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Jason Anthony Robison

University of Wyoming College of Law, jrobiso8@uwyo.edu

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COLORADO RIVER WATER IN SOUTHERN CALIFORNIA: EVOLUTION OF THE ALLOCATION FRAMEWORK, 1922–2015¹

JASON A. ROBISON

There was no paucity of vision in secretary of the interior Ray Lyman Wilbur's statement on July 7, 1930, announcing the commencement of construction on Boulder (now Hoover) Dam. Erection of the colossus would, in the words of the secretary, signify nothing less than "our national conquest over the Great American Desert."² By means of the dam, the nation would "build a great natural resource . . . make new geography, and start a new era in the southwestern part of the United States."³ The secretary's message was bold and prophetic, as emphatic in its description of the pivotal role

¹I am very grateful to *Western Legal History* for sponsoring the Western History Association conference panel from which this article extends. Many thanks also to my colleagues on that panel: Donald Pisani, Peter Reich, and Tanis Thorne. Funding for this article was generously provided from the George Hopper and Carl M. Williams Faculty Research Funds. Any errors or omissions are solely my own. This article is dedicated to Rachel St. John, the western historian who initially fostered my interests as a legal scholar in the Colorado River Basin, the Law of the River, and the opus of Norris Hundley, Jr.

²Ray Lyman Wilbur and Northcutt Ely, *The Hoover Dam Power and Water Contracts and Related Data with Introductory Notes* (Washington, DC, 1933), 439. For an excellent account of Hoover Dam's construction, see Michael Hiltzik, *Colossus: Hoover Dam and the Making of the American Century* (New York, 2010).

³Wilbur and Ely, *The Hoover Dam Power and Water Contracts*, 439.

Jason A. Robison is an assistant professor in the University of Wyoming College of Law. He holds a Doctor of Juridical Science and an LL.M. from Harvard Law School, a J.D. from the University of Oregon School of Law, and a B.S. in environmental studies from the University of Utah.

to be played by the dam in regional development as it was in its account of the vital economic function to be performed by the dam within Southern California. Imperial Valley would "no longer be menaced by floods" proclaimed the secretary, facilitating "new hope and new financial credit to one of the largest irrigation districts in the West."⁴ So, too, would the dam grow the coastal plain. "By increasing the water supply of Los Angeles and the surrounding cities, homes and industries [would be] made possible for many millions of people."⁵

Signed into law on December 21, 1928, roughly a year-and-a-half prior to Secretary Wilbur's statement, the Boulder Canyon Project Act had authorized Hoover Dam's construction and thereby had given rise to the vision articulated by the secretary of a "conquered" Colorado River making "new geography" and dawning a "new era" in the seven western states with portions of territory located in the Colorado River Basin ("Basin States").⁶ The Project Act originated at a clutch moment in the early stages of an evolutionary process that over the next century would generate a labyrinthine legal framework to allocate and manage the basin's water. This framework is colloquially called the "Law of the River." In addition to the Project Act, it embodies an international treaty, two interstate compacts, a Supreme Court decree issued in the historic case of *Arizona v. California*, and dozens of statutes and regulations.⁷ These nested international, interstate, and intrastate components make the Law of the River one of the most complex legal regimes of its kind in the world.

California's use of Colorado River water—or, more precisely, the evolution of the complex legal framework governing this water use—can be viewed as progressing in six periods that track seminal basin-wide, interstate, and intrastate milestones. Rich themes appear across these periods for citizens, historians, legal scholars, policymakers, and practitioners alike to consider with regard to the iterative and provisional way in which water laws evolve and the diverse forms water laws assume. The conclusion examines these themes. As will become

⁴Ibid.

⁵Ibid.

⁶Charles Wilkinson has coined the apropos term *Big Buildup* to refer to the transformative development facilitated by the Colorado River in the U.S. Southwest throughout the mid-twentieth century. Charles F. Wilkinson, *Fire on the Plateau: Conflict and Endurance in the American Southwest* (Washington, DC, 1999), xii.

⁷For a useful overview of the Law of the River, see Lawrence J. MacDonnell, "Colorado River Basin," in *Waters and Water Rights*, ed. Robert E. Beck (Dayton, OH, 2009): 5–54.

evident, California has emerged through the evolutionary process surveyed below with a relatively secure entitlement to Colorado River water in modern times—a claim that cannot be made to a comparable extent by other Basin States. Nearly 40 million people basin-wide rely on the flows associated with this entitlement,⁸ and roughly half of this population resides within Southern California.⁹ Given this scale of reliance, it is unsurprising that an unprecedented imbalance between water supplies and demands now faces the Colorado River Basin.¹⁰ A clear understanding of the evolution and nature of California's legal rights to Colorado River water is, in this author's view, essential for addressing future interstate and intrastate tensions surrounding the coveted flows.

A NASCENT BASIN-WIDE FRAMEWORK

At the base of the allocation framework for Colorado River water in Southern California is an interstate compact that underlies the entire Law of the River: the Colorado River Compact.¹¹ Signed by members of the Colorado River Commission on November 24, 1922, the compact was the first interstate compact formed in U.S. history for purposes of water allocation. It has been aptly described as the “constitution” of the Law of the River,¹² and the varied events that have shaped California's legal rights to use water from the Colorado River during the past century uniformly have transpired with the compact as a backdrop.

⁸U.S. Department of the Interior, Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study, Study Report (2012), SR-2, <http://www.usbr.gov/lc/region/programs/crbstudy.html>.

⁹U.S. Department of the Interior, Bureau of Reclamation, Colorado River Basin Stakeholders *Moving Forward* to Address Challenges Identified in the Colorado River Basin Water Supply and Demand Study, Phase 1 Report (2015), 3-3, <http://www.usbr.gov/lc/region/programs/crbstudy/MovingForward/Phase1Report/Chpt3.pdf>.

¹⁰The Bureau of Reclamation summarized this imbalance as follows in its lengthy basin study released in December 2012: “Although a range of future imbalances is plausible, when comparing the median of water supply projections to the median of the water demand projections, the long-term imbalance in future supply and demand is projected to be about 3.2 maf [million acre-feet] by 2060.” Colorado River Basin Water Supply and Demand Study (2012), SR-36.

¹¹The seminal account of the Colorado River Compact's formation remains Norris Hundley, Jr., *Water and the West: The Colorado River Compact and the Politics of Water in the American West* 2^d ed. (Oakland, CA, 2009).

¹²Robert Adler, “Revisiting the Colorado River Compact: Time for a Change?” *Journal of Land, Resources, and Environmental Law* 28 (2008): 21.

The compact's genesis can be traced to a resolution passed by a regional booster organization, the League of the Southwest, at a meeting held in Denver on August 25–27, 1920.¹³ A proposal introduced at this meeting by Colorado water lawyer Delph Carpenter—later hailed as the “Father of Interstate River Compacts”—called for using the “treaty-making power of the states” to address the competing legal rights of the Basin States and the United States to water in the Colorado River and its tributaries.¹⁴ Expressing the league’s conviction that these legal rights should be “settled and determined by compact or agreement between said States and the United States,” the resolution requested the appointment of commissioners by the Basin States’ legislatures in order to negotiate a compact or agreement that would subsequently be ratified by those legislatures and eventually the U.S. Congress.¹⁵

Myriad events had taken place in the Basin States—particularly, in Southern California—during the first two decades of the twentieth century leading up to the League of the Southwest’s resolution. The essential dynamic stemming from these events involved allocational tensions between states (and water users therein) located in the upper versus lower parts of the Colorado River Basin.

Water users in the Lower Basin gradually had mobilized to solicit the federal government’s assistance with funding and construction of infrastructure that would ultimately emerge in the form of Hoover Dam and the All-American Canal. Irrigators in California’s Imperial Valley had begun exhausting the Colorado River’s summer flows around the turn of the century,¹⁶ and they also had endured devastating floods from 1905 to 1907 that formed the Salton Sea.¹⁷ Their interests eventually aligned with those of Arthur Powell Davis—director of

¹³Ray Lyman Wilbur and Northcutt Ely, *The Hoover Dam Documents* (Washington, DC, 1948), 18.

¹⁴*Ibid.* Delph Carpenter is said “to have suggested the use of the treaty-making power by the states as a method for settlement of interstate water rights” as early as 1912. *Ibid.*, 17. For excellent scholarship on Delph Carpenter, see Daniel Tyler, *Silver Fox of the Rockies: Delphus E. Carpenter and Western Water Compacts* (Norman, OK, 2003); Daniel Tyler, “Delph E. Carpenter and the Principle of Equitable Apportionment,” *Western Legal History* 9:1 (1996): 39–53.

¹⁵Wilbur and Ely, *The Hoover Dam Documents*, 18.

¹⁶Norris Hundley, Jr., “The West Against Itself: The Colorado River—An Institutional History,” in *New Courses for the Colorado River: Major Issues for the Next Century*, ed. Gary D. Weatherford and F. Lee Brown (Albuquerque, NM, 1986), 12.

¹⁷William DeBuys and Joan Myers, *Salt Dreams: Land & Water in Low-Down California* (Albuquerque, NM, 1999), 63–70.

the U.S. Reclamation Service from 1914 to 1923—to generate a vociferous call for Lower Basin water infrastructure—specifically, a large-scale dam and reservoir for flood protection and storage, and a canal system located wholly within the United States that would run from the Colorado River's mainstem to the Imperial Valley.¹⁸ Also notable at this time was Los Angeles' budding interest, initially expressed in 1920, in utilizing hydro-power produced by the dam.¹⁹

Upstream in the basin's headwaters, the prospect of large-scale Lower Basin water infrastructure was viewed with apprehension, as it presented the possibility that water use facilitated by this infrastructure would preclude the Upper Basin states from utilizing the same resources. The western water law doctrine of prior appropriation was the culprit in this regard.²⁰ Apportioning water resources among parties according to temporal priority ("first in time, first in right"), interstate application of the prior appropriation doctrine portended to enable water users in the Lower Basin states to secure senior rights to Colorado River water that would foreclose the exercise of junior rights by parties in the slower-developing Upper Basin states. Hence Delph Carpenter's proposal. If the Basin States could agree on a compact that would render prior appropriation inoperative on an interstate scale, such an agreement would quell Upper Basin concerns about the coveted Lower Basin infrastructure. As summed up by Norris Hundley, Jr., "The Lower Basin wanted a dam, the Upper Basin wanted protection, and each concluded they could probably best reconcile their interests in a compact."²¹

¹⁸Hundley, "The West Against Itself," 12–13.

¹⁹*Ibid.*, 13–14.

²⁰Excellent accounts of the prior appropriation doctrine's history can be found in Robert Dunbar, *Forging New Rights in Western Waters* (Lincoln, NE, 1983), 59–85; Donald J. Pisani, "Enterprise and Equity: A Critique of Western Water Law in the Nineteenth Century," *Western Historical Quarterly* 18:1 (1987): 15–37; Donald J. Pisani, *To Reclaim a Divided West: Water, Law, and Public Policy, 1848–1902* (Albuquerque, NM, 1992), 11–38; and Charles W. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, DC, 1992), 231–35.

²¹Hundley, *Water and the West*, 108. The state of California described this dynamic similarly thirty years later in its pleadings in *Arizona v. California*: "The Upper States . . . objected that if such storage works were built, the additional rights which would be acquired through priority of appropriation by water users in the lower States would preclude the future expansion of uses by projects in the Upper Basin." In light of this prospect, "[t]he Upper States insisted that [their] rights for . . . future development be protected before the project was authorized; and out of this demand came the Colorado River Compact." California's Original Answer in *Arizona v. California*, 16–17 (May 19, 1953).

Nearly a year-and-a-half elapsed between passage of the League of the Southwest's resolution in August 1920 and commencement of compact negotiations in January 1922. From February to May 1921, each of the Basin States enacted legislation authorizing these negotiations,²² which was followed by federal legislation in August 1921.²³ Congress imposed January 1, 1923, as a deadline for the compact's ultimate formation, articulating as the instrument's essential purpose the "equitable division and apportionment among said States of the water supply of the Colorado River and of the streams tributary thereto."²⁴ As reflected in this text, Congress' vision of a state-based allocation framework for the Colorado River Basin subsequently would prove infeasible as the negotiations unfolded. All told, in conjunction with the enactment of this enabling legislation over the course of 1921, state commissioners were appointed for each of the Basin States,²⁵ then secretary of commerce Herbert Hoover was appointed as a federal commissioner, and out of these appointments emerged the Colorado River Commission as a negotiating body.

