

Water-Sharing: A Necessity for Peace in an Era of Uncertainty & Risk

Justice Gregory J. Hobbs, Jr., Colorado Supreme Court

In this era of uncertainty and risk, water sharing is a necessity for peace between neighbors and nations. Water shortage causes conflict, because water is a necessity for all life and commerce. Humans have always been challenged by a variable and changing climate, through cycles of flood and drought, some quite prolonged.

At a time when we learn from our climate scientists that “wetter wets” and “drier dries” will mark our future, even more than our past, peace among peoples depends on our ability to adapt to a variable and changing water supply. No longer can we depend on the recorded history of monitoring gauges, supplemented by tree ring, ice core, and shell fish analysis. No longer can we assume that water rights or licenses we have depended on in the past can be counted on in the future.

No longer can we pretend that each nation is sovereign to itself. The hydrology of rivers, together with their connected aquifers, is a public resource that transcends jurisdictional boundaries. No longer can we leave the environment and indigenous communities to fend for themselves. No longer can we allow our water supply infrastructure to fail the clean drinking water needs of a growing world population; nor can we allow our food supplies to fail because we do not manage water sustainably.

But we do not start from zero. Existing legal and institutional arrangements may continue to serve us well, if we find them to be adaptable or can shape them. For example, through water conservation and sharing agreements, the seven basin states of the arid region of the Southwestern United States are confronting water shortage under the framework of the 1922 Colorado River and 1948 Upper Colorado River Basin compacts. The United States must also continue to honor its Colorado River water delivery obligations to the Republic of Mexico under the 1944 Mexico-U.S. Treaty.

On the other hand, the Transboundary Water Convention (N.Y. 1997), which is based upon the principles of reasonableness and equity, has to date less than half of the required thirty-five country signatories required for its enforcement. Negotiations over crucial river systems, such as the Nile River, have been difficult. The existing mathematical grid boxes of climate models map a flat world, while much of the world is far from flat. Certainty is no longer a viable operating principle in water supply planning, if it ever was, and the risk of doing nothing is unacceptable in light of consequences.

I would make a few predictions. We will learn to adapt, sustain, and survive together because we must. We will expect our water managers to conserve well, plan well, and price water for what it's really worth. We will expect our land use decision makers to shape communities that look and live great and water frugally. We will find our way to restore water ways we've wrecked in the past. We will foster farmers who feed us on less water and homeowners who sprout native grasses and day lilies instead of turf. We will find a way to buy, lease, trade and share water through interlinked water systems that serve our greater communities with our pooled financial resources. We will enlarge existing reservoirs, build strategically placed new ones, and employ underground aquifer storage. We will insist on being rate payers of energy utilities that mind a strict water budget and harness the bounty of our strong winds and many sunny days. We will learn how to develop, in a transparent manner, equitable water sharing criteria for humans and the environment. It will happen incrementally, as change does.