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# **CONFLICT AND COALITION: POLITICAL VARIABLES UNDERLYING WATER RESOURCE DEVELOPMENT IN THE UPPER COLORADO RIVER BASIN**

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The political boundaries of the Lake Powell region almost defy definition. While the hydrology of the lake is limited by the river system above the lake, and the ecology of the shoreline is necessarily restricted to the land surface immediately surrounding the lake, the political boundary most certainly includes people and institutions in state capitals throughout the Southwest and in Washington, D.C. In a broader inquiry concerning decisionmaking with respect to the entire Colorado River system of which the Upper Basin is a part, the boundary may stretch as far as Mexico City as well.

Furthermore, in seeking systematic explanations of political events such as the decision to create Lake Powell with the passage of the Colorado River Storage Project Act, it must be recognized that the boundaries which presumably define the political system are highly permeable, *i.e.*, they are highly responsive to both unique and general conditions that prevail in the surrounding political, economic, and social environment. Thus, for example, a general, prevailing condition—low discount rates in evaluating benefits of water resource projects—may have facilitated the passage of the Act; similarly, a very specific circumstance—other legislators who wanted a St. Lawrence Seaway Project—may also have facilitated passage. While we may come to a more or less acceptable and accepted explanation of why events took place and results were achieved, we may find it extremely difficult to predict what the results might have been had these conditions been otherwise.

## **MODELS OF THE AMERICAN POLITICAL PROCESS**

Despite these caveats about providing systematic explanations concerning political behavior, it is nevertheless possible to provide an explanation of the politics of Upper Colorado River Basin development as a manifestation of certain patterns of political behavior. These patterns are founded in the proposition that substantive policy is the crucial independent variable which largely determines the manner in which the actors and the political institutions of American society perform. That is to say, water resources policy issues have

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been handled in a distinctive way because of the expectations of the various actors about the rewards that come from water policy.

The politics of the Colorado River Storage Project Act clearly demonstrate the validity of a paradigm of American politics first posited by Theodore Lowi. This paradigm distinguished among *distributive*, *regulative*, and *redistributive* politics.<sup>1</sup>

In its classical form, *distributive* politics involves a process of coalition-building among local interests hoping to achieve some benefit from the public treasury. These local interests strive to achieve unity on a basic legislative proposal by a process of bargaining and accommodation, thus removing any sources of conflict that will provide opportunities for resistance at the higher levels of government. This coalition then seeks to achieve its policy goals by extending its bargaining effort outside the parameters of its own adherents by a process familiarly known as "logrolling." The legislative output takes the form of financial support for projects of interest to the various localities. There is very little in the way of "policy" as an outcome since each locality receives a benefit that is peculiar to itself. This form of politics is further characterized by the relative lack of confrontation between those who gain and those who lose as a result of the adoption of the proposal. The taxpayers, who must pay the bill, seldom have an effective voice in the political bargaining. The principal actors in this political process tend to be local and state interests and public agencies, federal bureaus and committees of Congress.

*Regulatory* politics take on quite different characteristics. The battles in regulatory politics tend to concern sectoral interests rather than local interests. These sectoral interests might be and usually are economic, but they may be aesthetic, religious, or fraternal. The battles tend to be fought by national associations, and the issue is public policy as well as specific project elements. The struggle is more open because the winners and the losers are more obvious. The implications for both producer and consumer cannot be so easily hidden and the spokesmen for each side endeavor to broaden the conflict in order to obtain allies. Principal actors, in addition to the national associations, are the two houses of Congress rather than their committees and occasionally the President. The resolution of the conflict, after intense bargaining, may take the form of a victory for one side or the other or some form of compromise. The output

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1. Lowi, *American Business, Public Policy, Case Studies and Political Theory*, 16 World Pol. 186 (1964); Lowi, *Four Systems of Policy, Politics and Choice*, 32 Pub. Ad. Rev. 298 (1972).

of this process is a policy which states the terms of the bargain achieved and provides the baseline for future political combat.

The third form of politics is *redistributive* and concerns shifts in the general incidence of benefits and burdens in society. The subjects for redistributive politics tend to concern levels and rates of taxation, tariffs, levels of public spending and welfare programs. Principal participants in this process tend to be the President and both houses of Congress, the Office of Management and Budget, and major peak associations such as the trade union federations and the national Chamber of Commerce. It must be recognized that all forms of politics have *redistributive effects*, but in redistributive politics the principal focus of conflict concerns deliberate efforts to achieve redistribution of the goods and services of society.

### THE COLORADO RIVER STORAGE PROJECT

The politics of the Colorado River Storage Project involve both distributive and regulatory politics. It is clear that the proponents of the Project desired above all else to have the Project considered within the distributive framework because that framework provided the maximum political leverage through the quiet accommodations that have traditionally characterized water politics in the United States. On the other hand, the inclusion of a project to construct a dam at Echo Park within the Dinosaur National Monument led to a prolonged and highly visible political battle in which the proponents found that they no longer had the necessary political resources with which to achieve an accommodation.<sup>2</sup>

#### A. Historical Context

The context of the struggle is well known and requires little elaboration here. The Upper Basin states, at the conclusion of World War II, were anxious to exercise their claims upon the waters of the Colorado River system. They had obtained what was in effect a promissory note for development in the Colorado River Compact of 1922<sup>3</sup> which was finally implemented through the Boulder Canyon Project Act of 1928.<sup>4</sup> This promissory note reserved to the Upper Basin an average annual flow of 7.5 million acre-feet of water from

2. For extended treatments of this controversy, see O. Stratton & P. Sorotkin, *The Echo Park Controversy* (1959); see also R. Baird, *The Politics of Echo Park and Other Development Projects in the Upper Colorado River Basin*, 1960 (Ph.D. dissertation, University of Illinois); R. Nash, *Wilderness and the American Mind* (1967); E. Richardson, *Dams, Parks and Politics* (1973).

3. Nov. 24, 1922, 70 Cong. Rec. 324 (1928).

4. 43 U.S.C. § 617-617v (1970).

the Colorado River. The Upper Basin had been growing more slowly than Southern California, and this agreement therefore provided a guarantee against almost complete appropriation by California of the river system's water under the law of prior appropriation.

The Bureau of Reclamation provided the impetus for serious consideration of Upper Basin development projects when in 1946 it published its study, *The Colorado River*.<sup>5</sup> This study did at least two things: it catalogued possible development projects and made it clear that there was not enough water to make all the projects feasible. Moreover, the report made explicit the premise that no projects would be developed in the Upper Basin unless the states of the Upper Basin achieved an agreement concerning utilization of the waters of the river in the Upper Basin.

### *B. Upper Basin Bargaining*

Thus, the opportunity and impediment contained in the Bureau's report were powerful stimuli to action in the Upper Basin. This action took the form of creating an Upper Colorado Compact Commission for purposes of writing an interstate compact. Over a period of two years the commissioners engaged in intensive discussion and negotiation over different approaches to the allocation problem. The Bureau of Reclamation was available to provide technical assistance as well as policy advice.<sup>6</sup>

Negotiations centered on the allocation of water but also on the implications of reserved Indian rights and the specific manner in which each state's interest might be realized. Colorado was especially torn: it wanted very hard to get Upper Basin projects authorized and was therefore willing to be flexible, but it also felt that Colorado deserved a lion's share of the water since it produced about 70 percent of the water. The formula the commissioners arrived at in allocating Upper Basin water was the following:<sup>7</sup>

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5. H.R. Doc. No. 419, 80th Cong., 1st Sess. (1946).

