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PUBLIC INVOLVEMENT IN NATURAL RESOURCE DEVELOPMENT: A REVIEW OF WATER RESOURCE PLANNING

Gregory A. Daneke*

I. INTRODUCTION

A. *Participation and Water Policy*

The relation of the individual to the decision processes of the state has been a vital intellectual concern for over 2000 years. In the twentieth century, much if not most governmental prerogative has been centralized in the administrative arm of the state. Thus, academicians have become increasingly aware of relations between the public and the various administrative agencies,¹ and have formulated suggestions for direct public participation in administrative decision-making. As noted by Daniel Moynihan, this concern for public involvement rapidly transferred, "from the university lecture room and professional journals to the halls of Congress and the statute books of the national government,"² during the reform frenzy of the 1960's. Yet, despite the efforts of the past decade, the conversion of theory into practice has remained, in Moynihan's phrase, "a maximum feasible misunderstanding."

Nowhere has there been a greater lack of clarity than in efforts to increase citizen involvement in environmental policy-making. The

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¹ See M. Meade, *Participative Administration: Emerging Reality or Wishful Thinking?*, in *PUBLIC ADMINISTRATION IN A TIME OF TURBULENCE* (D. Waldo ed. 1971).

² D. MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING* 8 (1970); see also R. Blumenthal, *The Bureaucracy: Anti-Poverty and the Community Action Program*, in *AMERICAN POLITICAL INSTITUTIONS AND PUBLIC POLICY* (1st ed. A. Sindler 1968).

rapid growth of public environmental concern coupled with an extensive legislative commitment has made this area a focal point for the participatory movement. Amid the spectrum of environmental issues, water resource policy stands out for several reasons. First, to the extent that water represents a nondivisible commodity,³ water policy can be seen as a problem of wide-spread public concern. Second, water planning and policy-making are basically decentralized processes, highly dependent upon local support and involvement.⁴ While certain policy decisions must be of a national character, the tradition of local involvement in water planning is well established.⁵ Third, water agencies have recently acquired more definite standards and requirements for public decisional involvement.⁶ And finally, water development agencies, such as the Army Corps of Engineers, have been in the vanguard of recent efforts to develop new participatory strategies.⁷

B. Participation vs. Accommodation: The Perceptual Problem

Local involvement, in one form or another, has been an integral part of water resource development for a number of years. The major planning agencies in water resource development are the Bureau of Reclamation, the Soil Conservation Service, and the Army Corps of Engineers (the Corps). All three agencies, and particularly the Corps, have long been aware of the advantages of building strong bases of local support.⁸ On the other hand, recent years have brought a new growth of interests at the local level and an increased demand for direct public involvement.

[F]or several decades the Corps has worked closely with official representatives of the public during planning and has sought the views of the general public at selected points during the process, usually at the be-

³ See A. Kneese, *The Political Economy of Water Quality Management*, in *THE POLITICAL ECONOMY OF ENVIRONMENTAL CONTROL* 35-40 (J. Bain & W. Ilchman eds. 1972).

⁴ See H. Ingram, *Patterns of Politics in Water Resources Development*, 11 *NAT. RESOURCES J.* 103-18 (Jan. 1971).

⁵ See A. MAASS, *MUDDY WATERS: THE ARMY ENGINEERS AND THE NATIONS RIVERS* 37-60 (1951) [hereinafter cited as *MUDDY WATERS*].

⁶ See, for example, 38 *Fed. Reg.* 24777 (1973) for the Water Resources Council's Establishment of Principles and Standards for Planning.

⁷ D. Mazmanian and J. Nienaber, *Bureaucracy and the Public: A Case of Citizen Participation in the Corps of Engineers*, (paper presented at the Midwest Political Science Association Convention, Chicago, Ill., May 1974).

⁸ See *MUDDY WATERS*, *supra* note 5, at 37-60.

gining and end of a study. In recent years, however, it has become clear that this level of public input into the planning is not sufficient.⁹

Not surprisingly, evaluations of on-going participatory efforts indicate a general failure to create meaningful and effective public participation. This failure is evidenced by the recent decline in popular support for many of the agencies' projects.¹⁰ Yet, "the question as to what 'meaningful and effective' public participation is remains unanswered;"¹¹ and while inadequacy of participation is conceded, agreement on the nature of the deficiency is lacking.

One cause of deficient public participation may have been an assumption by planning agencies that increased public turnout would automatically mean increased public support.¹² Such notions, as well as the traditional apolitical character of planning, caused the water development agencies to separate participation from planning; that is, to contact the public only after the planning process was completed. At this stage, the dominant form of interaction was educational/informational, a one-way communication flow. Given the considerable investments of time, money, and egos involved in existing plans, the motivation to "sell" plans to the public was overwhelming. But, as the case studies which follow point out, the public was reluctant to buy these belated attempts at building a consensus. These examples illustrate not only a failure to achieve adequate participation, but also a more critical failure to accommodate conflicting interests in the planning process.

In response to these failures, resource agencies (in this case the Corps) have experimented with innovative two-way communication strategies. Yet, it still appears that neither the problem of accommodation nor the issue of participation have been clearly conceptualized and integrated into water resource planning. This article, therefore, will explore recent participatory efforts in the hope of clarifying this perceptual problem.

⁹ B. Dodge, *Achieving Public Involvement in the Corps of Engineers Water Resource Planning*, WATER RESOURCES BULL. 448 (1973).

¹⁰ See D. Mazmanian, *Participatory Democracy in a Federal Agency*, in WATER POLITICS AND PUBLIC INVOLVEMENT 201-04 (J. Pierce & H. Doerksen eds. 1976).

