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## **THE CONTENTION OVER THE USE OF RIVER WATER IN THE EL PASO AREA**

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Sunday mornings when I have masses in one of the farming community east of El Paso, I enjoy driving the back road through the cotton, pecan, chili and alfalfa fields. The interstate might take me to my destination faster, but the sight of the green, red, and white crops growing from the manicured earth uplifts my spirits. People tend to think of nature as the wilds, divorced from human activity and spawning wonder. But perhaps because I was raised in a city, agriculture awakes a similar sense of awe in me.

El Paso lies at the extreme western tip of Texas. Its annual rainfall has in recent years been less than eight inches. This peripheral amount is only about one-half the average of Los Angeles and one-sixth that of Houston. Yet God has remarkably gifted the El Paso metropolitan area, which includes the Mexican city of Juarez (Ciudad Juárez), with water. The Rio Grande, literally the "Great River" in Spanish, has brought copious amounts of melted snow pack to the area for ages. Millions of years ago as the earth's crust was taking shape, the waters of the Rio Grande filled an aquifer under what are now the twin cities. Locals call this huge pocket of water by another Spanish name, the Hueco Bolson.

For over a hundred years municipal residents on both sides of the international border have used the fresh water portions of the Hueco Bolson for living needs. Meanwhile, farmers have irrigated their fields with river water. This arrangement came about through various agreements and developments. In 1906 the United States and Mexican governments signed a pact designating 60,000 acre-feet of river water (19.6 billion gallons and approximately 8 percent of the annual flow of the river) to Mexico. Farmers in Texas and New Mexico divided the remaining lion's share of the river water with the former state receiving about 75 percent as much as the latter.

Together with other water users, the New Mexican farmers formed the Elephant Butte Water Users Association and the Texas farmers organized into the El Paso Water Users Association. These groups negotiated with the federal government the construction of the Elephant Butte Dam which was completed in 1916. The associations agreed to repay the government the cost of the dam. Notably, the city of El Paso with access to well water from the Hueco Bolson refused to participate in the enterprise.

Twenty years later the federal government, again with money promised by farmers, constructed the Caballo Dam downstream from Elephant Butte to enhance the control of water. The two dams have substantially improved the prospect and quality of life in the Rio Grande Valley by providing not only water for farming, but also flood control, electricity and water recreation areas. However, environmentalists complain that damming the Rio Grande has resulted in the loss of grandeur from the destruction of flora and fauna.

In recent decades dramatic increases in the populations of El Paso and especially Ciudad Juarez have begun to strain the fresh water reserves of the Hueco Bolson. Both cities must now seek alternative water sources or face serious deterioration of water quality.

The situation of Ciudad Juarez is decidedly more critical. Although residents of the city use only half as much water per capita as El Pasoans, its many *maquila* (i.e., export based manufacturing) plants have attracted thousands of newcomers causing the population to swell to well over a million people. (El Paso's population is approximately 700,000.) A bigger liability is the lack of large sums of capital for investment in water infrastructure. Yet, the city is not without hope since it is one of Mexico's most important industrial centers. El Paso also recognizes that it must be ready to assist its neighbor as its own economic prosperity is closely linked to Ciudad Juarez's manufacturing capacity.

Because it is totally renewable, the most strategic resource of water for the El Paso area is the Rio Grande. Today the city receives more than half its municipal water supply from the river. El Paso Water Utilities (EPWU), the city's publicly-owned water company, wants to use even more river water to supply municipal needs since it is readily available and, in theory at least, inexpensive. Alternative water sources such as desalinizing the huge amounts of brackish water lying untapped in the Hueco Bolson and pumping water from distant aquifers are very costly.

Since 1941 EPWU has been purchasing water rights from the El Paso Country Water Improvement District #1 (EPCWID#1). Local farmers control the latter entity and have been willing to sell the use of part of their water to which their land entitles them. (Of course, the owners and their forebears earned these entitlements through payment of taxes for the dams and irrigation canals.) Since 1941, EPWU has purchased the use of water at the inexpensive price of \$15 an acre-foot. In 2001 EPWU agreed to acquire the use of a smaller amount of water from the EPCWID#1 at a very lucrative \$200+ per acre-foot. Currently such purchases must have the approval of the U.S. Department of the Interior since federal law established that the water be used for agriculture. EPCWID#1, representing the interests of local agriculture, wants this prescription to be kept so that it can maintain control over the price of the use of water.

EPWU is interested in purchasing the use of river water at what it considers reasonable rates. It notes that the El Paso area has changed considerably over the last century. Farming no longer plays a major role in the area's economy. Therefore, it believes, river water should be made available for urban needs and not continue to be reserved for agricultural purposes. Making the use of more water available for purchase, it believes, will lower its price.

To be sure, the EPCWID#1 sees the matter differently. Its representatives are not opposed to selling the use of water for municipal needs, but ask the "market price" for the water delivered – a matter which is

contested. To justify their request that the price be in the range of \$200 per acre-foot (more than 13 times the price EPWU pays currently EPCWID#1 for the use of water under the 1941 contract), they contend that the monopolistic EPWU sells water to city residents for what amounts to \$800 an acre-foot. Still, the price the district asks for the water is substantially greater than what the city's water company thinks reasonable.

At the current time EPWU is petitioning members of Congress to reexamine provisions of the federal law governing the use of waters in the Rio Grande. It wants to be able to deal directly either with EPCWID#1 or with individual landowners who have water rights without the approval of the Department of the Interior. In this way, the water company believes that it would have more leverage to negotiate lower water prices.

