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Arizona v. California - A Brief Review

David Haber

ARIZONA v. CALIFORNIA†—A BRIEF REVIEW

DAVID HABER*

It is a commonplace that our great interstate streams are as troublesome as they are important. The trouble stems from technology only to the extent that we are not yet able to make water so plentiful at so low a cost that no management of its "scarcity" is called for. It is this need for regulating human affairs, the task of providing for competing claims to a "scarce" resource which poses the greater difficulty—a difficulty which becomes intensified by expanding population and increased industrialization. Here, as is true of our era generally, our progress in solving the human problem has not kept pace with technology.

The intense and protracted struggle over the Colorado River and its tributaries reflects this state of affairs. The more the engineers were able to tame this wild river, the more its waters were made available to serve human needs, the more future plans for development and use were projected, and the more intense seemed to become the struggle for water between some of the states through which the river flows. True, the prospect of extensive federal development[1] and the fear that rapidly growing California would acquire, under a possible application of the "prior appropriation" doctrine to disputes between the states,[2] the largest portion of the river's flow produced an agreement, the 1922 Colorado River Compact,[3] which quieted the apprehension of the upper users by allocating to them a specific quantity of the water of the "river system." But the Compact was not signed by Arizona.[4] Moreover, the Compact left unsettled the division of water between the Lower Basin states. The chief contenders were Arizona and California. California continued to de-

† 373 U.S. 546 (1963). For the decree see 84 Sup. Ct. 755 (1964).

* Professor of Law, Rutgers University, Newark, N.J.

I wish to thank Professor Eva Morreale, my colleague, for her valuable assistance, although she does not necessarily share all my views. I also wish to acknowledge my general indebtedness to Professor Frank Trelease for having written the article which I cite in note 7 *infra*.

1. See Fall-Davis Report, S. Doc. No. 142, 67th Cong., 2d Sess. (1922).

2. See Wyoming v. Colorado, 259 U.S. 419 (1922).

3. 70 Cong. Rec. 324 (1928). See U.S. Dep't of the Interior, Documents on the Use and Control of Interstate and International Streams 39 (1956).

4. In 1944, after the six-state ratification which made the Compact effective under the Boulder Canyon Project Act, 45 Stat. 1057 (1928), Arizona did ratify. Arizona v. California, 373 U.S. 546, 558 n.24 (1963).

mand a larger portion of the Lower Basin flow than Arizona would grant, and Arizona refused to guarantee that a portion of its Colorado River tributary waters, principally those of the Gila River, be allocated to meet any obligation the United States might have to Mexico.[5]

Finally, in 1928, Congress, as part of its authorization for further development of the Colorado River, enacted the Boulder Canyon Project Act,[6] a result of much legislative maneuver and compromise, which contained provisions which could be interpreted to govern many of the disputed issues between the Lower Basin states. But the dispute continued, nevertheless. In addition to the 7,500,000 acre-feet of water allocated annually to the Lower Basin by the 1922 Compact, California eventually wanted to use substantial amounts of mainstream water to extend its irrigation in the Imperial, Coachella, and Palo Verde Valleys and for increasing diversions to the coastal cities. Its contention was that Arizona, through its use of tributary waters, had more than an adequate share of the river basin's supply. Arizona, on the other hand, in addition to free use of the tributaries, wanted at least 2,800,000 acre-feet from the main stream so as to assure dependable operation of the proposed Central Arizona Project,[7] which had been shelved in Congress pending some assurance of Arizona's allotment.[8] As a result, in 1952 Arizona sued California in the United States Supreme Court. Nevada, New Mexico, Utah, and the United States became parties to the proceeding, and in 1963 the Supreme Court rendered its historic decision.[9] The justice of this decision and its scope will be disputed for a long time. But there can be no question that in the absence of extensive congressional action to undo the decision's effect,[10] it will be recognized as a major step in bringing order to the management of this important stream and as an important precedent for resolving other jurisdictional disputes over the waters of the Western States.

The Court's sweeping opinion rejected all contentions based on

5. See *Hearings on H.R. 5773 Before the House Committee on Irrigation and Reclamation*, 70th Cong., 1st Sess. 30-31, 402-05 (1928). These Hearings are discussed by Mr. Justice Black in Arizona v. California, 373 U.S. 546, 558-59 (1963).

