

# [***ARTICLE UPDATE: Synopsis of Major Documents and Events Relating to the Colorado River***](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:42FS-2W30-00C3-W0XT-00000-00&context=1516831)

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**Reporter**

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**Text**

**[\*339]** In Volume 2, Issue 2 of the *Water Law Review*, we introduced the Article Update section, which has allowed us to provide our readers with updated information from previously published *Water Law Review* articles. The first Article Update we published provided excerpts from ***Colorado*** Supreme Court decisions that brought Justice Hobbs' survey of ***Colorado*** water law published in Volume 1, Issue 1 up to date. The next Article Update, which appeared in Volume 3, Issue 1, presented the resolution of an unresolved dialogue between two attorneys about the Animas La-Plata project that appeared in Volume 2, Issue 2 of the *Water Law Review*.

The *Water Law Review* dedicated Volume 3, Issue 1 to Mr. Felix Larry Sparks for his consistent and monumental work as a ***Colorado*** water attorney. During the course of the interview, Mr. Sparks revealed that in 1976, while Director of the ***Colorado*** Water Conservation Board, he authored an article that surveyed some important provisions of the "Law of the ***Colorado*** ***River***." We are pleased to present as an Article Update Mr. Sparks' survey and an introduction to this survey authored by Mr. James S. Lochhead.

This issue's Article Update differs from its predecessors. It arose from the Volume 3, Issue 1 dedication to Mr. Felix Larry Sparks as opposed to from an article, and, therefore, continues to tell a history rather than update a legal issue. Although Mr. Sparks' piece provides a historical perspective, we have included an introduction authored by Mr. James S. Lochhead which explains the current significance of Mr. Sparks' survey.

**I. INTRODUCTION TO MR. FELIX LARRY SPARKS' SYNOPSIS OF MAJOR DOCUMENTS AND EVENTS RELATING TO THE *COLORADO* *RIVER***

JAMES S. LOCHHEAD ++

Seven major western ***rivers*** originate in ***Colorado***'s mountains, one of which is the ***Colorado*** ***River***, a ***river*** fraught with allocation controversies governed by state and federal statutes, interstate compacts, court decisions, and even an international treaty. This regulatory scheme is called the "Law of the ***Colorado*** ***River***," and its ramifications are not limited to ***Colorado***; it affects all states with an interest in ***Colorado*** ***River*** water.

**[\*340]** The State of ***Colorado*** has been fortunate--its representatives have assumed a leadership role in the development of the "Law of the ***Colorado*** ***River***." Mr. Felix Larry Sparks is one of those leaders. As the Director of the ***Colorado*** Water Conservation Board ("CWCB"), Mr. Sparks was instrumental in the 1968 ***Colorado*** ***River*** Basin Project Act negotiations. From the perspective of the Upper Basin, Section 602 contains the Act's key language, written in large part and strongly endorsed by Mr. Sparks. This law provides protection for water to be held over in Upper Basin reservoirs in order for the Upper Basin to meet its obligations under the ***Colorado*** ***River*** Compact.

Mr. Sparks had a firm grasp of the history of, and legal and policy reasons for, ***Colorado***'s positions in the negotiation of the ***Colorado*** ***River*** Compact. He was able to use that understanding to further the protection of ***Colorado***'s water entitlement for future generations. He was careful to pass along that knowledge to those of us who followed in his footsteps. This survey, written in 1976 when Mr. Sparks was still Director of the CWCB, was part of his continuing effort to inform ***Colorado*** water users of the legal underpinnings of the protections afforded to ***Colorado*** under the "Law of the ***River***," and of the issues remaining to be resolved.

Mr. Sparks' survey is still relevant because ***Colorado***'s current positions on the ***Colorado*** ***River*** are based on the historic principles argued by Mr. Sparks and his predecessors. First, ***Colorado*** has sought assurance that it could develop a specified share of the ***Colorado*** ***River*** in perpetuity, as need and economic conditions dictated. Second, ***Colorado*** has sought the elimination of the doctrine of prior appropriation as applied on an interstate basis, the application of which would give the faster developing Lower Basin a preferred share of the ***River***. Third, ***Colorado*** has sought to preserve state autonomy in water resource management and the intrastate operation of the prior appropriation doctrine. Fourth, while strongly protecting its interests, ***Colorado*** has sought negotiated solutions to avoid interstate litigation. Finally, ***Colorado*** has advocated for comprehensive development and operation of reservoir regulation, in both the Upper and Lower Basins, in a way that would assure the protection of ***Colorado***'s entitlement to develop its share of the ***River***. These principles are reflected as themes in Mr. Sparks' outline, and continue today as the foundation for ***Colorado***'s positions in its relationships with the other states and the federal government.