6. For an excellent discussion of these negotiations, see J. Muys, *Interstate Water Compacts: The Interstate Compact and Federal-Interstate Compact* (Nat'l Water Comm'n Legal Study No. 14, 1971). The ambivalent position of the Bureau was nicely stated by the Commission's engineering adviser from the Bureau: "As an engineer, I would like to see all the facts gathered. As a promoter and a member of the Bureau of Reclamation, I would like to see the States come to a quick agreement, select a list of projects and give them to the Secretary of the Interior and say, 'Mr. Secretary, we have agreed among ourselves we can build these projects that will use up "x" amount of water, and we will not squabble up to here. We can surely build these amounts of projects.'" Upper Colo. River Compact Comm'n, 2 Official Record 22 (Meeting No. 5, Dec. 1-4, 1947).

7. Upper Colorado River Compact, art. III(a)(2), 63 Stat. 31, 33 (1949).

Colorado	51.75%
Utah	23 %
New Mexico	11.25%
Wyoming	14 %

Of particular importance was the issue of water for the Central Utah project. With serious questions about the availability of water of adequate quality from the Green River, Utah demanded and received 500,000 acre-feet annually from the Yampa River in Colorado. For this water to be effectively used in Utah, a dam at Echo Park would be necessary. Thus, the proposed Echo Park proposal became in effect a part of the Compact. Since Indian rights were unquantified, and no one was prepared to quantify them, it was impossible to allocate those rights.

Agreement on the Compact was obtained without difficulty from the legislatures of the four compacting states and thus the way was cleared for development of a project proposal by the Bureau of Reclamation. The Bureau endeavored to work very closely with the water development agencies of each of the four states and with the Compact-created Upper Colorado River Commission. In fact, the states for the most part established their priorities with respect to projects and the Bureau endeavored to develop a plan which would accommodate their preferences. As expressed by a Bureau official at a meeting of the Commission,

After all, the Bureau is in the position of asking you states to help us. Sometimes we admit we are [not?] all-powerful, but down deep in our hearts we know we are not all-wise, either. We want your recommendations. [To the New Mexico representative] If you think Martinez should be there, don't be bashful.<sup>8</sup>

Bashful they were not, but their assertiveness depended very much on their ability to reconcile sometimes serious differences within their own states. It was one thing to obtain agreement on general outlines of water allocations among states, particularly for the purpose of getting federal support, but it was quite another thing to get agreement on within-state allocations of those waters. Transbasin diversions provided a principal focus for these conflicts. In Utah, the controversy concerned diversions from the Green River system to Central Utah and the impact of such diversions on irrigation development in the eastern portion of the state. In Colorado, the conflict concerned the interest of the city of Denver in obtaining an additional supply of water from the Blue River in the Colorado River system; controversy over the Fryingpan-Arkansas project; and

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8. Upper Colo. River Comm'n, 1 Official Record 57 (Meeting No. 3, Oct. 29, 1949).

disputes over the location and size of a dam and reservoir on the Gunnison River, the Curecanti Unit. In New Mexico, the debate concerned the proposed diversion of water from the San Juan River to the Rio Grande system for purposes of supplying it to developing municipal and industrial interests in Albuquerque. Resolution of these conflicts was imperative if Upper Basin interests were to obtain consideration of their basic proposal for basinwide development. Congress, and particularly the House Interior and Insular Affairs Committee, took a dim view of projects on which local support was not close to unanimous. Governor Thornton of Colorado put it this way:

Thus, we are at the crossroads. Is Colorado to act as a unit in supporting a program which will be fair and equitable to all areas in the State, or is Colorado to have dissension with each region seeking only that which appears to favor it the most. . . . Our future is at stake. I have great fear as to our success in securing any one of these projects which I have mentioned in the event there is substantial opposition from within Colorado.<sup>9</sup>

In the short space provided here it is impossible to provide a detailed history of the specific compromises reached within each state. There was intense bargaining in each state and among the states, with the Bureau of Reclamation nurturing agreement by fact-gathering and analysis. The concerns of Eastern Utah were met by the agreement on the waters of the Yampa. The debates within Colorado continued for several years, resulting in: (1) a court suit,<sup>10</sup> the result of which was ultimately recognized by Congress,<sup>11</sup> allowing Denver to obtain a quantity of water from the Blue River; (2) a decade-long controversy within Colorado and in Congress over Fryingpan-Arkansas with its ultimate approval in 1962;<sup>12</sup> (3) reduction in size of the Curecanti Unit and recalculation of the benefit-cost ratio to make it a feasible project for inclusion in the Colorado River Storage Project; and (4) a sharing of shortage formula in New Mexico which gave recognition to the in-basin and out-of-basin interests in the waters of the San Juan River.<sup>13</sup> None of these agreements came easily, and some of them were still being negotiated when Congress took up the Storage Project in 1954.

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9. Colo. Water Conservation Bd., 1973 Minutes of Meetings 94 (Meeting No. 60, Feb. 16-17, 1953).

10. *United States v. Northern Colo. Conservancy Dist.*, Civil Nos. 2782, 5016, 5017 (D.C. Colo. 1955) (unreported decree).

11. 43 U.S.C. § 620j (1970).

12. 43 U.S.C. §§ 616-616f (1970).

13. *See* 43 U.S.C. § 620a (1970).

### C. *The Conflict Over Echo Park*

Inclusion of the proposed dam at Echo Park made a major struggle with conservationist groups inevitable. However much the Upper Basin spokesmen might insist that Echo Park was the "piston" that drove the engine of the Project, however much they might argue that Echo Park was the most economical part of the Project, both from a monetary and an evaporation standpoint, however much they might argue about its positive benefits for recreation and fishing, the conservationists would have none of it. This was regulatory politics in its classic mold: two major combatants linked in combat with little or no possibility of compromise on the principal issue or of disaggregating the benefits. The major conservation organizations took up the invasion of the Dinosaur National Monument as an attempt to violate holy ground, and, while they might register skepticism concerning the economic feasibility of the project, their outright opposition and national campaign was aimed at total elimination of any works of man in the Monument.

It was not as though no effort was made to find some way out. When the first outlines of the proposed project became known in 1949, both the proponents and the conservationists saw the conflict coming. By 1950 it had resulted in a formal hearing conducted by the Secretary of the Interior.<sup>14</sup> Secretary Oscar Chapman, a highly political official who liked compromises and not battles, temporized, vacillated, seemingly reversed himself, and finally got out of the controversy by getting out of his job when the Eisenhower Administration took office in 1953. Meanwhile, delegations from the Upper Basin states and members of Congress from that region kept up a drum beat of public and private pressure on the Department of the Interior and the Bureau of Reclamation to move the project onto the legislative calendar. It was only after a new leadership group entered Interior and the Under Secretary of the Interior made a specific study of the Echo Park question that the Administration became fully committed to that project and supported its inclusion in legislation introduced into Congress.

The intensity of the opposition by the conservationists reflected their protective concern for Echo Park but also their concern for the sanctity of national parks. The invasion of the Monument, if successful, was considered a harbinger of future invasions when the magical goal of economic development was used as justification. The specter

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14. U.S. Dep't of Interior, Transcript of Proceedings in the Matter of Dinosaur National Monument: Echo Park & Split Mountain Dams (1950).

of Hetch Hetchy<sup>15</sup> was trotted out regularly as a horrible example of what might happen. The battle to save Echo Park became the struggle of the generation to save a part of America's hallowed heritage.

