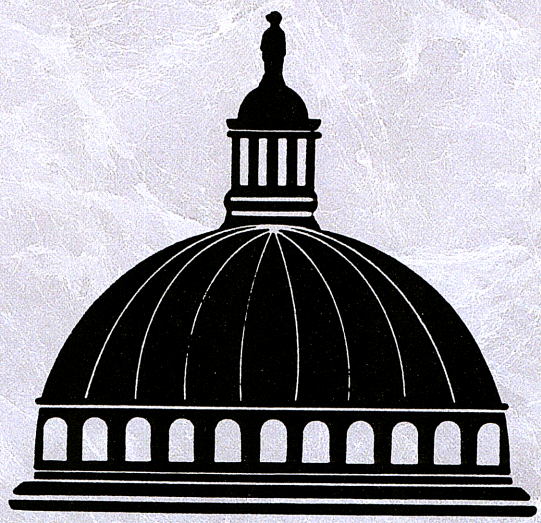
Interstate Council on Water Policy
and
Western States Water Council

1996 WATER POLICY ROUNDTABLE



March 20-22, 1996

The Washington Court Hotel
525 New Jersey Avenue, N.W.
Washington, D.C.

Foreword

On behalf of the members and staff of the Western States Water Council and the Interstate Council on Water Policy, we want to take this opportunity to welcome you to our Water Policy Roundtable. To help ensure that you find this a beneficial experience, we have prepared these briefing materials for you.

This foreword is followed by the agenda and schedule for the Roundtable and a table of contents for the other materials in this booklet. Some background regarding the Western States Water Council and the Interstate Council on Water Policy and the purpose of this Roundtable is next. There follows information on the topics which will be the focus of roundtable discussions during the Roundtable. The information regarding each topic for discussion concludes with a listing of relevant questions. Finally, a list of members of both the Western States Water Council and the Interstate Council on Water Policy, as well as their staffs are included for reference.

While the issues to be addressed during the discussions will not be new to many of you, we hope that this Roundtable will provide a valuable opportunity for you to gain new perspectives and share fresh insights. In this regard, we would appreciate any comments you may have regarding this Roundtable.

The Council desires to acknowledge with appreciation the efforts of its Water Policy Seminar Subcommittee, chaired by Roland Westergard. Both the Council and ICWP also wish to express their gratitude to Boyle Engineering Corporation for sponsoring the social hour on Wednesday evening.

Thank you for coming.

Roundtable Objective

The objective of the Roundtable is to promote open discussion between state and federal representatives responsible for development of water policy, regarding issues of particular concern to states. The discussions will focus on appropriate federal and state roles, with the aim of providing an enhanced perspective on how national interests can best be accommodated within the framework of state water management.

WATER POLICY ROUNDTABLE

Sponsored by the
INTERSTATE COUNCIL ON WATER POLICY
and the
WESTERN STATES WATER COUNCIL

Wednesday, March 20
(Washington Court Hotel)

Western States Water Council (WSWC)
8:00 a.m. Management Subcommittee
9:00 a.m. Other Subcommittees
10:30 a.m. Executive Committee

Interstate Council on Water Policy (ICWP)
8:00 a.m. Legislative Committee
10:00 a.m. ICWP Board Meeting

WSWC-ICWP JOINT SESSION

1:00 p.m. Welcoming Remarks
WSWC Chair, D. Larry Anderson (Utah)
ICWP Chair, Alfred Vang (South Carolina)

1:15 p.m. Congressional Address
Congressman John T. Doolittle, Chair, House Resources Subcommittee on Water and Power

1:45 p.m. ROUNDTABLE DISCUSSION I
"Setting Priorities: Risk Assessment, Cost/Benefit Analysis & Risk Management"

Moderator - Rick Kropp, New Jersey Department of Environmental Protection

- *Phil Metzger, EPA Chief Policy Counsel*
- *Jimmie Powell and Mike Evans, Senate Environment Committee Staff*
- *Kyle Schilling, Director Institute for Water Resources*
- *Henry Dean, St. Johns River Water Management District*
- *Members of ICWP and WSWC*

3:00 p.m. Break

3:30 p.m. ROUNDTABLE DISCUSSION II
"Clean Water Act Reauthorization"

Moderator - Ed Anton, California State Water Resources Control Board

- *Tim Kasten, EPA Special Assistant to the Assistant Administrator for Water*
- *Mike Davis, Chief of Corps of Engineers' Regulatory Program*
- *Jimmie Powell and Mike Evans, Senate Environment Committee Staff*
- *Ben Grumbles and Ken Kopocis, House Transportation and Infrastructure Committee Staff*
- *Members of ICWP and WSWC*

5:30 p.m. Adjourn for the day

6:00 p.m. Social Hour for Registrants and Guests
Hosted by Boyle Engineering

Thursday, March 21
(Washington Court Hotel)

WSWC-ICWP JOINT SESSION

8:30 a.m. ROUNDTABLE DISCUSSION III
"Federal Water Project Transfers Policy"

Moderator - Martha Pagel, Director, Oregon Water Resources Department

- *Eluid Martinez, Commissioner of Bureau of Reclamation*
- *James Smyth, Deputy Assistant Secretary of the Army (Civil Works), for Planning Policy and Legislation*
- *John Clements, Deputy Director, Office of Hydropower Licensing, Federal Energy Regulatory Commission*
- *William Simmons and Elizabeth Birnbaum, House Resources Committee Staff*
- *Jeanine Jones, Principal Engineer, California Department of Water Resources*
- *Members of ICWP and WSWC*

10:15 a.m. Break

WSWC and ICWP CONCURRENT SESSIONS

WSWC

11:00 a.m. - 12:30 p.m. Water Quality Committee

1:15 - 2:45 p.m. Water Resources Committee

3:00 - 5:00 p.m. Legal Committee

ICWP

10:30 a.m. Board Bus for National Press Club

11:15 a.m. - 12:00 p.m. National Water Policy Charter Media Event

12:15 - 2:00 p.m. Luncheon
- *Congressman Ed Whitfield (R-KY)*

2:15 p.m. Board Bus to return to Hotel

3:00 p.m. ROUNDTABLE DISCUSSION IV
"The Evolving Federal Role in Water Resources"

- The Future of USGS
  Moderator - Ray Hart, California Department of Water Resources

  Gordon Eaton, USGS Director
  Robert Hirsch, Chief Hydrologist, USGS

- The Future of River Basin Commissions
  Moderator - Jerry Sherk, Georgia State University College of Law

  Invited Panelists:
  John Griffin, Secretary, Maryland Department of Natural Resources
  Rep. Rodney Frelinghuysen (R-NJ), Member, House Appropriations Subcommittee on Energy and Water Development (invited)
  Dan Renberg, Legislative Director for Senator Specter (R-PA)
  Jimmy Bates, Deputy Director of Civil Works, U.S. Army Corps of Engineers

5:00 p.m. Adjourn for the day

Friday, March 22

(Washington Court Hotel)

WSWC-ICWP JOINT SESSION

8:30 a.m. ROUNDTABLE DISCUSSION V

"The Future of Water Policy in the West"

Moderator - Dave Sprynczynatyk, North Dakota State Engineer

- *Senator Larry Craig (invited)*
- *Representatives of Congressional Members of the Western Water Policy Review Commission*

Denise Fort, Chair, Western Water Policy Review Advisory Commission
Larry MacDonnell, Executive Director, WWPRAC
Senate: Jim Beirne [Sen. Frank Murkowski (R-AK), Energy & Natural Resources]
David Brooks [Sen. Bill Bradley (D-NJ), Energy & Natural Resources]
House: Valerie West [Rep. Don Young (R-AK), Resources]
Ben Grumbles [Rep. Bud Shuster (R-PA), Trans. & Infrastructure]
Steve Lanich [Rep. George Miller (D-CA), Resources]
Ken Kopocis, House Transportation and Infrastructure Committee Staff

10:30 a.m. Break

WSWC

10:45 a.m. Full Council Meeting
11:45 a.m. Adjourn

ICWP

10:45 a.m. ICWP Board Business Meeting
12:30 p.m. Adjourn

Contents

Background Regarding the Western States Water Council

The Western States Water Council is an organization consisting of representatives appointed by the governors of 16 western states. Since its creation, through adoption of a resolution at the Western Governors' Conference in 1965, the Council has strived to fulfill its chartered purposes. The purposes of the Council are: (1) to accomplish effective cooperation among western states in the conservation, development and management of water resources; (2) to maintain vital state prerogatives, while identifying ways to accommodate legitimate federal interests; (3) to provide a forum for the exchange of views, perspectives, and experiences among member states; and (4) to provide analysis of federal and state developments in order to assist member states in evaluating impacts of federal laws and programs and the effectiveness of state laws and policies.