The last 100 years in the development of the "Law of the ***River***" can be divided into three "eras." In the first era, the states and the federal government established the entitlements that laid the foundation for later development of the ***River***. The ***Colorado*** ***River*** Compact, [[1]](#footnote-2)1 the Boulder Canyon Project Act, [[2]](#footnote-3)2 the Mexican Water Treaty, [[3]](#footnote-4)3 and the Upper ***Colorado*** **[\*341]** ***River*** Basin Compact [[4]](#footnote-5)4 were the important documents that established these allocations.

In the second era, in which Mr. Sparks played a key role, the states and federal government developed the ***river*** with a vast system of reservoirs and diversions, and negotiated the legislation that provided the financial wherewithal and operating rules for that system. Important elements of this era included the 1956 ***Colorado*** ***River*** Storage Project Act, [[5]](#footnote-6)5 the United States Supreme Court decree in *Arizona v. California*, [[6]](#footnote-7)6 the 1968 ***Colorado*** ***River*** Basin Project Act, [[7]](#footnote-8)7 and the 1970 Operating Criteria for ***Colorado*** System Reservoirs.

The third era, in which we now find ourselves, may be termed the era of limits, an era that will test the system put in place by Mr. Sparks and his peers. In this era, many things are happening in response to the foundation already laid. First, quantification issues have arisen. California consistently uses water in excess of its entitlement under the decree in *Arizona v. California*. For the last nine years, the states of Arizona, ***Colorado***, Nevada, New Mexico, Utah, and Wyoming have been engaged in negotiations with California and the Secretary of the Interior to develop criteria for the operation of ***Colorado*** ***River*** reservoirs for an interim period that will allow California time to implement a plan to reduce its use of ***Colorado*** ***River*** water to its basic apportionment of 4.4 million acre-feet per year in years in which a normal declaration is made by the Secretary of the Interior under the decree. The states and the federal government also have developed interstate water banking regulations in the Lower Basin that allow Nevada and California access to surplus water stored underground in Arizona, and provide some flexibility in the use of water in the Lower Basin. California's overuse is not the only quantification issue that remains controversial. The quantification of Native American reserved rights claims, an issue expressly reserved in the ***Colorado*** ***River*** Compact, must continue toward resolution.

[*Second*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T352-D6RV-H379-00000-00&context=1516831), the states and the federal government are working hard at solving environmental problems without disrupting the framework of water allocation and management established under the "Law of the ***River***." This is a time in which the states, the federal government, and other interested parties are struggling to deal with the environmental impacts of the development of the reservoirs and diversions in the Basin. The condition of the ***Colorado*** ***River*** Delta in Mexico and the Salton Sea in California, along with salinity in the ***River***, are critical environmental issues. Also, fluctuating water releases have had detrimental effects on aquatic ecosystems, resulting in states' negotiation and support of the Grand Canyon Project Act. The Grand Canyon Project Act changed the operation of the power plant at Glen Canyon Dam in order to reduce the adverse impacts of fluctuating **[\*342]** water releases in the Grand Canyon. Additionally, the states are undertaking active and expensive endangered species recovery programs in both the Upper and Lower Basins.

As Mr. Sparks writes at the end of his survey, the final chapter in the continuing struggles over the waters of the ***Colorado*** ***River*** may never be written. However, if ***Colorado*** is fortunate to have in its future the kind of principled, dedicated, and intelligent leadership as that provided by Mr. Sparks, then its interests will be well served, and the historic principles under which ***Colorado*** has consistently negotiated will be maintained.

