

1989

New Roles for the Bureau of Reclamation

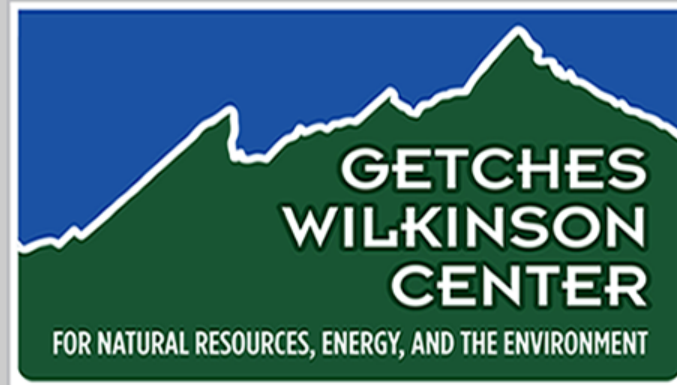
Richard W. Wahl

University of Colorado Boulder. Natural Resources Law Center



William A. Wise Law Library
COLORADO **LAW**

UNIVERSITY OF COLORADO **BOULDER**



Getches-Wilkinson Center Collection

RICHARD W. WAHL, NEW ROLES FOR THE BUREAU OF RECLAMATION (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1989).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

NEW ROLES FOR THE BUREAU OF RECLAMATION

Richard W. Wahl
Office of Policy Analysis
U.S. Department of Interior

Natural Resources Law Center
University of Colorado School of Law

NEW ROLES FOR THE BUREAU OF RECLAMATION

Richard W. Wahl*

In 1987 a rather remarkable thing happened: the Bureau of Reclamation, the federal agency charged with constructing water facilities and multi-purpose dams in the western states, issued a short report indicating that its mission should change. The Assessment '87 report indicated that

The Bureau's primary role as the developer of large federally financed agricultural projects is drawing to a close... The Bureau of Reclamation must change from an agency based on federally supported construction to one based on resource management.

The report goes on to discuss some ways in which the Bureau could facilitate more efficient resource management, such as improved systems analysis of multi-reservoir systems to enhance their dependable yield, nonfederal operation of Bureau facilities, transfer of title of facilities to water districts, developing a water marketing policy to allow contractors to sublease water at a profit, and increased roles in the areas of groundwater management and water quality.

*Dr. Wahl has been a member of the economics staff for 10 years in the Office of Policy Analysis, U.S. Dept. of the Interior. He was a Visiting Fellow at the Natural Resources Law Center during fall semester, 1988, where he worked on the Center's project on market transfers of water. The views in this article are those of the author and do not necessarily reflect the views of the Department of the Interior. This article is drawn, in part, from the author's book Markets for Federal Water: Subsidies, Property Rights, and the Bureau of Reclamation, to be published this year by Resources for the Future.

How seriously should one take these claims? Some critics of the Bureau feel that the report was largely a public relations campaign and that the agency would proceed with business as usual. Indeed, although Assessment '87 indicates that "decades-old legal authorities and policies based on the Bureau's traditional role in the West must give way to new laws and policies which encourage efficient resource management," no package of general amendments to Reclamation legislation has been forthcoming and, therefore, the financial and regulatory framework of the program remains essentially unaltered. Too, it would be difficult to expect the personnel making up the agency, with specific training in dam design and construction, to easily accommodate a different role.

However, in some ways the Bureau has already seen some changes since the issuing of Assessment '87. It moved most of its Washington, D.C., headquarters staff to join the Engineering and Research staff in Denver. Although not guaranteeing any change in direction, a move of such major proportions does something to shake up an agency. On a more substantive policy note, on December 16, 1988, the Department of the Interior issued a set of principles designed to guide Bureau of Reclamation review and approval of requests for voluntary transfers of water involving Bureau of Reclamation facilities. In brief, this policy says that the Bureau of Reclamation will facilitate transfer requests that are brought to the agency, so long as the

transfers comply with applicable state and federal law and do not injure third-parties (parties other than the buyer and seller of the water). Transfers may be short-term or long-term leases, permanent sales, or dry-year option agreements. The policy also makes clear that, beyond the water user repayment required by federal contracts and law, the federal government does not intend to burden such transfers with additional federal charges--the transferring parties are free to work out the financial terms of the transaction.