6. 45 Stat. 1057 (1928). For earlier attempts to legislate in this area see H.R. 11449, 67th Cong., 2d Sess. (1922); S. 727, H.R. 2903, 68th Cong., 1st Sess. (1923); S. 3331, H.R. 9826, 69th Cong., 1st Sess. (1926).

7. See Trelease, *Arizona v. California: Allocation of Water Resources to People, States, and Nation*, Kurland, The Supreme Court Review 158, 164-65 (1963).

8. Arizona v. California, Report of the Special Master 130 (1960).

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

10. A sample of congressional action is H.R. 9364, Dec. 5, 1963.

prior appropriation and equitable apportionment[11] which, in the absence of a compact,[12] are the usual doctrines that have governed judicial allocation of water between the states. Recognizing that the 1922 Compact did not settle the allocation between Lower Basin states and that the states, despite a provision in the Boulder Canyon Project Act[13] inviting a compact on this issue, failed to reach further agreement, the Court held that the Project Act and the actions of the Secretary of the Interior, authorized thereby, allocated the supply in the following manner: (1) Under section 4(a) of the Project Act, Congress provided as an alternative contingency prior to authorizing the building of Hoover Dam that six states, including California, sign the Colorado River Compact, which was already the case, and that California by legislation, which it enacted, would limit its uses to 4.4 million acre-feet per year of the 7.5 million allotted to the Lower Basin plus one-half of any unappropriated surplus. (2) Other allocations in the Lower Basin, according to the Court, were to be made by the Secretary of the Interior.[14] This judgment was based on the following sections of the Project Act and its somewhat confused legislative history:[15] (a) section 5 authorized the Secretary of the Interior to contract for storage and delivery of water to users, and these contracts were a prerequisite to any right to use water; and (b) section 8(b) provided that if the states were to agree to the previously mentioned compact regarding Lower Basin allocations, to which the Act urged them to agree, then even these compact allocations were to be subject to the Secretary's contracts entered into prior to the compact. Presumably, this provision was viewed by the Court as supporting its theory that in the absence of a further compact, allocations among the Lower Basin states, other than those

11. See Wyoming v. Colorado, 259 U.S. 419 (1922); Nebraska v. Wyoming, 325 U.S. 589 (1945).

12. There was a suggestion that even a compact must conform to equitable apportionment. In Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938), the Court stressed that the purpose of a compact was equitable apportionment and that individuals in the state cannot claim more than the state's "equitable share."

13. 45 Stat. 1058 (1928).

14. The language in this portion of the opinion is not entirely free from ambiguity. Thus, at times the Court speaks as if the Project Act somehow apportioned all of the water, with the Secretary merely carrying out the specific division demanded in the Act. Yet, the only specific division is in the proposed compact between the Lower Basin states which was not agreed to. Therefore, it seems reasonable to read the opinion as stating that aside from the California limitation the Act merely provided for a machinery of allocation. Arizona v. California, 373 U.S. 546, 593 (1963). *But see* note 37 *infra*.

15. For typical colloquy of the legislators see Arizona v. California, Report of the Special Master 156, 199 (1960).

provided for in section 4(a), were to be effected by the Secretary. That the power of the Secretary was one of allocation was further indicated by a provision that in the case of domestic and irrigation users, these contracts were to be for "permanent service."[16] (3) The authorized allocation, according to the Court, was effected by the Secretary when he made contracts with particular users in California totaling 5.362 million acre-feet annually (construed as 4.4 million plus a portion of the surplus mentioned in section 4(a)), with Arizona for 2.8 million acre-feet, and with Nevada for 300,000 acre-feet. As to shortages, the Court held that the Secretary can do as he sees fit within the limits of the purposes of the Project Act.

Subsidiary to this main aspect of the decision, but most important to the states involved, the Court decided that whether the Colorado River Compact dealt with the entire water system or just the main stream, the Project Act itself, despite its reference to the Colorado River Compact, clearly allocated only the main stream water which the Upper Basin states under that Compact were obliged to let pass through Lee Ferry, Arizona, the dividing line between the Upper and Lower Basin states. The allocation of this 7.5 million acre-feet of main stream water among the Lower Basin states was in no way to depend on the extent of the use that these states, principally Arizona, made of their tributaries.[17] The Court also decided, contrary to the Master, that the states can be charged for any diversions of main stream water between Lee Ferry and Lake Mead.[18]

In addition to allocating the water among the Lower Basin states, the Court's opinion purports to authorize the Secretary of the In-

16. 45 Stat. 1060 (1928). This requirement applies only to contracts for irrigation and domestic uses (defined to include industrial uses in art. 2(h) of the original Compact). The actual contracts contain many clauses which, if valid, would seem to permit the Secretary to reduce or perhaps even eliminate the "permanent service." See Arizona v. California, Report of the Special Master 399, 409, 423 (1960).