**II. SYNOPSIS OF MAJOR DOCUMENTS AND EVENTS RELATING TO THE *COLORADO* *RIVER***

MR. FELIX L. SPARKS

**1. THE *COLORADO* *RIVER* COMPACT** [[8]](#footnote-9)8

During the period 1905-1907, a series of disastrous floods occurred in the ***Colorado*** ***River***'s Lower Basin. A considerable portion of the Imperial Valley was inundated and the Salton Sea was created. Nature made it quite obvious that settlement along the lower reaches of the ***Colorado*** ***River*** was fraught with uncertainty. In the years following these floods, plans for controlling the ***Colorado*** ***River*** gathered momentum in the Lower Basin, spearheaded by private and public organizations of the State of California.

The residents of the upper reaches of the ***Colorado*** ***River*** had no consuming interest in the Lower Basin's problems. ***Colorado*** and Wyoming were busily engaged in disputing each other's water rights concerning the North Platte ***River***, which is a tributary of the Missouri ***River***. The resulting decision of the United States Supreme Court in the case of *Wyoming v.* ***Colorado*** [[9]](#footnote-10)9 established the legal principle that the doctrine of prior appropriation controls regardless of state boundaries. When the full import of this decision began to sink in, the other ***Colorado*** ***River*** Basin states realized that the already rapidly growing State of California was presented with an opportunity to grab off the lion's share of the ***Colorado*** ***River*** flow.

At this time the State of California was already vigorously pressing Congress for authorization of a federally financed Lower Basin project on the ***Colorado*** ***River***. As a result of the *Wyoming v.* ***Colorado*** [[10]](#footnote-11)10 decision, the Upper Basin states were now openly hostile towards storage or diversion facility construction on the lower ***river*** that would place that area in a position to monopolize the waters of the ***river*** through prior appropriation. Therefore, it did not appear possible that Congress would approve lower basin projects without an adequate guarantee that Upper Basin water resources would have some protection. In such a climate, the ***Colorado*** ***River*** Compact Commission ("Commission"), authorized by Congress the **[\*343]** previous year, began its deliberations in January of 1922. Herbert Hoover, who represented the United States, chaired the Commission.

It soon became obvious that no water division among the respective seven states could ever be accomplished. Agreement was then reached that the waters of the ***Colorado*** ***River*** and its tributaries would be apportioned between the "Upper Basin" (***Colorado***, Wyoming, parts of New Mexico, Utah, and Arizona), and "Lower Basin" (California, Nevada, parts of Utah, New Mexico, and Arizona).

However, the Commission then became deadlocked on the question of how much water each basin was to receive. A handy solution was provided by the Bureau of Reclamation, which had conducted studies to determine each basin's possible future water requirements. The Upper Basin's requirements were figured at 6,500,000 acre-feet of water annually. The requirements of the Lower Basin from the main stem of the ***Colorado*** ***River*** were estimated at 5,100,000 acre-feet. The total future consumptive use of water from the Gila ***River*** in Arizona was computed at 2,350,000 acre-feet. This latter sum, when added to the 5,100,000 from the main stem of the ***Colorado***, came to 7,450,000 acre-feet. This figure was rounded out to 7,500,000 acre-feet.

At this point the situation existed whereby the total Upper Basin present and future requirements were computed at 6,500,000 acre-feet of water annually, and the Lower Basin requirements, including the Gila ***River***, were computed at 7,500,000 acre-feet annually. Since over 80% of the ***Colorado*** ***River*** flow originates in the "Upper Basin" states (***Colorado***, New Mexico, Utah, and Wyoming), the Upper Basin commissioners were hardly in a position to return home and inform their constituents that they had bargained away over half of the ***Colorado*** ***River*** to the Lower Basin.

At this point, a successful compromise almost occurred, whereby the Upper Basin would be allowed another million acre-feet of water in order to bring its total allocation to the same figure agreed on for the Lower Basin. The result would have been a neighborly 50-50 split of the ***Colorado*** ***River*** waters. The Arizona commissioner, however, insisted that if the Upper Basin was to get another million acre-feet of water, then the Lower Basin must have another million acre-feet of water also. Thus, the matter was thrown out of balance again.