This water transfer policy may be the first substantive policy redirection of the new Bureau. However, this policy can also be seen as resulting from a gradual evolutionary process, rather than a sudden or significant departure from past agency practice.

Evolution of Reclamation Law

The Bureau of Reclamation was established by the Reclamation Act of 1902 to provide irrigation water supplies on landholdings of 160 acres or less. The social goals of the program were to assist in settling the arid west with small family farms. However, almost immediately, the water supplies, were seen as valuable for other uses. In 1906 the Town Sites Act authorized the Secretary to contract for the sale of water to towns or cities in the immediate vicinity of irrigation projects, and to

lease surplus hydropower (not needed for irrigation pumping) for municipal and other uses, provided that the leases not "impair the efficiency of the irrigation project." An even more general authority to contract for water from irrigation projects for purposes other than irrigation was provided by the Miscellaneous Purposes Act of 1920. For a somewhat different purpose, the Warren Act of 1911 allowed the Secretary of the Interior to contract out excess project capacity to nonproject individuals, districts, and associations for the purpose of storing or transporting nonproject water. So, even in the early years of the program, reallocating project water and facilities from irrigation uses to other newly developing uses was seen as important for western development. The current attempt to clarify the rules under which water that is already under contract can be transferred to new uses can be seen as furthering the same goal.

Past Water Transfer Activity

The Bureau has been a party to transfers of water for many years. Annual rentals of water from the federal reservoirs on the Upper Snake River date back to the 1930s and are explicitly recognized in Bureau of Reclamation contracts with water users. In 1972, the Utah Power and Light Company obtained 6,000 acre-feet of water from two irrigation companies in the federal Emery County project for power plant cooling. During the 1976-77

drought in California, the Bureau of Reclamation operated a water bank in which some 45,000 acre feet of water changed hands for total payments of \$2.2 million. The City of Casper, Wyoming, is paying the nearby Casper-Alcova Irrigation District for canal lining on portions of the district's fifty-nine-mile canal and 190-mile lateral system in order to reduce seepage. The exchange is intended to provide the city with 7,000 acre-feet of water. One of the most notable examples of a functioning water market is in the Northern Colorado Water Conservancy District around the Ft. Collins area, where shares of Colorado Big Thompson Project water have, for years, been sold at market value.

Perhaps the most dramatic recent examples of water transfers are the agreements reached between the Imperial Irrigation District and the Metropolitan Water District of Southern California. Imperial diverts about 3 million acre feet annually of Colorado River water, which represents nearly 25% of the total diversions from the river. In the fall of 1988, Metropolitan and Imperial reached an agreement under which Metropolitan will pay Imperial to fund conservation measures within the irrigation district that would salvage 100,000 acre-feet of water annually for diversion to Metropolitan's service area. Metropolitan will pay Imperial \$92 million for construction of the conservation facilities, \$3.1 million annually for operation and maintenance, and \$23 million in five annual installments for indirect costs. The same two entities reached a separate agreement under which

Metropolitan can fund lining of the earthen All-American Canal (a federally constructed facility which transports water from the Colorado River to the irrigation district) in exchange for the conserved water. Both state and federal studies indicate that there is potential for at least another 100,000 acre-feet of conservation within Imperial--which may provide the basis for future agreements between the two entities.

The Larger Context

Because of the extensive facilities of the Bureau in the seventeen Western states, similar transfers are likely to be important to the future development of these states. The Bureau supplies about 27 million acre-feet of water for irrigation annually, about 3 million acre-feet for municipal and industrial use, and about 1 million acre-feet for other uses. Irrigation water is delivered to about 10 million acres of farmland. Although this represents, on average, only about 20% of the irrigated acreage in these states, the Bureau delivers water to more than 40% of the irrigated acreage in some states. However, these figures may under-represent the potential importance of the Bureau of Reclamation in water transfers since the Bureau controls major storage and conveyance facilities in several states (such as the Central Valley Project in California and the Central Arizona Project).