¹¹ PROCEEDINGS OF THE CONFERENCE ON PUBLIC PARTICIPATION IN WATER RESOURCES PLANNING AND MANAGEMENT 189 (J. Stewart ed., North Carolina Water Resources Research Institute, 1974) [hereinafter cited as PROCEEDINGS].

¹² See Mazmanian, *supra* note 10, at 201-04.

II. EARLY PARTICIPATION BY SPECIAL ECONOMIC INTEREST

Public involvement in water resource planning is a relatively conventional idea. Since its inception approximately 175 years ago, the Corps of Engineers has developed a pattern of servicing local demands. The Corps' very first appropriation of \$75,000 to clear impediments from waterways was in response to demands by regional merchantmen and shippers.¹³ An expansion about 30 years ago into several additional service areas, including recreational development, improvement of water supply, and the stimulation of regional economic development, mandated an increased emphasis on developing local support and financial cooperation.¹⁴ As its functions expanded from maintenance of canals and waterways in the 1800's, to flood control in the 1900's, electricity production in the 1920's, and a panoply of other water-related operations since, the Corps' vast web of clientele relationships increased geometrically. These clientele relationships are strong, and their linkages to Congress have been used as weapons against the Corps's counterpart, the Bureau of Reclamation, as well as to defy Presidential directives.¹⁵ The Corps thus has, and will likely continue to develop participatory measures as a means of solidifying local support regardless of the establishment of statutorially required participation standards.¹⁶

Historically, the Corps gained local support by making itself welcome as an agent of community growth and prosperity. In the rare situations in which hostilities arose, agency personnel could calm irate citizens by explaining the variety of benefits accruing to them from the particular project. Indeed, prior to the growth of environmental consciousness, the Corps assumed that opposition was simply the product of ignorance, and it appears that this assumption guided many of their early efforts at public involvement.

All too frequently the typical public participation program seems to involve agency and development technical personnel armed to the teeth

¹³ For a history of early Corps developments, see W. HOLT, *CORPS OF ENGINEERS SERVICE MONOGRAPH No. 27* (Johns Hopkins University Press, 1923).

¹⁴ See MUDDY WATERS, *supra* note 5, at ch. 4; R. HAVEMAN, *WATER RESOURCE INVESTMENT IN THE PUBLIC 7-12* (1965) [hereinafter cited as HAVEMAN].

¹⁵ For example, the President initially directed the Bureau of Reclamation of the Department of the Interior to handle the now famous *Kings River Project*. The Corps, however, convinced Congress and local interests that the project should be designated as a flooding project and placed under Corps jurisdiction. MUDDY WATERS, *supra* note 5, at 208-62.

¹⁶ *Id.* at 51.

with facts, figures, thick reports that say too little or nothing about some of the real issues of interest to the enlarged and concerned public, etc. plus sometimes 'public relations' people. The combination of technically competent individuals who believe in the nobility of the project providing sterile facts and overzealous promotional people who utilize the 'hard sell' on the one hand and a diverse array of publics, sometimes confused and frequently ill-informed, on the other hand can create a very fertile setting for misunderstanding and conflict.¹⁷

This traditional form of building participatory support usually involved local government officials and other prominent city fathers rather than the rank and file citizenry. The general public was, for the most part, oblivious to this interaction. In essence, the Corps has been interested in those with an interest in it, most frequently developers, contractors, real estate brokers, and local businessmen. In the eyes of many, this special interest relationship was not necessarily a social wrong. Under the assumption that any community growth was good, the promotion of growth through water development was viewed as a broadly distributed benefit. While this notion still prevails in many parts of the country, particularly in small towns and rural areas,¹⁸ "the whole question of economic growth being the food for a region has come under sharp questioning. 'Growth is good' and 'water brings it' are still very much alive but under strong fire."¹⁹

Along with questioning the inherent value of growth, resource economists are now demonstrating the inaccuracy of what might be termed the "trickle-down" theory of income redistribution. Contrary to prior assumptions, evidence suggests that water investments do not benefit the median and low income groups in the affected region.²⁰

¹⁷ B. Drysart, *Education of Planners and Managers for Effective Public Participation*, in PROCEEDINGS, *supra* note 11, at 81.

¹⁸ See C. Denmon, *Small Towns*, in THE VOTER'S GUIDE TO ENVIRONMENTAL POLITICS 98-105 (G. DeBell ed. 1970); D. Mann, *Community Development in the Colorado River Basin: Future Choices* (paper presented at the Conference of the American Association for the Advancement of Science, San Francisco, March 1974). Mann points out how many small towns are willing to accept any form of development rather than witness the death of their community. *Id.* at 19-24.

¹⁹ D. Allee, *Institutional Changes for Water Development Projects*, in NATIONAL WATER COMMISSION: A REVIEW OF SOME ISSUES 59 (P. Ashton ed., Bull #75, Virginia Resources Research Center 1974).

²⁰ See HAVEMAN, *supra* note 14, at 125-51.

III. THE ENVIRONMENTAL CHALLENGE TO WATER MANAGEMENT

Popular challenge to the once sacrosanct "growth syndrome" has developed with the emergence of a vocal counter-elite in the form of the "Environmental Movement." Factions within this movement trace their origins to an initial focus upon wilderness protection. One historian has noted that as early as 1913, a new group of preservationists arose from this old conservationist camp.²¹ This group, a harbinger of present day environmentalist groups, wished to prohibit the use of areas of natural beauty rather than allow their development for water storage or the pleasure of outdoor recreationists. Contemporary organizations, such as the Sierra Club, by challenging water projects which threaten scenic areas, represent the preservationist point of view toward the use and abuse of water resources.

During the sixties, these rather esoteric cadres of preservationists were joined by hordes of environmental advocates ranging from the mild-mannered humanists preaching simplicity, to the more radical doom-sayers demanding limitations upon population.²² These new groups were even further removed from the earlier conservation movement, both in means and ends.