#### *D. Opposition on Other Grounds*

Leaving the Echo Park controversy aside, the Upper Basin Storage Project as a system of storage and power dams, combined with a series of irrigation projects in the Upper Basin, encountered little or no opposition. The opposition it did receive came primarily from California and on quite other grounds. One might have expected a project costing inevitably well over \$1 billion to encounter some very heavy weather simply because of its fiscal impact and the amounts of subsidy required. Certainly there were those who raised those questions—most notably Raymond Money in the popular press—but it cannot be said that the project was seriously in danger at any time because of its economic features. The issues were there—interest-free money, low interest rates in calculating costs and benefits, use of power revenues to subsidize irrigation projects that could not possibly sustain themselves without a subsidy, questionable benefit-cost ratios, long pay-out periods, opportunity costs in using the money for this kind of investment, value of the land after development, costs per acre for development—and, although they were raised, few appeared to take the issues seriously as the bases on which a decision should be made. The only spirited attack on the economics of the Project was made by Senator Paul Douglas in floor debate, and it appears that the effect was negligible.<sup>16</sup>

The reason seems clear: irrigation projects financed by federal funds were part of the “expected” or “accepted” output of the political system. As other areas received assistance in the development of inland waterways, or in agricultural subsidies, or in military bases and defense contracts, the West received its due in the form of irrigation projects. In addition, there remained an aura about irrigation as an almost mystical technological and sociological process that led to economic development, to the opening up of the frontier, to further opportunities for the small farmer. Finally, it may be argued that water projects in general, whether in the West or the East, have been a kind of common currency in politics. Support for water projects in one area would be traded for support for water projects in another area. Or they could be traded for votes on issues wholly unrelated to water projects. Thus, an attack on one of these

15. For a brief account of the Hetch Hetchy controversy, see 14 *Natural Resources J.* 431, 440-41 (1974). [Ed.]

16. 101 Cong. Rec. 4573 (1955).

projects invited an attack on all of them, and such a battle was to be avoided at all costs.

Southern California interests and members of Congress from Southern California were dedicated opponents of the Storage Project. Their opposition was clearly self-interested and the stubbornness of their opposition may have been too extreme to have much credibility. Moreover, they were fighting against a sense of equity for the various parts of the Colorado Basin. There was strong feeling in the Upper Basin that Southern California had profited enormously from federal assistance in the construction of Hoover Dam and that it was now the Upper Basin's "turn." Whatever the justice or the merits of the position from which Southern California argued, its principal goal was to buy time. Every year that they could delay the development of the Project was an additional year that Southern California interests could enjoy the benefits of waters that were arguably the legal entitlement of the Upper Basin States.

The legal claims of California were numerous and cannot detain us long here. They were being fought out in the courts in the case then pending before the Supreme Court, *Arizona v. California*. The issues concerned both the interpretation of the Colorado River Compact and the significance of contracts entered into by the Secretary of the Interior with the Metropolitan Water District of Southern California and other public agencies for the delivery of water. Southern California argued that Congress should make no decisions on questionable legal assumptions regarding entitlements to water. The arguments fell substantially on deaf ears because the Upper Basin could rather convincingly demonstrate that the Storage Project being considered by Congress could not possibly interfere with established California rights even with their most expansive definition. The ultimate resolution of this legal battle came in the 1963 decision of the Supreme Court in which it generally found against California and imposed more severe limits on its use of Colorado River water.<sup>17</sup>

### *E. The Role of Presidents*

Presidents do not often play important roles in water resource development policy, partially because they have other duties of higher priority, but usually because they recognize that if they are opposed to a given project or set of projects, their opposition may be overridden by a Congress and a group of nominally subordinate agencies, both of which jealously guard this realm of so-called "pork." As Harold Ickes so characteristically expressed it with regard to the

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

Army Corps of Engineers, it is "mutiny *for* the bounty."<sup>18</sup> It may be noted that among the very few presidential vetoes overridden by Congress in the last two decades, a substantial number have been on water project bills.

On the other hand, if the President favors a project, his support may be very influential indeed. President Truman appears to have favored Upper Basin development, although his interest appeared to correspond with pressures brought on him by Upper Basin members of Congress who wanted support for the project as a means of bolstering their reelection campaigns. He did not appear to impose much pressure on Secretary Chapman nor did he do much to restrain the Bureau of the Budget in its efforts to impose greater economic rationality in the evaluation of the project proposals. And in the election campaign of 1952 he implied that all dam-building and power and reclamation projects would come to an end if a Republican Administration came to power.<sup>19</sup>

President Eisenhower, on the other hand, gave strong support to the Upper Basin Project. The reasons for this support are not entirely clear, but a number of explanations seem reasonable. One is that he simply shared the ethic of water resource development, perhaps gained in his early life in Kansas. Another is that he recognized the political importance of the Rocky Mountain States and the power they represented in Congress in such men as Millikin, Johnson, and Aspinall of Colorado, Anderson and Chavez of New Mexico, and Watkins and Bennett of Utah. The Democrats plus Millikin were men of vast experience and influence in the Senate and House and the new Republicans were men upon whom Eisenhower would have to depend in getting his legislative program through. Cementing this support, although probably not instrumental in obtaining it, was Senator Watkins' role in carrying the President's successful immigration legislation through the Senate and in helping to dispose of the problem of Senator Joseph McCarthy through the censure recommendation that came out of his select committee.

Whatever the reasons, President Eisenhower removed the roadblock in the Bureau of the Budget and gave firm administrative support at crucial stages in the legislative process. Notable in this regard was his inclusion of a statement urging passage of the project legislation in early 1956 as a part of his announcement that he would run for a second term.

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18. Ickes, *Foreword* to A. Maass, *Muddy Waters* at xiv (1951).

19. Remarks of President Truman, Dedication of Hungry Horse Dam, Sept. 1952, *quoted* at 99 Cong. Rec. 7438 (1953).

*F. The Role of Congress*

The structure of Congress was receptive to presidential support. The Interior Committees of each house were and are today primarily Western committees; the Senate Committee almost exclusively so. Approval in the Senate was an almost certainty because of the bias of representation for the West in that body and the stature of the Western members. Approval in the House was more problematical both because the House Committee was torn by conflicts and because the House is less responsive to a single geographical interest than the Senate. On the House Committee were powerful spokesmen for the opposition: Saylor of Pennsylvania who took up the conservationist cause and Hosmer of California who promoted the interests of California.

The importance of Saylor and Hosmer, particularly the former, lay in their ability to articulate for the other members of the House the concerns they had about the legislation being considered. Moreover, Saylor worked very carefully with the conservationists in their movement to broaden the arena of conflict beyond the ordinarily quiet recesses of the House Interior Committee. Thus, at crucial times it became painfully apparent to the proponents that the Upper Colorado Storage Project bill would not pass the House of Representatives if it contained a dam at Echo Park. The Committee was therefore faced with the options of removing Echo Park from the bill in Committee and thus facilitating its passage by the House, or reporting it with Echo Park and either having Echo Park stricken on the floor or seeing the entire bill go down in defeat.