The negotiations that followed the Colorado River Commission's empanelment spanned a roughly ten-month period during 1922, beginning with initial sessions in Washington, D.C., in January, and concluding with an intensive series of sessions in November at Bishop's Lodge outside Santa Fe, New Mexico.²⁶ Among other notable events propelling these negotiations was the U.S. Supreme Court's decision in *Wyoming v. Colorado* on June 5, 1922, which applied the prior appropriation doctrine to resolve an interstate dispute between these states over their respective rights to water from the Laramie River. Unsurprisingly, "the final negotiation of the compact took

²²Citations for the state legislation can be found in appendix 202 of Wilbur and Ely, *The Hoover Dam Documents*.

²³Act of August 19, 1921, ch. 72, 42 Stat. 171.

²⁴*Ibid.*

²⁵The following commissioners were appointed for the respective Basin States: W.S. Norviel for Arizona, W.F. McClure for California, Delph E. Carpenter for Colorado, J.G. Scrugham for Nevada, Stephen B. Davis, Jr. for New Mexico, R.E. Caldwell for Utah, and Frank C. Emerson for Wyoming. Wilbur and Ely, *The Hoover Dam Documents*, 19.

²⁶Colorado River Commission, Minutes and Record of the First Eighteen Sessions of the Colorado River Commission Negotiating the Colorado River Compact of 1922 (1922); Colorado River Commission, Minutes and Record of Sessions Nineteen Thru Twenty Seven of the Colorado River Commission Negotiating the Colorado River Compact of 1922 (1922). An electronic copy of the negotiation minutes can be found at <http://www.riversimulator.org/Resources/LawOfTheRiver/MinutesColoradoRiverCompact.pdf>.

place in the atmosphere produced by that decision."²⁷ "The doctrine so announced," described Delph Carpenter, "leaves the Western States to a rivalry and a contest of speed for future development."²⁸ Upper Basin states like Colorado had "but one alternative" under these circumstances—namely, "using every means to retard development" in Lower Basin states "until the uses within the upper State have reached their maximum."²⁹ As Carpenter had proposed two years earlier at the League of the Southwest's Denver meeting, "[t]he States may avoid this unfortunate situation by determining their respective rights by interstate compact."³⁰

But how exactly should this remedy, an interstate water compact for the Colorado River Basin, be composed? Faced with an impasse over the viability of a state-based allocation framework—again, as Congress initially had contemplated when authorizing the compact negotiations—the commission had to grapple with an alternative structure for the agreement. This turning point in the negotiations took place at the commission's eleventh meeting on November 11, 1922, extending from Delph Carpenter's introduction of a draft compact that would emerge in modified form a week-and-a-half later as the Colorado River Compact.³¹ The draft compact called for splitting the Colorado River Basin into two divisions, an "Upper Division" and a "Lower Division," at a point along the Colorado River's mainstem in northern Arizona called Lee's Ferry (see figure 1).³² The Upper Division would consist of territory above Lee's Ferry within the states of Arizona, Colorado, New Mexico, Utah, and Wyoming, and the Lower Division would consist of territory below Lee's Ferry within the states of Arizona, California, Nevada, New Mexico, and Utah. In lieu of establishing individual entitlements that would control each state's use of water from the Colorado River and its tributaries, the draft compact "equitably divided and apportioned" this water by imposing two flow obligations on the Upper Division states, with

²⁷Wilbur and Ely, *The Hoover Dam Documents*, 22.

²⁸This statement from Commissioner Carpenter regarding *Wyoming v. Colorado* and its relation to the compact appeared in a report submitted to Colorado governor Oliver Henry Shoup on December 15, 1922. A copy of this report can be found in appendix 210 of Wilbur and Ely, *The Hoover Dam Documents*, A97–A98.

²⁹*Ibid.*, A98.

³⁰*Ibid.*

³¹This draft compact appears in Colorado River Commission, *Minutes of the Eleventh Meeting* (November 11, 1922), 13–20.

³²*Ibid.*, 14.

Arizona excepted.³³ These states would commit to (1) avoiding depleting the "average annual flow of the Colorado River at Lee's Ferry over any period of ten (10) consecutive years" below 6,264,000 acre-feet, and (2) augmenting these minimum average flows by "an amount of water equivalent to one-half the annual requirement for delivery to the Republic of Mexico."³⁴

As embodied in Delph Carpenter's draft compact, the two-division allocation framework for the Colorado River Basin ultimately would prove precedential as mentioned above. Before turning to its adoption, however, we will highlight two additional aspects of its genesis.

As an initial matter, the origin of the two-division framework appears to have predated Delph Carpenter's introduction of the draft compact on November 11, 1922, by at least two years and perhaps longer. According to Sims Ely, who served on the League of the Southwest's subcommittee from which Carpenter's compact proposal issued in August 1920, Carpenter "outlined not only the general scheme of an interstate compact" at that time, but also "a basis for division between the four upper States, as one group, and the three lower States, as another."³⁵ On his own account, Carpenter described the two-division framework at the eleventh meeting as having been "advanced before this Commission by Director Davis" (i.e., Arthur Powell Davis) in an earlier form that involved a division point below the mouth of the San Juan River.³⁶ Arizona commissioner W.S. Norviel likewise attributed the two-division "principle" to a study "prepared by the Geological Survey in connection with the Reclamation Service."³⁷ What appears clear from the historical record is that, as Norris Hundley, Jr., graciously put it, Herbert Hoover's memory was "playing tricks on him" when he later claimed credit for the two-division idea in his memoirs in 1951.³⁸

In a related vein, it also should be noted that, although the two-division framework of Delph Carpenter's draft compact ended up having staying power, this allocational approach was not the only one envisioned for the Colorado River Basin. The state-based model reflected in Congress' enabling legislation was an obvious alternative if an acceptable basis for calculat-

³³Ibid., 15.

³⁴Ibid., 15–16.

³⁵Wilbur and Ely, *The Hoover Dam Documents*, 18.

³⁶Colorado River Commission, Minutes of the Eleventh Meeting, 39.

³⁷Ibid., 47.

³⁸Hundley, *Water and the West*, 182.

ing the respective states' water rights (e.g., irrigable acreage) could be agreed upon by the commissioners. Since no such basis could be found, however, this dynamic favored the two-division framework, notwithstanding concerns expressed by some of the commissioners at the eleventh meeting.³⁹ New Mexico commissioner Stephen B. Davis, Jr., was noticeably hesitant in this regard, viewing a state-based approach as "contemplated by the law under which we are constituted. . . ."⁴⁰ There must be a definite allocation as among the individual states rather than among the groups," he opined.⁴¹ "All that I see in the group idea . . . is that we shove off to the future that much responsibility."⁴² Arizona commissioner Norviel offered similar remarks, indicating that a two-division approach was not what the commission had been "appointed for," and that such an approach would fail to "arrive at any conclusion" and leave "the two divisions to work out their own salvation on whatever plan they may choose in the future."⁴³ Yet Delph Carpenter was not alone in suggesting that a two-division framework was desirable as a pragmatic matter. Utah commissioner R.E. Caldwell also introduced a draft compact at the eleventh meeting that entailed dividing the basin into an Upper Basin and a Lower Basin for purposes of a basin-wide apportionment.⁴⁴ To these two proposals were added distinct compacts offered by Commissioner Norviel and the city attorney of Long Beach, California, George L. Hoodenpyl.⁴⁵

Thus, at the end of the day, the interstate compact formed by the commission on November 24, 1922—a little more than a month before the end-of-year deadline—did not fully comport with Congress' aspiration for an instrument that would effect "an equitable division and apportionment" of water from the Colorado River system among the individual Basin States. Instead, the most the commission was able to accomplish

³⁹Wyoming commissioner Frank C. Emerson described the impasse over the state-based model as follows in his post-negotiation report to Wyoming governor William B. Ross and the Wyoming legislature: "After extended consideration this plan was found to be impractical by reason of the facts that accurate determination could not now be made as to the possibilities of development in the different States, and agreement could not be reached upon any relative figures." This report appears in appendix 214 of Wilbur and Ely, *The Hoover Dam Documents*.

⁴⁰Colorado River Commission, Minutes of the Eleventh Meeting, 45.

⁴¹*Ibid.*, 33.

⁴²*Ibid.*

⁴³*Ibid.*, 34.

⁴⁴*Ibid.*, 26–28.

⁴⁵*Ibid.*, 4–9, 56.

was to craft an apportionment scheme that aimed at this goal of equity in a manner closely resembling that of Delph Carpenter's draft. As shown above in figure 1, this scheme split the basin into an "Upper Basin" and a "Lower Basin" at Lee's Ferry. The Upper Basin encompassed parts of Colorado, New Mexico, Utah, and Wyoming, plus a small section of north-eastern Arizona. The Lower Basin extended primarily to parts of Arizona, California, and Nevada, with particular sections of New Mexico and Utah also included. To a similar effect, the compact designated Arizona, California, and Nevada as the "Lower Division" states, and Colorado, New Mexico, Utah, and Wyoming as the "Upper Division" states.

Considered in relation to Southern California's legal rights to Colorado River water, the upshot of the compact was at least threefold:⁴⁶ First, given California's location within the Lower Basin, Article III(a) of the compact authorized California to share in the beneficial consumptive use of 7.5 million acre-feet (maf) of water per year from the Colorado River system, an amount apportioned to the Lower Basin as a whole without individual state entitlements. Article III(b) authorized an additional 1.0 maf of such use annually. One acre-foot equals 325,851 gallons of water.⁴⁷ Second, mirroring Delph Carpenter's draft, the compact in Article III(d) proscribed the Upper Division states from depleting mainstream flows at Lee's Ferry below a specified level, 75.0 maf, during any consecutive ten-year period. This critical obligation secured the primary source of flows within the Lower Colorado River on which California water users would rely. Third, and cutting the other way, Article III(c) of the compact also obligated California and the other Lower Division states to contribute half of the flows needed to satisfy any future treaty entitlement recognized for Mexico, if surplus waters were unavailable for this purpose. It is imperative to highlight that the nascent basin-wide framework outlined by these four paragraphs of Article III was founded on an erroneous estimate of 16.4 maf of average annual Lee's Ferry flows that had been reported by the Bureau of Reclamation based on limited data.⁴⁸ The commissioners' "strong desire" to form a compact caused them not to challenge the accuracy of

⁴⁶An electronic copy of the compact can be accessed on the website of the Bureau of Reclamation's Lower Colorado River Regional Office at <https://www.usbr.gov/lc/region/pao/pdfiles/crcompact.pdf>.

⁴⁷United States Geological Survey, *Water Science Glossary of Terms* (2014), <http://water.usgs.gov/edu/dictionary.html>.

⁴⁸Hundley, "The West Against Itself," 18.

this figure,⁴⁹ however, and several commissioners actually presumed even higher flow estimates.⁵⁰ Nearly one hundred years later, the historical record reveals that average annual Lee's Ferry flows have been approximately 15.0 maf.⁵¹ Nonetheless, "the consequences of the compact remain with us."⁵²

CONDITION PRECEDENT: A CEILING FOR CALIFORNIA

Signing of the compact by the esteemed members of the Colorado River Commission did not contemporaneously result in the instrument's entry into force. Both federal and state ratification of the compact had to be obtained moving forward from Bishop's Lodge. Extending from the signing ceremony in November 1922, a roughly six-and-a-half-year ratification process ensued, culminating in a proclamation by newly elected president Herbert Hoover of the Boulder Canyon Project Act's effectiveness on June 25, 1929. It was during this prolonged ratification process that the U.S. Congress inserted text into the Project Act conditioning federal ratification of the compact on the imposition of a ceiling on California's use of Colorado River water. This ceiling delineated the pool of water available to agricultural and municipal water users within Southern California, although it would not be until four decades later in *Arizona v. California* (1963) that the ceiling's precise contours would become fully clear.

Ratification of the compact as a seven-state equitable apportionment of water from the Colorado River system was not a protracted process in most of the Basin States following the negotiations. From January to April 1923, six states enacted ratification legislation, including California, Colorado, Nevada, New Mexico, Utah, and Wyoming.⁵³ Unable to follow suit at this time, however, was California's neighbor to the east: Ari-

⁴⁹Ibid.

⁵⁰For example, Colorado commissioner Delph Carpenter, Utah commissioner R.E. Caldwell, and Wyoming commissioner Frank E. Emerson all estimated average annual Lee's Ferry flows of more than 18.0 maf in post-negotiation reports to their respective state governors and legislatures. Copies of these reports appear in appendix 210 (Carpenter), appendix 213 (Caldwell), and appendix 214 (Emerson) of Wilbur and Ely, *The Hoover Dam Documents*.