The focus of the environmental movement is a major qualitative leap beyond earlier conservation interests. Conservationists gave paramount attention to land use. . . . From the viewpoint of current eco-activists, the conservationists, notwithstanding their many admirable achievements, were too narrow in their vision of environmental degradation and too unsophisticated in their understanding of its causes and consequences.²³

Recent exposure to vocal environmental factions has made the American public more environmentally conscious. Whether or not this awareness is sustained at peak levels, many new factors have entered into water policy formulation which are likely to produce long lasting effects. These factors, which relate to our ecological "quality of life," seem to entail a fundamental reassessment of technological advancement, societal progress, and the growth syn-

²¹ See R. Nash, *Rivers and Americans: A Century of Conflicting Priorities*, in ENVIRONMENTAL QUALITY AND WATER DEVELOPMENT 78-94 (C. Goldman, J. McEvoy & P. Richerson eds. 1973).

²² For an overview of this spectrum, see W. ROSENBAUM, THE POLITICS OF ENVIRONMENTAL CONCERN 53-91 (1973).

²³ *Id.* at 61; see also G. McConnell, *The Environmental Movement: Ambiguities and Meanings*, 11 NAT. RESOURCES J. 427-36(1971).

drome.²⁴ Manifestations of this change in attitude are numerous. For example, various small communities have decided that the social benefits of limited size far outweigh the economic benefits of growth, and have taken steps to limit the influx of population.²⁵

A more interesting precedent has been set by those communities which have realized that an abundant water supply is necessary for growth. Citizens in these localities have attempted to gain control of water supplies in order to limit community growth. For example, in Goleta, California, an unincorporated coastal community, the citizens took control of the local water board (previously dominated by agricultural and developmental interests) and placed a moratorium on water hook-ups. In this manner, the citizens effectively compensated for their lack of control over local zoning policy.

Issues of growth and concern for quality of life have thus produced a new atmosphere in water planning. Traditional participatory measures, limited by their monitoring only those interested in the developmental aspects of water, are now grossly insufficient.²⁶ The combination of these elements in environmentally related areas has made an expansion of participatory mechanisms a paramount concern.

²⁴ For the suggestion that the environmental issue is already on the wane as a public concern, see A. Downs, *Up and Down With Ecology*, 29 PUB. INTEREST 30 (1972). Others suggest, however, that it will be sustained by the intellectual community. See H. Henderson, *Philosophical Conflict: Reexamining the Goals of Knowledge*, 35 PUB. AD. REV. 77, 77-80 (1975); *THE SOCIAL WELL-BEING AND QUALITY OF LIFE DIMENSION IN WATER RESOURCE PLANNING AND DEVELOPMENT* (W. Andrews, et. al. eds. 1973).

²⁵ One of the better known examples was Petaluma, California, a small city north of San Francisco, which passed an ordinance limiting multi-unit construction to 500 dwellings per year. The Ninth Circuit Court of Appeals upheld the constitutionality of the ordinance, explaining that "the concept of public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace." *Construction Industry Association of Sonoma County v. City of Petaluma*, 522 F.2d 897, 908-09 (9th Cir.), *cert. denied*, 96 S.Ct. 1148 (1976). Small municipal governments controlled by developmental interests have historically panicked their citizens into passing bonds for large overdrafts of water with the threat of water shortages. The predicted shortage is normally based upon an enormous linear growth equation. Once the water was obtained, the growth would be necessary in order to spread out the new tax burden. Alan Wyner has labeled this phenomenon, "the self-fulfilling policy making process." A Wyner, *On Diminishing the Value of Local Bond Elections: The California Experience* (Xerox, Univ. of Cal., Santa Barbara, 1975).

²⁶ G. White, *Public Opinion in Planning Water Development; in ENVIRONMENTAL QUALITY AND WATER DEVELOPMENT* 158 (C. Goldman, J. McEvoy & P. Richerson eds. 1973).

IV. EXPERIMENTATION AND FRUSTRATION: PLANNING AND PARTICIPATION IN THE 1960'S

With a burgeoning demand for public access to government decision-making, particularly in the area of natural resources, water development agencies were hard pressed to renovate their existing participatory arrangements during the 1960's. This was especially true of the Corps of Engineers because of its heritage of local involvement and its status as a major development agency.

Initially, the major thrust of reform centered on attempts to improve informational/educational capabilities. Innovations had as their principal focus informing the public in the hope of buttressing project support. The most illustrious of these early efforts was the *Brandywine Plan*, developed in 1966 by the Institute of Environmental Studies of the University of Pennsylvania.²⁷ This enterprise employed a diverse set of innovative devices aimed at increasing public awareness, including: (1) news releases; (2) multiple mailings; (3) a coordinating committee made up of local government and agency representatives; (4) a citizens' committee nominated by local civic organizations; (5) 20 public meetings and 13 meetings of public officials; (6) personal visits by planning officials to local landowners; and (7) an opinion survey of watershed residents.²⁸

These participation devices generated a great deal of interests in the Brandywine area, much of which was in opposition to the plan. Unfortunately, while the planners gathered a wide variety of data on public values, those values failed to be reflected in the proposed plan, and the elaborate scheme for coordinated land use was thoroughly rejected by the large land holders.

The manner in which the county commissioners passed the responsibility to the township supervisors, who in turn passed it to individual landowners is typical. Here is participatory democracy, but who participates? Most opponents, some proponents, few of the majority of middle-of-the-rovers, and none of the future residents who have not yet come to the valley . . . Equally important, there was no forum for

²⁷ The Brandywine, a small rural watershed about 30 miles west of Philadelphia, Pa., was experiencing rapid suburban expansion. Agricultural run-off was threatening homeowner water supplies. The Brandywine planning process was an attempt to integrate fairness into a comprehensive watershed protection plan.

