

POLITICS AND THE COLORADO RIVER

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The symposium program lists my subject as "Politics and Water Rights." I will take considerable liberty with that subject and will limit my remarks to past and future problems and political solutions on the Colorado River. I do this because this is an area in which I can speak largely from information gained through an intimate involvement with the Colorado starting in 1965 and continuing to date.

The Colorado River is the only major stream in the United States whose water supply is fully utilized. In achieving this distinction the Colorado has known more than its share of controversy. All problems that couldn't be resolved among the seven states of the Colorado River Basin through negotiation, and that means most of them, ended up either in the courts or on the floor of Congress. Because of the limitations of time, I will present only a very brief history leading up to the Colorado River Basin Project Act of 1968, and concentrate on the political compromises of that Act and the problems that still face us. I would also like to bring to your attention today*efforts that we are making within State Government in Arizona to avoid leaving completely to political solution, a problem of great importance to the State. I allude to the allocation of our remaining entitlement in the Colorado River.

The early water history of the Colorado is largely a struggle between the haves and the have-nots, between areas and states slow to develop and those in which development came early and rapidly. The unregulated flows of the Colorado were fully developed and utilized in the Lower Colorado River Basin by the early 1900's. The resulting economy was subject to the vagaries of nature, either too little water or too much, and in 1905 was ravaged by a particularly devastating flood. The need for construction of major conservation and flood control storage along the Colorado became widely recognized, and the river and its problems were subjected to several intensive studies culminating in the Fall-Davis Report of 1920. This report recommended the construction with Government funds of a reservoir at or near Boulder Canyon. Implementation of the Boulder Canyon Project was delayed for a decade, however. The slowly developing Upper Basin States of Colorado, Wyoming, New Mexico, and Utah were apprehensive that the Boulder Canyon Project would result in rapid expansion of irrigation in the Lower Basin and would permit, through the exercise of the western doctrine of prior appropriation, the development of rights to all of the waters of the Colorado River to the detriment of the Upper Basin.

The political impasse resulting from the opposition of the Upper Basin states to the construction of the Boulder Canyon Project led to the negotiation and adoption of the Colorado River Compact, the first Interstate Compact to allocate the waters of an interstate stream. The purpose of the Compact was to equitably apportion the waters between the two basins, and to provide protection for the Upper Basin through a reservation of water for that basin.

The Colorado River Compact was signed on November 24, 1922 by the Compact Negotiators. All states of the Basin except the State of Arizona ratified the Compact by April of 1923.

Numerous conferences were held from 1923 through 1927 in an effort to obtain ratification by Arizona of the Compact and to negotiate a three-state compact dividing the waters allocated to the Lower Colorado River Basin. These efforts failed, however, because of the inability of Arizona and California to agree on the division of the 8.5 million acre-feet allocated to the Lower Basin by Articles IIIA and IIIB of the Compact.

The failure to bring about seven state ratification of the Compact delayed action by Congress on the construction of the Boulder Canyon Project. Finally, in 1928 the Boulder Canyon Project Act was adopted on the basis of California and five other states ratifying with the further proviso that California limit its consumptive use of the 7.5 million acre-feet apportioned by Article IIIA of the Colorado River Compact to 4.4 million acre-feet per year.

California agricultural and municipal interests entered into an agreement in 1931 establishing an internal order to priority of use within the State of California of 5.362 million acre-feet of Colorado River water. Contracts entered into between the California entities and the Secretary of the Interior for a total of 5.362 million acre-feet included these priorities.

In 1944 the State of Arizona, to enable its entry into a contract with the Department of the Interior for 2.8 million acre-feet of water from the Colorado, finally ratified the Colorado River Compact.

The Colorado River Compact recognized the rights of the Republic of Mexico to a supply from the Colorado without setting forth the amount. In 1944 the United States signed a Treaty guaranteeing delivery to Mexico, except in unusual circumstances, of 1.5 million acre-feet annually. The Treaty on the Colorado was part of a larger instrument involving also the waters of the Rio Grande and the Tijuana Rivers. The fact that Mexico was granted in the Treaty approximately twice the supply from the Colorado that she was then using, the fact that Senator Connally of Texas occupied the strategic position of Chairman of the Senate Committee on Foreign Relations, the Committee that had to approve the Treaty; and the fact that Texas gained water on the Rio Grande explains the widely held view among water people of the Colorado River Basin that water from the Colorado was given to Mexico in exchange for additional Rio Grande water for Texas.