⁵¹U.S. Department of the Interior, Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study, Technical Report B-Water Supply Assessment (2012), B-22, <http://www.usbr.gov/lc/region/programs/crbstudy.html>.

⁵²Hundley, *Water and the West*, 352.

⁵³Wilbur and Ely, *The Hoover Dam Documents*, 35.

zona. The Arizona legislature considered a slew of ratification measures in early 1923, including, as the last in this line, a bill introduced in the Arizona House in March 1923 calling for unconditional ratification. This bill failed by a tie vote of 22-22, however, and "[b]y this margin the Compact was subjected to a quarter century of conflict."⁵⁴ Arizona ultimately would not ratify the instrument until 1944.

The Basin States' lack of unanimity regarding the compact led to attempts at a workaround and varied efforts to bring Arizona into the fold. Delph Carpenter lobbied from 1923 to 1925 for ratification of the compact as a six-state agreement, but these efforts were only partly successful. A similar result followed from a governors' conference held in Denver in 1927 to facilitate seven-state ratification. Arizona and California rejected a proposal made by the Upper Division states' governors at this conference for an apportionment of water from the Colorado River system among the Lower Division states.⁵⁵

Paralleling the ratification processes in the Basin States' legislatures was the federal ratification process in the U.S. Congress—a process subjected to the fate of a series of four bills introduced between 1922 and 1927 by Representative Phil Swing and Senator Hiram Johnson of California ("Swing-Johnson bills"). Each of these bills called for congressional authorization of the Lower Basin water infrastructure that had animated the compact negotiations: a large-scale dam and storage reservoir, and the All-American Canal. It was the fourth of the Swing-Johnson bills that sealed this deal.⁵⁶ Signed into law by President Coolidge on December 21, 1928, the Boulder Canyon Project Act was devised with the Imperial Valley and Southern California coastal plain as major beneficiaries.

Although the Project Act conferred congressional approval on the compact, it was a nuanced blessing to be sure. Congress' ratification hinged on the Project Act's taking legal effect, which in turn was conditioned, in section 4 of the act, on one of two scenarios. On one hand, the Basin States could unanimously ratify the compact and thereby render the Project Act effective. On the other hand, if unanimous ratification proved impossible within six months of the Project Act's enactment, six-state ratification also could bring the act into effect, so long as California was one of the ratifying states and its legislature

⁵⁴Ibid., 35–36.

⁵⁵Ibid., 37–38.

⁵⁶An electronic copy of the Project Act can be accessed on the website of the Bureau of Reclamation's Lower Colorado River Regional Office at <http://www.usbr.gov/lc/region/pao/pdfs/bcpact.pdf>.

would agree to the imposition of a ceiling on the state's annual use of Colorado River water. That ceiling was set at "four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact."⁵⁷

Accompanying the Project Act's provisions conferring federal ratification and limiting California's water use were others that proved equally significant in later years. Although the invitation was declined, Congress authorized the Lower Division states to enter into an agreement that would have apportioned to Arizona and Nevada, respectively, the consumptive use of 2.8 maf and 300,000 acre-feet of the 7.5 maf apportioned to the Lower Basin by Article III(a) of the compact. Of equal importance, Congress provided that any storage and delivery of water in and from the reservoir authorized by the Project Act (Lake Mead) for use in the Lower Division states would be permitted only under contracts formed with the secretary of the interior for this purpose. Congress similarly hinged appropriations for the construction of Hoover Dam and the All-American Canal on the secretary of the interior's forming water contracts, and related contracts for hydropower, deemed adequate to ensure repayment of this infrastructure within fifty years.

Given Arizona's recalcitrance toward the compact at this time, the Basin States were forced to secure federal ratification (and the coveted Lower Basin infrastructure) via the six-state ratification option in the Project Act. California's ratification was the last to fall into place during the six-month period following the statute's passage on December 21, 1928.⁵⁸ This ratification occurred on March 4, 1929, the same date on which the California legislature satisfied the second condition precedent in the Project Act by enacting the California Limitation Act.⁵⁹ The 4.4 maf limitation agreed to in this act incorporated the text quoted above in section 4 of the Project Act. With these two pieces of the statutory puzzle in place, and the requisite six-month period having passed, the former chairman and federal commissioner of the Colorado River Commission,

⁵⁷Ibid.

⁵⁸Citations to the basin state legislatures' ratifications of the compact as a six-state agreement can be found in appendix 501 of Wilbur and Ely, *The Hoover Dam Documents*.

⁵⁹A copy of the California Limitation Act can be found in appendix 502 of Wilbur and Ely, *The Hoover Dam Documents*.

President Herbert Hoover, proclaimed the Project Act effective as of June 25, 1929.⁶⁰

APPORTIONING CALIFORNIA'S SHARE OF COLORADO RIVER WATER

President Hoover's proclamation of the Boulder Canyon Project Act's effectiveness thus simultaneously brought into effect the compact's basin-wide allocation framework and laid the foundation for an intrastate framework to take shape within California across the next decade. At the core of this intrastate scheme was the ceiling on annual Colorado River water use agreed to by California in the Project Act and the Limitation Act: 4.4 maf of the waters apportioned to the Lower Basin by "paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact." Southern California agricultural and municipal water users had to reach consensus about how the Colorado River water subsumed within this limitation would be parsed out among them. Moreover, in light of the Project Act's contractual requirements for water storage and delivery, the secretary of the interior necessarily would play a major role in the negotiation and formation of California's intrastate framework and contracts effectuating it.

Initial attempts to devise an intrastate framework for Colorado River water in Southern California took place roughly six months after the Boulder Canyon Project Act had gone into effect so as to impose the California limitation. Agricultural groups and the Metropolitan Water District of Southern California (MWD) formed a preliminary agreement for this purpose on February 21, 1930.⁶¹ This agreement served as a valuable precedent to be sure, but it involved a loose allocation scheme that classified Colorado River water into three categories and apportioned 4.95 maf of it in specified amounts between the "Agricultural groups" collectively and the MWD individually. Two months passed between the formation of this agreement and the secretary of the interior's adoption of initial regulations for water contracts on April 23, 1930. The secretary formed

⁶⁰*Ibid.*, 42. A copy of President Hoover's proclamation declaring the Project Act effective can be found in appendix 503 of this source.

⁶¹Wilbur and Ely, *The Hoover Dam Documents*, appendix 1001.

the first such contract on the same date—a contract with the MWD for 1.05 maf of Colorado River water per year.⁶²

The “necessity of a more definite division of the California water” than that provided in the preliminary agreement became increasingly apparent in subsequent negotiations over contracts pertaining to the All-American Canal.⁶³ On November 5, 1930, the secretary of the interior submitted a formal request for such specificity to California contractors, including the Imperial Irrigation District, MWD, Coachella Valley County Water District, and Palo Verde Irrigation District (see figure 2).⁶⁴ Included with this request was a draft recommendation for an intrastate allocation scheme that was prescient when considered in relation to later conflicts in which these parties would become ensnared. Two features of this framework were remarkable. First, it categorized the water available to the contractors into three classifications rooted in the compact’s apportionment scheme—namely, Article III(a) water, Article III(b) water, and “water which may be available to California over and above the foregoing.” Second, while leaving blank the respectively permitted amounts of water use, the framework called for establishing water use entitlements for individual contractors, rather than lumping contractors into groups (e.g., an “Agricultural group”) that would share collective entitlements as the preliminary agreement had done.

Yet the secretary’s recommended framework ultimately would not see the light of day. California contractors did oblige the secretary’s request for more specificity by engaging in nine months of negotiations regarding the intrastate allocation scheme. Emerging on August 18, 1931, as the Seven-Party Agreement, however, the final version of this framework only partially remedied the shortcomings of the preliminary agreement.⁶⁵ Table 1 and figure 3 below summarize the Seven-Party Agreement’s intrastate system of allocation priorities for Colorado

⁶²*Ibid.*, appendix 1007.

⁶³Wilbur and Ely, *The Hoover Dam Power and Water Contracts*, 32.

⁶⁴Wilbur and Ely, *The Hoover Dam Documents*, appendix 1002. Figure 2 identifies the respective geographic areas that fall within these contractors’ boundaries. Their titles are abbreviated as acronyms.

⁶⁵An electronic copy of the Seven-Party Agreement can be accessed on the website of the Bureau of Reclamation’s Lower Colorado River Regional Office at <http://www.usbr.gov/lc/region/pao/pdfiles/ca7pty.pdf>.

FIGURE 2. Hydrologic Basin and Export Areas in California (Courtesy of U.S. Department of the Interior, Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study, Appendix C-7, California Water Demand Scenario Quantification [2012], C7-2)

River water in Southern California.⁶⁶ Among other salient features, this scheme authorized contractors to collectively consume 3.85 maf of Colorado River water per year under priorities one through three, but failed to specify the amounts of use permitted for each contractor individually. Also notable is the fact that the MWD's and San Diego's entitlements to 662,000 acre-feet of water use in priority five attached to "excess or surplus waters" within the meaning of the Boulder Canyon Project Act and the Limitation Act. As discussed earlier, both acts restricted California from using more than 4.4 maf per year of the water apportioned to the Lower Basin by Article III(a) of the compact, while affording California the use of up to "one-half of any excess or surplus waters unapportioned by [the] Compact"—i.e., assuming such excess or surplus waters indeed were available. The MWD's exercise of its 550,000 acre-feet entitlement in priority four alone, however, would bring California's collective water use to the 4.4 maf level—i.e., before accounting for the priority five entitlements—when combined with the 3.85 maf of water use authorized in priorities one through three. As we shall see, these and related aspects of the Seven-Party Agreement would prove divisive in later decades.

Incorporated into amended general regulations adopted by the secretary of the interior on September 28, 1931,⁶⁷ the Seven-Party Agreement would control the terms of water contracts subsequently formed by the secretary with the California contractors between 1931 and 1934.⁶⁸ The secretary executed a revised version of the MWD's 1930 contract—conforming it to the Seven-Party Agreement—contemporaneously with the adoption of the amended regulations. Following suit in 1932 was a contract with the Imperial Irrigation District for water deliveries through, and construction of, the All-American Canal. The Palo Verde Irrigation District and the city of San Diego similarly formed delivery contracts in 1933, the latter calling for deliveries from, and associated capacity in, the canal. Last but not least among these parties was the Coachella Valley County Water District, which executed a water contract in 1934 that

⁶⁶Table 1 appears in Wilbur and Ely, *The Hoover Dam Documents*, 107. It was produced in 1948 by secretary of the interior Ray Lyman Wilbur, who served in this position at the time of the Seven-Party Agreement's formation, and his assistant Northcutt Ely, who later litigated the principal case of *Arizona v. California* on California's behalf in 1963.

⁶⁷Wilbur and Ely, *The Hoover Dam Documents*, appendix 1005.

⁶⁸*Ibid.*, Metropolitan Water District (appendix 1008), Imperial Irrigation District (appendix 1106), Palo Verde Irrigation District (appendix 1006), San Diego (appendix 1009), Coachella Valley County Water District (appendix 1108). No contract was formed for the Yuma Project.

Priority No.	Agency and description	Annual quantity in acre-feet
1	Palo Verde irrigation district—104,500 acres in and adjoining existing district.....	3,850,000
2	Yuma project (California division)—not exceeding 25,000 acres.....	
3	(a) Imperial irrigation district and lands in Imperial and Coachella Valleys to be served by All-American Canal.....	
4	(b) Palo Verde irrigation district—16,000 acres of adjoining mesa.....	550,000
	Metropolitan Water District, city of Los Angeles, and/or others on Coastal Plain.....	
5	(a) Metropolitan Water District, city of Los Angeles, and/or others on Coastal Plain.....	550,000
	(b) City and/or county San Diego.....	112,000
6	(a) Imperial irrigation district and lands in Imperial and Coachella Valleys to be served by All-American Canal.....	300,000
	(b) Palo Verde irrigation district—16,000 acres of adjoining mesa.....	
	Total.....	5,362,000

TABLE I. California's Colorado River Water Priorities. (Courtesy of Ray Lyman Wilbur and Northcutt Ely, *The Hoover Dam Documents*, Washington, DC, 1948)

resembled San Diego's by obligating the secretary to deliver Colorado River water through, and provide associated capacity in, the All-American Canal.