17. Article 3(a) of the Compact provides for 7.5 million acre-feet for consumptive use in the Lower Basin. Article 3(d) provides that ten times 7.5 million is to be allowed to pass at Lee Ferry over a ten-year period, *i.e.*, an average of 7.5 per year. The Master stated that of the 7.5 million per year passing Lee Ferry, a substantial amount will be lost on the way to the places of consumptive use. *Id.* at 144.

Whether this means the 7.5 average which must pass by Lee Ferry is to be allocated there for consumptive use elsewhere and the transportation losses are to be borne by the users, or whether this means that an amount additional to what flows at Lee Ferry must be made available somehow to the users, is only indirectly answered by the opinion through the elimination of the tributaries from the accounting between the Lower Basin states. The actual contracts measure the amount at the point of diversion. *Id.* at 403, 412, 429.

18. On the other hand, it is not clear that the Secretary has contracting power over this water. See note 37 *infra*.

terior to allocate the main stream water through his section 5 contract power among individual users within the states without any regard for the states' prior appropriation law or other state water laws. This construes the Project Act as giving him broad powers of water management which generally were thought to have been left to the states under most previous interpretations of federal laws, including the reclamation laws.[19] Of course, there had been some earlier indication that the Court might not view the power of the states to be as broad as generally believed. One such indication stressed by the Court in *Arizona v. California* was its language previously used in *Ivanhoe Irr. Dist. v. McCracken.*[20] In *Ivanhoe*, the Court held that seciton 8 of the Reclamation Act of 1902,[21] which required the Secretary to proceed in conformity with state law, did not empower a state to force the Secretary to deliver water beyond the federally imposed 160 acre limitation, and said:

> As we read § 8, it merely requires the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. But the acquisition of water rights must not be confused with the operation of federal projects.[22]

Then, quoting from *Nebraska v. Wyoming*[23] to the effect that where Congress has provided a system of regulation for federal projects it need not give way before an inconsistent state system, the Court concluded in *Ivanhoe*: "We read nothing in § 8 that compels the United States to deliver water on conditions imposed by the State."[24]

This interpretation of section 8 became important in the *Arizona* case because section 14 of the Project Act makes the Secretary subject to the provisions of the Reclamation law, except as the Act otherwise provides. Relying on the above language from *Ivanhoe*, the majority in *Arizona* held that the provisions of the Reclamation

19. See Ickes v. Fox, 300 U.S. 82 (1937); Trelease, *op. cit. supra* note 7, at 183-84, 188-90.

20. 357 U.S. 275 (1958).

21. 32 Stat. 370 (1902), 43 U.S.C. § 383 (1958).

22. Ivanhoe Irr. Dist. v. McCracken, 357 U.S. 275, 291 (1958), quoted in Arizona v. California, 373 U.S. 546, 586 (1963).

23. 325 U.S. 589, 615 (1945).

24. Ivanhoe Irr. Dist. v. McCracken, 357 U.S. 275, 292 (1958), quoted in Arizona v. California, 373 U.S. 546, 586 (1963); see also First Iowa Hydro-electric Co-op. v. Federal Power Comm'n, 328 U.S. 152 (1946).

law did not require the Secretary to follow state law in his scheme of allocation. And section 18 of the Project Act which provides that the Act shall not interfere with such "rights as the States now have" either "to the waters" or to "enact such laws . . . with respect to the appropriation of waters,"[25] was also held not to require the Secretary to follow state law. This is because the states' powers are always subject to the superior power of the federal government to control navigable waters "for purposes of flood control, navigation, power generation, and other objects" and are subsidiary to the power of Congress "to promote the general welfare through projects for reclamation, irrigation, or other internal improvements."[26]