*G. Consideration in Congress*

The fragile agreement put together by the Bureau of Reclamation and the Upper Basin States called for the authorization of two major power and storage dams—Glen Canyon and Echo Park—and authorization of 12 irrigation projects which were called participating projects.<sup>20</sup> Glen Canyon Dam was the so-called “cash register” of the entire project in that it would produce the greatest proportion of revenue, a considerable portion of which would be used to pay off the costs of the irrigation projects. The latter, taken together, would pay only approximately 12 percent of the costs of their own development. Thus, the purchasers of power would subsidize the irrigation projects. Of the 12 participating projects, the largest by far was the Central Utah Project which would require 74 percent of the funds

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20. The Administration proposal was actually made known after the House hearings had begun. The House had already before it bills sponsored by Upper Basin interests.

authorized for irrigation projects. Water would be supplied to 143,360 acres of new land and as a supplement to 242,930 acres already under irrigation.

That none of the proponents was entirely satisfied with the Administration's proposal is indicated by the introduction, with Upper Colorado River Basin support, of legislation that would have authorized several more dams and irrigation projects.<sup>21</sup> Altogether, the Bureau had identified ten power dams in the Upper Basin, and there were a host of other potential irrigation sites that would have to be developed later.

In 1954 and 1955 lengthy hearings were held on the various legislative proposals.<sup>22</sup> Extensive testimony was taken from the proponents, Upper Basin people who remained unreconciled with the original proposal, conservationists, spokesmen for California, and even a critic from the Hoover Commission that questioned the economics of the Project. It cannot be said that many minds were changed in the process, although the ranking Democrat on the House Interior Committee, Clair Engle, did finally become a convert. One suspects his conversion was in part a willingness to see the Upper Basin use their water as they saw fit but in larger part a reflection of the fact that he was interested in getting votes for the Trinity Project in Northern California.

Evidence obtained from those participating in the legislative phase of the effort to pass the Storage Act indicates that they put on an intensive and extensive propaganda and lobbying campaign to gain its passage. The effort was coordinated through the Upper Colorado River Commission with Ival Goslin serving as the chief of staff and working under the direction of Congressman Wayne Aspinall and a small committee of Upper Basin legislators.

Within Congress, it appears that key legislators such as Dennis Chavez, a power on the Senate Appropriations Committee, used their muscle to get favorable votes. By reminders of past favors and future needs, they were able to convince otherwise neutral or perhaps mildly negative colleagues of the merits of the Project. It is difficult to say how many votes were won in this way, but it is clear that Upper Basin found this legislation of such vital importance that they spent their political capital profligately to obtain a favorable result.

Similarly, outside of Congress, individuals from the Upper Basin

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21. H.R. 4443, H.R. 4449, H.R. 4463, 83d Cong., 2d Sess. (1954).

22. *Hearings on the Colorado River Storage Project Before the Subcomm. on Irrigation & Reclamation of the House Comm. on Interior & Insular Affairs*, 84th Cong., 2d Sess. (1954-55); *Hearing on the Colorado River Storage Project Before the Subcomm. on Irrigation & Reclamation of the Senate Comm. on Interior & Insular Affairs*, 84th Cong., 1st Sess. (1954-55).

who had contacts with political and economic interests outside the Basin were asked to intervene in behalf of the Project. Delegations were sent on forays into other parts of the country in search of constituencies that could influence their legislators. Again, the results of such tactics are uncertain but the proponents were convinced both of the necessity of trying and of the marginal success of their efforts.

#### *H. Continuing Internal Dissent*

While the major focus of conflict was the controversy over Echo Park, continuing dissatisfaction in Colorado provoked a serious rupture in the united front the Upper Basin was striving to maintain. Former Senator and then Governor "Big Ed" Johnson vigorously attacked the Administration bill for its failure to give Colorado its due in terms of projects and expenditures.<sup>23</sup> He found the building of Glen Canyon Dam of little benefit to Colorado since it supplied no water and little revenue for the state's few projects. He insisted that serious consideration be given to the inclusion of a long list of projects that he believed justified authorization. The fact that they had not been adequately investigated by the Bureau of Reclamation only increased the sense of outrage that he and his fellow Coloradans felt at the way they were being treated in the legislation before Congress. He argued that Colorado might be better off seeking authorization for individual projects, rather than participating in an inequitable basinwide arrangement.

It may well be that Governor Johnson's well-advertised attack on the Administration's proposal was little more than a ploy to dramatize Colorado's long-term interest in getting additional funding. Certainly he was bought off rather inexpensively through the device of adding a large number of priority planning projects to the legislation.<sup>24</sup> These were nothing more than statements in the legislation that these projects—then little more than a gleam in someone's eye—should be given priority in future investigations.

But this mild protest took on more serious proportions toward the end of 1955 when it appeared that final passage was in the offing. Governor Johnson then contended that the power revenues derived from the Project be distributed to each state in accordance with a formula based on the allocations of water under the Colorado River Compact. Since Colorado received 51 percent of the water, he maintained, Colorado should get 51 percent of the funds. This position

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23. *Hearings on the Colorado River Storage Project Before the Subcomm. on Irrigation & Reclamation of the Senate Comm. on Interior & Insular Affairs*, 84th Cong., 1st Sess. 824 (1954-55).

24. Colorado River Storage Project Act § 2, 43 U.S.C. § 620a (1970).

clearly threatened to wreck the entire basin project since there would not be enough money left over to finance projects in other states. This was a particular threat to New Mexico and the Navajo Project which would take a very sizable amount of Colorado River Storage Project revenue. There ensued an intense period of negotiation in which Ival Goslin, the Executive Secretary of the Upper Colorado Commission, played a crucial role, the result of which was an agreement on the part of the four Upper Basin States that the power revenues would be distributed according to the following formula:

Colorado	46%
Utah	21.5%
New Mexico	17%
Wyoming	15.5%

And, by a marvelous maneuver, the cost of Navajo Dam was made completely nonreimbursable, *i.e.*, a charge completely on the federal treasury. These Santa Fe accords demonstrated the intensity of the feeling that some accommodation had to be made in the quest for a project and the fundamental bargaining nature of the political system by which such accommodations are achieved.

### *I. The Price Tag*

One of the concerns of the proponents was that the price tag of the Project would scare away many potential supporters. Some early versions of the Project legislation clearly carried a billion dollar plus price tag and opponents such as Senator Paul Douglas made much of this allegedly exorbitant cost.<sup>25</sup> One way to avoid such a high figure was to exclude participating projects and storage and power dams that would run up the cost. Another way was simply to pare down the authorized expenditure figure, counting on the fact that later Congresses would feel compelled to increase the authorization. The administration had recommended a bill which would authorize an expenditure of \$950,000,000.<sup>26</sup> The figure finally arrived at, in the last instance by simply reducing by 10 percent the estimated cost and not including funds for the Curecanti Unit, was \$760,000,000.

### *J. The Elimination of Echo Park and Final Passage*

The principal stumbling block—Echo Park—impeded action in the House of Representatives for two full years. In 1954, the House Interior Committee reported a bill with Echo Park in it by a vote of

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25. 101 Cong. Rec. 4573 (1955).

26. Bureau of Reclamation, U.S. Dep't of the Interior, Reclamation Project Feasibility and Authorization 188 (Supp. 1968).

13-12, but it died in the House Rules Committee because Interior Committee sponsors recognized that it was unlikely to pass if it came up for debate. The Senate, after its Interior Committee had reported a bill by a margin of 13-1, simply deferred further consideration in view of the House difficulties. In 1955, the Senate passed the bill by a vote of 58-30 after defeating an amendment to delete Echo Park by a vote of 52-30.<sup>27</sup> In the House of Representatives, the Committee remained in serious conflict. The deadlock was broken when Congressman Wayne Aspinall, upon being advised by Ival Goslin that no bill with Echo Park in it would pass the House, moved its deletion. This was approved by a vote of 14-8 in the Subcommittee and ratified by the full Committee. Once again the bill was before the House Rules Committee but again debate was postponed because of uncertainties regarding the revenue allocation formula noted above and conservationist concern that any decision to delete Echo Park in the House be reversed in the process of negotiation with the Senate in the conference committee.