Since the Council was created by the governors, and since the members serve at their respective governor's pleasure, the Council sees itself as being accountable to the Western Governors' Association (WGA). Council members and staff work closely with the WGA staff on water policy issues of concern to the governors. Much of the Council's work is accomplished under the auspices of its three working committees, which meet three times a year: namely, the Water Resources Committee, the Water Quality Committee and the Legal Committee.

As states continue to carry out their traditional role with regard to water allocation and management, the challenges are increasing. With changing and increasing demands on limited water resources, complicated by an increasingly complex overlay of federal laws and regulations, the importance of cooperative efforts and exchanges by and among states has likewise been magnified. With the continued support of its member states, the Council plans to continue to facilitate such vital cooperation.

Background Regarding the Interstate Council on Water Policy

The Interstate Council on Water Policy (ICWP) is the national organization of state and regional water resource management agencies. As such, it provides a means for its members to exchange information, ideas, and experience and to work with federal agencies which share water management responsibilities. In particular, ICWP focuses on both water quality and water quantity issues, and on the dynamic interface between state and federal roles.

ICWP is committed to seeking more comprehensive and coordinated approaches to water management that integrate quality and quantity concerns, ground and surface water management, and economic and environmental values. Within this context, the relationship between local, state, and federal policies, programs, and regulatory authority is of particular interest.

ICWP's scope of interest includes such issues as watershed management, dam safety, floodplain management, groundwater, nonpoint source pollution, water quality standards, water conservation, drought and emergency management, wetlands protection, state water rights, climate change, hydropower licensing, endangered species and habitat, water supply, and water resource research and data.

ICWP was founded in 1959 to provide a voice for the states in national water policy. In the late 1960s ICWP successfully fought for the Water Resources Planning Act which provided the basis for improved state water planning programs. During the 1970s ICWP served as the Standing State Advisory Committee to the U.S. Water Resources Council. In the 1980s ICWP was influential in the development of the 1986 Water Resources Development Act which redefined cost-sharing for federal water projects. In the 1990s ICWP is continuing its leadership by spearheading the development of a National Water Policy Charter and promoting a national dialogue on water policy.

Membership in ICWP is open to all states. Water resource agencies in nineteen states are currently active members. Associate members include regional interstate water agencies and sub-state water management districts and commissions. Consulting firms, educational institutions, and other organizations interested in water issues participate as affiliate members.

Roundtable Topics

Risk Assessment, Risk Management and Benefit-Cost Analysis

Definitions

Risk assessment is the use of scientific data to define the probability of some harm coming to an individual or a population because of exposure to a substance or a situation.

Risk management is the process of deciding how to deal with a risk that has been determined to exist. Risk management includes taking into account the technical feasibility of reducing risk in the light of social economic, and political factors. (Environmental Law, Findley and Father, 1992).

Benefit-cost analysis compares the costs and benefits of a project or project alternatives in monetary terms, including monetary estimates of the nonpecuniary environmental values. (Intergovernmental Decision Making for Environmental Protection and Public Works, U.S. Advisory Commission on Intergovernmental Relations, A-122, November 1992).

Using Quantitative Analytical Tools in Water Management Decisionmaking

Quantitative methods have been used by water managers and policymakers in the United States for more than sixty years. One example is benefit-cost analysis, used for decisionmaking on water resources projects undertaken with government funding. Another is risk assessment, used as the basis for setting water quality standards. A third example is risk management, used in choosing cleanup actions for polluted ground water.

The current emphasis on balancing the federal budget and down-sizing government has stimulated increased interest in using these kinds of quantitative tools to help set priorities for government decisionmaking and resource allocation. Government agencies have been increasingly called upon to justify either the expenditure of tax dollars for public works or the cost to business, government, and the public of compliance with environmental regulations. Therefore, techniques for evaluating the risks, costs, and benefits of those actions and requirements have been used more frequently. One analyst explained the situation this way:

> In the nineties, we will be forced to make increasingly difficult decisions about resource use. The quality of those decisions, as well as the ability to make them in a reasonably democratic society, requires the ability to compare consequences. (V. Kerry Smith, "Resource Evaluation at the Crossroads," *Resources* 90 (Winter 1988):6)

While the interest in such tools as risk assessment and benefit-cost analysis is growing, so is concern on the part of many about the possible over-reliance on or misuse of quantitative methods. A recent report of the U.S. Senate Committee on Environmental and Public Works, which is struggling with how to evaluate costs associated with pollution and public health regulations, stated:

In 1993, the Office of Technology Assessment estimated that it may cost Americans $150 billion a year to comply with environmental regulations. While this may not be too much to spend, it is too much to spend unwisely. Therefore, in recent years, there has been increasing attention given to the potential use of risk assessment and cost-benefit analysis as tools to make environmental laws more efficient and effective. As the Commission on Risk Assessment and Risk Management recently wrote, "The tools of risk assessment and cost-benefit analysis can contribute useful information for critical decisions affecting health, safety, and the environment, and the nation's economy." Yet risk assessment and cost-benefit analysis remain imperfect tools. There are limitations and uncertainty which are unavoidable with current methods, and as a result, over-reliance on risk assessment and cost-benefit analysis can lead, in some cases, to excessive regulatory burdens, and unreasonable costs to businesses, taxpayers, and prolonged litigation.

In light of both the prospects and the limitations of risk assessment and cost-benefit analysis, the Committee has been seeking to strike a balance, carefully incorporating risk assessment and cost-benefit analysis into environmental laws where appropriate. (U.S. Senate Environment and Public Works Committee Report on the Safe Drinking Water Act Amendments of 1995 (S. Rpt. 104-169))

The development of quantitative analytical tools for water management decisionmaking has followed two parallel tracks at the federal level, reflecting the division of water management responsibilities between federal government agencies responsible for water project development (primarily the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation) and responsible for management of water quality (primarily the U.S. EPA). The use of quantitative methods by these agencies is illustrated by the following two examples:

- The use of benefit-cost evaluation and other quantitative tools by the U.S. Army Corps of Engineers.

- The use of risk assessment and benefit-cost evaluation in the Safe Drinking Water Act.

The U.S. Army Corps of Engineers

Benefit-cost analysis techniques for evaluating federal water projects have been in existence for over 60 years, having originated in the national economic development efforts of the 1930's. The first interagency guidelines were published in 1950, and they have been updated several times. In 1983, the U.S. Water Resources Council published Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G). This guidance was developed to ensure that proper and consistent plans are developed by federal agencies to "enhance their ability to identify and recommend to the Congress economically and environmentally sound water project alternatives."

Since the early 1970s, the Army Corps of Engineers water resources program has shifted its emphasis from the construction of new projects to the improved operation or modification of existing projects. In addition, environmental restoration is now a high priority mission of the Corps, along with the more traditional missions of navigation and flood control. Although the 1983 Principles and Guidelines focused on national economic development as the primary objective, they have been adapted to address environmental impacts.

