal control, of circumvented Congressional supervision
and of doubtful methods for incurring Federal obligations. They fail to
visualize the possibility of coordinating existing agencies and enacting
remodial legislation necessary to attain an adequate program for the
conservation and development of land and water resources.

Referring to the vast and largely undeveloped areas in the seventeen
reclamation states, these principles should be recognized, namely:

1. That the value and extent of agricultural land is dependent
upon the availability of a water supply from a surface or sub-surface
source; and that, in the best interest of western economy, prior use
of these waters should be dedicated to domestic and irrigation purposes.

2. That the right to use this water constitutes a property right
upheld and protected under state constitutions and statutes heretofore
recognized by the Federal courts; that on the basis of those property
rights, western agriculture, with all its incidental industrial development,
has been built; and that any procedure which removes the judicial
determination of those rights from the state courts tends to weaken local
autonomy.

3. That recognizing the highest use of water for growing crops
except of course its use for domestic consumption, multiple-use
reclamation projects should be so designed and operated that power
production shall at all times be subservient to the need of irrigation;
and that in the allocation of repayable costs, power should bear its
just and reasonable share, so as to reduce as far as possible the cost
to the farmer.

4. That, in order to obtain a maximum basin-wide development
and a workable adjustment of conflicting claims and to prevent the
intervention of an over-riding Federal authority which would control such
development and dictate such adjustment, the freedom to compact between
states must be restored and maintained. The states must encourage the
amicable adjustment of inter-state and major intra-state controversies.
5. That these water resources cannot be reduced to beneficial use without due regard for the reasonable national interest; but that such national interest must always be appraised and considered in just relation to local and state interests.

Those principles, in the opinion of the speaker, must be recognized in western reclamation. Any legislative proposal which threatens them, or any one of them, is inimical to the present and future development of the West.

May we briefly allude to proposed Authority bills to determine whether, and in what way, these principles are violated. In doing this, we refer to strictly regional Authority legislation, such as the Arkansas Valley, the Dakota, and the two Rankin omnibus Authority proposals. Congressman Rankin of Mississippi has introduced two bills which propose covering the entire nation with these regional Authorities.

This class of bills springs from the school of thought that appears to feel it necessary to have independent Authorities with extensive powers in the planning, construction and operation of projects, and of more concern to us, with extensive power over the initiation and use of waters within the river basins in which they are to operate. These Authorities are to be governed by one or more persons, appointed by the President, with wide latitude for unreviewable action, and with no adequate provision for keeping the policies of the several independent Authorities consistent.

There is another type of Authority bill which, as we see it, is markedly different. In this type of bill, if we correctly read its scope, the intent is only to deal with the problem of marketing power that will become available in the operation of certain multiple purpose projects - projects wherein the development of water for primary reclamation purposes will proceed under existing law, and where the Authority will not, in any sense, dip into the matter of control and use of water. Of the latter type appears to be the proposed Columbia Power Authority bill introduced by Congressman Hill. While this type of bill may be subject to some criticism of the kind we level at the other "Authority" bills, if my interpretation of the scope of the Hill bill is correct, its defects may lead themselves to correction by amendments. This is a matter for further serious study and thought. For the moment, let us direct our attention to the more objectionable Authority bills.

The violation of reclamation principles, above enumerated, by these Authority legislative proposals may be summarized as follows:

1. The motivating force back of them is cheap power. The production of hydro-electric energy is placed in the foreground as the first objective of water development. The planning is in the hands of officials who because of financial requirements to sustain the Authority and the spirit and general purposes of the law would provide for ultimate development of a basin from strictly the power point of view. The present-day appreciation of the desirability of cheap and available power and the demands for national defense are arrayed by their proponents in support of Authority legislation. No one here is questioning the desirability of widespread cheap power; and all subscribe to the necessity of national
defense are arrayed by their proponents in support of Authority legislation. No one here is questioning the desirability of widespread cheap power; and all subscribe to the necessity of national defense. But in the frenzy to secure these things, we should not jeopardize the future of western irrigated agriculture. The long-time economy of the region must not be disregarded. Agriculture supplies a large part of the power markets and contributes in a large measure to industrial development. Agriculture, livestock growing and mining are dependent upon those water resources; but power can be economically produced, under modern methods, from coal and oil, of which there is an abundance in most sections of the West.