The Court held that congressional authorization of the Secretary to allocate among individual users was mandatory and rejected a contention by Nevada that the Secretary, under the contract with it, had relinquished any power to make further individual contracts within the limits of the total amount designated in the state contract. The Court felt that such a conclusion "would . . . transfer from the Secretary to Nevada . . . the . . . power to determine with whom he will contract and on what terms."[27] Nevertheless, the Secretary's discretion is not to be unlimited. He is bound by the terms of the original Compact regarding the division between the Upper and Lower Basin states. He can not exceed the limits imposed on California by section 4(a) of the Project Act. Moreover, section 6 establishes certain priorities. The reservoir is to be used first for "river regulation, improvement of navigation and flood control," second "for irrigation and domestic uses and satisfaction of present perfected rights" (which the Court characterized as of intense importance to those who had reduced their water rights to actual beneficial use at the time the Act became effective), and third "for power."[28] Additional standards limiting the Secretary's discretion, according to the Court, were to be found in the requirement that the contracts must yield adequate revenues to recover expenses within fifty years and in the provision, previously mentioned, that contracts for irrigation and domestic use must be for "permanent service."

25. 45 Stat. 1065 (1928).
26. Arizona v. California, 373 U.S. 546, 587 (1963).
27. *Id.* at 592.
28. 45 Stat. 1061 (1928), quoted in Arizona v. California, 373 U.S. 546, 584 (1963).

This much for the major issues decided.[29] The dissenters, Justices Harlan, Stewart, and Douglas, wanted ordinary judicial allocation principles to apply. Their reading of the legislative history and the provisions of the Boulder Canyon Project Act led them to conclude that Congress did not allocate the water among the Lower Basin states nor authorize the Secretary of the Interior to do so; his contract power was merely a revenue measure. The constitutionality of delegating to the Secretary so much power without adequate standards was questioned. And Mr. Justice Douglas was especially shocked by the authorization of the Secretary to allocate water to individual users without regard to state law, which he believes is required by the Project Act and the reclamation laws. He also objected strenously, on the basis of his reading of the legislative history, to the elimination of the tributaries from the Lower Basin allocation scheme.

In this short article it is impossible to detail and evaluate these arguments. A brief estimate of the likely impact of the decision will have to suffice. First, the decision establishes congressional legislation as a device for the apportionment of an interstate stream. This possibility had been foreshadowed by many prior cases interpreting

29. The Court also accepted a compromise settlement between Arizona and New Mexico concerning conflicting claims to Gila River water. This settlement had been accepted by the Master, after he had first dealt with the dispute, on the basis of equitable apportionment.

The Court also granted claims by the United States to waters in the main stream and some of the tributaries for use on Indian reservations, national forests, recreational and wildlife areas, and other government lands and works. The Court held that claims by Indian reservations against the states need not be settled under the doctrine of equitable apportionment because (1) Indian reservations are not states, and (2) they are at any rate "governed by the statutes and Executive Orders creating the reservations." Arizona v. California, 373 U.S. 546, 594-97 (1963).

The Court held that after Arizona became a state, only the shores and lands underlying navigable waters became its property. But the broad powers of the federal government to regulate navigable waters under the commerce clause and to regulate government lands under article IV, § 3 of the Constitution remained unlimited. Under these powers, the federal government can reserve water rights for its reservations and other property, and this can be done by Executive Order. Such a reservation can also arise by implication where the lands involved are arid and water rights once reserved, if this was done before the Project Act became effective, are "present perfected rights" entitled to priority under the Act. The quantity of water involved can include the amount needed for future use. All uses of main stream water by the United States are to be charged against the state's apportionment, and the United States is not entitled, as it claimed, "to the use, without charge against its consumption, of any waters that would have been wasted but for salvage by the Government on its wildlife preserves." *Id.* at 597-601.

the ever-expanding power of Congress to control navigation.[30] But this decision, without elaborate discussion of the constitutional issue, explicitly recognizes this power for the first time. Moreover, the opinion's reference to the "general welfare" power suggests that this congressional power will, if the occasion requires, also be held to extend to nonnavigable streams or, at the very least, to the nonnavigable tributaries of navigable streams.[31]

Second, the opinion holds that the Secretary of the Interior has the power to allocate water within a state through contracts, without regard to the state's water allocation laws and under very broad standards established by federal law. While the particular resolution of the constitutional issue of improper delegation does not seem too surprising at this stage of development of administrative law, the opinion is novel in its interpretation of the usual boiler plate in federal water laws seeking to protect the rights of the states and to preserve state laws. This language is said to do no more than protect individual rights perfected prior to the federal legislation and guarantee to the states the power to regulate in ways "not inconsistent with" the legislation. In this respect, the opinion might affect not only the Secretary's power granted by the Boulder Canyon Project Act but also his powers under the Reclamation Act, since section 8 of that law was the subject of part of this aspect of the decision. As previously indicated, although earlier decisions had somewhat limited the states' powers to regulate waters under the jurisdiction of certain federal agencies, the construction adopted in *Arizona v. California* goes much further than what had generally been regarded to be the spirit of the federal laws.