However, U.S. Environmental Protection Agency (EPA) activities are not covered by these Principles and Guidelines. Rather, EPA has developed its own regulatory and planning approaches with little or no coordination with other federal benefit-cost methodologies. This has led to many conflicts and inconsistencies between water development and environmental restoration activities undertaken by the Corps and

water quality protection and restoration programs administered by EPA.

The traditional Corps planning process (based upon the 1983 Principles and Guidelines) utilizes economic analysis, comparing both project benefits and construction and operation costs in monetary terms. Although there has been a shift in the types of projects the Corps undertakes, the agency has indicated that "there is every reason to believe the planning approaches of the past might be adapted for evaluating environmental projects." Given that many outputs of environmental restoration and mitigation cannot be measured in monetary terms, the Corps' Institute for Water Resources is conducting the Evaluation of Environmental Investments Research Program (EEIRP) to assist planners, managers, and regulators in addressing the following two broad issues regarding environmental restoration and mitigation planning studies.

- Site issue: Which is the most effective and efficient alternative for a particular location?

- Portfolio issue: How should limited resources be allocated among competing recommended actions?

The Safe Drinking Water Act

The federal Safe Drinking Water Act (SDWA), passed by Congress in 1974, directed EPA to set human health-based standards for contaminants in drinking water and to require water supply system operators to come as close as possible to meeting the standards by using the best available technology that is economically and technologically feasible.

In 1986, amendments to the SDWA called for EPA to set maximum contaminant level goals (MCLGs) for 83 specific potential contaminants within three years, and additionally to publish a triennial priority list of contaminants which may require regulations. EPA was further required to propose primary regulations for at least 25 contaminants within two years, and 25 new contaminants every three years thereafter. Numerical MCLGs must be established at a level at which no known or anticipated adverse health effects occur, providing an adequate margin of safety. For carcinogens, MCLGs must be set at zero. Water suppliers must then deliver drinking water in compliance with maximum contaminant levels (MCLs), which EPA must set as close to the MCLGs for each contaminant as is feasible.

These demanding requirements have had at least two major consequences related to benefit-cost considerations. First, in order to meet the aggressive time schedule in the SDWA for promulgating regulations, EPA has been compelled in many cases to choose contaminants for which to develop MCLGs, based primarily on the availability of data regarding the contaminants and their health effects. Therefore, EPA's selection of contaminants for regulation is not necessarily based on the relative risk to the public health of the chosen contaminants, compared to other contaminants. Second, because EPA does not set MCLGs based on an assessment of the actual risk of exposure, these standards are often more stringent than they need to be to protect the public from adverse health effects.

Predictably, as the SDWA regulations began to be implemented, the costs of meeting these requirements caused water suppliers, state and local governments, and the public to compare the cost of compliance with the benefits.

The current debate surrounding amendments to the Safe Drinking Water Act illustrates the growing concern over the appropriate use of risk assessment and benefit-cost analysis. For example, the Senate passed S. 1316 in November 1995. Section 5 deals specifically with MCLs. It requires the use of risk assessment and benefit-cost analysis in the context of considering MCLs for drinking water.

Risk assessment and benefit-cost analysis techniques can also be useful in setting overall environmental priorities. Section 28 of the Senate bill would have directed EPA to rank sources of pollution with respect to the relative degree of risk

that they pose to human health, the environment, and public welfare. In addition, the agency would have been directed to evaluate the private and public costs associated with each source of pollution and the costs and benefits of complying with regulations designed to protect against the risks associated with the sources of pollution. However, Section 28, was deleted prior to passage, because this was judged to be a broader issue than the protection of drinking water alone. The Senate concluded the issue would be more appropriately addressed in the context of overall regulatory reform legislation.

Questions

1. What role should risk assessment/risk management and benefit-cost analysis play in regulatory reform?

2. Are the 1983 Principles and Guidelines still useful? If so, should all federal agencies use them? Are revisions necessary? If so, who should make the revisions?

3. How should scientific uncertainty be treated in risk assessments?

4. How can non-monetary or non-quantifiable values be best incorporated into risk assessment and benefit-cost analyses?

Clean Water Act Reauthorization

The Clean Water Act: A National Perspective

Introduction

The Clean Water Act (CWA) protects water quality by limiting discharges of pollutants to the nation's waters. Considerable improvement in water quality has resulted under the CWA. For example, since 1972, the number of people served by municipalities with primary only or no wastewater treatment was reduced from 34 million to 1.1 million, while the number of people served by advanced or secondary municipal wastewater treatment more than doubled. However, states' experience suggests that the CWA could be improved to recognize and address remaining concerns.

The House passed its Clean Water Act Reauthorization bill, H.R. 961, on May 16, 1995, by a vote of 240-185. President Clinton has said that he would veto that bill. The Senate has yet to act on a clean water bill. Senator Chafee (R-RI), Chairman of the Senate Environment and Public Works Committee, has stated that his environmental priorities for the remainder of this Congress are superfund, the Endangered Species Act, then the CWA. He has also stated that he does not believe the Act is in need of a comprehensive overhaul, but that the Committee's bill would be much narrower, including provisions on storm water, combined sewer overflows, wetlands, and reauthorizing the state revolving loan fund.

The National Governors' Association is currently in the process of revising its "states' package" of legislative language for reauthorization of the Clean Water Act. The package was originally completed during the Summer of 1994, and subsequently served as the nucleus for many of the provisions in the House bill. NGA is currently reviewing the states' positions in light of the House action, and in order to prepare for action on clean water in the Senate.

Background

The Clean Water Act was first enacted in 1948. It has since been amended ten times and is currently up for reauthorization. The basic framework of the CWA as it exists today was enacted in 1972. Its primary focus is on controlling pollutant discharges to waters. Pollutants are defined as arising from point and nonpoint sources. Point source pollutants are primarily end-of-pipe discharges from municipal and industrial sources. Point source discharges are controlled through National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits incorporate technology-based standards to control toxic pollutants. Nonpoint source pollution is more difficult to trace and control, including such sources as agricultural runoff and storm water. Nonpoint sources are not generally regulated by permits under the CWA, but are subject to state programs which include best management programs and other measures to control nonpoint pollution.

National Issues of Concern

With CWA reauthorization before the Congress, states have identified several priorities under the existing regime. Primary national concerns identified by state water quality administrators include: state grants policy reform; implementation of watershed programs; water quality standards criteria revision and development; monitoring; storm water management; State Revolving Loan Fund management; federal nonpoint source policy; and program funding. National debate has also focused on the wetlands program under the CWA, and state authority over water resources. The following positions of the Western States Water Council and the Interstate Council on Water Policy address these and other issues and are included for reference. (It should be noted that these positions may change as a result of continuing deliberations.) Following these positions is a description of issues of particular western concern, and a listing of questions relevant to the roundtable discussion.

Position No. 202

POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
REAUTHORIZATION OF THE CLEAN WATER ACT
April 14, 1995

BACKGROUND

Clean water is essential to the quality of life and health of the citizens of the nation. This is particularly true in the arid West, where water is a scarce and precious resource that must be managed considering all social, environmental, and economic values and needs. Because of their unique understanding of these needs, states are best able to manage the water within their borders. Much progress has occurred under the Clean Water Act (CWA) toward the goal of controlling water pollution. Western states have made great strides in integrating water quality and water quantity decision-making and have developed legislative and planning strategies for promoting these goals as well as promoting water conservation and water reuse.

The CWA is now being considered in Congress for reauthorization. The outcome of the debate will affect the ability of state, federal, local, and tribal governments to protect water quality, and could affect the ability of state governments to administer water rights. The Western States Water Council encourages the reauthorization of the CWA based upon the following principles. As issues become more clearly defined, the council will provide further comments in future position statements.

CROSSCUTTING ISSUES

There are three issues of importance, pollution prevention watershed management and risk assessment and management, which deserve special consideration during the CWA reauthorization process, because they potentially impact all programs authorized by the CWA.