It was by means of the Seven-Party Agreement and the contracts just outlined that Southern California apportioned its interstate share of Colorado River water—as circumscribed by the Boulder Canyon Project Act and the Limitation Act—on an intrastate basis during the five-year period after the Project Act had taken effect. Minor clarifications and tweaks would be made to this intrastate framework in the 1930s and 1940s, including folding of San Diego's water contract into the MWD's in 1946.⁶⁹ Alongside the compact and the Project Act, the intrastate framework also would survive three unsuccessful lawsuits brought by Arizona against California in the Supreme Court during the 1930s.⁷⁰ Upon Arizona's eventual ratification of the compact in 1944, however, sustained efforts were put into motion within that state to increase its use of Colorado River water through an extensive canal system comparable in scale to the All-American Canal. Just as adoption of the compact's basin-wide framework had been a prerequisite to the Project Act's enactment, so too would clarification of Arizona's and California's respective rights to Colorado River water be necessary before Arizona's plans could be realized. The principle case of *Arizona v. California* emerged at this

⁶⁹*Ibid.*, appendix 1012.

⁷⁰These lawsuits included *Arizona v. California*, 283 U.S. 423 (1931), *Arizona v. California*, 292 U.S. 341 (1934), and *Arizona v. California*, 298 U.S. 558 (1936).

FIGURE 3. California's Intrastate Priority System. (Courtesy of U.S. Department of the Interior, Final Environmental Impact Statement, Implementation Agreement Inadvertent Overrun and Payback Policy, and Related Federal Actions [2012], 1-7)

historic juncture to define the contours of California's allocation scheme in arguably novel ways.

CALIFORNIA AND THE LOWER COLORADO RIVER REVISITED: *ARIZONA V. CALIFORNIA*

Various schemes for constructing a canal system to route water from the Colorado River to central Arizona had been proposed for several decades prior to the Bureau of Reclamation's unveiling of the Central Arizona Project (CAP) in December 1947.⁷¹ Consuming the next twenty years, Arizona's quest for congressional authorization of the CAP, and for secure title to the Colorado River water that would flow through the project, entailed monumental repercussions for the Lower Basin interstate allocation scheme and California's intrastate framework.

⁷¹Hundley, *Water and the West*, 299-300.

The Supreme Court's decision in *Arizona v. California* in 1963 would distinguish the Colorado River Basin as the supposed site of the first congressional apportionment in U.S. history based on a majority of the Court's interpretation of the Boulder Canyon Project Act. That interpretation would definitively delineate California's interstate share of Colorado River water under the Project Act and the Limitation Act, despite the fact that the Seven-Party Agreement and associated water contracts already had been formed three decades earlier.

Eight years elapsed between Arizona's ratification of the compact on February 24, 1944, and the onset of *Arizona v. California* in the Supreme Court. Arizona's ratification followed on the heels of a treaty formed by the United States and Mexico three weeks prior that had established the latter sovereign's legal right to use 1.5 maf of Colorado River water annually.⁷² One week after this treaty was formed, Arizona entered into a water contract with the secretary of the interior for annual deliveries of 2.8 maf of Colorado River water.⁷³ Federal authorization and construction of the CAP infrastructure would be necessary to utilize a portion of this water through the project, however, and stern opposition from California in Congress ultimately would keep Arizona from this goal. On April 18, 1951, the House Committee on Interior and Insular Affairs adopted a resolution postponing consideration of any bills related to the CAP "until such time as use of water in the Lower Colorado River Basin is either adjudicated or binding or mutual agreement as to the use of the water is reached by the States of the lower Colorado River Basin."⁷⁴

Arizona pursued the adjudication route contemplated in the committee's resolution, filing its original complaint with the Supreme Court on August 8, 1952, and thereby commencing one of the most epic lawsuits in the history of western water

⁷²An electronic copy of the U.S.-Mexico Treaty can be accessed on the website of the Bureau of Reclamation's Lower Colorado River Regional Office at <http://www.usbr.gov/lc/region/pao/pdfiles/mextrety.pdf>. For a thorough account of the treaty's formation, see Hundley, *Dividing the Waters: A Century of Controversy Between the United States and Mexico* (Berkeley, CA, 1966).

⁷³Wilbur and Ely, *The Hoover Dam Documents*, appendix 1016.

⁷⁴See *Hearings Before the Committee on Interior and Insular Affairs*, House of Representatives, 82^d Cong., 1st Sess. (April 18, 1951), on H.R. 1500 and H.R. 1501, part 2, pp. 739–61.

law.⁷⁵ Arizona's complaint prayed that the state's "title to the annual beneficial consumptive use of 3,800,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted."⁷⁶ Arizona also requested that California's title "be fixed and forever limited to 4,400,000 acre-feet."⁷⁷ Arizona argued that both the Seven-Party Agreement and the contracts formed by the secretary of the interior based on it were illegal and invalid to the extent that they exceeded this limit by apportioning 5,362,000 maf of Colorado River water per year.⁷⁸ California, of course, sharply disputed these and related arguments in its answer, characterizing Arizona's position as an attempt "to obtain water for [the CAP] by taking it from existing and operating California projects."⁷⁹ California allegedly had developed these projects in reliance on interpretations of the Colorado River Compact and the Boulder Canyon Project Act that allowed for 5.362 maf of annual Colorado River water use within the state.⁸⁰ In particular, the MWD would not have accepted its 550,000-acre-foot entitlement in priority five of the Seven-Party Agreement ("a low priority") under interpretations of the compact and the Project Act being proffered by Arizona.⁸¹

These initial arguments touched only the tip of the iceberg concerning the wide range of issues, and the parties' evolving positions with regard to these issues, that emerged throughout the litigation. Eventually drawing the case to a close, the Supreme Court issued its opinion on June 3, 1963, nearly eleven years after Arizona had filed its complaint.⁸² As canvassed by the Court, the proceedings ultimately encompassed the appointment of two special masters; a roughly two-year trial with 340 witnesses, thousands of exhibits, and 25,000 pages of transcripts; a 433-page report and recommended decree from the second special master; and extensive briefing as well as

⁷⁵Seminal articles discussing and critiquing this landmark case include Hundley, "Clio Nods: *Arizona v. California* and the Boulder Canyon Project Act—A Reassessment," *Western Historical Quarterly* 3 (1972): 17–51; Charles J. Meyers, "The Colorado River," *Stanford Law Review* 19 (1967): 1–75; Frank J. Trelease, "*Arizona v. California*: Allocation of Water Resources to People, States, and Nation," *Supreme Court Review* 1963 (1963): 158–205.

⁷⁶Arizona Bill of Complaint 30 (August 8, 1952).

⁷⁷*Ibid.*

⁷⁸*Ibid.*, 16–18.

⁷⁹California Answer of Defendants to Bill of Complaint 2, 69–70 (May 19, 1953).

⁸⁰*Ibid.*, 39–40, 44–45, 60–61.

⁸¹*Ibid.*, Exhibit A, 2.

⁸²*Arizona v. California*, 373 U.S. 546 (1963).

two oral arguments (sixteen hours and more than six hours in length, respectively) before the Court.⁸³ The Court's final opinion was a split one to boot, including two lengthy dissents.⁸⁴

A variety of holdings fell within the majority opinion issued in *Arizona v. California*, but most pivotal among them for Southern California's use of Colorado River water was that Congress had established a statutory apportionment in the Lower Basin when enacting the Boulder Canyon Project Act. According to the majority, "Congress in passing the Project Act intended to and did create its own comprehensive scheme for the apportionment among Arizona, California, and Nevada of the Lower Basin's share of the mainstream waters of the Colorado River, leaving each State its tributaries."⁸⁵ As further construed by the majority, "Congress decided that a fair division of the first 7,500,000 acre-feet of such mainstream waters would give 4,400,000 acre-feet to California, 2,800,000 to Arizona, and 300,000 to Nevada; Arizona and California would each get one-half of any surplus."⁸⁶ The majority's holding responded to voluminous briefing submitted by the parties regarding Congress' intended meaning in section 4 of the Project Act, particularly the limitation imposed on California's use of Colorado River water. In the final analysis, the Court rejected California's constructions of this provision, despite the state's repeated assertions that it had relied on these interpretations when previously adopting the Limitation Act and the Seven-Party Agreement.

The Court issued its original decree in *Arizona v. California* in 1964 to implement its decision.⁸⁷ This decree vested the secretary of the interior with discretion to determine the amount of Colorado River water that would be released from Lake Mead

⁸³*Ibid.*, 551.

⁸⁴One of these dissents was from Justice William O. Douglas. It offered as pointed a critique of the majority opinion as any subsequent academic commentary. In Justice Douglas' words, "Much is written these days about judicial lawmaking; and every scholar knows that judges who construe statutes must of necessity legislate interstitially, to paraphrase Mr. Justice Cardozo. . . . The present case is different. It will, I think, be marked as the baldest attempt by judges in modern times to spin their own philosophy into the fabric of the law, in derogation of the will of the legislature." *Ibid.*, 628.

⁸⁵*Ibid.*, 565.

⁸⁶*Ibid.*

⁸⁷An electronic copy of the Court's original decree can be accessed on the website of the Bureau of Reclamation's Lower Colorado River Regional Office at <http://www.usbr.gov/lc/region/pao/pdfiles/supctdec.pdf>. The Court issued a consolidated version of its decree in 2006, which also can be found on this website at <http://www.usbr.gov/lc/region/g4000/4200Rpts/DecreeRpt/2006/decree/06Decree.pdf>.

for consumptive use in the Lower Division states each year. During normal conditions, releases sufficient to enable 7.5 maf of consumptive use would be allocated according to the interstate scheme noted above: 4.4 maf to California, 2.8 maf to Arizona, and 300,000 acre-feet to Nevada. Years during which surplus was available to facilitate more than 7.5 maf of consumptive use would involve a 50/50 split of the surplus between Arizona and California (with a potential 4-percent cut for Nevada out of Arizona's share). When less than 7.5 maf of consumptive use was possible—i.e., in shortage conditions—the secretary was given guidelines to abide by when allocating the available water, including ensuring no more than 4.4 maf would be apportioned for use in California. An equally notable provision of the decree authorized the secretary to allocate apportioned but unused water from one Lower Division state to another on an annual basis, with no recurrent rights to this water accruing.

Four years elapsed between the Court's issuance of its decree in *Arizona v. California* and Congress' enactment of legislation finally authorizing the CAP—namely, the Colorado River Basin Project Act—in 1968.⁸⁸ In addition to authorizing the project, this legislation contained a key provision bearing on California's legal rights to use water from the Lower Colorado River after *Arizona v. California*. Section 301 of the act restricted Arizona from diverting any water into the CAP during shortages (as defined by the decree) if doing so would preclude 4.4 maf of consumptive use in California in the particular year. That is, after two decades of heated struggle, including eleven years before the Supreme Court and its special masters, Congress ultimately subordinated Arizona's CAP entitlement to California's 4.4 maf normal entitlement in the event of shortages in the Lower Basin. With this post-litigation development, the stage was set for contemporary refinements to the intrastate and interstate allocation schemes governing California's use of the Colorado River.

PATCHWORK ON THE INTRASTATE ALLOCATION

Congress' authorization of the CAP in 1968 led, unsurprisingly, to increased use of Colorado River water within the Lower Basin, as the project gradually began operation two decades after the principal decision in *Arizona v. California*.

⁸⁸ An electronic copy of the Colorado River Basin Project Act can be accessed on the website of the Bureau of Reclamation's Lower Colorado River Regional Office at <http://www.usbr.gov/lc/region/pao/pdfiles/crbproj.pdf>.

This increased water use in Arizona (and Nevada also) posed a crucial issue that largely has defined Southern California's relationship with the Colorado River in modern times: what measures would the state need to employ to live within the 4.4 maf entitlement announced by the Court for normal conditions? In 2011, Justice Ronald Robie of the California Court of Appeals succinctly described *Arizona v. California's* implications for the state's intrastate allocation framework in this regard: "While the United States Supreme Court largely settled the interstate conflict over water nearly 50 years ago . . . the court's resolution of the dispute between the states—which limited California's share of the river to far less than the state can use—ensured the fight would continue within the state for years to come."⁸⁹ Justice Robie's remark stemmed from protracted litigation over an agreement called the Quantification Settlement Agreement ("QSA") that had been forged in 2003 by various parties to the predecessor Seven-Party Agreement. As of the time of this writing, the QSA litigation finally appears positioned to conclude after a dozen years, although this milestone emerges amidst significant parallel developments that intertwine the future of the QSA with that of the Salton Sea. Notwithstanding these developments and the lengthy litigation trail, the QSA currently serves as the primary instrument for refining California's intrastate allocation scheme in a manner that complies with the 4.4 maf normal entitlement secured in *Arizona v. California*.