²⁸ These devices are summarized in K. WARNER, PARTICIPATION IN WATER RESOURCE PLANNING 56-60 (Environmental Simulation Laboratory 1971) [hereinafter cited as K. WARNER].

debate and no mechanism for resolving the numerous clashes of interest the project raised.²⁹

Brandywine is thus an example both of failure to achieve participation by all affected segments of the public and of failure to accommodate those segments of the public which did participate.

This lack of interest accommodation was rarely made explicit in the planning literature. Most critics continued to argue for the correct mixture of procedures and scheduling to bring planners and the public together in a two-way exchange, and assumed that better plans would automatically flow from these exchanges.³⁰ No process of accommodating interests was clearly conceptualized. Nevertheless, solutions to the problems of past efforts may be a prerequisite to effective interest accommodation; thus, this article will discuss these problems at greater length.

These problems can be categorized as propagandizing, poor timing, and inconsistency. All three elements are associated with the general obstacles of institutional lag and inertia. In the sixties, despite a long history of interaction with selected publics, resource agencies still found alien the notion of public participation. This does not necessarily imply a conflict in organizational ethos, as did the famous case study of forest rangers who were reluctant to carry out controlled burning even to cut down fire-risk.³¹ It does imply, however, that water development agencies were not geared to deal with a highly nonsupportive and disruptive public.

The water planning problems of the 1960's not only demonstrate how the pedagogic role often lapses into propagandizing and salesmanship, but also how this role may take precedence over all others. Communication was for the most part a one way process.³² To the extent that public input was solicited, it was done through the limited vehicle of public hearings; and these, unfortunately, became "in many cases the only mechanism used both for informing publics and for inviting reactions."³³ For example, in the *Susquehanna River Basin Study*, the Corps of Engineers attempted to update

²⁹ J. Keene & A. Strong, *The Brandywine Plan*, 36 J. AIP 55 (1970).

³⁰ See PROCEEDINGS, *supra* note 11, at 185-90.

³¹ See A. SCHIFF, *FIRE AND WATER: SCIENTIFIC HERESY IN THE FOREST SERVICE* (Harv. Univ. Press 1962).

³² This is the principal indictment of several authors who studied the efforts of the sixties. See, e.g., K. WARNER, *supra* note 28, at 159-78; PROCEEDINGS, *supra* note 11, at 185-90.

³³ P. Ross, *Education of Publics for Participation in Water Resources Policy and Decision Making*, in PROCEEDINGS, *supra* note 11, at 144-54.

their participatory procedures by holding public meetings to determine the most critical water problems in the minds of the general citizenry.³⁴ Public turnout at these preliminary hearings was sparse, however, and Corps planners decided to proceed with little knowledge of potential opposition.³⁵ Additional information was periodically disseminated in the form of leaflets and newsletters, and occasional personal contacts followed. Yet, no large scale efforts to gain support were made until just prior to the decision stage, the conclusion of the planning process. The Corps then intensified its informational program, bombarding the public through the newspapers, and asking citizens to participate in local workshops and open forums.

Once again, as public awareness grew, so did opposition. At this stage, it was too late for the Corps to provide more than minor modifications of the plan. To the opposition, these changes were tokenistic; hence, a stalemate.³⁶ Research indicates that citizens viewed the meetings "more as review sessions than opportunities for active participation in the plan's formulation."³⁷ The workshops might have been more effective if they were held earlier in the planning process.³⁸

Studies of the use of public hearings catalogue an assortment of serious weaknesses,³⁹ but whether these are fundamental deficiencies or merely the result of misapplication remains an open question. If hearings are inherently defective, their use in the aforementioned studies compounded the problem: they were badly timed or staged during the planning process;⁴⁰ they were often inadequately publicized and poorly attended; and they were frequently the only form of communication exchange employed.

³⁴ A. Hahn, *The Corps of Engineers and Citizen Participation*, in *THE ROLE OF PUBLIC INVOLVEMENT IN WATER RESOURCES PLANNING AND DEVELOPMENT* 76-79 (D. Allee ed. 1972).

³⁵ See K. Murdock, *The Susquehanna Public Information and Participation Experiment*, in *THE ROLE OF PUBLIC INVOLVEMENT IN WATER RESOURCES PLANNING AND DEVELOPMENT* 55-60 (D. Allee ed. 1972).

³⁶ *Id.*; see also D. Allee, *Panelist Comments*, in *PROCEEDINGS OF THE CONFERENCE ON WATER RESOURCES PLANNING AND PUBLIC OPINION* 39-40 (W. Viessmon, Jr. ed., Nebraska Water Resources Research Institute 1970).

³⁷ T. Borton, *et al.*, *The Susquehanna Communication—Participation Study* 35-36 (U.S. Army Engineers Institute for Water Resources 1970).

³⁸ D. Allee, *Panelist Comments*, *supra* note 36, at 39-44.

³⁹ See K. WARNER, *supra* note 28, at 159-78; P. Ross, *supra* note 33, at 144-54.

⁴⁰ See K. WARNER, *supra* note 28, at 169; A. DAVIS, *PUBLIC PARTICIPATION IN WATER POLLUTION CONTROL DECISION MAKING* (North Carolina Water Resources Research Institute 1973). This latter phone survey found little public knowledge of public hearings.