POLLUTION PREVENTION

Pollution prevention has recently received a great deal of attention, but needs to be given more emphasis. The concept of pollution prevention cuts across all CWA programs by offering a means of avoiding complex and costly "command and control" approaches to water pollution control and clean up. Expanded funding should be provided to states for development of pollution prevention programs, and incentives such as greater flexibility in using existing grants should be provided to states with strong pollution prevention programs.

WATERSHED MANAGEMENT

The watershed approach offers great opportunities. It allows focus on the most critical problems that affect the watershed while eliminating duplication and inconsistency between regulatory entities. It allows public involvement to be focused on a defined area where results can be measured. It has the potential to foster cooperative problem solving where the important players can help each other solve mutual problems in a way that can result in an improved environment at less cost. It provides a feasible means of developing an "ecosystem approach" relative to the protection of water quality and related values. To encourage these benefits the CWA should embody the following principles:

1. States should be encouraged, but not mandated, to utilize a watershed approach for water quality and resources management.

2. Any absolute mandate contained in the CWA should be limited to water quality concerns.

3. While states should be allowed to craft their watershed management to meet their needs, the goals and the scope of such programs must be clearly defined. This definition is essential since "watershed management" has many different meanings to different people. In general, basin-specific goals and programs should be selected and prioritized on the basis of risk to quality-of-life, human health, and ecological concerns.

4. Watershed management should emphasize performance, not planning. A uniform set of best management practices should not be mandated. States should be allowed to identify appropriate individual strategies to be applied within, and for, a given basin.

5. There should be no interference with the rights of the states to manage allocation of their water supplies.

6. The internal structure of state government should not be mandated. States should be allowed to use existing authorities and programs or set up advisory committees and watershed councils to meet their needs as they understand them.

7. Flexibility should be provided in both the procedural and substantive requirements of clean water programs to meet the goals of improving water quality and the environment as soon as possible.

8. EPA should provide technical, financial, and research assistance. It should not mandate any particular approach or try to mandate its preferred methods.

9. Federal funding should be made available to the states to support watershed management. The funding should not be tied to following processes specified by EPA. There should be sufficient flexibility in funding to allow states to deal with watershed problems according to the priorities they have identified.

RISK ASSESSMENT AND MANAGEMENT

Implementation of programs authorized by the Clean Water Act should be based on the magnitude of risk to human health, the protection of designated uses, and the likelihood of further significant and unreasonable water quality degradation if no action is taken.

FUNDING

1. The minimum funding at the national level for the state revolving fund (SRF) should be $2.4 billion annually for at least five additional years beyond the current authorization to meet the original funding commitment of the CWA. Funding levels must be restored in response to changes from the "stimulus package" which caused a reduction of funding to unacceptable levels. This funding is also needed to provide adequate assistance for new needs created by the 1987 reauthorization, such as controls on non-point source pollution, stormwater, and toxics. Adequate funding should also be provided to meet the water quality needs of small communities and rural areas. A grant program or combination loan/grant program with loan terms greater than 20 years should be implemented through new funding and/or in a manner that does not deplete SRF assets.

2. CWA Section 106 funding should be increased to a level that enables states to maintain effective water quality planning, ambient monitoring, permitting, and compliance. Funds available to states under CWA Sections 104, 319, and any new funding for pollution prevention and watershed management should be combined into Section 106, and a single grant should be awarded to each state. States should then have flexibility in targeting the expenditure of funds.

3. For any new federally mandated programs, new federal funds should be provided. The Council opposes any increased matching requirements for federal funds.

4. In providing SRF financial assistance to municipalities, federal requirements other than those specified by CWA Title VI should not be imposed. Once federal capitalization of the program ceases, EPA oversight should be limited to ensuring that the SRF is maintained. Federal crosscutting laws associated with the SRF program should be

eliminated. Costs associated with the purchase of land, easements, and rights of way should be eligible for SRF funding.

5. The 4% limitation on SRF administrative costs should be based upon the authorized level rather than the appropriated capitalization grant amount, and provisions should be made for a minimum amount of federal assistance per state for administrative costs.

6. Separate funding and administrative requirements should be provided for any drinking water state revolving fund program. Money allocated for the drinking water fund should be from a source separate from the wastewater SRF.

7. Alternatives to typical "command and control" programs can be promoted through creative funding incentives. The elimination of "cross-cutter" requirements for states with 90% of point sources meeting secondary treatment or for states with no or minimal National Pollution Discharge Elimination System (NPDES) permit backlogs are two examples.

NON-POINT SOURCE POLLUTION CONTROL

1. Maximum flexibility should be provided to states to effectively implement non-point source (NPS) pollution control programs. NPS funding should enable states to balance program elements and focus, as needed, on technology development and transfer, monitoring, assessment, demonstrations, local community technical assistance, and institutionalizing non-traditional water quality management programs.

2. NPS plans, demonstration projects, and program development as envisioned in the 1987 CWA amendments are not yet complete. To produce needed results, states must have the ability to use a significant portion of their CWA Section 319 funds to establish and maintain long term, consistent programs as envisioned by the 1987 amendments.

3. A provision should be added to the CWA to ensure that Section 319(k), requiring federal agency activities to comply with state NPS management plans, is implemented.

4. EPA should not define national, mandatory management practices to control agricultural runoff and other forms of NPS pollution. It should be left to states to select an appropriate mix of voluntary and mandatory approaches to control such pollution, provided that the overall program is adequate to achieve compliance with water quality standards within a 15-year time frame. A voluntary approach should be acceptable if the states have authority to enforce mandatory requirements where water quality standards violations occur. The irrigation return flow exemption from the NPDES should not be rescinded.

5. Federal agencies should be required to develop incentives for implementing NPS controls on federal lands and for federally supported activities. For example, support payments could be increased to farmers with effective conservation plans and bonus acreage awarded to lumber companies with successfully implemented NPS plans.

WATER QUALITY STANDARDS

1. The states must have the primary role in establishing and interpreting water quality standards that meet the intent of the CWA. EPA should be required to provide necessary criteria development guidance to states in a clear and timely manner.

2. The CWA should clearly acknowledge that municipal stormwater systems are to implement best management practices to the maximum extent practicable with the goal of meeting water quality standards.

3. The various water quality assessment requirements should be integrated into a single, streamlined assessment under CWA Section 305(b). The assessment requirements should not be overly burdensome and the 305(b) assessment should be prepared every three to five years rather than every two years.

4. The states should review and revise water quality standards on a five-year basis. EPA should continue to be responsible for approving adopted state water quality standards to assure interstate compatibility and compliance. However, the application of water quality standards in support of state water quality protection goals must continue to be the prerogative of the states.

5. States must be allowed to establish water quality standards flexible enough to account for natural variations in water quality and background levels.

6. When a state, in establishing a water quality standard, has considered the impacts of non-water quality factors -- such as legal and illegal harvest of fish, introduction of non-native aquatic species, and unscreened diversions -- on the maintenance of a balanced population of fish, shellfish, and wildlife, the Administrator shall also consider those factors in reviewing the state's standard.

7. Not all waters should be classified as fishable, swimmable. For example, the CWA should be amended to recognize the unique nature of constructed drains and canals and allow water quality standards to be set that recognize the benefits provided by these waterways (many of which would not exist without the agricultural activity) and the nature of agricultural operations and their ability to reduce pollutants from non-point sources. In such cases,

protection of receiving waters for designated beneficial uses should be assured. Also, there are waters which historically, for natural reasons and causes, cannot meet fishable/swimmable criteria.