2. The constitutional basis for the creation of these Authorities lies in the promotion and protection of navigation, flood control, power production and the national welfare and defense. By decisions of the United States Supreme Court rendered within the past year, flood control and electric power production have been held to be within the Commerce Clause of the Federal Constitution. Under the cloak of control and use of water for these Federal functions, the Authority is invested with power to control the appropriation, use and distribution of water for all purposes, including irrigation. The control of the appropriation, use and distribution of water for irrigation, domestic and manufacturing purposes under State laws is effectively divested. Specific language in the Authority bills to this effect is not there and not necessary. Likewise, specific language inserted in the legislation, by way of amendments, as proposed by some Western men, to reserve to the States the control of these waters for irrigation and other beneficial purposes would be unavailing and an idle gesture, because to do so would be to defeat the very purpose for which the law was created, annul the authority reposed in the designated officials and deny the constitutional basis under which such Authorities must operate. Legally, you cannot have in this respect a hybrid thing. The word "Authority" in these bills is no idle term; it is pungent with meaning. By a stroke of the pen, through administrative procedure set up in the proposed acts, the conflict between State and Federal laws, in the administration of the use of water, is effectually determined; and it will not be in favor of the States.

These Regional Authorities cover entire river basins; and it must be so if they are to function. In many of these Western river basins, such as the Arkansas, conditions as to climate and requirements for irrigation, flood control and power production differ greatly. It has been proposed by some that these bills be amended to divide the basin, eliminating the control of the Authority in
the upper areas where irrigation is practiced. This would not cure the situation nor would it be a practicable solution. An Authority astride the lower section of the river would have supreme control of the waters thereof whether within or originating without the geographical sphere of its activity. Furthermore, if an Authority were once set up in part of a river basin, it would only be a matter of time until its territory would be extended to cover the entire basin.

Under the Arkansas Valley Authority and Rankin bills, the Federal Court is in terms and by recognized procedural practice vested with exclusive jurisdiction to determine questions affecting rights to the use of water. The last Rankin bill provides:

"The District Court of the United States for the judicial district in which the principal office of the Authority is located. . . . shall have exclusive jurisdiction of all proceedings at law or in equity against such Authority. . . . or any officer of such Authority, in which there is drawn in question the validity of this Act or any other law of the United States, or the validity of any Act or conduct of such Authority. . . . done pursuant to or under color of this Act or any such other law; and no other Court of the United States, and no Court of any State, shall have jurisdiction of any such cause now pending or hereafter commenced without the express consent of such Authority . . . ."

This bill also specifies an exclusive remedy providing that no temporary or permanent injunction shall be issued except upon the filing of a bond sufficient in amount to recompense

"the persons enjoined, and the Authority, the United States, any intervener, and any person or agency damaged, for any and all loss, expense and damage which may be caused or contributed to by the issuance or continuance of any such injunction".

This provision is so stringent as to costs, expenses and damages covering all persons involved that any citizen would hesitate, no matter what he believed his rights to be, before seeking by court action to enjoin the threatened acts of the Authority.

3. Under the A.V.A., Dakota, and the Rankin Omnibus Authority proposals, interstate compacts involving the waters within the region under an Authority

"shall not become effective or binding upon the states party thereto unless and until it shall have been submitted to and approved by the Authority. . . . ."

The last Rankin bill also provides that such approval shall be grant-

"if it finds such . . . compact and the projects and activities contemplated thereby to be feasible, practicable and appropriate to and
consistent with the policies and purposes of this Act."

Accordingly, not only must the Authority approve interstate compacts, but such approval cannot in any event be secured unless the compacts are in compliance with the policies and purposes of the Authority legislation.

4. By the terms of the A.W.A. and the Dakota proposals, the Authority could and undoubtedly would supplant existing Agencies, including the Bureau of Reclamation, in the planning, construction and operation of water projects. By the terms of the last Rankin bill, the Authority would coordinate and integrate projects, activities and regional developments and study and survey the projects and activities, within the region of such Authority, of the Departments of the United States relating to navigation, the control of floods, the development of hydro-electric power, and the reclamation of the public lands, for the conservation and prudent husbandry of the water, power, soil, mineral and forest resources of the nation. This Rankin bill also provides that whenever pursuant to the act

"or any other Act of the Congress, any project or activity is entrusted to an Authority, such Authority shall construct, operate and carry out such project or activity . . . ."

It can be seen that, although the last omnibus Authority proposal does not go as far as the provisions of the A.W.A. in this regard, yet by its enactment existing agencies, including the Bureau of Reclamation, would be subjected to the Authority, in the planning, investigating and surveying of irrigation projects; and in addition a new construction agency for such projects would be placed in the field. Under the domination of such an authority which would make the project recommendations to the President and Congress, it is easy to conclude that the Bureau of Reclamation would become relegated to a limited sphere of activity.

Moreover, it is too clear for verbal demonstration here that, if projects are to be undertaken by the Authorities, they would be undertaken in disregard of many time tested policies that have been incorporated as requirements in the basic Federal reclamation laws. No good can come to the irrigation program of tomorrow, half Authority borne, half Reclamation sponsored.