Timing of public input is probably the most widely discussed issue in planning literature.⁴¹ The point of these criticisms is that in many planning situations there is little or no public input during the actual planning process. For example, the *Connecticut River Basin Study* reviewed the efforts of the New England River Basins Commission to establish a 28-person Citizen Review Committee (CRC). Members of the CRC were chosen by the Basins Commission and were supposedly representative of the broad range of interests in the Basin area. The CRC was given 90 days to assess the nine volume study. While the group completed its task on schedule, it failed to reach agreement on the final disposition of the study. Its reports emerged more as a critique of the review system than as an evaluation of the plans for the River Basin:

Effective citizen participation cannot be achieved by presenting a group with a completed plan without prior consultation. For future studies CRC recommends that a citizen review committee be established at the outset or at an early stage in the study so that it may play a role in setting the study's scope; and that it receive progress reports as they become available for review and comment; that each progress report contain an element responding specifically to citizen review comments elicited by the preceding report; that river basin studies be released as a series of periodic technical progress reports; that assumptions, implications, and interrelationships between every element of the report be made explicit; that a continuous dialogue be maintained between the citizen review committee and the coordinating committee undertaking the study; and that the final comprehensive report be completed within three years.⁴²

Here again, the major criticism was that public interaction and planning were maintained as separate and inconsistent processes. By the time public values and preferences were identified, there was little opportunity to include them in the largely completed planning process. Planning efforts by the Puget Sound Task Force⁴³ and at

⁴¹ A. DAVIS, *supra* note 40; PROCEEDINGS, *supra* note 11, at 185-86.

⁴² REPORT OF THE CITIZEN REVIEW COMMITTEE ON THE CONNECTICUT RIVER COMPREHENSIVE WATER AND RELATED LAND RESOURCES INVESTIGATION TO THE NEW ENGLAND RIVER BASIN COMMISSION, *quoted in* K. WARNER, *supra* note 28, at 102-03.

⁴³ For a more detailed examination of this controversy, see A. Widditsh, *Public Workshops on the Puget Sound and Adjacent Waters Study: An Evaluation* (U.S. Army Engineers Institute for Water Resources 1972). Several workshops were provided by the Pacific Northwestern River Basins Commission, but only after severe public opposition had been uncovered at the hearings over the preliminary plan. Feedback from the workshops was published in a series of reports which attempted to address or dismiss the issues raised by the public partici-

the Grand River Basin in Michigan also failed because public input was sought too late in the process.⁴⁴

In other projects, however, the public was asked to participate in the very early stages of a project study, but then not again until a plan had been chosen, still allowing little involvement in the generation of alternatives.⁴⁵ Planners soon began to discover that these lengthy periods of planning invisibility afforded little assistance to unpopular projects. In fact, the longer they waited to confront opposition, the less flexibility they reserved for modifying plans, and the more time and money they placed in jeopardy.⁴⁶

In still other instances, water development personnel were either so confident of local leadership or suspicious of public opinion that only preliminary hearings were held. While the *Susquehanna* and *Connecticut River* experiments were used as show pieces, most areas of the country experienced inconsistent attempts at public participation: all districts held hearings at the beginning of their surveys (often several years prior to reaching a final proposal), but only about ten percent conducted hearings closer to the actual decision date.⁴⁷ Thus, while some districts and regions were at least experimenting with new techniques and procedures, others, for various reasons, made little or no effort to inform broader segments of the public.

The persistence of these difficulties should not be taken to mean that no progress has been made. Agencies such as the Corps came a long way from the one-way communication approaches of the *Susquehanna Study* to the attempts at planning modifications in the *Connecticut Basin Study*. Yet, even in that study, the problem of accommodation remained largely unexplored.

pants. This systematic evaluation of the issues did very little to reduce opposition, for it still appeared that the planners were reacting instead of interacting. Further, they placed too much emphasis on information and too little on conciliation.

⁴⁴ See K. WARNER, *supra* note 28, at 97. In the *Michigan Study*, the information program included more than 60 meetings with local officials and civic leaders, as well as with certain elements of the general public. The Corps provided special press, television, and radio announcements. However, the information campaign did not begin until nearly six years after the study began. Despite belated attempts by planners to provide what they felt were realistic concessions to the opposition, public opinion polarized.

⁴⁵ An example of this was the Brandywine project. See text at notes 26-27, *supra*.

⁴⁶ For further discussion of this problem, see G. Bultena, D. Rogers & V. Webb, *Public Responses to Planned Environmental Change* (Sociology Rep. 106, Iowa State Univ. 1973).

⁴⁷ R. Wolff, *Involving the Public and Hierarchy in Corps of Engineers' Survey Investigations* (Nov. 1971) (unpublished Doctorate of Engineering dissertation in Stanford Univ. Library).

V. CONTINUED PROBLEMS OF THE 1970'S: FUTURE PROSPECTS

A. *Response to Environmental Legislation*

The passage by Congress of the National Environmental Policy Act of 1969 (NEPA)⁴⁸ provided the promise of a new era in resource development.⁴⁹ Environmental considerations became, at least on paper, as important as economic indicators in feasibility assessments. An environmental evaluation, called an Environmental Impact Statement (EIS), was required to ensure proper attention to the ecological ramifications of any major government action.⁵⁰

With specific regard to water policy, Congress followed NEPA with the new Flood Control Act of 1970,⁵¹ which specifically instructed water resource agencies to consider closely "the total environment," including the individual "well-being" of the region's residents, and the region's level of economic development. The Act also suggests that direct public input should be instrumental in considering these factors.⁵²

These new canons, along with reflections upon past failures, promoted widespread introspection by the water development agencies. Once again the Corps of Engineers led in these reevaluations. In February, 1971, the Corps brought together its planning chiefs and public affairs officers for a special conference on public involvement. General Clarke, Chief of Engineers concluded:

In the past we have conducted our planning activities with a relatively small percentage of the people who have actually been concerned, primarily federal, state and local government officials of one kind or another. Today there are, in addition, vast numbers of private citizens who, individually, or in groups and organizations and through their chosen representatives, are not only keenly interested in what we are doing with the nation's water resources but who want to have a voice and influence in the planning and management of those resources We cannot and must not ignore these other voices.⁵³

⁴⁸ 42 U.S.C. §§ 4321 *et seq.* (1970).