From a policy perspective the outcome can be criticized for bestowing such extensive powers on the federal government and for granting to the Secretary so much authority without very strict limiting standards. Regionalism has long been a slogan even of the most advanced thinkers in water law. And extensive state allocation of water is part of the history of the West. When one adds to this the relatively conservative political climate which in recent years has made the Tennessee Valley Authority a showplace of the past rather than a model for the future and has led to the demise of a

30. See Morreale, *Federal Power in Western Waters: The Navigation Power and the Rule of No Compensation*, 3 Natural Resources J. 1 (1963).

31. See Trelease, *op. cit. supra* note 7, at 181. Trelease also mentions the power over governmentally stored waters, the treaty power, the war power, the property clause, and the power to improve the public lands. He also mentions the power to consent to compacts. *Id.* at 183.

proposed Missouri Valley Authority, there is little wonder that regionalism and state power have become synonymous. As a result, the compact was thought the best technique for attaining true regional water control, and generally in the area of allocation the federal government was to stay in the background largely in the role of a supporter and financier of the states' policies. There is little wonder that none dared to change the boiler plate about state water rights in the federal laws, despite its frequently ambiguous meaning.

The preference for preserving states' rights in connection with federal projects reflects still another, somewhat archaic, standard way of thinking about water law—that which establishes a dichotomy between problems of development and those of allocation. Yet the extent of the need for development and the type of development is affected by the type of allocation. Development costs can be reduced if the allocation is properly planned and if the conditions of use are strictly enforced. It is therefore desirable that the development of water and the regulation of its use be integrated as fully as possible.[32] Provision for compensation, so that no undue burden is placed on certain individuals for the sake of benefits reaped by other individuals or the public as a whole, can be achieved by making water rights already in use compensable if taken away and by providing for a similar scheme in water use contracts or similar devices with respect to new diversions which might later, because of new construction or needs, have to be cut down or eliminated.[33]

Of course, federal control is not necessarily a panacea. Aside from conflict between federal agencies, which was one of the chief difficulties in the Missouri Valley, the federal government might not manage water from a regional perspective. A regional perspective implies a regional unit of administration with development and allocation powers, whether it be created by compact with the federal government as a participant or by the federal government alone. Even a federally created agency can provide for state participation.[34]

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32. See Bower, *Some Physical, Technological, and Economic Characteristics of Water and Water Resources Systems: Implications for Administration*, 3 Natural Resources J. 215 (1963).

33. See Haber, *Michigan Law of Water Allocation, Part II—Evaluation: Protection of Investment, the Public Interest and State Water Policy*, The Law of Water Allocation in the Eastern United States 417, 422-29 (Haber & Bergen eds. 1958).

34. See Martin, Birkhead, Burkhead & Munger, River Basin Administration and the Delaware 141-42 (1960); U.S. Dep't of the Interior, Pacific Southwest Water Plan VI-13 (1963); Comments of the State of California on the "Pacific Southwest Water Plan" 7 (1963) (calling for establishment of Regional Commission). *Cf.* Comment,

In view of the foregoing discussion, what are the policy accomplishments of *Arizona v. California*? First, the allocation problem was transferred from the Court to the political and administrative arenas where it belongs. The Court lacks the expertise, the time, and the machinery to administer a river system. Second, the great power given to the federal government has created the leverage which will force the states to come to terms. This was a step which seems to have been necessary in the absence of judicial apportionment, in view of the long history of the conflict along the Colorado River. Third, these powers which are now said to be in the hands of the executive and legislative branches of the federal government make it possible to accomplish a fully integrated development-allocation scheme without interference of conflicting state authority. The states will have to negotiate their participation politically, and there is therefore a chance that the result may be a rational regional scheme under which no single area of the region can completely frustrate the desires and needs of the region as a whole. Fourth, that no undue share of the cost will be placed on individual users for the benefit of the entire community or for the benefit of other individuals is assured to a certain extent by the protection of "present perfected rights" and the requirement that certain contracts be for "permanent service."[35]