The impetus for such voluntary transfers is not surprising for another reason. Contracts for project water deliveries confer a property interest to the Bureau's water contractors. Given the terms of the Reclamation subsidy for irrigation, these rights are quite valuable. Under Reclamation law, repayment for construction costs is interest-free over 40-years. In addition, since 1939 there has been a statutory provision that repayment by water districts can be capped at their estimated "ability to pay," based on an analysis of expected farm income. The result of these two provisions is that irrigation water users are responsible, on average, for paying less than 15% of irrigation construction costs. The benefits of this subsidy enhanced agricultural income or became incorporated into the higher value of irrigated land when parcels of project land were resold. Therefore, the contractual rights to water deliveries are property interests of the current landowner, and it is not surprising to see water-user support for the transferability of these interests.

Potential for Future Water Transfer Activity

What type of future water transfers are we likely to see? Of course, the conditions which create the economic demand for transfers are going to vary from one situation to another and would not be possible to predict. In fact, that is the point of facilitating transfers -- project planners cannot accurately

predict the patterns of economic development and water demands 100 years into the future (the typical planning horizon for Bureau projects). But, based on past experience and transfers currently under consideration, one can expect transfers to be useful in the following general situations. Where there is increasing urban growth, purchases of water from agricultural uses are likely to be an inexpensive source of supply, as is payment for irrigation conservation measures. Agricultural producers with high value or perennial crops will be willing to purchase water from other agricultural users, especially during drought periods.

One could also speculate on some potential future situations where transfers might prove useful, even though they have not been employed to date. In areas where agricultural drainage is found to cause problems of contamination (such as the selenium poisoning in the Kesterson National Wildlife Refuge), sale of the irrigation water and removing from production the irrigation lands with severe drainage problems will be one way to achieve a better use of the water and land resources, as well as providing compensation for farmers. Meeting the water demands and the international treaty requirements with Mexico on the Colorado River will place increasing demands on water use in that basin. Water transfers based on already established compact allocations and water contracts may eventually prove to be one way of assuring the most efficient use of water in this arid region,

while still protecting previously established property interests.

Other Changes in the Bureau

Besides issuing a policy on water transfers, what other actions have been taken by the Bureau that would indicate the agency's seriousness about the various initiatives proposed in Assessment '87? As noted, the report places emphasis on transferring greater control over and responsibility for operation and maintenance of existing projects by water users. There are some recent notable examples: districts along the Friant-Kern Canal, the Madera Canal, and the Tehama-Colusa Canal in the Central Valley Project in California have taken over responsibility for operation and maintenance of these facilities. The districts were motivated by an interest in greater control over project works. In addition, they believe they can operate the facilities at lower cost than the Bureau of Reclamation. These actions were initiated before the issuing of Assessment '87 and extend the Bureau's long-standing policy of transferring operation and maintenance responsibilities to water users.

The additional step of transfer of title to facilities is a new initiative. Already, some California districts have expressed interest in prepaying their remaining repayment obligation in order to take title to project facilities. Most such cases require case-by-case approval by Congress, and

legislation for the California districts is pending. In a somewhat different vein, the Bureau took steps in 1988 to sell some of its financial assets to water users--the outstanding loans under its various loan programs. Such a program could be logically extended to the outstanding repayment obligations for project construction or could be coupled with transfer of title to facilities.

Conclusions

Given the disruption accompanying the Bureau's move to Denver and the accompanying staff reorganization, it may take some time for other initiatives to emerge from the Bureau that will move it in the new directions set out in Assessment '87. As is the case with the actions taken to date, these other changes are likely to be ones not so much initiated by the agency as ones arising from the demands of the Bureau's client water users, as well as the larger forces leading to changes in the way the western states manage their water resources.