As development began to accelerate in the Upper Colorado River Basin the states of that Basin undertook negotiation of a compact to apportion the waters allocated by the Colorado River Compact to the Upper Basin. To their credit they successfully consummated this effort in 1948.

It became obvious soon after completion of Hoover Dam that the Colorado River could not support California's contracts for 5.362 million acre-feet per annum, Nevada's contract for .3 million acre-feet, and Arizona's contract for 2.8 million acre-feet, but the Lower Basin States of California, Arizona, and Nevada remained unable to agree upon a tri-state compact to divide the waters available to the Lower Basin. California insisted that the contracts of California

agencies with the Secretary of the Interior totaling 5.362 million acre-feet remain inviolate and take precedence over subsequent contracts. This position, if honored by Arizona and Nevada, would have left them with little wet water and a handful of paper rights.

When Arizona went before the Congress of the United States in 1948 to seek authorization of the Central Arizona Project and the ability to put its remaining entitlement in the Colorado River to use, she found that she was strongly opposed by the State of California. Arizona made repeated attempts over the next few years to gain project authorization, but was blocked by the superior political force of California. In 1951 Congress deferred further deliberations on a Central Arizona Project in the words of the Committee report "until such time as the use of the water in the Lower Colorado River Basin is either adjudicated or binding or mutual agreement as to the use of the waters is reached by the states of the Lower Colorado River Basin."

Shortly thereafter Arizona brought action in the Supreme Court of the United States against the State of California to obtain such an adjudication. A long and expensive case followed. After twelve years of argument and deliberation the Supreme Court on March 9, 1964, issued its decree. It found that California was entitled to 4.4 million acre-feet, Arizona 2.8 million, and Nevada .3 million of the first 7.5 million acre-feet available in the Lower Colorado River. The court did not attempt, however, to establish priorities in the event of shortage, but rather left that problem to the discretion of the Secretary of the Interior or

to the future action of Congress. Since none of the hydrologists who testified before the court or, for that matter, any who have subsequently studied the water supply of the Colorado River envision a full 7.5 million acre-feet being available at all times for consumptive use by the three lower basin states, the court's decree left a major issue to be resolved either by the Secretary or by the Congress.

This is a key point, the root of the conflict between the states of Arizona and California as Arizona, having established its water right, renewed its efforts to gain authorization of the Central Arizona Project. California maintained that since, under the court's decree she would be forced as soon as the Central Arizona Project went into operation to reduce from a contractual right of 5.362 million acre-feet and a current use of about 5.1 million acre-feet down to a use of 4.4 million acre-feet, that her 4.4 million acre-feet should have priority over the Central Arizona Project. Arizona argued that all rights should be equal and, in the event of shortage, supplies should be prorated in accordance with the formula recommended by the special master of the Supreme Court. With her 38 congressmen, California prevailed, but only after joining Arizona and the other states of the Colorado River Basin in support of provisions that recognize the Mexican Treaty Burden of 1.5 million acre-feet a year as a National obligation rather than that of the seven Colorado River Basin states alone. Under these provisions, which Congress approved, relief of the Mexican Treaty Burden is the first responsibility of any system developed to augment the Colorado River, and the cost of providing a new supply in the amount of the Mexican Treaty

requirement plus the losses associated therewith is to be borne by the general taxpayers of the United States. Once this provision is implemented, the 4.4 priority to California becomes virtually meaningless. This fact enabled Arizona's Congressional Delegation to agree, even though reluctantly, to the 4.4 priority to California.

Still other political compromises were required to move the Colorado River Basin Project Act through the committees of Congress. In spite of the protection provided by the Colorado River Compact, the Upper Basin states were still fearful that the completion of the Central Arizona Project and the commitment to use of another sizable increment of supply would jeopardize their future development. They feared that the Lower Basin states, with their Compact allotment fully utilized and the unused portion of the Upper Basin entitlement temporarily supporting uses in the Lower Basin with a higher economic return, would be able to successfully oppose the authorization of future Federal projects in the Upper Basin. Hence, the Upper Basin states insisted on concurrent authorization and construction of five projects in Colorado and New Mexico and the Dixie Project in Utah, and priority study of some additional projects in the State of Utah. The State of Wyoming, whose development lags behind that of other Upper Basin states, didn't have a project ready for authorization, and elected to oppose the Colorado River Project Act. The position of Congressman Wayne Aspinall from the State of Colorado, as Chairman of the House Interior and Insular Affairs Committee, assured the success of the Upper Basin consensus position.

