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6-8-1981

The Colorado River Compact: A Limit on Upper Basin Development: Outline

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Citation Information

Meyers, Charles J., "The Colorado River Compact: A Limit on Upper Basin Development: Outline" (1981). *Water Resources Allocation: Laws and Emerging Issues: A Short Course (Summer Conference, June 8-11)*. 14.
<https://scholar.law.colorado.edu/water-resources-allocation-laws-and-emerging-issues/14>

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Charles J. Meyers, *The Colorado River Compact: A Limit on Upper Basin Development: Outline*, in WATER RESOURCES ALLOCATION: LAWS AND EMERGING ISSUES (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1981).

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OUTLINE

THE COLORADO RIVER COMPACT:
A LIMIT ON UPPER BASIN DEVELOPMENT

by

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THE COLORADO RIVER COMPACT:
A LIMIT ON UPPER BASIN DEVELOPMENT

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- I. Introduction and Background
 - A. Geography, hydrology and politics of the Colorado River System to 1922
 - B. Negotiation of the 1922 Colorado River Compact
 - C. Ratification of the Compact; 1928 Boulder Canyon Project Act
 - D. Upper Basin Compact of 1948
 - E. Continuing unresolved conflicts between Upper and Lower Basins
 1. Relation of Article III (a) and (b) to III (d) Colorado River Compact
 2. Determination of each Basin's share of the Mexican Water Treaty burden
 3. Meaning of "beneficial consumptive use"
 4. Priority for release of water for power generation

5. Water quality obligation of Upper Basin to Lower Basin

6. Accounting for groundwater use

F. Sources and references

1. E. Clyde, Conflicts Between the Upper and Lower Basins on the Colorado River, Western Resources Conference, Resources Development: Frontiers for Research 113 (1960)

2. N. Hundley, Jr., Water and the West, Univ. of Cal. Press, 1975

3. Meyers, The Colorado River, 19 Stan. L. Rev. 1 (1966)

II. Relation of Article III (a) and (b) to III (d)
Colorado River Compact

Do III (a) and (b) cover both the main-stream and tributaries? Do III (a) and (b) place a limit on the III (d) delivery obligation? Effect of Section 301 (b) Colorado River Basin Project Act, P.L. 90-537 (1968) (Appendix)

III. The Mexican Water Treaty obligation

What is "surplus" under Article III (c)?
How is Mexican burden to be satisfied if

there is no surplus? What is relation of
III (c), III (d), and III (e)? What is
the effect of Section 202, Colorado River
Basin Project Act of 1968, P.L. 90-537?

IV. Beneficial consumptive use -- how is it
measured?

- A. Article III (a), (b) and (c) Colorado
River Compact
- B. Article VI Upper Colorado River Compact:
"The quantity of the consumptive use of
water . . . [shall be determined] by the
inflow-outflow method in terms of man-
made depletions of virgin flow at Lee
Ferry (net depletion)"
- C. Section 4 (a) of the Boulder Canyon
Project Act defines consumptive use as
"diversions less returns to the river."

V. Release of water for generation of hydro-
electric power

The conflict between Article III (e)
and III (d) of the Compact; the power
of the Secretary of Interior to decide.

VI. Water quality

The Compact is silent on the question;

parallels in the Mexican Water Treaty
and in U.S.-Mexican relations; the Clean
Water Act

VII. Groundwater

Should groundwater uses be charged as
beneficial consumptive use where the
groundwater is tributary to system water?

COLORADO RIVER BASIN PROJECT ACT

PUBLIC LAW 90-537; 82 STAT. 885;

43 U.S.C.A. § 1501 et seq.

[S. 1004]

An Act to authorize the construction, operation, and maintenance of the Colorado River Basin project, and for other purposes.

Sec. 202. The Congress declares that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a national obligation which shall be the first obligation of any water augmentation project planned pursuant to section 201 of this Act and authorized by the Congress. Accordingly, the States of the Upper Division (Colorado, New Mexico, Utah, and Wyoming) and the States of the Lower Division (Arizona, California, and Nevada) shall be relieved from all obligations which may have been imposed upon them by article III(c) of the Colorado River Compact so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to satisfy the requirements of the Mexican Water Treaty together with any losses of water associated with the performance of that treaty: *Provided*, That the satisfaction of the requirements of the Mexican Water Treaty (Treaty Series 994, 59 Stat. 1219), shall be from the waters of the Colorado River pursuant to the treaties, laws, and compacts presently relating thereto, until such time as a feasibility plan showing the most economical means of augmenting the water supply available in the Colorado River below Lee Ferry by two and one-half million acre-feet shall be authorized by the Congress and is in operation as provided in this Act.

TITLE III—AUTHORIZED UNITS: PROTECTION OF EXISTING USES

Sec. 301. (a) * * * [The deleted section authorizes the construction of the Arizona and New Mexico components of the project.]

(b) Article II(B)(3) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340) shall be so administered that in any year in which, as determined by the Secretary, there is insufficient mainstream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada, diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of mainstream water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of this subsection 301(b). This subsection shall not affect the relative priorities, among themselves, of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project, or amend any provisions of said decree.

THE COLORADO RIVER COMPACT—EXTRACTS

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 * * * and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners * * * who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Article II

As used in this compact—

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

* * *

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah

within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

* * *

[Paragraph (f) provides for further apportionment "of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c)" after 1963 if either Basin reaches its total beneficial consumptive use under (a) and (b).]

Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

* * *

Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.