Commencement of CAP deliveries in 1985 markedly influenced the interstate allocation of Colorado River water among the Lower Division states as well as the intrastate allocation of this water within Southern California.⁹⁰ Arizona's use of Colorado River water had ranged from roughly 1.0 to 1.4 maf per year from 1971 to 1985, and this figure jumped to approximately 2.25 maf within a decade after CAP deliveries began. Nevada's use of Colorado River water—although unrelated to the CAP—likewise more than doubled (from roughly 100,000 to 225,000 acre-feet) across this period. Distinguished from Arizona and Nevada, California's use of Colorado River water consistently exceeded the state's 4.4 maf normal entitlement over this timeframe, falling at or above 5.0 maf during several years. The secretary of the interior enabled California's consumption

⁸⁹*Quantification Settlement Agreement Cases*, 201 Cal. App. 4th 758, 772 (2011) (emphasis in original).

⁹⁰U.S. Department of the Interior, Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study, Appendix C10, Historical Consumptive Use and Loss Detail by State (2012), C10-12 to C10-18, <http://www.usbr.gov/lc/region/programs/crbstudy.html>.

at this level with deliveries of surplus water and water apportioned to, but unused in, Arizona and Nevada. This pattern could not persist once the CAP entered the scene. As described by the Colorado River Water Board of California many years later: "With the commencement of CAP deliveries in 1985, California's dependable supply from the Colorado River was reduced to its basic apportionment of 4.4 maf per year."⁹¹

Roughly two decades passed between the onset of CAP deliveries in 1985 and the formation of an intrastate agreement in 2003 aimed at enabling California to live within its 4.4 maf normal entitlement—again, the QSA. A variety of interstate and intrastate efforts preceded the QSA's adoption.⁹² As an initial development, the Imperial Irrigation District and the MWD formed an agreement in December 1988 whereby the MWD agreed to fund \$10 million of conservation measures in the district annually in exchange for the transfer of 100,000 acre-feet of conserved water (IID-MWD transfer).⁹³ Although this agreement would promote efficient use of California's Colorado River water budget, it also raised concerns about whether the transfer would violate higher-priority entitlements of the Palo Verde Irrigation District and the Coachella Valley Water District under the Seven-Party Agreement. A follow-up agreement with these water agencies in 1989 navigated these concerns,⁹⁴ but a 1992 letter from the Bureau of Reclamation addressed a critical issue raised by them: the need to quantify entitlements held by parties under the first three priorities of the Seven-Party Agreement.⁹⁵ Included in this letter was a proposal from the bureau to accomplish this formidable task, which was considered essential for future intrastate transfers and for curbing excess water use.

⁹¹Colorado River Board of California, *California's Colorado River Water Use Plan* (2000) (emphasis added), 16, http://www.crb.ca.gov/programs/Calif_Plan_May_11-Draft.pdf.

⁹²A detailed discussion of interstate efforts underlying the QSA's formation can be found in James S. Lochhead, "An Upper Basin Perspective on California's Claims to Water from the Colorado River Part II: The Development, Implementation and Collapse of California's Plan to Live Within Its Basic Apportionment," *University of Denver Water Law Review* 6 (2003): 318.

⁹³U.S. Department of the Interior, *Final Environmental Impact Statement, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions* (2012), 2-13 to 2-14, <http://www.usbr.gov/lc/region/g4000/FEIS/Volume%20I.pdf>.

⁹⁴*Ibid.*

⁹⁵Robert J. Towles, regional director, Bureau of Reclamation Lower Colorado Regional Office to Gerald M. Davisson, manager, Palo Verde Irrigation District, December 10, 1992.

The bureau's 1992 quantification proposal ultimately fell flat, but it set a precedent for related measures that appeared across the decade. Spurring these developments was a 1996 address by secretary of the interior Bruce Babbitt indicating that California must develop a strategy to limit its Colorado River water use to 4.4 maf annually (the normal entitlement) and means to meet its water needs without jeopardizing Colorado River water use in other states.⁹⁶ Two years elapsed between this address and a subsequent water conservation and transfer agreement formed by the Imperial Irrigation District and San Diego County Water Association (SDCWA) involving "the largest agricultural-to-urban water transfer in United States history"—a transfer of 300,000 acre-feet of conserved water annually (IID-SDCWA transfer).⁹⁷ This transfer later would be modified—divvying out 200,000 acre-feet of the conserved water to the SDCWA and 100,000 acre-feet to either the Coachella Valley Water District or the MWD—but both it and the predecessor IID-MWD transfer were incorporated into a path-breaking "Key Terms Agreement" formed in 1999 by the state of California, the Imperial Irrigation District, the Coachella Valley Water District, and the MWD.⁹⁸ This agreement laid the groundwork for the QSA and outlined many of its eventual features, including quantifying the parties' entitlements under the Seven-Party Agreement and authorizing the two water transfers.

It would take four years, from October 1999 to October 2003, for the Key Terms Agreement to evolve into the QSA, and this critical period would be marked by the formation of two important documents. Released by the Colorado River Water Board of California in 2000, the first document was the "California 4.4 Plan," which was tailored to the water budget goal articulated by Secretary Babbitt in 1996 and sought in earnest by the other Basin States since at least the early 1990s.⁹⁹ "There is a fundamental change in the availability and use of Colorado River

⁹⁶Address by Bruce Babbitt, secretary of the interior, to Colorado River Water Users Association 1996 Annual Conference (December 19, 1996), http://www.sci.sdsu.edu/salton/secr_babbitt_CoR_issues.htm.

⁹⁷*Quantification Settlement Agreement Cases*, 201 Cal. App. 4th 758, 788 (2011); Agreement for Transfer of Conserved Water By and Between Imperial Irrigation District and San Diego County Water Authority (April 29, 1998), accessed May 13, 2015, <http://www.iid.com/Modules/ShowDocument.aspx?documentid=887> (agreement no longer available).

⁹⁸Key Terms for Quantification Settlement Among the State of California, IID, CVWD and MWD (1999), <http://www.riversimulator.org/Resources/LawOfTheRiver/HooverDamDocs/Supplements/1999KeyTermsQuantificationSettlement.pdf>.

⁹⁹Colorado River Board of California, California's Colorado River Water Use Plan (2000), http://www.crb.ca.gov/programs/Calif_Plan_May_11-Draft.pdf.

water in California," the plan heralded.¹⁰⁰ "As we enter the new millennium, California for the first time will be required to reduce the amount of Colorado River water it uses."¹⁰¹ In line with the Key Terms Agreement, the plan identified as its core "linchpins" quantification of certain entitlements within the Seven-Party Agreement and implementation of cooperative water conservation/transfers between agricultural and urban water users. An additional measure called for by the plan was the adoption of interim surplus guidelines by the secretary of the interior.¹⁰² These guidelines would clarify the circumstances in which the secretary of the interior would deliver surplus water to California contractors under the *Arizona v. California* decree. They constituted the second key document to emerge at this time, and Secretary Babbitt adopted them under a "Peace on the River" banner at a signing ceremony in San Diego in January 2001,¹⁰³ conditioning their effectiveness on the QSA's formation by December 31, 2002. When this deadline passed unmet, a new secretary of the interior, Gale Norton, suspended the guidelines and limited California's water deliveries to 4.4 maf in 2003.¹⁰⁴ California had consumed 5.37 maf of Colorado River water in 2002,¹⁰⁵ so this reduction did not entail a "soft landing."

After ten months of subsequent negotiations among California contractors, the QSA finally came into being on October 10, 2003.¹⁰⁶ Two noteworthy developments occurred during this final lap, one involving the federal judiciary, the other the California State Legislature.

On the judicial front was a lawsuit filed by the Imperial Irrigation District in the Southern District of California.¹⁰⁷ The district pursued this suit to challenge the secretary of the

¹⁰⁰*Ibid.*, 2.

¹⁰¹*Ibid.*

¹⁰²U.S. Department of the Interior, Record of Decision, Colorado River Interim Surplus Guidelines Final Environmental Impact Statement (January 16, 2001), http://www.usbr.gov/lc/region/g4000/surplus/surplus_rod_final.pdf.

¹⁰³Lochhead, "An Upper Basin Perspective," 375.

¹⁰⁴*Ibid.*, 399–400.

¹⁰⁵This figure appears on page 1 of U.S. Department of the Interior, Bureau of Reclamation, Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona v. California et al.* dated March 9, 1964, calendar year 2002, <http://www.usbr.gov/lc/region/g4000/4200Rpts/DecreeRpt/2002DecreeRpt.pdf>.

¹⁰⁶Quantification Settlement Agreement and Related Agreements and Documents to which Southern California Agencies Are Signatories (2003), http://www.sdcwa.org/sites/default/files/files/QSA_final.pdf.

¹⁰⁷Lochhead, "An Upper Basin Perspective," 402–404.

interior's reduction of Colorado River water deliveries to it in 2003. In short, the district successfully obtained a preliminary injunction in the suit, resulting in an increase in its water use of approximately 330,000 acre-feet that year and a decrease in the MWD's water use of roughly 121,000 acre-feet. This counterpoise ensured that California's collective Colorado River water use did not exceed its 4.4 maf normal entitlement.

In turn, several months after the injunction in the federal lawsuit had been issued, the California State Legislature enacted a trio of laws commonly addressing the fate of the Salton Sea as implicated by the QSA. Comprising this trio were Senate Bills 277, 317, and 654—collectively referred to as the “QSA legislation” and devised “to facilitate” the QSA's implementation.¹⁰⁸ Senate Bill 277 was entitled the Salton Sea Restoration Act and expressed the legislature's intent to “undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on that ecosystem.”¹⁰⁹ This restoration would be based on an alternative developed in a restoration study that would be funded by moneys deposited into a Salton Sea Restoration Fund.¹¹⁰

The second bill in this line, Senate Bill 317, dovetailed with the first piece of legislation in calling for the secretary of the California Natural Resources Agency to undertake the Salton Sea restoration study, including generating a preferred alternative for restoration and a proposed funding plan.¹¹¹ Also imposed by this bill was an obligation on the Imperial Irrigation District to provide “mitigation water” during the QSA's first fifteen years—i.e., water to mitigate adverse environmental impacts to the Salton Sea resulting from the agriculture-to-urban water transfers contemplated by the QSA.¹¹²

In a similar fashion, Senate Bill 654 also broached the subjects of restoration and environmental mitigation. “[I]t is important that actions taken to reduce California's Colorado River water use are consistent with its commitment to restore the

¹⁰⁸Quantification Settlement Agreement and Related Agreements and Documents to which Southern California Agencies Are Signatories (2003).

¹⁰⁹California Senate Bill 277 (September 29, 2003), 2, section 1 [revising subsection 2931(a) of Fish and Game Code], http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0251-0300/sb_277_bill_20030929_chaptered.pdf.

¹¹⁰*Ibid.*, 2–3, section 1 [revising sections 2931 and 2932].

¹¹¹California Senate Bill 317 (September 29, 2003), 5, section 1 [revising subsection 2081.7(c)(1) of Fish and Game Code], http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0301-0350/sb_317_bill_20030929_chaptered.pdf.

¹¹²*Ibid.*, 3, section 1 [revising subsection 2081.7(c)(2)].

Salton Sea," provided the bill.¹¹³ It then proceeded to explain how a restoration plan was necessary to prevent the Salton Sea from becoming too saline to support its fishery and fish-eating birds, and how the QSA's water transfers could accelerate the rate of salinization.¹¹⁴ The bill ultimately called for the Imperial Irrigation District, the Coachella Valley Water District, and the SDCWA to contribute \$30 million collectively to the Salton Sea Restoration Fund, and generally provided that any additional restoration actions would be "the sole responsibility of the State of California."¹¹⁵ As for mitigation, the bill explained that it was "necessary to provide a mechanism to implement and allocate the environmental mitigation responsibility" between the water agencies and the state in order to implement the QSA.¹¹⁶ The specific instrument envisioned for this purpose was a "joint powers agreement" to be formed by the California Department of Fish and Game and to include the Coachella Valley Water District, the Imperial Irrigation District, and the SDCWA.¹¹⁷ The bill capped these water agencies' collective environmental mitigation payments at \$133 million.¹¹⁸ As detailed below, it is these restoration and mitigation provisions within the QSA legislation that, as of the time of this writing, factor most significantly into the QSA's future.