The *Arizona v. California* decision, like many others, is not completely free of ambiguities. Nor could it possibly deal with all hypothetical issues that might arise at a future date. For example, it is not entirely clear whether the allocation between the Lower Basin states is held to be fixed by the Project Act or by the Secretary's allocation, though most of the opinion must be read as leaning toward the latter interpretation.[36] If it is the Secretary who fixed the allocations between the Lower Basin states, can he now change these allocations even in the absence of a shortage or a surplus? Is he prohibited or restricted by the requirement that certain contracts be for "permanent service"? Does the "permanent service" requirement mean that despite exculpatory language in the contracts the Secretary can not, in the absence of a shortage, reduce or take away the water from individual users with whom he has entered into agreements? Can he do so but only upon payment of compensa-

Governmental Techniques for the Conservation and Utilization of Water Resources: An Analysis and Proposal, 56 Yale L.J. 276 (1947).

35. *Cf.* note 16 *supra*, note 37 *infra*, and text at 27, *infra*.

36. See note 14 *supra*.

tion?[37] Though the Compact calls for honoring present perfected rights, the Project Act only gives these rights a second priority after navigation and flood control requirements. Does this mean that where navigation and flood control requirements interfere with present perfected rights these must be compensated, since the Project Act is to be supplementary to the Compact? Can the Secretary contract for water diverted between Lee Ferry and Lake Mead? If not, how can he be sure the supply he contracted for below Lake Mead will be available? Does the principle of equitable apportionment still apply between users of tributary waters prior to their entering the Colorado River between Lee Ferry and Lake Mead and claims by users in California to that water?[38]

These and other issues might lead to future litigation unless Congress and the Secretary act to clarify some of the ambiguities and to fill some of the gaps. But what is more important, the *Arizona v. California* decision has opened the way for congressional action on the Central Arizona Project[39] and for ultimate adoption of a Pacific Southwest Water Plan,[40] which incorporates the Central Arizona Project and provides for state and federal construction and enlargement of the California Aqueduct to bring water from northern California to Southwestern areas. Many other features, such as a pilot desalinization plant, a water recovery and conservation program, and new projects for supplying water to Nevada, New Mexico, and certain Indian reservations, have also been incorporated in the proposed plan. Present proposals call for state advisory parti-

37. Since the writing of this article, the Court has issued its decree. Arizona v. California, 84 Sup. Ct. 755 (1964). It seems to clarify some of the doubts stated above: (1) it fixes the basic allocation between the states, thus indicating that the Secretary of the Interior does not have unlimited discretion to alter these allocations; and (2) it indicates that the Secretary's contracting power extends to water above Lake Mead.

38. This possibility is suggested by the Court's treatment of the Arizona-New Mexico dispute; see note 29 *supra*.

39. See *Hearings on S. 1658 Before a Subcommittee of the Senate Committee on Interior and Insular Affairs*, 88th Cong., 1st Sess. (1963).

40. See U.S. Dep't of the Interior, Pacific Southwest Water Plan (1963).

The Plan has been revised. See U.S. Dep't of the Interior, Pacific Southwest Water Plan (1964). The pilot plant is no longer a part of the immediate proposal. In connection with the issue of state participation, the Plan provides:

> To assure such coordination among Federal, State, interstate and local plans, consistent with the responsibilities of the Secretary of the Interior under existing Colorado River legislation and the decree in *Arizona* v. *California*, it is highly desirable that the authorizing legislation establish a regional water commission modeled, to the extent appropriate, upon that set forth in Title II of S. 1111, as supported by the Administration and as passed by the Senate.

Id. at VIII-7.

cipation. Thus, Congress is confronted with the large opportunity to integrate the water development and use control of the entire region through an authority in which the states participate, if they consent to do so, or through some similar administrative device. It should be recalled in this connection that under the decision in *Arizona v. California*, Arizona's tributaries were excluded from the accounting. From a policy perspective, it would have been improper to include them without taking into consideration California's northern waters which can be made available to southern California. But Congress could conceivably authorize allocations based on a total regional accounting system which would also take into consideration waters that can be imported from other regions.