EFFLUENT DOMINATED WATERS/WATER REUSE

1. Natural channels are often needed to transport reclaimed water to an area of reuse. Reuse of wastewater is an increasingly important source of water in the West. Effluent dominated waters also support riparian habitat. In the CWA reauthorization, Congress should recognize the interrelationship of such waters and water quality standards, riparian habitat, and water rights issues, and should develop policies that support the objectives of state and federal law, by allowing establishment of appropriate water quality standards, based on intended uses, for natural conveyance systems and man-made waterways that discharge flows to waters of the United States.

2. A policy statement should be added to the CWA such as: It is the policy of Congress to allow states to encourage the reuse of treated wastewater, as a component of water quality control as well as comprehensive water management.

3. The CWA reauthorization should allow the permitting authority maximum flexibility in establishing requirements pertaining to effluent dominated waters and ephemeral and intermittent streams based upon net environmental benefit under applicable law. States should be encouraged to adopt water quality standards for reclamation projects to control toxicity, nutrients, and other water quality parameters to provide for reasonable protection of designated water uses. EPA should assist with research to establish safe effluent discharge parameter levels for human contact water uses.

FEDERAL/WESTERN STATE ISSUES

1. Water pollution control programs are administered most efficiently and effectively at the state level. Delegated state programs should be approved if they meet the goals, objectives, and intent of federal statutes. They should not be less stringent than, but need not be identical to, EPA regulations, policies, or procedures.

2. CWA Sections 510(2) and 101(g) are clear expressions of Congressional intent regarding deference to the states' role to allocate quantities of water and establish water rights. This fundamental principle of deference, which is manifest in many other federal environmental statutes, should be reinforced in the context of the CWA reauthorization.

3. Virtually all western states have in place mechanisms to establish and maintain instream flows. Statutory requirements in the CWA for maintenance of such flows would

affect water rights and impact water management in the West. No such requirements, either explicit or implicit, should be included in the CWA.

4. Additional federal research and technical assistance are needed on the following topics important to western states: turbidity, suspended solids, physical integrity of the water body, biotic methods applicable to ephemeral and intermittent waters, definition and regulation of ephemeral and intermittent waters, federal land and facility compliance with state water quality standards, mining activities as they relate to storm water, and turbidity.

5. To maintain an appropriate federal/state partnership, it is essential that state officials have a meaningful voice in EPA policy development, particularly in the early stages of such development before irreversible momentum leads toward prescriptive programs. State participation in EPA policy making should not be subject to the Federal Advisory Committee Act or the Administrative Procedures Act.

WETLANDS

1. The existing CWA Section 404 regulatory program must be improved. Sole authority for administration of the program should be vested in one agency. The program should encourage and enable states to assume full or partial permitting authority. Financial support should be provided to states that assume the federal program. The program must recognize the basic differences between natural wetlands and those that are artificially and/or incidentally created. The program should include research into and development of techniques to assess wetlands' functions and values.

2. The continuing loss and degradation of the nation's wetlands base is unacceptable. A no-net-loss policy is an important step toward reversing that trend. Such a policy, however, must provide flexibility and be implemented at different rates and in different ways in various regions of the country to reflect regional wetlands needs, conditions, and types.

3. National wetlands policy should lend itself to implementation through state, regional, and local plans and programs, and recognize individual state and local planning and regulatory efforts to preserve and protect wetlands.

4. The diverse needs and types of wetlands nationwide, and concern for human and economic impacts, will make it difficult to achieve a no-net-loss goal. To achieve such a goal, a broad range of non-regulatory programs (such as subsidies and tax incentives, public acquisition, conservation easements and leases, and other non-punitive approaches) and regulatory programs will be required.

GROUND WATER

1. A national regulatory program for ground water would be inappropriate and should not be part of the CWA reauthorization. Ground water protection and management are primarily the responsibilities of state and local governments. Such governments must have the flexibility to develop and continue existing programs appropriate for their own circumstances, including strategies and mechanisms appropriate to assure ground water quality protection and preserve their ability to allocate, manage, and protect rights to use ground water.

2. The federal role in ground water management should be to provide technical assistance, gather data, and promote research to support state programs. Also, any federal funds that are provided for ground water protection should be made available to support all phases of program development and implementation of state ground water quality programs, not just program development.

3. Federal agencies should be required to conduct their activities in accordance with, and without duplication of, state and local ground water protection programs.

4. EPA's Comprehensive State Groundwater Protection Program strategy is an acceptable approach to ground water protection to the extent that it is carried out on a voluntary basis. This approach provides flexibility to address the most pressing ground water problems within a given ground water basin.

STORMWATER

1. Existing requirements for NPDES permits applicable to stormwater discharges are often unrealistic and may, to a large extent, be unachievable, especially in arid areas. The CWA should clarify previous congressional intent that municipal stormwater dischargers are to implement best management practices and should not necessarily be subject to end-of-pipe treatment standards. Best management practices shall be developed through public participation and be designed to ensure that control of stormwater discharge is consistent with regulatory implementation of mandated stream standards. State regulatory agencies are encouraged to establish additional monitoring and performance criteria to assure meeting goals of watershed management programs.

2. The statutory deadlines for implementation of the stormwater program should be revised to establish realistic deadlines for permit issuance and to accommodate phased implementation of stormwater regulatory programs.

3. Recognition should be made of the tremendous responsibility placed upon states by federal stormwater regulations. Significant additional federal resources should be made available to avoid major cuts in other programs.

4. Stormwater pollution controls may include small ephemeral ponds and injection wells as part of on-site retention requirements which could result in significant pollution of ground water. Impact of these requirements may adversely affect the overall water management process. States need the flexibility to design optimum water quality/water quantity interfaces.

ANTI-BACKSLIDING

1. The CWA should be revised to clarify that anti-backsliding requirements apply only to technology-based effluent limits. Water quality-based limits may become more or less stringent over time as more information is acquired about the conditions necessary to protect beneficial uses. Any implication that anti-backsliding requirements apply to water quality-based limitations provides a powerful disincentive for states to establish conservatively protective water quality standards in the face of uncertainty. EPA's inaction on guidance or regulations regarding anti-backsliding has been detrimental to the permitting process, resulting in delaying permits or causing less-restrictive permits to be written.

2. The CWA should be amended to allow removal or modification of effluent limits in cases where the limit is determined to be unnecessary because of errors in calculation, publication of new scientifically valid information, or determination that the substance being limited is not present in the discharge.

CLEAN LAKES

1. CWA Section 314 funding should be increased to a level that recognizes the key role the Clean Lakes Program plays in managing the nation's lakes for maximum beneficial use and enjoyment.

2. Appropriations should be sufficient to support meaningful efforts to continue assessment and identification/implementation of methods and procedures to restore lake quality.

COMPLIANCE WITH STATE LAW UNDER CWA SECTION 401

States have primary jurisdiction over water quantity issues and should retain primary jurisdiction under the CWA over integration of water quantity and water quality considerations through the water quality certification process set forth under Section 401.

TRANS-BORDER AREAS

The International Boundary and Water Commission, International Joint Commission, and EPA need adequate resources to deal with water quality issues in trans-border areas. Also, mechanisms should exist for better coordination and participation between the International Boundary and Water Commission, International Joint Commission, EPA, the states, other agencies, and our neighboring nations.

WATER QUALITY CONTROLS ON TRIBAL LANDS

In order to prevent voids in regulation, state water quality standards should be effective on Indian lands until replacement standards have been adopted by tribal governments which have been designated as states, or promulgated by EPA. Congress should provide direction that will aid in cooperative resolution of water quality issues.

CLEANUP OF ABANDONED AND INACTIVE MINES

States and local government agencies should be encouraged to address water quality problems caused by abandoned and inactive mines. To provide encouragement, the remediating party must be assured that its liability for cleanup at the site is limited to following its cleanup plan including any amendments thereto. The remediating party should not be liable for conditions existing prior to initiation of cleanup under its remediation plan.