Although the QSA is referred to in the singular here, the agreement actually consisted of an individual QSA as well as a suite of related agreements governing the legal rights of California contractors to use Colorado River water. Included among these related agreements was an implementing Colorado River Water Delivery Agreement (CRWDA) forged on October 10, 2003—again, the QSA's signing date—by secretary of the interior Gale Norton and the Coachella Valley Water District, the Imperial Irrigation District, the MWD, and the SDCWA.¹¹⁹ Also sub-

¹¹³California Senate Bill 654 (September 29, 2003), 3, section 2 [revising subsection 1(c) of Chapter 617 of Statutes of 2002], http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0651-0700/sb_654_bill_20030929_chaptered.pdf.

¹¹⁴*Ibid.*, 4, section 2 [revising subsection 1(f) of Chapter 617 of Statutes of 2002].

¹¹⁵*Ibid.*, 5, section 3 [revising subsections (1)(b)(2) and (c) of Chapter 617 of Statutes of 2002].

¹¹⁶*Ibid.*, 4, section 3.

¹¹⁷*Ibid.*, 4, section 3 [revising subsection (1)(a) of Chapter 617 of Statutes of 2002].

¹¹⁸*Ibid.*, 5, section 3 [revising subsection (1)(b)(1) of Chapter 617 of Statutes of 2002].

¹¹⁹U.S. Department of the Interior, Record of Decision, Colorado River Water Delivery Agreement, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions Final Environmental Impact Statement (October 10, 2003), http://www.usbr.gov/lc/region/g4000/crwda/crwda_rod.pdf.

sumed in the mix was a Joint Powers Authority Creation and Funding Agreement (JPA) prepared to implement the restoration and environmental mitigation provisions of Senate Bill 654.¹²⁰ Except for the MWD, the water agencies that were parties to the CRWDA also entered into the JPA, alongside the California Department of Fish and Game. Regarding Salton Sea restoration, the JPA (1) established the water agencies' respective financial contributions to the Salton Sea Restoration Fund (i.e., from the collective \$30-million contribution), and (2) reiterated the state's commitment to both legal and financial coverage of any costs above this amount.¹²¹ As for mitigation, the JPA likewise (1) outlined the water agencies' respective financial contributions for environmental mitigation (i.e., from the collective \$133-million contribution), and (2) specified that the state of California would bear as an "unconditional contractual obligation" any costs in excess of this limit.¹²²

Situated within its proverbial nest of implementing instruments, the QSA was generally described as a consensual agreement among three parties—the Imperial Irrigation District, the Coachella Valley Water District, and the MWD—that served to resolve "longstanding disputes regarding the priority, use (including quantification), and transferability of Colorado River water."¹²³ As already discussed at length, the agreement responded to the other Basin States' and the secretary of the interior's "insistence that California must implement a strategy that [would enable] the State to limit its use of Colorado River water to 4.4 MAF during a normal year."¹²⁴ Although it encompassed a range of measures toward this end, the QSA's linchpins were those of the 1999 Key Terms Agreement: (1) quantification of certain entitlements in the Seven-Party Agreement, and (2) facilitation of agriculture-to-urban water transfers via conservation/transfer agreements.

With regard to quantification, the QSA addressed two priorities within the Seven-Party Agreement that had lacked specificity since 1931. Extending from priority 3(a) of that agreement, the QSA established basic caps of 3.1 maf and 330,000 acre-feet, respectively, for the Imperial Irrigation District's and the

¹²⁰Quantification Settlement Agreement, Joint Powers Authority Creation and Funding Agreement (October 10, 2003), http://www.sdcwa.org/sites/default/files/files/QSA_jpa-funding.pdf.

¹²¹*Ibid.*, 15–16.

¹²²*Ibid.*, 11.

¹²³U.S. Department of the Interior, Record of Decision, Colorado River Water Delivery Agreement (October 10, 2003).

¹²⁴*Ibid.*

Coachella Valley Water District's annual use of Colorado River water.¹²⁵ Similarly, based on forbearance agreements, the QSA prescribed a pecking order for annual water allocations associated with priority 6(a) of the Seven-Party Agreement: (1) 38,000 acre-feet to the MWD, (2) 63,000 acre-feet to the Imperial Irrigation District, and (3) 119,000 acre-feet to the Coachella Valley Water District.¹²⁶ Although not comparably opaque, the QSA also capped the MWD's use of Colorado River water under priorities four and five of the Seven-Party Agreement at 550,000 and 662,000 acre-feet per year, respectively.¹²⁷

Intertwined with the basic caps on consumptive use of priority 3(a) water by the Imperial Irrigation District and the Coachella Valley Water District were a host of conservation and transfer agreements that served to reduce or augment these parties' entitlements.¹²⁸ These agreements included the 1988 IID-MWD and the 1998 IID-SDCWA transfers discussed earlier. Also appearing in the mix were measures that called for lining of portions of the All-American Canal and the Coachella Canal, and transfers of water conserved by this lining to parties to the San Luis Rey Indian Water Rights Settlement. All told, the QSA contemplated that these and related measures would alter the intrastate allocation of California's normal entitlement [specifically, priority 3(a) water] in the manner shown below in Table 2. The Imperial Irrigation District is projected to consume roughly 2.6 maf of this water annually by the time the QSA expires in 2077 at the latest. Similarly, although the Seven-Party Agreement provides for 3.85 maf of annual consumptive use under its first three priorities, the QSA is projected to reduce this amount to approximately 3.47 maf. This nearly 400,000-acre-foot reduction provides critical security for the MWD—again, an entity whose 662,000-acre-foot entitlement under priority five of the Seven-Party Agreement falls squarely outside California's 4.4 maf normal entitlement.

Although the intricacies of the QSA's formation and composition surveyed up to this point alone provide ample food for thought, they do not fully bring the intrastate chronicle up to date. Will the QSA remain in effect to govern allocation of

¹²⁵Quantification Settlement Agreement and Related Agreements and Documents to which Southern California Agencies Are Signatories (2003).

¹²⁶*Ibid.*

¹²⁷*Ibid.*, 12.

¹²⁸*Ibid.*, 10–13. For a useful overview of these agreements, see U.S. Department of the Interior, Final Environmental Impact Statement, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions (2012), <http://www.usbr.gov/lc/region/g4000/FEIS/Volume%20I.pdf>.

Calendar Year	Priority 1, 2 and 3b (1000 acre-feet)	IID Priority 3a Net Consumptive Use Amount (1000 acre-feet)	CVRD Priority 3a Net Consumptive Use Amount (1000 acre-feet)	Total Priority 1-3 Use Plus PER Consumptive Use (1000 acre-feet)	Water Available for MWD Seven Party Agreement, Priority 5 (1000 acre-feet)
2003	420	2,963.5	347	3,745.0	105.0
2004	420	2,948.5	347	3,730.0	120.0
2005	420	2,933.5	347	3,715.0	135.0
2006	420	2,909.5	321	3,665.0	185.0
2007	420	2,903.5	321	3,659.0	191.0
2008	420	2,811.8	325	3,571.3	278.7
2009	420	2,772.8	329	3,536.3	313.7
2010	420	2,733.8	333	3,501.3	348.7
2011	420	2,694.8	337	3,466.3	383.7
2012	420	2,654.8	342	3,431.3	418.7
2013	420	2,614.8	347	3,396.3	453.7
2014	420	2,589.8	352	3,376.3	473.7
2015	420	2,564.8	357	3,356.3	493.7
2016	420	2,539.8	362	3,336.3	513.7
2017	420	2,524.8	366	3,325.3	524.7
2018	420	2,717.8	384	3,536.3	313.7
2019	420	2,682.8	389	3,506.3	343.7
2020	420	2,645.3	394	3,473.8	376.2
2021	420	2,627.8	399	3,461.3	388.7
2022	420	2,625.3	404	3,463.8	386.2
2023	420	2,622.8	409	3,466.3	383.7
2024	420	2,617.8	414	3,466.3	383.7
2025	420	2,612.8	419	3,466.3	383.7
2026	420	2,607.8	424	3,466.3	383.7
2027	420	2,607.8	424	3,466.3	383.7
2028	420	2,607.8	424	3,466.3	383.7
2029-2037	420	2,607.8	424	3,466.3	383.7
2038-2047	420	2,607.8	424	3,466.3	383.7
2048-2077	420	2,610.8	421	3,466.3	383.7

TABLE 2. QSA Quantifications and Transfers. (Courtesy of U.S. Department of the Interior, Record of Decision, Colorado River Water Delivery Agreement, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions Final Environmental Impact Statement [2003], 33)

California's share of Colorado River water? Underlying this existential question is a thick post-2003 trajectory of QSA-related developments on which this narrative must shed at least modest light.¹²⁹

As an initial matter, it would probably be naive to assume that an agreement as crucial as the QSA would escape litigation by dissident California interests, and events over the past decade bear out this view. Described by the California Court of Appeals as a "battle royal"¹³⁰ and a "tsunami,"¹³¹ litigation now exceeding in length the eleven-year trail in *Arizona v. California* has been winding its way through the state and federal

¹²⁹The author wishes to express his gratitude to attorneys Antonio Rossmann (previously counsel for Imperial County) and Patrick Redmond (currently counsel for Imperial Irrigation District) for taking time to discuss contemporary developments involving the QSA litigation and Salton Sea. Any errors in the discussion are solely my own.

¹³⁰*County of Imperial v. Superior Court*, 152 Cal. App. 4th 13, 18 (2007).

¹³¹*Imperial County Air Pollution Control District v. State Water Resources Control Board*, 2013 WL 2605470 at 1 (June 12, 2013).

courts ever since the QSA's formation in 2003. Of greatest import, nine related cases were consolidated into a coordinated QSA proceeding in 2004 that has been administered by the Sacramento County Superior Court.¹³² Three of these cases make up the core of the QSA litigation: (1) an action by the Imperial Irrigation District to validate the QSA and related agreements; (2) an action by Imperial County asserting violations of the California Environmental Quality Act (CEQA) and the Water Code in connection with the QSA; and (3) an action by an environmental organization, Protect Our Water and Environmental Rights (POWER), and other parties also asserting CEQA violations. Three major decisions have been handed down in these cases thus far—two from the Sacramento County Superior Court in 2010 and 2013,¹³³ and one from the California Court of Appeals in 2011.¹³⁴ The upshot of the litigation appears to be twofold. First, the QSA has been validated, surviving perhaps most notably a state constitutional challenge to the JPA—specifically, the “unconditional contractual obligation” borne by the state under it for environmental mitigation costs exceeding the water agencies’ collective \$133-million contribution.¹³⁵ Second, the QSA also has persisted through the CEQA and Water Code actions, which have included several challenges to environmental review processes addressing the QSA’s impacts on the Salton Sea (e.g., its restoration).¹³⁶

The last particular lingering thread in the QSA litigation at present seems to be a cross-appeal to the Sacramento County Superior Court’s decision on July 31, 2013. Filed the month following this decision, the superior court’s validation and CEQA holdings initially prompted appeals by Imperial County

¹³²Superior Court of California, County of Sacramento, Quantification Settlement Agreement (QSA) Cases, Judicial Council Coordination Proceeding No. 4353, <http://www.saccourt.ca.gov/coordinated-cases/qa/qa.aspx>.

¹³³Superior Court of California, County of Sacramento, Statement of Decision Following Phase 1A Trial, Coordinated Proceeding, case no.: JC4353 (January 13, 2010), <http://chanceofrain.com/wp-content/uploads/2010/01/jc4353-qa-statement-of-decision.htm>; Superior Court of California, County of Sacramento, Statement of Decision, QSA Coordinated Civil Cases, case no. JCCP 4353 (July 31, 2013).

¹³⁴*Quantification Settlement Agreement Cases*, 201 Cal. App. 4th 758 (2011).

¹³⁵*Ibid.*, 796–812.

¹³⁶Superior Court of California, County of Sacramento, Statement of Decision, QSA Coordinated Civil Cases, case no. JCCP 4353 (July 31, 2013), 37–96. The Ninth Circuit also rejected challenges to the QSA under the Clean Air Act and National Environmental Policy Act in *People of the State of California v. U.S. Dep’t of Interior*, case no. 12-55856 (9th Cir. 2014), <http://sdcwa.org/sites/default/files/files/federal-QSA-9th-CircuitOpinion.pdf>.

and POWER, among other parties.¹³⁷ The Imperial Irrigation District eventually entered into settlement agreements with each of these parties in August 2014 and March 2015, however, such that the appeals have now either been dismissed or appear en route to that destination.¹³⁸ Almost (but not quite) the same thing can be said for a cross-appeal filed by the SDCWA, the MWD, the Coachella Valley Water District, and others. It is still live for the time being and generally raises jurisdictional challenges to the superior court's decision that are founded on principles of sovereign immunity and preemption.¹³⁹ Nonetheless, by its own terms, the cross-appeal appears short-lived, since it requests the court of appeals to affirm the superior court and to consider the jurisdictional issues only if the higher court were to reverse the validation and CEQA holdings.¹⁴⁰ In sum, the QSA litigation seems to be slowly grinding to a halt.