⁴⁹ For an overview of NEPA's impact, see L. CALDWELL, *ENVIRONMENTAL POLICY AND ADMINISTRATION* 76-96 (1975); S. Deutsch, *The National Environmental Policy Act's First Five Years*, 4 *ENV. AFF.* 3 (1975).

⁵⁰ 42 U.S.C. § 4332(2)(c) (1970).

⁵¹ Pub. L. No. 91-611, 84 Stat. 1824 (codified in scattered sections of 5, 10, 16, 33, 42, 43 U.S.C.).

⁵² See L. Tinkham, *The Public's Role in Decision-Making for Federal Water Resources Development*, 10 *WATER RESOURCES BULL.* 692 (Aug. 1974).

⁵³ B. Dodge, *Achieving Public Involvement in the Corps of Engineers*, 9 *WATER RESOURCES BULL.* 449 (June 1973).

Thus, the Corps redefined participatory planning to encompass two-way communication. The impetus for this change emerged in a 1971 Engineering Circular, which specified that regional representatives should: (1) present information which will help the public define its water resource priorities, understand the Corps' planning process, and participate effectively in it; (2) develop channels through which the public can express its preferences regarding resource use and development; (3) provide structured opportunities for the public to influence planning, weigh conflicts, and achieve consensus; and (4) promote coordination between the Corps' planning and the planning of other agencies.⁵⁴

More recently, this directive was augmented by the Water Resource Council's Principles and Standards for Planning Water and Related Land Resources.⁵⁵ The Principles and Standards require consideration of quality of life factors as well as economic indices, and suggest that such consideration will be best achieved through vigorously pursued public involvement.

Whether or not the Corps or other water development agencies could meet these lofty goals remained in question, however, as initial efforts met with only marginal success. A prime example of this continued lack of effective participatory planning was the *Upper Rock River Basin Workshops*. At Rock River, the Corps attempted to coordinate survey analysis, pamphleteering, and functional workshops. While planning personnel at the Rock Island District Office concluded that the workshops "provided useful information for assessing the types of studies most likely to result in politically and socially acceptable solutions to the basin's needs,"⁵⁶ social researchers were far less optimistic. Despite an attempted emphasis on interactive procedures, *Rock River* failed to develop authentic public participation: too little energy was directed toward exhibiting alternatives, maintaining public visibility and interest, providing a forum for interest group bargaining, and incorporating public sentiment into the actual plan.⁵⁷

⁵⁴ CORPS OF ENGINEERS, PUBLIC PARTICIPATION IN WATER RESOURCES PLANNING (E.C. 1165-2-100, May 1971).

⁵⁵ 42 U.S.C. §§ 1962 *et seq.* (1970).

⁵⁶ CORPS OF ENGINEERS, A PLAN OF SURVEY OF REVIEW REPORTS FOR FLOOD CONTROL AND ALLIED WATER RESOURCES AND RELATED LAND RESOURCES ON THE UPPER ROCK RIVER BASIN IN ILLINOIS AND WISCONSIN 34 (Rock Island District, U.S. Army Corps of Engineers Report, November 1970).

⁵⁷ See D. BROMLEY *et al.*, AN EVALUATION OF PUBLIC PARTICIPATION IN THE UPPER ROCK RIVER BASIN SURVEY (1972).

B. *Planning in a Fishbowl*

A more innovative approach than that used by the Rock River group was developed in the *Seattle District Studies*. This technique, known as "Fishbowl Planning," has emerged as the model for participatory efforts in the 1970's, and thus warrants detailed consideration. The original Fishbowl procedure coupled old participatory mainstays—workshops and public meetings—with certain new devices.⁵⁸ The first of these innovations was the citizen committee

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Fishbowl planning vs. traditional planning

	<u>fish- bowl plan- ning</u>	<u>tradi- tional plan- ning</u>
<i>Public meeting 1</i> —held at early point in study to determine the concerns, opinions, and preferences of all interests. No alternatives presented by planner.	x	x
<i>1st Draft public brochure</i> —a description of preliminary alternatives, with pros and cons mailed to interested parties for comment, shortly after public meeting 1.	x	
<i>Workshop series 1</i> —to prepare brochure for public meeting 2 (i.e. modify and add alternatives, pros and cons).	x	
<i>2d draft public brochure</i> —mailed to interested parties for comment.	x	
<i>Public meeting 2</i> —to debate the full range of alternatives.	x	
<i>3d draft public brochure</i> —mailed to interested parties for comment. Added: analysis of alternatives and rationale for selecting one or two alternatives for detailed technical checkout.	x	
<i>Workshop series 2</i> —to prepare brochure for public meeting 3.	x	
<i>4th draft public brochure</i> —mailed to interested parties for comment.	x	
<i>Public meeting 3</i> —to debate tentative decision to conduct a technical checkout of one or two alternatives while continuing debate on all alternatives.	x	
<i>5th draft public brochure</i> —mailed to interested parties for comment.	x	
<i>Workshop series 3</i> —to discuss results of technical checkout of one or two alternatives and prepare brochure for public meeting 4.	x	
<i>Formal letter coordination with public agencies.</i>	x	x
<i>6th draft public brochure</i> —mailed to interested parties for comment.	x	
<i>Public meeting 4</i> —to discuss results of technical checkout and tentative selection of one alternative.	x	x
<i>Final version public brochure</i> —mailed to interested parties as report summary.	x	

(CITCOM), a sort of clearing house for the participatory enterprise. The second and most unique invention was the introduction of the feedback brochure. Following each of the several rounds of planning interaction, a brochure explaining the pros and cons of the previously discussed alternatives was drafted and disseminated to "interested parties," along with the names and affiliations of the sponsoring individuals, groups, or organizations. A returnable survey portion providing additional citizen input was also included.