INTERSTATE COUNCIL ICWP ON WATER POLICY

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ICWP Comments on the Proposed Clean Water Act Reauthorization H.R. 961

The Interstate Council on Water Policy (ICWP) is the independent national association of state, interstate, regional, and local water administrators concerned with water quantity and quality management, conservation, and development. Since 1959, ICWP has been the voice for state water management concerns, particularly with regard to the relationship between local, state, and federal programs; regulatory authority; and information exchange.

The reauthorization of the Clean Water Act presents an opportunity to review the on-going efforts of federal and state government to improve the water resources of the Nation. This legislation will help define national water policy and establish the future relationship between and among federal, state, and local agencies that manage water resources. ICWP recognizes the role of the federal government in defining and reflecting the national interest in water resources. However, we assert that states have the primary responsibility for managing both quality and quantity aspects of water resources.

The ICWP offers the following comments on H.R. 961 in an effort to foster creative, flexible, and performance oriented water quality/quantity legislation. We believe the intent of this legislation is to make the Act easier to implement while furthering the states' efforts to achieve water quality goals. While we support this effort, we have concerns with some provisions of the legislation.

Wetlands

ICWP policy supports an interim goal of achieving no overall net loss of the nation's wetland base and a long-term goal of increasing the quantity and quality of that base. This legislation does not include an explicit policy statement, but the wetlands program it defines clearly diverges from the goals supported by ICWP. The revision of the definition of wetlands would virtually eliminate the regulatory protection of wetlands in some states. New Jersey alone reports that it would reduce the area of wetlands protected in that state by 85 percent. The proposed definition has no scientific basis and would be administratively burdensome to implement, especially in those states with active wetlands regulatory programs. Existing mapping and delineations would be worthless. The need to verify 21 consecutive days of standing water would be burdensome to state environmental agencies that are already facing reductions in resources. ICWP recommends that the National Academy of Sciences study of wetlands delineation procedures be used as the basis for any decisions, revisions, or clarifications to delineation. We also believe the bill should provide flexibility by allowing states that already have their own delineation methodologies to continue to use them if they are already in place and are comparable to existing federal methodologies.

ICWP is also concerned with the provisions of H.R. 961 that require that any wetlands classified as type "A" automatically be purchased by the government if the owner so chooses (Subsection (d) of the bill essentially equates classifying a wetlands as "high priority" with a taking of the property regardless of whether or not any use has ever been denied to the property owner through any type of permitting process.) The Congressional Budget Office estimates that the cost of buying all "high value" wetlands in the lower 48 states would range between $10 and $45 billion.

ICWP is concerned that the bill eliminates the role of the U.S. EPA in wetland regulation and replaces it with the Army Corps of Engineers and, for the mapping provisions, the U.S. Fish and Wildlife Service The bill also increases oversight by the federal government by requiring that any state administering the (404) program submit notice to the Corps of Engineers for every permit application.

ICWP supports a wetlands policy that encourages and supports a watershed based approach to water quality/quantity management. Evaluating and managing the interrelated systems of a watershed is supported by science and assists the regulated community by allowing better coordination and streamlining of the multiple requirements they face under the Act. By eliminating the role of EPA, the coordination of Section 404 type activities with those activities covered by other parts of the CWA is frustrated and complicated. We recommend that wetlands management be viewed as a part of watershed management not apart from it.

While ICWP certainly supports the goal of streamlining the permitting process, we also concur with the position of the National Governors' Association that consolidation of Section 404 authorities in one federal agency should be done only after "a comprehensive study of the impacts of concentration and development of a plan for the necessary reorganization." As the Governors stress, "each federal agency responsible for the implementation of wetlands programs currently has a specific interest in the protection of the resource, and makes a unique contribution to the program. Concentration of authorities in one federal agency would necessitate restructuring of that agency and reallocation of resources."

Watershed Management

ICWP endorses the concept of watershed management because it encourages the examination of water issues from an integrated perspective. It is also an opportunity for states to go beyond water quality concerns and utilize the watershed management approach for integrating other water management activities for which they are responsible. The reauthorized Clean Water Act should not hinder states that choose to deal with water use, stormwater management, land use, aquatic and riparian habitats, floodplain management, and similar issues in their watershed management program.

Flexibility is essential to the success of watershed management in two ways. First, watershed management should inherently recognize and accommodate the diversity of water resources across the country. Second, excessive federal oversight stifles innovation and reduces the incentive to pursue watershed planning. In particular, states who may wish to build upon the Clean Water Act watershed provisions by integrating their own water management programs into that framework will be understandably reluctant to do so if it means that those state responsibilities would be exposed to federal oversight.

ICWP recognizes that flexibility needs to be coupled with mechanisms to ensure accountability. States should be expected to evaluate their progress toward achieving performance-oriented goals, both administrative and environmental, but not through burdensome or overly prescriptive means.

Nonpoint Source Management

As with watershed management, nonpoint source management proposals must produce a flexible, performance-oriented approach. Each state has a unique blend of environmental factors, land uses, and existing nonpoint source management mechanisms that influences both the nature of its nonpoint source problems and the most effective means of dealing with them. Imposing specific mandatory measures from the federal level (as in the Coastal Zone Act Reauthorization Amendments) may be counter-productive by directing resources to lower priority problems and inhibiting the implementation of effective and innovative state approaches. A more effective approach is for the federal government to assist states by providing technical assistance, identifying and eliminating barriers to effective state action, and coordinating activities and policies of federal agencies.

Flexibility should also extend to the arena of setting priorities for action. States should identify their impaired waters and then be allowed to focus their efforts and financial resources on the areas (geographic or otherwise) where the most significant progress toward water quality improvement can be made. Nonpoint source management plans should follow a targeted approach that addresses the most critical watersheds first and then the less critical ones over a reasonable period. Likewise, the most critical sources within a watershed should be targeted first. This should include maximum flexibility to find the most cost-effective balance between point source and nonpoint source controls. Throughout this process, it is appropriate to expect states to demonstrate that they are making reasonable progress toward meeting national water quality goals and be held accountable if they are not.

State Revolving Funds (SRF)

Section 206 of the Federal Water Pollution Control Act of 1987 provides an allotment formula for appropriations under the Construction Grants Program through fiscal year 1995. H.R. 961 contains a revised allotment formula that will result in the loss of funds to many states. ICWP recommends that the allotment formula contain a 10 percent cap on the amount of funds each state could lose from the annual appropriations. This would provide a gradual transition period that would allow affected states to develop alternate funding sources.

Summary

Previous efforts in these areas have been designed to build the institutions necessary for effective programs. States, together with local and regional organizations, now have the ability to undertake these responsibilities and no longer require detailed or rigid oversight. ICWP members believe that protection and enhancement of the national interest must rise from a true partnership of state, local, and federal activities. National water policy and effective water management must evolve from this partnership in which the states, regional agencies, and the federal government all have continuing roles.

The Clean Water Act: A Western States' Perspective

Western states have experienced a unique set of concerns and needs in attempting to meet Clean Water Act goals, related to particular climatic and sociodemographic factors and the prior appropriation system of water law predominant in the western states.

One general problem identified by western state water quality administrators is the CWA's "one size fits all" approach. This approach is of particular concern in the West where unique climatic and sociodemographic factors exist. The most arid states are in the West, and several "arid area issues" have been identified by western states. These include water quality standards for ephemeral streams, which do not flow throughout the year, and effluent-dependent streams, whose flow is comprised of effluent discharges. The CWA goal to establish fishable, swimmable waters was implemented through water quality criteria based on chemical and biological characteristics of perennial, natural waterways that may be inapplicable to the characteristics of waters in certain arid areas. Western states have developed arid areas legislative language for amending the CWA, which would add new definitions for effluent-dependent and ephemeral streams, constructed water conveyances, and reclaimed water. These definitions would be accompanied by appropriate standards and regulations which would take into account the unique characteristics of these waters and the life they may support.