Given the seemingly short shelf life of the QSA litigation going forward, only one other key variable appears poised to potentially jeopardize the QSA and its patchwork on the intrastate allocation framework: the Salton Sea. Notwithstanding the recurring emphasis on restoration and environmental mitigation in the QSA legislation and elsewhere, the state of California has not yet implemented and funded a restoration plan for the sea, nearly a dozen years after the QSA's formation. The Imperial Irrigation District has been delivering mitigation flows throughout this period—an obligation prescribed by Senate Bill 317 as well as a 2002 order issued by the State Water Resources Control Board conditionally authorizing the 1998 IID-SDCWA transfer.¹⁴¹ These mitigation flows are scheduled to cease in 2017, however, and grave concerns have been raised based on this sunset about environmental impacts and

¹³⁷The notices of appeal and related information about the case (case no. C074592) can be accessed through the court of appeals case information system at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=3&doc_id=2055075&doc_no=C074592.

¹³⁸*Ibid.*; Imperial Irrigation District, "IID Reaches Settlement Agreement with QSA Litigants," news release, September 16, 2014, <http://iid.com/Home/Components/News/News/416/30?arch=1>; Imperial Irrigation District, "IID and Imperial County Announce QSA Coordinated Cases Settlement," news release, February 3, 2015, <http://www.iid.com/Home/Components/News/News/431/30?arch=1>.

¹³⁹Respondents and Cross-Appellants San Diego County Water Authority, Vista Irrigation District and City of Escondido's Joint Combined Cross-Appellants' Reply Brief (August 25, 2014).

¹⁴⁰*Ibid.*, 40.

¹⁴¹State of California, State Water Resources Control Board, Revised Order WRO 2002-0013 (December 20, 2002), http://www.waterboards.ca.gov/water-rights/board_decisions/adopted_orders/orders/2002/wro2002-16.pdf.

corresponding costs associated with not having a restoration plan in place. A 2014 report by the Pacific Institute estimated "inaction costs" through 2047 of \$3 billion to \$37 billion related to public health, \$400 million to \$7 billion related to property devaluation, \$110 million to \$150 million related to recreation, and \$10 billion to \$26 billion related to ecological values.¹⁴² Also highlighted (but unquantified) as an inaction cost in the report was diminished agricultural productivity.

It was against this backdrop of unfulfilled Salton Sea restoration and waning mitigation water that the Imperial Irrigation District in November 2014 submitted a petition to the control board requesting two forms of relief pertaining to the sea.¹⁴³ "[A]lthough the obligation to restore the Sea belongs to the State alone," explained the petition, the district requested the control board "to order the QSA parties and Salton Sea Authority member agencies to meet and confer in good faith in an effort to achieve consensus around a realistic, feasible restoration plan and mechanism for funding it."¹⁴⁴ In turn, extending from this collaborative effort, the district sought a second form of relief that, if granted, would hold significant implications for the QSA's future. As requested by the district, "the Board should issue an order modifying its 2002 Order"—again, the order issued in 2002 conditionally authorizing the 1998 IID-SDCWA transfer—"to add State implementation and funding of [the] restoration plan as a condition of transfers under the QSA."¹⁴⁵ Simply put, "the State *must* restore the Sea as a condition of the QSA transfers," contended the petition, expressing elsewhere in its text the district's hope "that cooperative dialogue and proceedings before the Board can obviate any possible litigation regarding restoration of the Sea."¹⁴⁶

On March 18, 2015, the control board held a public workshop in response to the Imperial Irrigation District's petition, and as of the time of this writing this event marks the van-

¹⁴²Pacific Institute, *Hazard's Toll: The Costs of Inaction at the Salton Sea* (2014), v-vii, <http://pacinst.org/publication/hazards-toll/>.

¹⁴³Imperial Irrigation District, "IID Petitions State Water Board to Take Action at the Salton Sea," news release, November 18, 2014, <http://38.106.5.247/Home/Components/News/News/425/30?arch=1>.

¹⁴⁴State of California, State Water Resources Control Board, Petition of Imperial Irrigation District for Modification of Revised Water Rights Order 2002-0013 (November 18, 2014), 48, http://www.waterboards.ca.gov/waterrights/water_issues/programs/salton_sea/docs/iid_petition.pdf.

¹⁴⁵*Ibid.*, 50.

¹⁴⁶*Ibid.*, 30, 44 (*italics in original*).

guard of QSA-related developments in this domain.¹⁴⁷ A notice issued by the control board made clear that its convening of the workshop did "not reflect a conclusion that changes to the [2002 order] would be an appropriate way to address issues concerning restoration of the Salton Sea."¹⁴⁸ The notice likewise flagged as an issue for discussion at the workshop how making the transfer permitted by the 2002 order contingent on Salton Sea restoration might "unravel the complex series of agreements that make up the QSA, which would have significant water supply implications for the State."¹⁴⁹ Complementing testimony offered at the workshop, parties submitted a wide range of comment letters to the control board in support of, and in opposition to, the petition both before and after the event.¹⁵⁰ A full discussion of these letters would go beyond this article's scope, but, broadly speaking, solid support came from the environmental community, while staunch opposition came from the water agencies on the receiving end of the 1998 IID-SDCWA transfer: the SDCWA, the Coachella Valley Water District, and the MWD.

The punch line to this continuous drama over California's intrastate allocation framework for Colorado River water is that the QSA currently is intact. It is performing the clutch interstate function of enabling California to live within the bounds of its 4.4 maf normal entitlement announced in *Arizona v. California*. Despite the apparently impending close of litigation comparable in length to the Supreme Court's historic suit, what lies ahead for the QSA nonetheless appears less than fully clear given the status of Salton Sea restoration and the Imperial Irrigation District's associated petition. A point that does appear beyond dispute at this juncture, however, is that if the QSA parties "thought they were buying peace . . . they were sorely mistaken." Justice Ronald Robie explained this elegantly in 2011: "[A] drop of water cannot do two things at once, and every drop residents of coastal Southern California

¹⁴⁷Portions of testimony offered at the public workshop can be viewed at <https://www.youtube.com/watch?v=mYGUZTolIdA>.

¹⁴⁸State of California, State Water Resources Control Board, Notice of Public Workshop, Solicitation of Comments Regarding the Status of the Salton Sea and Revised Order WRO 2002-0013 (February 6, 2015), 1, http://www.waterboards.ca.gov/waterrights/water_issues/programs/salton_sea/docs/notice_saltonsea031815.pdf.

¹⁴⁹*Ibid.*, 3.

¹⁵⁰These comments can be accessed via the letters links of the State Water Resources Control Board's Salton Sea webpage, http://www.waterboards.ca.gov/waterrights/water_issues/programs/salton_sea/.

want to drink is one that cannot be used to sustain the endangered Salton Sea."¹⁵¹

SHORTAGE SHARING IN THE ERA OF LIMITS

One monumental fact not yet highlighted in the evolution of California's intrastate allocation framework, and the Lower Basin and basin-wide frameworks within which it is nested, concerns the onset of a historic drought in the Colorado River Basin beginning in 2000. This drought has forced innovations at the intrastate, interstate, and basin-wide levels that have paralleled the QSA's formation and the ensuing wave of conflicts. Just as the QSA evolved in 2003 to clarify the Seven-Party Agreement's scheme for allocating Colorado River water in California, so too did a similarly functioning instrument appear in 2007 to navigate this potentially game-changing dry spell: the "Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead" (Interim Guidelines).¹⁵² These guidelines have influenced California's use of the Colorado River in diverse ways.

It was shortly before the California 4.4 Plan's formation in 2000 that severe drought conditions gripped the Colorado River Basin and precipitated crisp relations among the Basin States. As described by the Bureau of Reclamation upon the Interim Guidelines' adoption in 2007, "the eight-year period from 2000 through 2007 was the driest eight-year period in the 100-year historical record of the Colorado River."¹⁵³ Vividly illustrating this pattern were declining reservoir storage levels throughout the basin. "From October 1, 1999 through September 30, 2007, storage in Colorado River reservoirs decreased from 55.8 maf (approximately 94 percent of capacity) to 32.1 maf (approximately 54 percent of capacity)."¹⁵⁴ Given the Basin States' extensive reliance on Colorado River water—particularly within the Lower Basin—the initially adversarial dynamic fostered by the drought may seem commonsensical. In 2005, after several years of coping with the drought, "tensions among the Basin States

¹⁵¹*Quantification Settlement Agreement Cases*, 201 Cal. App. 4th 758, 773 (2011).

¹⁵²U.S. Department of the Interior, Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007), <http://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf>.

¹⁵³*Ibid.*, 6.

¹⁵⁴*Ibid.*

brought the basin closer to multi-state and inter-basin litigation than perhaps any time since the adoption of the Compact."¹⁵⁵

Issuance of a directive by the secretary of the interior in 2005 served as a major turning point in the transition from adversarial to collaborative relations during the Interim Guidelines' formation. Preceding this directive was an October 2004 letter from the governors' representatives of the Upper Division states to their counterparts in the Lower Division states describing how "[d]eclining reservoir levels have raised fundamental issues associated with the allocations established under the Colorado River Compact, the Boulder Canyon Project Act as interpreted by the decree in *Arizona v. California*, and the Mexican Treaty."¹⁵⁶ Stating that "these issues will not go away," the letter identified the "fundamental issue" as the Upper Division states' obligation to contribute flows toward Mexico's treaty entitlement under Article III(c) of the compact.¹⁵⁷ Formal dialogue was needed on this matter and others. Roughly six months after this letter was sent, a disagreement arose among the Basin States regarding annual reservoir operations. On May 2, 2005, the secretary issued a directive responding to this disagreement, calling for consultation followed by a National Environmental Policy Act (NEPA) process that eventually would produce the Interim Guidelines in December 2007.¹⁵⁸

Embarked on by the Bureau of Reclamation one month after the secretary of the interior's directive, the NEPA process that yielded the Interim Guidelines involved broad-based participation by the Basin States and other stakeholders. The focus of the NEPA process was twofold: (1) development of guidelines that would clarify the circumstances in which the secretary would declare a shortage in the Lower Basin and reduce deliveries to the Lower Division states under the *Arizona v. California* decree, and (2) development of coordinated management

¹⁵⁵Ibid.

¹⁵⁶Letter from the States of Colorado, New Mexico, Utah and Wyoming Governor's Representatives on Colorado River Operations, October 7, 2004, http://www.usbr.gov/uc/rm/amp/amwg/mtgs/04oct25/Attach_12.pdf. W. Patrick Schiffer et al., "From a Colorado River Compact Challenge to the Next Era of Cooperation among the Seven Basin States," *Arizona Law Review* 49 (2007): 217-33.

¹⁵⁷Ibid.

¹⁵⁸Secretary of the interior Gale A. Norton to Honorable Jon Huntsman, Jr., governor of Utah, May 2, 2005, <http://www.usbr.gov/lc/region/g4000/AOP2005/DOIDecision.pdf>.

strategies for the operation of Lake Powell and Lake Mead.¹⁵⁹ With input from the Basin States and other parties throughout 2005 and 2006, the secretary issued a draft environmental impact statement in February 2007, incorporating into this document a "Basin States Alternative." In subsequent correspondence following the draft statement's release, the Basin States described how they had made "tremendous progress over the last two years in setting aside contentious issues and reaching agreements regarding operation of the Colorado River system reservoirs."¹⁶⁰ The Bureau of Reclamation released a final environmental impact statement six months later,¹⁶¹ which was followed by a Record of Decision on December 13, 2007.¹⁶²

As cast in their final form, the Interim Guidelines included a host of provisions at the basin-wide, interstate, and intrastate levels relevance to California's use of Colorado River water. At the basin-wide level, the guidelines adopted a coordinated operating scheme for Lake Powell and Lake Mead that would control the amount of water released from Lake Powell into the Lower Colorado River each year.¹⁶³ These annual releases from the Upper Division states again are the primary source on which Southern California water users rely. The guidelines' scheme was composed to hinge the amount of these annual releases on the relative water levels of Lake Powell and Lake Mead during a particular year. Historically, the minimum annual release had been 8.23 maf, but the guidelines authorized releases as low as 7.0 maf in certain circumstances. Traced to its root within the Law of the River, the guidelines' scheme was devised to implement for an interim period (up to 2026)

¹⁵⁹U.S. Department of the Interior, Bureau of Reclamation, Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions, Federal Register, vol. 70, no. 189 (September 30, 2005), <http://www.usbr.gov/lc/region/programs/strategies/news/FRnoticeSept05.pdf>.