The early legislation included construction of Bridge and Marble Canyon Dams on the Colorado River as features of the Central Arizona Project to provide power for pumping project water into the Phoenix and Tucson areas, and to provide surplus revenues to assist in repayment. Preservationist groups opposed these features on the grounds that they would unnecessarily adversely affect the Grand Canyon as coal and nuclear steam generation were less expensive than hydro-power generation. Proponents of the Central Arizona Project, in the face of the mounting political strength of the preservationists, backed off and with the assistance of the Secretary of the Interior, switched to a joint private-federal steam plant at Page for the production of the necessary capacity and energy to pump CAP water into central Arizona. It is interesting to note that this steam plant and all other fossil fuel and nuclear plants which were proposed by preservationists as better alternatives to construction of hydro-electric projects at Bridge and Marble Canyons are now under fire by those same interests.

The Colorado River Project Act as introduced in the House included provisions calling for feasibility level studies of water supplies and requirements, and plans to meet those requirements throughout the West. Importantly, these included feasibility level studies of interregional transfers of water. As the legislation passed the House, it still included provisions for study of interregional transfers; however, in the Senate Interior and Insular Affairs Committee, under the chairmanship of Senator Jackson of the State of

Washington, the studies were downgraded to reconnaissance level and a ten-year moratorium against study of interregional transfers was imposed. The Pacific Northwest argued that they didn't know what their resources were nor what their future requirements might be, and insisted on the ten-year moratorium to provide a study period to make these determinations. It is a fact, moreover, that the desire of the Pacific Southwest to look at the water supplies of the Pacific Northwest made marvelous re-election campaign material for Northwest congressmen.

The legislation, as proposed and as passed, contained strong "area of origin-state of origin" protection--the strongest, I believe, ever written into law. This language sprang from attempts to circumvent the Pacific Northwest argument against study of interregional transfers. Based upon California's experience in its efforts to move water from northern California to southern California, the drafters were aware that the people of an area of origin would demand more than a simple reservation of water to meet their future needs. As the cheapest supplies are normally developed first, those that remain for use in the areas of origin may be so expensive as to not be economically developable. In recognition of this problem the Act includes economic protection for the area of origin in these terms: "In the event that the Secretary shall... plan works to import water into the Colorado River System sources outside the natural drainage areas of the System, he shall make provisions for adequate and equitable protection of the interests of the states and areas of origin, including assistance from funds specified in this Act, to the end that water supplies may be available for use in

such states and areas of origin adequate to satisfy their ultimate requirements at prices to users not adversely affected by the exportation of water to the Colorado River System. "

In addition, the drafters of the Act recognized that the inhabitants of the areas of origin would have little confidence in projections of their future requirements made by outsiders; that they would insist on studies of their own and, in the final analysis, would demand protection against their own inability to foresee the future with confidence. To circumvent this problem and the endless chain of studies that might result from lack of confidence in future projections the Act guarantees to the areas and states of origin the absolute right of recall in the event future projections are in error. This places upon the importer the full risk that the projections of future use in the area of origin will not be exceeded, and the responsibility to extend, at his own expense, his import system further north to other areas of surplus in the event the projections are exceeded and the area of origin needs additional water. These strong provisions, while offered willingly by the southwest and accepted gratefully by the northwest, did not allay the fears of the northwest, and we find ourselves burdened with the ridiculous situation where mere studies, not construction, are precluded for a ten-year period.

One of the most important political consequences of the passage of the Colorado River Project Act is that it brought the three Lower Basin states-- California, Arizona, and Nevada--into a position of virtual unanimity on water matters. This is especially true of the States of California and Arizona and is

largely due to an awakening to the fact that the Colorado River, even under total development, cannot meet the water requirements of the Pacific Southwest and that the future of all areas in the Colorado River Basin require that the supplies of the Basin be augmented from outside. This isn't going to be easy to accomplish and will require a united effort. And while the Colorado River Basin Project Act has brought relative peace to the river it has not resolved all of our problems.

I would like to identify the remaining major problem areas for you. These are all problems for which negotiated solutions among state governments will be sought, but failing that, will end up either in the courts or in the Congress.