The conservationists remained intransigent on Echo Park and it was the proponents who finally gave way. Leading figures in the Upper Basin—senators, members of the House, governors, and members of the Upper Colorado River Commission—met in Denver in November 1955. Greeting them that fall day was a full page advertisement in the *Denver Post* paid for by the Council of Conservationists who had conducted an effective national lobbying and advertising campaign against the bill with Echo Park in it.<sup>28</sup> The advertisement stated, "May we have it clearly understood, once and for all that the conservationists who have been leading this battle are NOT anti-reclamationists, and are NOT fighting the principle of water use in the West?" The conservationists then pointed out the economic weaknesses of the project bill and implicitly threatened to broaden their attack if their demands that Echo Park be deleted were not heeded.

The supporters at last realized what Congressman Aspinall had long recognized: that Echo Park was dead. They agreed to its permanent deletion and also approved language that would protect Rainbow Bridge National Monument and would prevent authorization of any project that would invade a national park or monument. In an exchange of correspondence between the Council of Conservationists and Senator Clinton Anderson the agreement was made firm and the

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27. 101 Cong. Rec. 4806 (1955).

28. Reprinted in *News Items of Interest*, 1955 *The Living Wilderness* 24 (Winter/Spring 1955-56).

Council complimented the Upper Basin proponents upon the adoption of the broader protective language.

With these compromises achieved, the final resolution of the conflict was no longer seriously in doubt. There remained irreconcilables from California and those who disliked supporting irrigation agriculture with public subsidies, but these were insufficient in number to constitute a substantial challenge. Legislative leadership of both parties gave their support to the modified bill and it passed the House of Representatives on March 1, 1956 by a margin of 256-136. Differences of a rather substantial nature were subsequently resolved by a conference committee and the conference report was approved by both houses on March 28 and signed by President Eisenhower on April 11, 1956.

### SUBSEQUENT LEGISLATION

As controversial as the Colorado River Storage Project was, upon passage it quickly became settled policy, and it moved forward rapidly into the detailed planning and construction phase. By 1963 Lake Powell was completed and, upon reaching an adequate storage level in September 1964, began producing power and power revenue for the remainder of the Project elements. Progress on other participating projects also took place. Flaming Gorge was completed somewhat earlier and produced its first power in November 1963.

Without conservation or environmental issues to catalyze opposition to water development, the legislation proposed subsequent to the passage of the Colorado River Storage Project Act passed with almost no opposition. The accepted ethic of water development and federal financial support for it in the West dominated the proceedings so that opposition was effectively muted. In the case of water development for the Indians, there was recognized a special obligation to contribute to their economic well-being by exclusively federal funding which, at the same time, continued to preserve precious Upper Basin development funds for projects in non-Indian areas.

#### *A. San Juan-Chama and Navajo Projects*

State and local groups that had not obtained authorization of their projects in the original legislation continued to press their claims for consideration on the Bureau of Reclamation and on Congress. In 1962 the long negotiations over the waters of the San Juan River bore fruit with the passage of legislation authorizing over \$220 million for the construction of the Navajo Indian Irrigation Project

and the San Juan-Chama Diversion Project.<sup>29</sup> The \$135 million for the Navajo irrigation project would be nonreimbursable to the federal treasury while the \$85 million for the San Juan-Chama project would be largely reimbursable from municipal and industrial users. Whatever opposition remained after inter-basin conflicts had been resolved within New Mexico had principally to do with the economics of the projects, but this opposition was relatively mild and final passage in each house was by a voice vote.<sup>30</sup>

### *B. Fryingpan-Arkansas*

Eastern slope interests in Colorado continued to seek passage of the Fryingpan-Arkansas project which would bring Colorado River system water into the Arkansas River system. Since the Fryingpan is a tributary of the Colorado River, transmountain diversions raised issues for western slope interests and for interests as far removed as California because of the increasing burden being placed on the quantities of water in the Colorado River and because of the threats to water quality. Nevertheless, by 1962, the legislation was passed essentially because eastern and western slopes were able to resolve their differences by means of a "sweetener," to use Congressman Hosmer's term, for western slope interests in the form of authorization of Ruedi Dam and the prospect of developing an irrigation project at Basalt. Moreover, strong Republican states in the West overcame conservative opposition. *Congressional Quarterly* reported that when the House Rules Committee first considered the bill, it was rejected by a vote of 6-8 with the Republican members voting solidly against it. But when Republican incumbents from the Western States, Western Republican candidates for the Congress and Western Republican governors brought pressure on the Republican leadership, the five negative Republican votes on the Rules Committee switched to "yea."<sup>31</sup> Once the sweetener was agreed upon, the project was approved in both houses by voice votes.<sup>32</sup>

### *C. Three Colorado Projects*

In 1964, three additional projects were brought before Congress, the Savery-Pot Hook, Bostwick Park, and Fruitland Mesa projects. The first is on the Colorado-Wyoming border and the other two are in Colorado. The hearings reveal virtually no opposition to the projects except an occasional reference to the costs and the benefits

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29. 43 U.S.C. § 615ü-615yy (1970).

30. For a summary of action on this bill, see 18 Cong. Q. Almanac 469 (1962).

31. For a summary of action on this bill, see *id.*, at 472.

32. *Id.*

forthcoming. Those opposed to the economic features of the projects probably sympathized with an expression of Representative James Haley of Florida who at one point in the hearings on these projects stated:

Mr. Chairman, I see no use of continuing these hearings. Apparently any information or data that you might gather here is just a waste of time; and we can save the reporter's time and go on with some other project, and let them vote them all out and make no record. The committee has made up its mind and it is a useless gesture here in going through it.<sup>33</sup>

These projects passed both houses of Congress by voice vote and with very little vocal opposition.<sup>34</sup>

#### *D. Colorado Basin Project Act*

Upper Basin interests were also deeply involved in the major water resource controversy of the 1960's: the battle over the Central Arizona Project (CAP). In general terms, it may be said that the Upper Basin States supported Arizona in its quest for authorization of the CAP. Arizona had long given its aid to the Upper Basin States, and the latter's support was expected payment on the debt.

The focus of this legislation was on proposed dams above and below the Grand Canyon. These dams were to provide the revenue to finance the CAP and the power to pump the water into the Central Arizona area. The conservationists, as with Echo Park, would have none of either dam. Marble Canyon Dam would reduce the flow of the Colorado River within the Grand Canyon substantially and thus reduce the quality of the experience in seeing the agent that created the Grand Canyon. Bridge Canyon Dam would back water up through the Grand Canyon National Monument and into the national park.

While this battle was being fought vigorously both in Congress and in the national media, and while various compromises were being struck which would permit the authorization of CAP, Upper Basin legislators were quietly obtaining additional projects for themselves. It may almost be stated that the price of support of CAP on the part of the powerful legislators such as Wayne Aspinall and Clinton Anderson was approval of the projects they were sponsoring.<sup>35</sup> Colo-

33. *Hearings on H.R. 3672 & H.R. 3771 Before the Subcomm. on Irrigation & Reclamation of the House Comm. on Interior & Insular Affairs*, 88th Cong., 2nd Sess., pt. 2, at 142 (1964).