¹⁶⁰Letter from the states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming Governors' Representatives on Colorado River Operations to Secretary of the Interior Dirk Kempthorne, April 30, 2007, <http://www.ose.state.nm.us/Basins/Colorado/PDF/1-TransmittalLetter.pdf>.

¹⁶¹U.S. Department of the Interior, Bureau of Reclamation, Final Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007), <http://www.usbr.gov/lc/region/programs/strategies/FEIS/>.

¹⁶²U.S. Department of the Interior, Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007), <http://www.usbr.gov/lc/region/programs/strategies/RecordofDecision.pdf>.

¹⁶³*Ibid.*, 49–53.

the Upper Division states' flow obligations under Article III(c) and (d) of the Colorado River Compact.

Complementing the coordinated operating scheme, the Interim Guidelines also outlined a regime for Lake Mead's operation in normal, surplus, and shortage conditions as defined by the *Arizona v. California* decree.¹⁶⁴ Broadly speaking, Lake Mead's water level would dictate what type of conditions the secretary of the interior would declare each year. In the event of a shortage, the guidelines would allow for annual releases as low as 7.0 maf from Lake Mead, with 2.32 maf and 280,000 acre-feet available for consumptive use in Arizona and Nevada, respectively. California's 4.4 maf normal entitlement would remain untouched in this situation; a shortage declaration would not cut into it at all. On the other end of the spectrum, the guidelines' rules for allocating surplus water among the Lower Division states supplanted those that had been adopted in the interim surplus guidelines in 2001. Among other things, these revised rules earmarked surplus water for the MWD during a "domestic surplus" and adhered to the Seven-Party Agreement's intrastate priority system for surplus water deliveries during a "quantified surplus."

An additional aspect of the Interim Guidelines worth noting in relation to California's contractors (and those elsewhere in the Lower Basin) is a water banking program for "intentionally created surplus" (ICS).¹⁶⁵ This program was founded on the basic premise that these contractors could engage in activities like land fallowing, canal lining, desalination, etc., that would enable them to rely on the water generated by these activities in lieu of some of the mainstream water that they otherwise would use under their contracts. In turn, the contractors could store this unused water in Lake Mead for later use, subject to certain limits. Among these limits were caps on the annual and cumulative amounts of ICS created by contractors in each Lower Division state, as well as a cap on the amount of ICS that could be delivered annually. On the same day the Interim Guidelines were adopted, California contractors—including the MWD, the Imperial Irrigation District, and the Coachella Valley Water District—signed an intrastate agreement that defined their individual caps in each of these respects.¹⁶⁶ This agreement notably disclaimed any effect on the QSA.

¹⁶⁴*Ibid.*, 34–37.

¹⁶⁵*Ibid.*, 38–43.

¹⁶⁶California Agreement for the Creation and Delivery of Extraordinary Conservation Intentionally Created Surplus (December 13, 2007), <http://www.usbr.gov/lc/region/programs/strategies/agreements/CAICS.pdf>.

In sum, the secretary of the interior has relied on the Interim Guidelines since 2007 to operate Lake Powell and Lake Mead, and the drought in the Colorado River Basin has yet to abate. Although the ICS program is noteworthy for the flexibility it affords California's contractors under the intrastate scheme, arguably even more salient parts of the guidelines are the reservoir operating regimes. The final environmental impact statement prepared for the guidelines identified a 41-percent chance of an "involuntary shortage" along the Lower Colorado River while these regimes were in effect (until December 31, 2025).¹⁶⁷ Such a shortage has yet to be declared, but it should be noted that for the first time since its filling in the 1960s the Bureau of Reclamation released from Lake Powell only 7.48 maf this past year.¹⁶⁸ Moreover, in April 2015, the bureau reportedly projected the chances of shortage declarations along the Lower Colorado River as 33 percent and 75 percent during 2016 and 2017, respectively.¹⁶⁹ If this shortage scenario plays out—in 2016, 2017, or otherwise—Arizona and Nevada contractors again will bear the brunt. As mentioned, although California did not prevail in *Arizona v. California*, the Interim Guidelines fully insulate its 4.4 maf normal entitlement from shortage declarations.

CONCLUSION

If we treat as bookends the Colorado River Compact's formation in 1922 and the ongoing QSA-related developments and implementation of the Interim Guidelines, the evolution of the allocation framework governing Southern California's use of Colorado River water encompasses nearly one hundred years of western legal history. Apparent across this period is an iterative and provisional pattern and a resulting diversity of nested allocational institutions that make this evolutionary process

¹⁶⁷U.S. Department of the Interior, Bureau of Reclamation, Final Environmental Impact Statement, Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (2007), ES-25, <http://www.usbr.gov/lc/region/programs/strategies/FEIS/>.

¹⁶⁸Bureau of Reclamation, Upper Colorado Region, "Bureau of Reclamation Forecasts Lower Water Release from Lake Powell to Lake Mead for 2014," press release, August 16, 2013, <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=44245>; U.S. Department of the Interior, Bureau of Reclamation, Annual Operating Plan for Colorado River Reservoirs 2015 (2014), 17, <http://www.usbr.gov/uc/water/rsrvs/ops/aop/AOP15.pdf>.

¹⁶⁹Tony Davis, "Risk of CAP Shortages Next Year Reach 33%," *Arizona Daily Star*, April 29, 2015, http://tucson.com/news/science/environment/risks-of-cap-shortages-next-year-hit/article_7feb966b-6a17-5bc7-b2c1-057b9b70c00a.html.

resemblant in principle (though perhaps not in scale) to that of almost any legal regime ever devised for governance of water resources. Such regimes might be conceived of as sandcastles, and the myriad forces within society that perpetually shape their rule-laden structures might be analogized to the tide.

Tangible examples of the iterative and provisional nature of this evolution abound. Consider initially the relationship between the compact and the Interim Guidelines in this regard. Prescribing the Upper Division states' flow obligations to the Lower Division states and to Mexico, Article III(c) and (d) of the compact have eluded Supreme Court interpretation since their genesis. Notwithstanding their less-than-clear meaning in certain key respects for almost a century (and derivative tensions among the Basin States), however, these flow obligations have been implemented on the ground since 2007 through the Interim Guidelines' coordinated operating scheme for Lake Powell and Lake Mead. A similar pattern can be discerned in the Boulder Canyon Project Act's history. It is respectfully questionable whether Congress indeed intended to establish an apportionment scheme for the Lower Colorado River when enacting the Project Act in 1928. Thirty-five years after this milestone, however—i.e., after thirty-five years of living with uncertainty regarding the Project Act's precise meaning and relationship with the compact—the Supreme Court pragmatically laid these issues to rest in *Arizona v. California*.

Another salient example in this vein concerns the Seven-Party Agreement. Its intrastate priority system for California's use of Colorado River water would have benefited from clarity upon its inception in 1931, particularly with regard to the scope of the Imperial Irrigation District's and the Coachella Valley Water District's entitlements under priority 3(a). Yet it took a sustained interstate and intrastate effort to formulate the QSA for this purpose in 2003, and even now, a dozen years later, the QSA's fate is unfolding with that of the Salton Sea.

By way of synthesis, a common trend is evident from the "lives" of each of these allocation institutions bearing on Southern California's use of the Colorado River. They have originated without an entirely clear (or at least fully shared) understanding of their meaning and intended operation. They nonetheless have governed water allocation and management and related infrastructural and capital investment decisions in and around the Colorado River Basin until various tipping points have been reached requiring their clarification or modification. They then have been subject to triage-like work generally involving large-scale concerted efforts by diverse federal and state entities (executive, judicial, and/or legislative) at both the interstate and intrastate levels. In a nutshell, when

considered across the long arc of time, the persistence of these institutions within the history of western water law has had everything to do with the iterative and provisional manner in which they have been finessed.

A corollary to the preceding point is also notable concerning the diversity and interconnectedness of the allocation institutions that govern Southern California's Colorado River water use. A detailed recitation of the features of these institutions would not be prudent this late in the game, but it is enough to say generally that they demonstrate incredible variation in their makeup. This variation is apparent in their allocation schemes—e.g., the compact's scheme for the Colorado River system as a whole versus the *Arizona v. California* decree's scheme for the Lower Colorado River. This variation also is evident from the administrative arrangements for the allocation schemes—e.g., the absence of a formal basin-wide commission for the compact's scheme contrasted with the secretary of the interior's watermaster role for the scheme set forth in the *Arizona v. California* decree. Despite their diversity in these respects and others, however, these institutions obviously are inescapably joined. It is the entire integrated framework constituted by the compact, the *Arizona v. California* decree, the Seven-Party Agreement, the QSA, and related measures that collectively governs Southern California's use of the Colorado River. Simply put, the evolution chronicled above has generated in contemporary times a nested collection of diverse allocation institutions with rich insights for water laws elsewhere in the United States and across the globe.

Ultimately, given the particular contours of the allocation institutions that have originated through this iterative and provisional evolution, California's legal entitlement to Colorado River water has emerged comparatively secure from an interstate perspective as of 2015. Ever since the compact's formation in 1922, California has enjoyed its status as a beneficiary of the Upper Division states' decadal obligation under Article III(d) to avoid depleting Lee's Ferry flows below 75.0 maf. Moving forward four decades, despite the outcome in *Arizona v. California*, California nonetheless was able to ensure primacy for its 4.4 maf normal entitlement to Colorado River water (i.e., over Arizona's CAP entitlement) through the Colorado River Basin Project Act in 1968. Finally, coming about in 2007 in response to ongoing drought in the basin, there is again the Interim Guidelines' operating regime for Lake Mead. In the event of future shortages along the Lower Colorado River, this regime calls for cutting into Arizona's and Nevada's entitlements—the former's by as much as almost 500,000 acre-feet—while leaving California's 4.4 maf normal entitlement

wholly untouched. One may inquire about the equity of these allocational arrangements—particularly, in light of the textual importance ascribed to “equity” within the Law of the River’s constitution (compact).¹⁷⁰ At this stage of the institutional evolution, however, the relative security of Southern California’s entitlement seems clear.

A return to the statement quoted at the outset of this article from Secretary of the Interior Wilbur on July 7, 1930, upon commencement of Hoover Dam’s construction, is appropriate to close. It is apparent that the historical process canvassed in the preceding pages largely has realized the vision then articulated by the secretary for California and the U.S. Southwest.¹⁷¹ People hold diverse normative views on this subject in modern times, but Hoover Dam and the vast infrastructure governed by the Law of the River indeed have made “new geography” and ushered in a “new era in the southwestern part of the United States.”¹⁷² Even more germane to the focus of this piece, the Imperial Irrigation District has benefitted from the “new hope” and “new financial credit” alluded to by the secretary, and the large-scale importation of Colorado River water to Southern California’s urban coast has made possible “homes and industries . . . for many millions of people.”¹⁷³ Future Lee’s Ferry flows, as supplied by the Upper Division states under Article III(c) and (d) of the compact, will be a key variable to watch in successive visions implicating California’s use of the Colorado River. The Interim Guidelines now implement these flow obligations—as well as govern shortage sharing in the Lower Basin—but their 2026 sunset is little more than a decade away. Also warranting close attention, of course, will be the QSA’s intrastate juggling act. Will it be possible to reconcile the competing visions associated with undertaking the largest water transfer in U.S. history while simultaneously restoring California’s largest lake and one of the world’s largest inland seas? Time will tell, and that is the takeaway. What appears most clear from the historical record is that Southern California’s ongoing use of Colorado River water will remain deeply intertwined with ever-shifting economic, environmental, political, and social conditions in the state and across the basin, and that these dynamic changes will ensure that today’s allocation framework inevitably will evolve into tomorrow’s.

¹⁷⁰Jason A. Robison and Douglas S. Kenney, “Equity and the Colorado River Compact,” *Environmental Law* 42 (2012): 1157–1209.

¹⁷¹Wilbur and Ely, *The Hoover Dam Power and Water Contracts*, 439.

¹⁷²*Ibid.*

¹⁷³*Ibid.*