Since the Arizona commissioner was adamant on the point, a rather devious solution was finally worked out. The compact was written so that it would *appear* that the waters would be divided on a 50-50 basis. Article III(a) carried out this theme by providing for the apportionment of 7,500,000 acre-feet of water annually to the Upper Basin and Lower Basin respectively "in perpetuity." However, in Article III(b) the Lower Basin was "given the right" to increase its consumptive use of water by one million acre-feet annually. This latter provision would have been relatively innocuous had it not been followed by Article III(c) concerning future deliveries of water to the Republic of Mexico, which were subsequently established by treaty at 1,500,000 acre-feet of water annually. In computing any deficiency in deliveries to Mexico, the Lower Basin is entitled to compute the total of its use as being both III(a) and (b) (*i.e.*, 8,500,000 acre-feet of water), while the only use accorded to the Upper Basin is in Article **[\*344]** III(a) (*i.e.*, 7,500,000 acre-feet of water).

It should be noted that the commissioners calculated the average annual virgin flow of the ***river*** at Lee Ferry at approximately 17,000,000 acre-feet and the virgin flow of the lower tributaries at about 4,000,000 acre-feet, making a total water supply of about 21,000,000 acre-feet annually. Presently, the ***Colorado*** ***River*** and its tributaries have not exceeded 18,000,000 acre-feet annually. Total ***river*** allocations are 17,500,000 acre-feet annually (1 1/2 million to Mexico, 8 1/2 million to the Lower Basin, and 7 1/2 million to the Upper Basin).

A further compact provision provides that the Upper Basin shall not cause the flow of the ***river*** to be depleted below 75,000,000 acre-feet in any consecutive ten-year period reckoned in continuing progressive series. This amount of water, together with tributary inflow below Lee Ferry, has historically been sufficient to satisfy both the Lower Basin and the Mexican Treaty allocations.

The completed compact was signed by the respective commissioners of each of the seven ***Colorado*** ***River*** Basin States and by Herbert Hoover as a representative of the United States at the Palace of Governors in Santa Fe, New Mexico on November 24, 1922. In historical sequence, the compact was ratified by the Legislatures of the respective states as follows: Wyoming--February 25, 1925; ***Colorado***--February 26, 1925; New Mexico--March 17, 1925; Nevada--March 18, 1925; California--March 4, 1929; Utah--March 6, 1929; and Arizona--February 24, 1944.

Of particular importance is the fact that for many years the Arizona legislature refused to ratify the compact, despite urging from its commissioner. This refusal caused considerable consternation among the other states, since the compact by its explicit terms provided that it would not become effective until approved by the legislatures of each of the signatory states. The Boulder Canyon Project Act of 1928 resolved this problem.

**2. BOULDER CANYON PROJECT ACT OF 1928** [[11]](#footnote-12)11

After the signatory states executed the ***Colorado*** ***River*** Compact, the State of California renewed its battle to obtain congressional authorization for construction of the Boulder Dam project. At the time this battle was renewed, the Arizona, California, and Utah legislatures had not yet ratified the compact. However, it was anticipated that both California and Utah would ratify the compact, but that Arizona would not. This problem was neatly solved by a provision of the Boulder Canyon Project Act passed by Congress in 1928 that specified that the ***Colorado*** ***River*** Compact would become effective when ratified by the legislature of *six* states. [[12]](#footnote-13)12 Almost immediately after the passage of that Act, the States of California and Utah ratified the compact, bringing the total number to six, making the compact a reality.

The Act specifically states that it is "subject to the terms of the ***Colorado*** **[\*345]** ***River*** compact." [[13]](#footnote-14)13 In order to placate the State of Arizona, the Act provided that it would not become effective until the State of California, via legislative action, had irrevocably agreed to limit its consumptive water use from the ***Colorado*** ***River*** to 4.4 million acre-feet annually. [[14]](#footnote-15)14 Reluctantly, the California legislature did this. However, Arizona was not satisfied by this provision and fought the Boulder Canyon Project Act's passage. The Act was supported by all other ***Colorado*** ***River*** Basin states. The principal purpose of the Act was to authorize the Boulder Canyon Dam construction on the lower ***Colorado*** ***River***.