Adorants to the theories of planned economy and strong central control of natural resources and those who think of water resources largely in terms of hydro-electric production, have sponsored the Rankin omnibus bill, the Arkansas, and the Dakota Authority legislation. But the problem is not limited to theories of economic development. The incentive for this legislation has in a large measure arisen out of conditions which demand some form of action.

These are:

1. The existence of large areas in the United States where no present agency of the government can adequately function in the field of water development, Arkansas, Louisiana, and Mississippi in particular are not
included in the area in which the Bureau of Reclamation can function.

2. Although there is marked progress evident in the coordination of the activities of Federal bureaus and agencies engaged in flood control, water development and conservation, there is general recognition that in the interest of economy and the realization of maximum benefits from development of our water resources, there must be evolved some procedure for more effective coordination in the planning, construction and operation of such projects; and that conflicts in the plans and operation within river basins, evident in many cases in the past, must be avoided.

3. The existence of power facilities on large multiple use projects from which large blocks of power will be available for commercial sale. This condition has arisen because, to serve the interests of national and local economy, to secure the maximum use of water for all beneficial purposes, and, to make some irrigation projects feasible for authorization, it has been desirable to provide for such additional power capacity as a means of reducing the share of project costs that would otherwise have to be borne by the water users.

It cannot be too forcefully emphasized that, if you oppose these Authority proposals, you cannot hope for success in your opposition by a more negative position. It is evident that there is not authority for all phases of the water program.

The solution is indicated by the immediate problems. It will not be settled by theories on which there is an apparent difference of opinion. May the solution be suggested here, not in detail, because time does not permit, but in general outline. It is this;

1. That all Federal legislation relating to the control, regulation and utilization of water in interstate river basins recognize fully the principle of equitable cooperation between Federal and State governments, each operating within its constitutional limitations.

2. That the Reclamation Act of 1902, as amended, and as supplemented by the Reclamation Act of 1879, be further amended, to the end that the Bureau of Reclamation may function, in accordance with the provisions of these basic acts, outside of the area to which its activities are now restricted.

3. That appropriate steps be taken by legislation, or otherwise, for the purpose of coordinating more effectively the activities of existing Federal agencies engaged in investigating, constructing and operating projects for the development and utilization of the water resources of the river basins of the United States.

4. That all Federal legislation relating to the control, regulation and utilization of water in the arid and semi-arid west recognize fully the principle that the highest use shall be for domestic consumption and for growing crops; that multiple use reclamation projects should be so designed and operated that power production shall at all times be subservient to the
needs of irrigation; and that in the allocation of repayable costs the
twin problem of having power bear an appropriate share of these costs and
of keeping the water users' obligations within their ability to pay may
be met; and that, subject to this principle, the development in every
river basin be so adjusted and coordinated as to obtain the maximum bene-
fits for all purposes.

5. That legislation be enacted, or present statutes be amended, pro-
viding for an administrative procedure for the disposal and transmission of
hydro-electric power made available by Federal multiple-use reclamation
projects, bearing in mind that reclamation is primarily in aid of irriga-
tion.

This plan is supported by what has already been said. A word should be
added. The proposals here made with respect to the expansion of the geo-
ographical sphere of operation do not expand or alter in any respect the
functional phase of the activities of that Bureau. They are suggested as
one of the means of meeting a need which has been at least partially res-
ponsible for the Authority bills. Let us not destroy reclamation, as we
know it today, by being unwilling to extend its benefits to states out-
side the present reclamation area where a like need for reclamation exists.
That is not a departure from the policy of the past. Other states have
been added by Congressional enactment to the original reclamation area. It
should be borne in mind that of the approximately one hundred two million
dollars made available to reclamation projects by the last appropriation
bill, only about eight million dollars came from the reclamation revolving
fund. Any legislation to effectuate the proposal here made should reserve
the proceeds of the present revolving fund to the group of states that cre-
ated it.

As to the proposal respecting hydro-electric energy, it should be noted
that it only covers power produced by multiple-purpose reclamation projects;
and that it only refers to the legislative establishment of an administrative
procedure. It recognizes that the question of power is involved in the
problem and makes no attempt to suggest the details.

May it be emphasized that this Association should not become embroiled
in many of the highly controversial issues involved in power authorities;
but that, in so far as additional legislative authority is needed to meet
problems not being adequately met and thus defeat the Authority proposals dis-
cussed, may it be urged that in the attempt to work out the solution, we
continue to confer, not only among the representatives of states but also
with bureaus and agencies of the Government dealing with the development and
conservation of water resources. But that in so doing, we steadfastly main-
tain the principles of reclamation herein set out.