The controversy between EPWU and the EPCWID#1 raises several moral, social and political issues which defy facile solutions. We can make the following observations and questions:

- 1) Farmers are called greedy because they seek the highest possible price for selling the water to which they have legal rights. Yet they have invested equity for years to make available and improve the water from the Rio Grande. Now with a downturn in prices of crops such as cotton, they wish to sell the use of the water which their landholdings entitle them. At what point is this endeavor selfishness?
- 2) It is estimated that all the water of the Rio Grande designated for agricultural uses in Texas and Mexico if converted to municipal use would be more than enough to meet municipal needs of El Paso and Ciudad Juarez. But is this prospect really desirable? Does not agriculture provide a natural wonder to be preserved, to say nothing of the value of the crops and the livelihood of farmers?
- 3) The City of El Paso has squandered water in the past. Per capita water use a generation ago was around 200 gallons per day, equivalent to that of cities with substantially more rainfall. It is certainly true that this average amount has decreased significantly to now less than 150 gallons per day, yet the city continues to expand in ways what would not be unfairly typified as "urban sprawl." To what extent does it deserve a change in the law to maintain inexpensive water bills and the liberal use of water for residents?
- 4) Ciudad Juarez presents a particularly daunting challenge. One factor is that it is part of an autonomous nation with its own ways of meeting social needs. Another factor is that its leaders have fostered massive industrial growth with apparently little regard to its long-term effects. With the right to use river water El Paso might supply Ciudad Juarez with enough water for municipal needs. But is it fair, sustainable, and ultimately beneficial to provide water at the expense of farming to support the often-considered exploitative maquila industry in Mexico?
- 5) Of course, there are testy underlying issues. Is water a commodity to be owned or a benefit of nature like air to be shared equitably? How is the price of the use of water to be determined equitably? If the present way of allocating water rights is changed, how should the fiscal losers in the new arrangement receive compensation? If solutions are not democratically acceptable, can they be implemented by court fiat?

Peace and Justice Ministry (PJM) of the Diocese of El Paso has been examining water issues in El Paso for the past four years. In 1999 it received a grant from the Environmental Justice Program of the United States Catholic Conference's Office of Social Development and World Peace for the "Water Awareness Project." The first phase of the project called for workshops informing people in parishes of the water situation in the El Paso area and encouraging water conservation. More than 600 people attended these workshops in about 25 (approximately half) of the El Paso County's Catholic parishes. Typically, I preached a homily touching on water at each weekend mass and PJM's water awareness project coordinator presented the 45 minute workshop immediately following the end of mass.

The second phase of the project was a conference in May 2000 featuring a theologian with expertise in rural life organizing and experts in the different aspects of the El Paso area's water problems. More than a hundred people attended this event. PJM then queried the experts in the preparation of a pastoral statement on the situation. In October 2000 it published "A Pastoral Reflection on the Water Crisis" describing four critical issues, providing a moral perspective with Catholic Social Teaching, and recommending multiple ways in which the public might contribute to a positive outcome.

These accomplishments led to two more grants – one from the Raskob Foundation and a second from the Environmental Justice Program -- for work on the topic. The second year of grant funding was dedicated in large part to educating elementary and secondary school students on water issues.

After reviewing many of the references to water in the Bible, the pastoral reflection concluded that the El Paso area like the people in biblical times yearns for "living water." On a literal level "living water" is usually considered to be a flowing river. Symbolically, and more importantly here, it refers to the spiritual life made accessible through upholding Covenantal law, practicing wisdom and abiding in the Spirit. The following is an attempt to apply these principles to the water issue in the El Paso area described above.

Water in nature is not a commodity but a resource available for the benefit of all living beings. Humans have first claim on the use of water, but still it is necessary for all other creatures that inhabit the earth.

Human ingenuity has developed the market system for efficient distribution of scant resources. Markets cannot produce complete justice; however, beyond efficiency they do provide a sense of order with rules which most people can grasp and work with. For these reasons – efficiency, clarity, and functionality – the market system has proven effective in American life and should not be underestimated much less disregarded. It can be applied to the use of water to a considerable extent.

Since water is for the good of all, a critical question to ask is, who have the rights of first use? This is generally determined by prior claim although some attention must be given to need. Once rights are established, they are changed only with difficulty. We have seen how the farmers through their need and investment have established rights to the waters of the Rio Grande.

Farmers, of course, do not use water solely for their own good. They supply society with food and other products as well as a model for wholesome life. Their efforts also change the landscape, often turning

barren, rugged ground into awe-inspiring landscapes. In all these ways it can be said that El Paso's farmers have seldom abused their right to first use of the Rio Grande's waters.

But other humans besides agricultural producers have need of water and should be allowed access to its use. This is best done through the market system where use of water is purchased at a set price. Farmers should be able to sell the rights to their excess water although the sale should not cause them to stop farming.

However, since water is a vital necessity, some control should be placed on its price lest those without sufficient means be deprived of it. This can be done by the state imposing binding arbitration on the sale of water whereby a mutually acceptable mediator would assist in the settlement of disputes regarding the price for the use of water. Market factors would continue to be the principal determinant of the price of water, but other factors such as need, ability to pay and responsibility of the use of water would also be given consideration.

One of the people heavily involved in the contention of the use of the Rio Grande's water once cynically claimed that where there is money, there will be no shortage of water. "Water," he said, "will flow uphill to money." Of course, there is truth here. It is good to have money to make available valuable resources such as water. But everyone needs water, even those with little money. Society must see to it that the valid needs of these people are also met.



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