The Fishbowl technique immerses a few selected citizens (the CITCOM members) into much of the Corps busy work. In essence, CITCOM members relieve Corps personnel of certain administrative functions. During the planning process, CITCOM members may study status reports, determine if additional alternatives should be studied, identify other interest groups which should participate, and recruit additional citizen discussion leaders.⁵⁹ In terms of actual evaluation input and decision-making power, however, the role of the CITCOM is still uncertain. They "are not debating groups. Nor do they vote on proposed alternatives. Rather they recruit citizen discussion leaders, citizens who defend particular alternatives (and comment on other alternatives) in workshops and public meetings. CITCOMs also pass study information along to interest groups."⁶⁰

Employing citizens to secure the involvement of other citizens is a brilliant strategy in terms of conserving limited staff support. However, it also allows agencies to limit their own responsibility for excluding particular interests. Further, and particularly with reference to the *Seattle District Studies*, the term Citizen Committee is largely a misnomer. In those studies, a substantial portion of the CITCOM's membership was drawn from the ranks of local government agencies.⁶¹ While other members were from groups such as the Sierra Club and the League of Women Voters, these groups are also citizen elites in their own right. Researchers have concluded that the Seattle CITCOMs, particularly those of predominately voluntary membership, were not representative of the public at large.⁶²

Col. H. Sargent, Jr., *Fishbowl Planning Immerses Pacific Northwest Citizens in Corps Projects*, 42 CIV. ENGINEERING 54 (Sept. 1972).

⁵⁹ *Id.* at 57.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² J. Pierce & H. Doerksen, *Citizen Advisory Committees: The Impact of Recruitment on Representation and Responsiveness*, in WATER POLITICS AND PUBLIC INVOLVEMENT 249-68 (J. Pierce & H. Doerksen eds. 1976).

The feedback brochure is the most widely heralded aspect of the Fishbowl technique; for it is at once educational, evaluative, and participatory. It received additional favorable testing in the *Inland Lakes Project Study* implemented by the Huron River Council. Three distinct sets of informational brochures were circulated to selected publics. The first brochure instructed citizens on the purpose of the study and requested their feedback in terms of identifying particular problems. The second brochure explained in relatively simple language and graphic displays the technical and conceptual aspects of the water problems throughout the area. The final set of brochures discussed in detail the problems and solutions which had been forwarded, and provided a guide to responsible citizen action.⁶³

Despite favorable responses to the feedback brochure, it still seems to emphasize promotion rather than genuine citizen involvement. It is "salesmanship" carried to a new zenith. While the feedback mechanism is a revolutionary improvement over past efforts, its shortcomings ought to be considered. First, the brochure technique is a selective enterprise. Those who get on the mailing list may or may not be representative of all affected publics (those who have a life-quality or economic stake in the decision). While guidelines exist for preparing mailing lists⁶⁴ it is still conceivable that some affected publics will be excluded. For example, if the CITCOMs have discretionary power over membership recruiting, certain "out groups" might be excluded.⁶⁵ Even if allowed into the fold, their

⁶³ For more detail on the *Inland Lake Study*, see J. FULTON, *et al.*, DEVELOPMENT AND EVALUATION OF CITIZEN PARTICIPATION TECHNIQUES FOR THE INLAND LAKES AND SHORELAND MANAGEMENT (Huron River Watershed Council 1971).

⁶⁴ The following mailing list guidelines were provided by the Tulsa District Office, U.S. Army Corps of Engineers, from PUBLIC INVOLVEMENT TRAINING SESSION No. 3 (March 10, 1974):

1. Federal, state, regional and local government officials and agencies whose responsibilities are related, directly or indirectly, to the types of *problems* being studied.
2. Special interest groups, regional and local, which previously have had an interest in the types of *problems* being studied. Category includes: Commercial and Business Societies and Clubs
Environmental Societies and Clubs
Professional Societies and Clubs
3. Property owners and businesses whose properties and/or businesses are directly affected by *problems* being studied. Category includes:
Neighborhood Organizations
Business Associations
4. Civic organizations and the academic community in the study area. This category includes: Civic Associations, Fraternal Clubs, Research Institutions, University Faculty
5. News media throughout the study area.

⁶⁵ Affected publics which are most frequently left out are those which are impacted but

viewpoints might not be heard over those of established community leaders already involved in the process.

A second reservation relates to the brochures themselves. "[T]o obtain extensive participation it is necessary to devote considerable care to the design of the brochure (e.g., careful use of graphics and well written non-technical prose are essential). The design of the survey instruments used to obtain feedback is also crucial."⁶⁶ Whether or not brochures become propaganda devices and surveys become self-fulfilling prophecies depends largely upon who writes and administers them. Obviously, performance differs greatly from district to district.

A third reservation is that the Fishbowl method, with its laborious refinements and re-issuing of brochures, is a tremendously time-consuming and costly methodology.⁶⁷ While highly impressive in its various pilot runs, Fishbowl planning may not be as attractive after a full accounting for costs. There is also "the difficulty in getting citizen groups and government agencies to provide feedback before a final alternative action is proposed."⁶⁸ Should this problem arise, the entire purpose of the feedback procedure would be defeated. Moreover, the slowness of the Fishbowl method conflicts with recent Corps edicts, which have instructed districts to decrease the time involved in planning studies whenever possible. For a normal survey study, the deadline is now 36 months rather than the 5 or 6 years prevalent in earlier examples. The Corps also carries out some projects with such limited time frames that use of the Fishbowl technique is effectively precluded. Notably, the so-called "Continuing Authorities Program," which allows the Corps to plan, design, and construct projects without specific congressional approval, affords only an 18 months planning period. "Local citizens will not be easily convinced that the opportunity for involvement in such a study should be diminished simply because the Corps desires to streamline the planning process for Continuing Authorities Studies."⁶⁹ If

disinterested. Involvement requires a great deal of time and energy, plus organizational skills and monetary resources; thus precluding participation by low income groups. Current public involvement strategies make no attempt to underwrite the involvement costs for these groups.