Another area of western interest is the problem of so-called "Good Samaritan" clean-ups of abandoned mine sites. The western public lands are littered with hundreds of thousands of abandoned mines, contributing to water quality problems downstream through acid mine drainage. Efforts to voluntarily improve the situation backfired when western states found themselves saddled with full legal liability to treat the effluent to CWA standards once they attempted to clean up abandoned mine sites. In many cases, full treatment to CWA standards is too costly to justify under state budgets, although significant improvement could be made at reasonable cost. Western states are therefore seeking to amend the CWA to allow them to negotiate clean-up agreements with the EPA, without thereby incurring full CWA liability.

Another area of particular western concern involves state sovereignty over water rights administration. Historically, the federal government has deferred to states' sovereign control over water resources within state borders. Several states are concerned with recent indications that the CWA may impact state authority. A particular aspect of this issue arose under Section 401, which allows states to certify that proposed activities requiring a federal license or permit will comply with state water quality laws and standards. A U.S. Supreme Court decision in 1994 (the *Tacoma* case) upheld states' certification authority under Section 401 of the CWA to protect designated uses, in this case to impose a condition for instream flows to protect a fishery downstream from a proposed hydroelectric facility. However, the Court's reasoning suggests there may be federal statutory authority, under the CWA, to deal with water quantity. Further, several states point to earlier court cases as evidence that Congressional expressions of deference in the CWA have been weakened.

They therefore propose to reverse what they see as recent trends to use the CWA as a tool to establish the federal government's authority to allocate water to meet water quality standards. In so doing, proponents argue that: (1) water allocation is within the sole jurisdiction of the states; (2) establishing the appropriate balance between protection of water quality and the allocation of quantities for beneficial use should be maintained by states using existing state authorities; and (3) the CWA was never intended to be used for purposes of water allocation.

However, there is not unanimity about this issue among states. While states are united in opposing any amendments to overturn the Supreme Court's holding in the *Tacoma* case --

relative to Section 401, some believe it unnecessary and undesirable to amend Section 510. These states agree that the sole authority to allocate water should remain with the states. However, these states are concerned about the proposal's potential impact on EPA's authority to protect existing designated uses which are a part of EPA-approved water quality standards. These states want EPA to be able to effectively assure that states attain the goals of the Clean Water Act, and are concerned that the proposal will effectively preclude EPA from indirectly affecting water uses in cases where existing instream uses are impaired by water diversions which may impact such factors as temperature, salinity, or other factors which may be incidentally related to flow.

Western state representatives, through the auspices of the Western Governors' Association, submitted four legislative proposals to be included in the NGA package for consideration by the governors: state water rights (also referred to as 'Section 510'), "Good Samaritan" clean-ups of abandoned mines, arid areas issues, and Section 401 -- state water quality certification. Consensus was reached among the western state representatives on all but the Section 510 proposal, to which the states of Washington and Oregon dissented.

Questions

1. What are the prospects for Clean Water Act reauthorization in this Congress?

2. What are the potential consequences of a failure to reauthorize?

3. How should states and/or EPA enhance the control of nonpoint source pollution?

4. How can national wetlands legislation best account for regional differences in the number and type of wetlands? What other concepts should be incorporated in national policy to enhance wetlands protection?

5. What amendments could be made to the CWA to address the uniquely western issues related to effluent dominated streams and water reuse?

6. How can the water quality funding needs of rural communities best be addressed in the context of the CWA reauthorization?

7. What is the most appropriate method of addressing concerns related to compliance with CWA stormwater regulations to promote optimum participation and compliance?

8. How can the water *quality* impacts of decisions regarding water *quantity* allocation and management be most effectively addressed?

9. What is the most appropriate remedy to provide protection for "Good Samaritans" at abandoned mine sites?

10. What are the likely ramifications of reductions in EPA's budget?

The Transfer of Federal Water and Power Projects

Interest in the transfer of federal water projects to non-federal ownership and/or operation and maintenance (O&M) has been discussed for many years. The transfer of O&M responsibilities is common, but the transfer of title is not. Though it is rare, title transfers have taken place.

Federal administrative and legislative proposals have suggested transferring power marketing facilities, including power generation and power transmission facilities. At present, a number of bills would direct or facilitate the transfer of individual projects, as well as establish a process for evaluating and approving transfers administratively.

Some transfers may be rather simple and straightforward, involving a limited number of issues and interest groups. Others will be very complex and involve many different interests and important policy issues. Many projects serve multiple purposes and were built under longstanding agreements with water and power and other users. Many were individually authorized by the Congress.

Potential sales and transfers of federal water and power facilities may offer important public and private benefits. There may also be important public and private costs. In addition to the primary project purposes and direct benefits and costs, there may now be other important secondary and indirect benefits and costs. Such interests, which may involve various parties, must be considered. Moreover, many environmental and other interests that might be adversely affected by proposed transfers are currently protected under various state and federal laws.

Of particular interest to the states, many transfers of federal projects will directly affect state and local interests related to water, and some proposals have been moved forward without the benefit of state and local or public participation. Many questions regarding the future operation and maintenance and regulation of transferred projects remain unanswered.

There has been a call for criteria to be developed and a process established to carefully evaluate any proposals to sell or otherwise transfer federal water and power assets. Generally, a project-by-project review, with subsequent Congressional approval, will be appropriate. However, in the case of some simple projects, an administrative review and decision may be possible.

States urge their direct involvement in any decision, as they still have primary responsibility for the comprehensive development, management and protection of water resources for all purposes.

Questions

1. Who should review, and who should approve transfers?

2. What critical criteria should be considered before approving any transfer?

3. What potential benefits may be gained from the transfer?

4. What interests might be adversely affected?

5. Can the adverse impacts be mitigated?

6. Does the proposed transfer provide net benefits?

7. How is the value of a project to be determined?

8. What types of adjustments to the price might have to be made?

9. To what extent are the new public or private owners expected to continue to provide any particular federal benefits?

10. How would currently non-reimbursable federal operation and maintenance costs be handled in the future?

The Future of River Basin Commissions

Background

The Delaware and the Susquehanna River Basin Commissions (DRBC/SRBC) are federal-interstate compact commissions. Formal membership on the DRBC includes the states of New York, New Jersey and Delaware, the Commonwealth of Pennsylvania, and the United States of America. Membership on the Susquehanna River Basin Commission includes the states of New York and Maryland, the Commonwealth of Pennsylvania, and the United States of America.

Each member has an equal vote. The states are represented by their governors or the governors' designees. The federal government is represented by the Secretary of the Interior (member) and a U.S. Commissioner (alternate member) appointed by the President. The Delaware River Basin Compact became effective in 1961 and the Susquehanna Compact in 1971. All member jurisdictions contribute to the funding of each commission, though not necessarily in equal amounts.

Both the DRBC and the SRBC were created to manage the water resources of their respective basins under comprehensive, multi-purpose planning principles. As required by their compacts, each agency has adopted a comprehensive plan for management and development of the water resources of the basin. The commissions coordinate the actions of federal, state, and local governments in their basins to achieve the goals and objectives established in the comprehensive plan. The compacts grant extraordinarily broad authority to the commissions, allowing them to assume jurisdiction in virtually any matter affecting the water resources of their basins. The compacts also confer regulatory powers to approve and set standards for projects, and to allocate the waters of the basin among the member states.

The Interstate Commission on the Potomac River Basin (ICPRB) was created by an interstate compact approved by the signatories (Maryland,

Virginia, West Virginia, Pennsylvania and the District of Colombia) and Congress in 1940. Members of the Commission are appointed by the Chief Executive (Governor or Mayor) of each signatory body according to provisions of its ratifying statute and by the President for the federal government. All member jurisdictions and the federal government are required under the Compact to contribute to the funding of the Commission.