34. For a summary of action on this bill, see, 20 Cong. Q. Almanac 501 (1964).

35. See H. Ingram, *Patterns of Politics in Water Resources Development: A Case Study of New Mexico's Role in the Colorado River Basin Bill* (1969).

rado obtained authorization of five projects, some of which had not even been approved by the Bureau of the Budget. New Mexico got Hooker Dam. Utah got conditional authorization for another unit of the Central Utah Project and reauthorization (with more money) for the Dixie Project in the Lower Basin. It may be recalled how grievously wounded Colorado felt in getting so few projects out of the original Colorado River Storage Project. As described by a contemporary observer, it was literally, "You vote for my project and I'll vote for yours."<sup>36</sup> And, as Helen Ingram wrote in describing this legislative battle, no questions of principle—such as priorities, costs, direction of development—could be raised because "to raise such an issue was to threaten the cohesion which made negotiation among different power centers possible at all."<sup>37</sup>

### E. The Upper Basin Today

Many of the storage and power units and the participating projects are now completed while a number yet remain under construction or in the planning stage. Tables I and II give some relevant information

TABLE I

Storage Units—Colorado River Storage Project—as of June 30, 1972

Unit	State	Cost Originally Authorized (millions)	Total Cost (estimated) (millions)	Ultimate Plant Capacity (KW)	Power Generated F. Y. 1972 (KWH millions)
Curecanti	Colorado	88.6	153.5	208,000	599
Flaming Gorge	Utah-Wyoming	83.1	74.9	108,000	676
Glen Canyon	Arizona-Utah	421.0	297.9	950,000	3,799
Navajo	New Mexico	36.6	42.4	—	—

about the Project as of the end of fiscal year 1972. Of the presently authorized storage units, only the Curecanti is not yet fully developed, with the third unit, Crystal, not yet under construction. A number of participating projects, especially those authorized by the Colorado River Basin Act,<sup>38</sup> are not yet under construction and two—Dallas Creek and Savory-Pot Hook—have been deferred. The Pine River project was deauthorized in 1968.

As an exercise in distributive politics, the Project has some interesting features. In terms of money spent and size of project, Utah has clearly received the better of it. The Bonneville Unit receives the

36. See 24 Cong. Q. Almanac 813 (1968).

37. Ingram, *supra* note 35, at 37.

38. 43 U.S.C. § 1501-1556 (1970).

TABLE II  
Participating Projects—Colorado River Storage Project—as of June 30, 1972

Project	State	Cost Originally Authorized (millions)	Total Cost (estimated) (millions)	Reimbursed by UCRBF (1) (ultimate) (millions)	Average Crop Value/acre (FY 1971)	Prin- cipal Crop
Bostwick Park	Colorado	3.850	9.057	5.706	93.92	forage
Bonneville Unit	Utah	219.511	456.605	141.076	--	forage
Jensen Unit	Utah	1.787	11.601	2.177	--	
Vernal Unit	Utah	7.048	10.174	7.409	86.50	forage
Eden	Wyoming	2.445	11.220	9.628	39.75	forage
Emery Co.	Utah	9.883	15.662	9.131	76.90	forage
Florida	Colorado	6.964	11.273	7.679	96.20	forage
Fruitland Mesa	Colorado	27.185	40.776	33.845	(2)	
Hammond	New Mexico	2.310	7.205	6.303	133.99	forage
Lyman	Wyoming-Utah	10.624	16.944	11.908	(2)	forage
Navajo Indian Irrigation	New Mexico	135.000	207.500	--	--	
Paonia	Colorado	6.954	8.229	5.209	145.66	forage
Pine River	Colorado	3.240	3.468	(3)	56.99	forage
San Juan-Chama	New Mexico	85.428	92.211	--	--	
Seedskaadee	Wyoming	23.671	59.292	39.672	--	
Silt	Colorado	3.373	7.883	6.102	119.06	forage
Smith Fork	Colorado	3.439	4.706	3.203	68.35	forage
Dallas Creek	Colorado	Deferred	--	--	--	--
Savory-Pot Hook	Colorado- Wyoming	Deferred	--	--	--	--

(1) Upper Colorado River Basin Fund

(2) Under Construction

(3) Deauthorized 1968

Information derived from Bureau of Reclamation, U.S. Dep't of the Interior, Water and Land Resource Accomplishments: Federal Reclamation Projects, Project Data, Statistical App. 1 & 3 (1972).

largest chunk of power revenue, although proportionate to the cost of the entire unit it receives less than others, principally because the unit produces its own power which it applies to the cost of the unit. The two major projects in New Mexico impose substantial burdens on the federal treasury, but the Navajo Irrigation Project is entirely nonreimbursable. Colorado has the largest number of projects, but they are all relatively modest in size.

Another notable feature of the Project is the extent to which the costs of the developed unit exceed the estimated cost at the time of authorization. The reasons for this are numerous: Changes in the design of the project once the detailed planning is undertaken; inflation over the period of planning and construction; and unexpected problems such as drainage difficulties. It is difficult to judge the frequently heard accusation that the Bureau of Reclamation delib-

erately underestimates the cost of projects, but the evidence is clear that it has consistently underestimated costs in the Colorado River Storage Project, and sometimes by factors of more than 2.

The statistics indicate the extent to which each project relies on the power revenues to pay off the reimbursable costs, particularly those allocated to irrigation. The proportion varies from project to project, but in virtually every case it is substantial except where a large proportion of the cost can be charged to municipal and industrial use. This will be particularly the case with the San Juan-Chama Project which will supply a large block of water for Albuquerque.

The average crop value per acre is relatively low, even by reclamation standards. Only three of the projects for which figures are available have average crop values over \$100 per acre. The low crop values are of course related to the fact that the principal crops—almost the exclusive crops—grown on the participating units are forage crops. The utilization of scarce water for such low-value purposes raises important questions regarding future use of that water when higher value uses begin to be more readily available. The likelihood of transfers of use will depend on the flexibility of the legal and administrative institutions to accomplish those transfers.

#### *F. What of the Future?*

The basically distributive character of Upper Colorado River Basin water politics seems amply demonstrated by the historical record. Only when a major conservation battle develops does water policy enter the regulatory arena. In the two cases cited—Echo Park and Grand Canyon—the conservationists have won on the specific issue in controversy. But the price of winning may well have been acquiescence in distributive politics that is the very antithesis of planning and ecological concern. One leading defender of the environment, David Brower, was known to lament a considerable time after his victory on Echo Park, that the conservationists had given away unnecessarily one of the great natural wonders of the United States—Glen Canyon.

When these conservation issues were not present, those espousing water development for economic benefit to the various localities of the West have been able to succeed with little more than token opposition from outside the region. The only limiting condition has been lack of agreement *within* the region. Once those disagreements have been resolved, the authorizing legislation has been readily obtained.

The question remaining concerns the future: Will battles over

water development continue to be fought in the distributive arena or will the issues come forth in a regulatory or redistributive arena? Several interrelated questions involving the entire Colorado River Basin suggest both the persistence of the distributive mode of problem solving and the manner in which regulatory and redistributive modes may intrude.

The recency of the 1968 Colorado River legislation and the water pollution control legislation of 1972 suggests in itself the lasting power of the distributive style of politics dealing with water policy in the United States. But other characteristics of the 1968 legislation, in particular, lend credence to the view that, while distributive politics in the water field will persist, it may be on a somewhat altered basis.