The first of these problems involves the responsibility for the Mexican Water Treaty delivery requirement. The Colorado River Compact provides that the Treaty obligation is to be met first from surplus waters above the quantities apportioned to the states, but that if this amount is insufficient, any deficiency shall be borne equally by the Upper and Lower Basins and with the Upper Basin required to deliver one-half of the deficiency at Lee Ferry. Upper Basin representatives interpret the Compact in such a manner as to find that their obligation is zero. On the other hand, the Lower Basin representatives compute the Upper Basin Treaty obligation to be 750 thousand acre-feet plus half of the losses attendant with delivering the water to Mexico, a total of approximately 900 thousand acre-feet a year.

Once the Colorado River Basin Project Act provisions making the Mexican Treaty Burden a National obligation have been implemented, the two basins will

be relieved of these responsibilities. Implementation, however, is still many years away, and with full utilization of the Colorado River, settlement of this dispute may be necessary prior to such relief.

As the waters of the Colorado River are used and re-used in their travel downstream, their salt content increases. Much of the salt content originates in the Upper Basin. In January of 1967, the seven Colorado River Basin States agreed upon guidelines for formulating water quality standards for the Colorado River System as a part of the National effort to establish water quality standards. The states, however, stopped short of attempting to define quantitative salinity standards. The states of the Upper Basin feared that the establishment of definitive standards would tend to preclude future growth of use of the Upper Basin's Colorado River entitlement. The Lower Basin states, on the other hand, are being hurt economically by the continued increase in the salt content of the Colorado River. The day will come when definitive standards must be established on the river and when it does, there will be conflict between the two basins unless one or both of the following steps are taken.

The most effective way to solve the salinity problems of the Colorado River is to augment it's flows with supplies of appreciably lower salt content. The Federal Water Pollution Control Administration, in a study that is just concluding, have also identified a number of projects that would reduce the input of salt to the river within the Colorado River Basin itself. It is encouraging to note that the states of the Colorado River Basin are all rallying around in a position in support

of feasibility level studies of these potential water quality control projects.

There are other problems still outstanding between the two basins, but time is running short, so let me now move on to the internal problem within the State of Arizona for which we are attempting to provide a strong technical base so as to limit the impact of political influences.

When then-Secretary of the Interior Stewart Udall met with potential water contractors in Phoenix in January of 1969, he asked them to complete questionnaires expressing their interest in contracting for Central Arizona Project water. The Secretary has received expressions of interest from 68 agencies totaling in excess of 5.2 million acre-feet, or over four times the annual water supply of the Project.

Secretary Udall recognized the importance of the allocation decision to his state and urged that the State come to its own decisions on how this important resource should be allocated. While the Secretary of the Interior has the ultimate authority in allocating these resources, and while the task of making the allocation will be the most controversial yet faced internally in Arizona in implementing the Central Arizona Project, how these valuable resources are apportioned will have such a lasting impact on the future development of Arizona that the charge could not be denied by the State. No other decision, in my opinion, will have a greater effect on what our State looks like in the year 2000 than how we divide and use our remaining Colorado River entitlement.

At the request of Governor Williams, the Arizona Interstate Stream Commission undertook the task of preparing the State's recommendations. To

be sure that our recommendations are just and in the best interest of all Arizona, the Commission has undertaken comprehensive investigations of the factors involved and has hired experts in economics, engineering, and law to assist us in these studies. We are attempting to determine the allocation that will maximize the net economic and social benefits to the State. A computerized systems analysis approach has been adopted in the study. Each of the models used in the study has the ability to incorporate realistic constraints, whether physical, economic, political and/or social.

We anticipate presenting the results of our studies to the Advisory Board formed by the Interstate Stream Commission to assist us in our work. The Advisory Board consists of a representative of each potential contractor for Arizona's remaining entitlement in the Colorado River. At last count there were 96 members. The Advisory Board has met four times and has been very helpful in advising us on the assumptions and criteria and necessary input information for the study.

We also plan later this fiscal year a series of public hearings throughout the State to advise the public and seek comments on our proposed water allocations. We have as our objective completion of our studies, review by the Advisory Board and the public, and revision and submission to the Secretary of the Interior by June 30, 1971.

I hope that I have been able to give you some feeling for the political past of the Colorado River and appreciation for the fact that our political problems are not all solved.