⁶⁶ T. Wagner & L. Ortolano, *Analysis of New Techniques for Public Involvement in Water Planning*, 11 WATER RESOURCES BULL. 341 (April 1975).

⁶⁷ Mailing several editions of elaborate brochures, with full color charts, etc. costs substantially more than holding one or two public hearings and consumes three to five times as much time.

⁶⁸ T. Wagner & L. Ortolano, *supra* note 66, at 341.

⁶⁹ J. Hanchey, *Public Involvement in the Corps of Engineers Planning Process* 39 (U.S. Army Engineers Institute for Water Resources, Oct. 1975: report 75-R4).

the Corps and other resource agencies continue to "streamline" planning stages, feedback brochures and other drawn-out citizen participation techniques will quickly lose their luster.

A final reservation relates to the lack of sufficient documentation showing that the use of Fishbowl has actually produced substantive changes in proposed plans.⁷⁰ Hopefully, such evidence will be forthcoming. Yet, given past experiences and the inevitable inertia of public agencies, it is likely that Fishbowl-type techniques will occasionally be used more in the hope of changing publics than in a willingness to change plans.

C. *Toward an Alternative Participatory Technology*

While Fishbowl planning constitutes a step in the right direction, it remains subject to the phenomenon of "bi-polar elitism." That is, Fishbowl, like traditional participatory mechanisms, isolates conflicting interest groups (i.e., environmentalists v. developmentalists).⁷¹ Between these conflicting interests, a zero-sum-game mentality⁷² is quite likely: to either group, accommodation seems an unacceptable loss. In these situations, resource agencies will be hard pressed to arrive at compromise plans. Yet, assuming that the general public holds relatively moderate interests,⁷³ a greatly expanded participatory program might also broaden the support base for more moderate project alternatives. Current participatory strategies are more broad based than the traditional public hearing, but they continue to emphasize "interested publics" (those who attend hearings) rather than "affected publics" (those who have a stake or interest in a given issue).⁷⁴

⁷⁰ See Ross, *Education of Publics for Participation in Water Resources Policy and Decision-Making*, in PROCEEDINGS OF THE CONFERENCE ON PUBLIC PARTICIPATION IN WATER RESOURCES PLANNING AND MANAGEMENT 39 (1974); T. Wagner & L. Ortolano, *supra* note 66.

⁷¹ Evidence of this phenomenon was discovered via a random sample of 300 individuals from a watershed area. The study indicated that those exhibiting very high and very low environmental values were greatly over-represented in terms of community level participation. See G. Daneke, *Attitudes and Involvement with Regard to Environmental Issues* (Oklahoma Water Resources Research Center 1976); D. Mazmanian & J. Nienaber, *Bureaucracy and the Public*, in WATER POLITICS AND PUBLIC INVOLVEMENT (J. Pierce and H. Doerksen eds. 1976).

⁷² "Zero-sum-game" refers to a situation in which gain to one party can come only at the expense of a corresponding loss to another party.

⁷³ The *Stillwater Study* suggests that this is the case, for most of the individuals surveyed held middle-range environmental values. See G. Daneke, *Attitudes and Involvement with Regard to Environmental Issues*, *supra* note 71.

⁷⁴ See J. Ragan, *Public Participation in Water Planning: An Evaluation of 15 Corps of Engineers Districts* (U.S. Army Engineers Institute for Water Research 1975).

Once having identified the relevant interests, securing affected group participation is, of course, another matter. Highly affected publics are often individuals of lower socio-economic status. These groups simply cannot incur the organizational costs of involvement. Furthermore, the "logic of collective action" dictates that most individuals will withhold activity on the theory that they will benefit from any water policy decision, whether they participate or not.⁷⁵ Identifying and then integrating reluctant publics into the planning process is the present participatory challenge.

Greater input into resource planning might be achieved by taking such steps as:

- 1) Alerting affected publics as to the indirect and broadly distributed benefits and burdens which may accrue to them.
- 2) Underwriting a substantial portion of the informational investment required for effective participation.
- 3) Conducting workshops designed to provide the organizational skills necessary for effective participation.
- 4) Providing, in some instances, actual financial inducements to invoke involvement.⁷⁶ A system analogous to jury duty might prove useful.

Establishing broader based negotiations is no guarantee that polarized interests will agree. However, planning agencies will have a wider spectrum of interests from which to construct coalitions, and they will be able to document this breadth of support to legislative bodies. Legislative bodies, seeing this support, will then act on the plan with much greater speed.

VI. CONCLUSION

Whether or not the alternatives discussed in this article will resolve the participatory problem, only elaborate testing will tell. Nevertheless, to the extent that they represent an attempted integration of planning and participation, they might fulfill the spirit of the current participatory movement. While water development and other environmentally oriented agencies are likely to continue to exercise the educational function of involvement, they may also begin to educate themselves to the broader range of interests. This two-way exchange will be vital to newly emerging missions of envi-

⁷⁵ M. OLSEN, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND A THEORY OF GROUPS* (1965).

⁷⁶ S. Arnstein, *A Working Model for Public Participation*, 35 *PUB. AD. REV.* 70 (1975).

ronmental enhancement (i.e., wet lands restoration, stream flow augmentation, green belt development, water quality management, and the urban studies program). In sum, building upon the foundation of older development and regulatory agencies, public involvement and participation may prove the catalyst for a new resource development philosophy.