The 1940 Compact was developed for the purpose of controlling pollution in the Potomac drainage area. The signatory bodies and Congress approved amendments to the Compact in 1970, broadening the Commission's coordination, investigative and education responsibilities to include "development, utilization and conservation of the water and associated land resources in the basin." The Commission, a nonregulatory agency, assists federal agencies and the signatories in carrying out their water and related land resource management programs. ICPRB maintains an extensive public information and outreach effort. The Compact provides for creation of sections involving multiple but not all jurisdictions to address specific issues. One such Section has been created, the Section for Cooperative Water Supply Operations on the Potomac (CO-OP) formed to manage the cooperative allocation of Potomac River water during low flow periods in the metropolitan D.C. area. The CO-OP also conducts water use and outlook studies for the utilities.

Chronology of Events Related to Federal Funding Controversy

The President's request for funding of the three eastern river basin agencies has historically been referred each year to the House Appropriations Subcommittee on Energy and Water Development, currently chaired by John T. Myers of Indiana. On January 4, 1995 the commissions were told that, due to time limitations, oral testimony before the subcommittee would not be possible and that only written testimony should be submitted in support of their FY 1996 budget requests.

In June 1995, the commissions learned that the House Subcommittee version of the Energy and Water Development Appropriations Bill deleted FY 1996 funding for the Delaware, Susquehanna and Potomac Commissions. The reasons offered for this deletion were that the commissions served state interests more than they do federal interests and that the states could continue to operate the commissions by themselves. Another reason given was that no one had appeared before the Subcommittee in support of funding for the commissions.

An immediate effort was mounted to restore funding in the Senate Subcommittee chaired by Sen. Pete Domenici of New Mexico. On August 1, 1996, the Senate Subcommittee restored FY 1996 funding at roughly FY 1995 levels. The two versions of the Energy and Water Appropriations Bill then went to a joint conference committee in the fall of 1995.

On October 25, 1995, the conference committee issued its report. The conferees agreed "to provide final year funding" and to "prospectively" facilitate an orderly transition to state financing of the Commissions. In the case of the Susquehanna and Delaware Commissions, the Office of U.S. Commissioner would be terminated. The report further stated that committees of authorizing jurisdiction would have an opportunity during FY 1996 to "address any new institutional arrangements or revisions to the (Delaware, Susquehanna, Potomac) compact(s) that are necessary or desirable due to the prospective termination of federal funding."

Questions

1. Should the federal government continue its participation in interstate river basin management as carried out by interstate river basin commissions?

2. To what extent does the federal government (vs. states) derive benefits from the commissions?

3. What are the financial consequences of withdrawing federal funding of the river basin commissions? (Is state funding alone likely to suffice?)

4. What are the institutional consequences of withdrawing federal participation from the river basin commissions?

The Western Water Policy Review Advisory Commission

Background

On September 15, 1995 with the encouragement of Senate Appropriations Committee Chairman Mark Hatfield (R-OR), Department of Interior Secretary Babbitt certified the establishment of the Western Water Policy Review Advisory Commission, which Hatfield sponsored. Legislation authorizing the Commission was adopted as part of the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575). The law asks the Commission to:

(1) review present and anticipated water resource problems
project water supply requirements
identify alternative ways of meeting these requirements

(2) examine current and proposed federal programs
recommend whether they should be continued or adopted
and if so, how they should be managed
consider consolidation of current development and management agencies

(3) review the problems of rural communities related to water supply, potable water treatment, and wastewater treatment

(4) review the need and opportunities for additional storage
consider other augmentation alternatives, including conservation

(5) review various institutional arrangements, and Interior and Army's authority, covering
interstate water compacts
federal-state regional corporations
river basin commissions
Water Resources Council
municipal & irrigation districts & similar entities

(6) review the legal regime governing the development and use of water, and examine the respective roles of the federal and state governments with respect to
riparian zones
appropriation and mixed systems
market transfers
administrative allocations
ground water management
interbasin transfers
recordation of rights
examine federal-state relations, including the doctrines of
federal reserved water rights
Indian water rights
Public Trust Doctrine

(7) review the activities, authorities and reponsibilities of federal agencies with...
direct water reources management resonsibilities
Bureau of Reclamation
Department of the Army
Corps of Engineers

others
any impact on water resource availability & allocation
Federal Energy Regulatory Commission
others

However, concerns over appointments made by President George Bush and the nature of the Commission's work led the Clinton Administration to delay its establishment, as required by the Federal Advisory Committee Act. Hatfield's measure authorized up to $10M for a three-year study. Now, the study is to be completed in two years, with less than $2M.

Interior's announcement named eight of the ten people President Clinton was authorized to appoint to the twenty-two member panel: Denise Fort, Director of the University of New Mexico's Water Resources Administration, as Chair; Bruce Babbitt, in his position as Secretary of Interior; Togo West, serving as Secretary of the Army; Huali Chai, a California attorney and expert in biochemistry; Janet Neuman, an Oregon attorney specializing in water and natural resources issues; Jack Robertson, Deputy Director of the Bonneville Power Administration; John Echohawk, a Colorado attorney with the Native American Rights Fund; and Patrick O'Toole, a Wyoming sheep rancher and former state legislator.

Subsequently, the President appointed John H. Davidson of South Dakota and Kenneth L. Salazar of Colorado as the remaining two members of the Commission. Mr. Salazar is an environmental and water resources attorney with a Denver firm, and has served as Governor Roy Romer's Chief Legal Advisor and Executive Director of the Colorado Department of Natural Resources. He is also active in a family farm. Mr. Davidson is a University of South Dakota law professor, teaching and writing on water, public land, environmental and property law. The remaining members of the Commission are members of Congress who serve as ex-officio members. Although named by virtue of their office, it was subsequently determined that the members of Congress or their designated staff representatives would be voting members of the Commission. Larry MacDonnell, former director of the Colorado Natural Resources Law Center, was named as the Executive Director. The Commission is to be staffed primarily by the Bureau of Reclamation.

The first meeting of the Commission took place Feb. 16-17 in Portland Oregon. The meeting considered a draft work plan developed by staff. The Commission determined to hold a series of workshops through the West in March and April of 1996, and then the Commission will meet again in May to reconsider and then adopt a work plan. Much of the discussion at the initial meeting focused on the appropriate scope of the Commission's work. The draft work plan proposed concentrating on identifying the appropriate federal role in western water resources management. Some Commission members urged inclusion of studies and recommendations on broad substantive issues, citing the wide scope of the Commission's charge in the authorizing legislation. Each Governor in the Western 19 states may appoint an official representative, with whom the Commission is asked to consult. Further, the Western States Water Council is being asked for assistance in identifying people who should be included in the workshops, and in providing information and views on state innovations in water resources and the appropriate federal role in assisting states in their primary role in allocating quantities of water and protecting water quality.

The Commission's address and phone number are: Western Water Policy Review Advisory Commission, P.O. Box 25007, Building 56, Room 1017, Denver Federal Center, Denver, CO. 80225-0007; (303) 236-6211.

As the Commission grapples with its work plan, under the constraints of reduced resources and time to complete the work, the following questions, among others, seem pertinent.

Questions

1. With significantly less time and resources, how can the Commission deal adequately with the entire scope of its statutory charge?

2. Given that its limitations, in terms of time and resources, may require it to narrow its objectives, what objectives should it strive to achieve?

3. To what extent will the work of the Commission receive "buy-in" from other federal agencies, both in terms of preparing the report, and in responding to its recommendations?

4. Given the primary state role in both water allocation and water quantity protection, will the Commission necessarily become involved in some review and discussion of state laws and programs related to water resources?

5. Is it inevitable that the Commission will be considering some reformulation of the U.S. Water Resources Council and the river basin commissions?

6. What opportunities will there be for the governors' representatives appointed pursuant to the WWPRAC's statutory authority to be involved in the work of the Commission?

7. In general, what options are available and advisable for states to assist and otherwise respond to the work of the Commission?

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