One of the important provisions of the Colorado River Basin Project was that the States of the Colorado River Basin in the United States would be relieved of the obligation of supplying water to Mexico under the Mexican Water Treaty of 1944.<sup>39</sup> The Act declares "that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a national obligation. . . ."<sup>40</sup> This provision was tied to language in the Act which authorized investigations of water supplies of the Western United States for the purpose of increasing the available water. The Colorado River itself would continue to supply water to Mexico under the terms of the Colorado River Compact and Mexican Water Treaty until such a time as the lower Colorado Basin received a new supply of 2.5 million acre-feet.

By the terms of the Colorado River Compact of 1922 and the Boulder Canyon Project Act of 1928 the waters of the Colorado River were divided between the two basins, with the dividing point at Lee Ferry, Arizona, just below the present site of Glen Canyon Dam. In the event that the United States agreed to recognize rights on the part of Mexico to waters of the Colorado, the water supplied Mexico was to come from surplus; if no surplus existed, then each part of the basin would meet half of the burden.<sup>41</sup> An agreement was consummated with Mexico in 1944, granting to that country 1.5 million acre-feet annually.<sup>42</sup>

The evidence is conclusive that the estimates made in 1922 of water flows of the Colorado River were overoptimistic. Only once

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39. Treaty with Mexico Respecting Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Feb. 3, 1944, 59 Stat. 1219, T.S. No. 944 (effective Nov. 8, 1945) [hereinafter cited as 1944 Treaty with Mexico].

40. 43 U.S.C. § 1512 (1970).

41. Colorado River Compact, art. III(c), Nov. 24, 1922, 70 Cong. Rec. 324, 325 (1928).

42. 1944 Treaty with Mexico.

since 1933 has the 10-year moving average of virgin flows reached the level of 15 million acre-feet on which the Colorado River Compact was based. From 1922 to 1968 the average virgin flow was only 13.8 million acre-feet. The states of the Colorado River Basin were therefore faced with the burden of supplying water to Mexico out of supplies apportioned to them by the Compact and in the lower basin, at least, already in use. The answer, then, was to seek relief from this obligation. This relief was supplied by means of the above provision of the Colorado River Basin Project Act. How the United States will meet this obligation remains unclear at this time. Interbasin transfers and weather modification are frequently mentioned sources of increased water supply. What does seem clear is that the taxpayers and the beneficiaries of the waters of the Colorado River in the Southwestern States will largely be relieved of their obligations, and the taxpayers of the United States will assume them instead—distributive politics with an international hitching post.

The two most frequently mentioned sources of additional water raise other questions relating to distributive politics. The issue of interbasin transfers was roundly debated at the time of the passage of the Basin Project Act in 1968. Northwestern public officials, at the state level and in Congress, vigorously opposed even the study of interbasin transfers. Included in the Act was a provision that for the period of ten years from the date of the Act, the Secretary of the Interior could not undertake reconnaissance studies of any plan for importation of water into the Colorado River Basin from any other natural river drainage outside the Colorado River Basin States.<sup>43</sup> In partial compensation to the Southwest, a companion bill was passed calling for the creation of a National Water Commission for the purpose of studying water needs and consequences of water development for the quality of life of the American people.<sup>44</sup> Included in the possible means of meeting water requirements in the United States was interbasin transfers.

The National Water Commission has now issued a report which must send chills up the spines of those who have played distributive politics with Western water policy in the past. The Commission urges the application of strict economic analysis in the evaluation of all such proposals for interbasin transfers, *i.e.*, that there be clear-cut national economic gains and not simply income transfers and that the beneficiaries pay the full reimbursable cost of the water brought to their region, including compensation to the region that exports the

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43. Colorado River Basin Project Act of 1968, 43 U.S.C. § 1511 (1970).

44. National Water Commission Act, 82 Stat. 868 (contained in note to 42 U.S.C. § 1962a (1970)).

water.<sup>45</sup> Given the fact that the adoption of such principles clearly takes decisionmaking on water development projects completely outside the distributive framework, there is little expectation that any projects would be authorized on that basis.<sup>46</sup>

Weather modification is in a transitional stage between basic research and applied science, and its actual policy dimensions remain yet to be revealed. As a technique applicable to traditional reclamation policy, there will presumably be intense pressures to fit it within the policy mold laid down and refined since 1902. As a means of increasing the water supply of the Colorado River system and given the fact that the obligation to Mexico is now a national one, there would be strong incentives to write off the cost of public investment at taxpayers' expense.

Examining alternative futures in terms of population growth, pricing policies, and technological development, the National Water Commission concluded that it was unlikely that there would be outright water shortages for the nation as a whole or for the perennially water-short West. But it admitted that there might be water shortages in some areas.<sup>47</sup> Politically speaking, however, it is the number and relationship of those shortage areas that give rise to speculation about a continuation of distributive politics on a much grander scale. Numerous schemes for interbasin transfers have been discussed, costing as little as \$1.2 billion and as much as \$100 billion. They range from taking one million acre-feet from the Snake River to the headwaters of the Colorado River to grandiose schemes that would bring 110,000,000 acre-feet from Canada under the so-called North American Water and Power Alliance proposal.<sup>48</sup> The latter would bring water from Northern Canada not only to the Southwest but also to the Great Lakes and the Missouri-Mississippi Valleys.

Assuming it would be in Canadian interest—a very debatable point which Canada alone would have to decide—the American side of the proposal would involve the creation of a “Christmas tree” on which

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45. National Water Commission, *Water Policies for the Future* 317-333 (1973).

46. The views of the National Water Commission may of course be entirely ignored by decisionmakers in Congress and the executive branch. Congress may continue to authorize on its traditional basis, emphasizing regional economic development as a justification for doing so. But the Commission points the other way: “While water resources projects have had very significant impacts on regional economic development and population distribution in the past, their role in economic development diminished as a higher level of economic development was attained.” *Id.* at 39. Instead the Commission believed that water policy should be used strategically to complement other public policies designed to meet public needs of economic, environmental, and regional well-being.

47. *Id.*

48. See R. Johnson, *Law of Interbasin Transfers* (1971); some are even more grandiose: see Quinn, *Continental Water Images: Past and Present* (undated mimeo).

urban water supply, pollution control, irrigation development, and recreation would be the most notable ornaments. At least one Southwestern Congressman, who despaired of ever getting an interbasin transfer strictly for the interests of his state, believed that when much broader regional interests were at stake, such a program of water transfer would be possible.<sup>49</sup> The terms of such transfers would of course have to be worked out, but the temptation for distributive politics to be the mode would probably be overwhelming. Moreover, as in the cases cited previously, a bargain might be struck between those who have some worthy environmental goal in mind and those who seek federal funding for projects which would facilitate the enactment of an entire package.

Another current illustration of the persistence of distributive politics concerns water quality in the Colorado River system. The "law of the river," consisting of compacts, statutes, treaties, and court decisions is relatively silent on the question of water quality. The Colorado River Storage Project Act calls only for the Secretary of the Interior to undertake investigations of water quality. It appears that the negotiators for both the United States and Mexico avoided the issue of water quality in the 1944 Treaty because both parties wanted the Treaty and neither wanted to open up a subject that was likely to bog the negotiations in a dispute that might last several years.<sup>50</sup> The negotiators for the United States firmly disavowed any commitment on water quality in reporting to the Senate.<sup>51</sup> The negotiators for Mexico apparently had a different interpretation, believing that the United States had obligated itself to deliver water to Mexico no different in quality from that delivered at Imperial Dam just north of the border.<sup>52</sup>

The quality of the water in the Colorado River at the Mexican border took a dramatic turn for the worse around 1961, apparently related to completion of a drainage system on the Wellton-Mohawk project in Arizona as well as to continued upstream development generally. The Mexican government complained about severe damage to its crops in the Mexicali Valley and vigorously asserted its rights to

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49. D. Mann, *Interbasin Water Transfers: A Political and Institutional Analysis* 138 (1972).

50. See N. Hundley, *Dividing The Waters: A Century of Controversy Between the United States and Mexico* (1966).

51. S. Exec. Rep. No. 2, 79th Cong., 1st Sess. 4 (1945); *Hearings on Treaty With Mexico Relating to the Utilization of the Waters of Certain Rivers Before the Senate Comm. on Foreign Relations*, 79th Cong., 1st Sess. 7, 107, 322-24, 331, 338 (1945).

52. Alba, *Technical Report on the International Water Treaty*, in E. Weinberg, "Salt Talks" United States and Mexican Style: A Case Study of the Lower Colorado River Salinity Dispute (Mimeo. 1973).

water of quality equal to that delivered to Imperial Dam above the border. The issue was the subject of several talks between U.S. and Mexican presidents and lower level negotiators over the next decade. Several temporary expedients were adopted, but they were recognized as palliatives rather than solutions. However, in June 1972 President Nixon appointed Herbert Brownell as his special representative to find a solution to the problem. After extended negotiations with the Mexican Government, an agreement was announced on August 30, 1973.<sup>53</sup> The agreement calls for reduction of the salinity of Mexican water to just slightly over the salt content of water at Imperial Dam. This is to be achieved by lining the first 50 miles of the Coachella Canal that delivers water to the Coachella Valley in the United States, building a \$67 million desalting plant to treat Wellton-Mohawk drainage, constructing a canal to carry Wellton-Mohawk drainage to the gulf of Mexico, and facilitating financing of rehabilitation work on Mexican land. The effect of these agreements would be to offer Mexico essentially what it wished: complete substitution of 200,000-220,000 acre-feet of water available from Wellton-Mohawk drainage.<sup>54</sup> The United States would bear full costs, estimated to be at a minimum of \$115 million for the entire package.<sup>55</sup>

In February 1973, after several years of legal, engineering, and economic argument, the Federal District Court for Utah presented a challenge to the traditional framework of decisionmaking. In the case of *Friends of the Earth v. Armstrong* the court held that the Secretary of the Interior was obligated to prevent waters of Lake Powell from entering into the boundaries of the Rainbow Bridge National Monument.<sup>56</sup> The decision was based on the provisions of the Colorado River Storage Project Act which obliged the Secretary to "take adequate measures to preclude impairment of the Rainbow Bridge National Monument" and expressed the intention of Congress "that no dam or reservoir constructed under the authorization of this act shall be within any national park or monument."<sup>57</sup>

The implications of this decision were serious and were taken seriously by the Upper Basin States. A decision to limit the level of Lake Powell would substantially impair carefully worked out arrangements for storage in Lake Powell which would allow the Upper Basin to develop irrigation and other development projects while

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53. Los Angeles Times, Aug. 31, 1973, at 1.

54. Weinberg, *supra* note 52, at 38.

55. Los Angeles Times, Aug. 31, 1973, at 1.

56. *Friends of the Earth v. Armstrong*, 360 F. Supp. 165 (D.C. Utah 1973).

57. Colorado River Storage Project Act of 1956, 43 U.S.C. § 620b (1970).

releasing water for satisfaction of the obligations to the Lower Basin States and Mexico. Moreover, it threatened the economic life of the Storage Project since the loss of power head would substantially reduce power output and therefore the revenues to pay for the irrigation features of the Project.

The United States appealed the decision and won in the Circuit Court of Appeals.<sup>58</sup> The Circuit Court held that Congress had impliedly repealed the provisions of the Colorado River Storage Project Act by its repeated and explicit refusals to fund works "to prevent waters of Lake Powell from entering any National Monument." It noted that even when water was already in the Monument in 1972, Congress included such a proviso in its appropriation for the Bureau of Reclamation. The court contended that the intent of Congress was that the storage of Lake Powell would be at design capacity rather than half of that capacity, as would result from the district court's decision. It also noted that legislative authorizations of projects had occurred since 1956, all of which depended in some way on the storage capacity at Lake Powell. Of particular importance was the provision of the Colorado River Basin Act which required that the storage levels of Lake Mead and Lake Powell be as close to parity as possible.<sup>59</sup>

Two judges dissented on grounds that the court was usurping the power of Congress in removing a specific obligation created by Congress itself. The Supreme Court removed any doubt about the finality of the decision, at least from the courts themselves, by denying certiorari in January 1974.<sup>60</sup> Meanwhile, the water level of Lake Powell continues to rise and fill the gorge under Rainbow Bridge.

Thus, the environmentalists lost an important battle for protection of a natural area against the forces favoring development. While the Circuit Court found legal bases for its decision, its decision also clearly reflects a judgment that the overall needs of development took priority over the need for protection of a natural wonder in its pristine form. The costs of protection were deemed too great and the impairment too slight to merit a different conclusion.

### CONCLUSION

The norms of distributive politics dictate that individuals and groups who seek some benefit from a public source create a united front on their separable but common interests. They then obtain

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58. *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1973).

59. 43 U.S.C. § 1552(a)(3) (1970).

60. *Friends of the Earth v. Stamm*, 414 U.S. 1171 (1974).

their benefit from the public source without appearing to impose any burden on other interests in society. This may be, and usually is, accomplished through appropriations of money and imposition of the burden on the taxpayers. In water politics, at least, challenges have come only when other major interests in society were able to perceive damage to their interests. In the Colorado River Basin, these challenges have come only over conservation and interregional issues. It is clear that every effort is being made to continue policymaking in this same mold, and the agreement on water quality at the Mexican border is but one more attempt to do so.

No one is interested in taking on the tough questions. How will the water supply of the Colorado River Basin be made adequate to the needs and expectations of the various interests who clamor for more? Will the needs require redefinition rather than the supply? How are the needs to be determined? By some extrapolation of past growth or by a mechanism that is based more on the principle that those who want a resource more are willing to pay more? Should the taxpayers be required to bail out the Southwest, and if so, why? And to what extent? What evidence is there that the price tag attached to the desalination and bypass program at the Mexican border will be anything more than a guess? Are there not other alternatives that may involve some sacrifice in the Southwest itself? Is every acre that has been cultivated in the past deserving of cultivation in the future? What are the limits of water quality degradation? Is the institutional arrangement dividing the waters of the Colorado River between the Upper and Lower Basins still a rational one? What incentives may there be to consider an alteration in that arrangement?

These are questions that can be answered only by challenging the present process of handling water supply and water quality questions in the Southwest, *i.e.*, by considering them in a regulatory framework. The Environmental Protection Agency has moved in this direction in its quest for water quality standards on the Colorado. The courts have challenged this process in endeavoring to sort out environmental and developmental issues. But still the distributive mode prevails. It now has an international hitching post with the Mexican-United States agreement on the salinity problem.

What may happen is that the challenge to traditional modes of decisionmaking will come from those concerned about redistributive questions. It may be recognized eventually that the price tag on distributive politics is simply too great, particularly in view of the benefits that the nation receives. Presidential impoundments, higher interest rates, and movements toward revenue sharing may place

redistributive questions squarely before the policymakers and touch off a serious concern about politics as usual in dealing with water policy. The present signs, however, do not suggest a significant movement in that direction.