An extremely significant section of the Act authorized the States of Arizona, California, and Nevada to enter into an interstate compact that would divide among those states the 7.5 million acre-feet ("m.a.f.") of water apportioned annually to the Lower Basin by the ***Colorado*** ***River*** Compact. [[15]](#footnote-16)15 The apportionment suggested by Congress was 2.8 m.a.f. to Arizona, 4.4 m.a.f. to California, and .3 m.a.f. to Nevada. [[16]](#footnote-17)16 Furthermore, Congress suggested that Arizona should have exclusive beneficial consumptive use of that part of the Gila ***River*** and its tributaries within the boundaries of the State of Arizona, and Congress recommended that the Gila ***River*** should never be called upon to satisfy any agreement with Mexico concerning ***Colorado*** ***River*** waters. [[17]](#footnote-18)17 In recognition of article III(c) of the ***Colorado*** ***River*** Compact relating to a future potential agreement with Mexico, Congress further suggested that Arizona and California should mutually agree to supply the Lower Basin half of any deficiency from the *main stream* of the ***Colorado*** ***River***. [[18]](#footnote-19)18

Arizona adamantly refused to enter into the compact Congress suggested and presently still refuses to do so. Nonetheless, this issue was at least partially laid to rest by the Supreme Court decision in the case of *Arizona v. California* [[19]](#footnote-20)19 and by certain provisions of the ***Colorado*** ***River*** Basin Project Act of 1968. [[20]](#footnote-21)20

A further provision of the Boulder Canyon Project Act gave congressional approval for the Upper Basin states to negotiate a compact among themselves, dividing among the respective states the 7.5 m.a.f. apportioned to the Upper Basin by the ***Colorado*** ***River*** Compact. [[21]](#footnote-22)21 The Upper Basin states did this via the Upper ***Colorado*** ***River*** Basin Compact of 1948. [[22]](#footnote-23)22

**[\*346]** **3. MEXICAN TREATY AND PROTOCOL OF 1944** [[23]](#footnote-24)23

On February 3, 1944, at Washington, D.C., a treaty was executed between the United States and Mexico concerning the ***Colorado*** ***River*** and the Rio Grande. The United States subsequently ratified this treaty on April 18, 1945. The most significant provision of that treaty relating to the ***Colorado*** ***River*** is Article 10.

Article 10. Of the waters of the ***Colorado*** ***River***, from any and all sources, there are allocated to Mexico: (a) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty. (b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the ***Colorado*** ***River*** in excess of the amount necessary to supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the ***Colorado*** ***River*** system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the ***Colorado*** ***River*** system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually. In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced. [[24]](#footnote-25)24

While a treaty with Mexico apportioning ***Colorado*** ***River*** waters to Mexico had long been expected, it was never regarded as being a serious threat to the operation of the ***Colorado*** ***River*** Compact. Actually, the treaty has proven to be extremely vexatious to all of the ***Colorado*** ***River*** Basin states and probably will become the subject of protracted future litigation among the seven ***Colorado*** ***River*** Basin states. There is not ever likely to be any agreement between the Upper Basin and the Lower Basin concerning the "deficiency" in deliveries to Mexico as defined in article III (c) of the ***Colorado*** ***River*** Compact.

It is interesting to note that only the State of California opposed the ratification of the Mexican Treaty. Ratification was supported by the other six basin states. It appears at this point in history that California's fore-sight was much better than that of the other states.

The treaty was executed in the height of World War II. Since most of the United States' total energies and resources were being devoted to the prosecution of the war at that time, the events of that era provided a strange setting for the execution of a treaty relating to the waters of the ***Colorado*** ***River*** and the Rio Grande. While it is difficult to deny that the **[\*347]** treaty was equitable, the treaty language makes no mention of the true reasons for which it was executed.

The actual trigger for the execution of the Mexican Treaty of 1944 was the Japanese attack on Pearl Harbor on December 7, 1941. This attack produced hysteria in the United States to the extent that it was believed that the Japanese might attempt a United States invasion through either the west coast of the United States, or the west coast of Mexico, or both. One tragic example of this hysteria was the forced evacuation of American citizens of Japanese ancestry from the west coast to interior areas of the United States, including ***Colorado***.

It was a fact that Mexico could have offered no serious resistance to a Japanese invasion of the United States that might have occurred through Mexico. Consequently, the questionable opinion of people in high places, for example, the President, was that an accommodation with Mexico was necessary in order to permit the employment of United States military forces on Mexican soil to resist any Japanese invasion from that source. Mexico had a price for such accommodation. The water treaty of 1944 was a part of that price. Ironically, World War II was over within a few months after the United States ratified the treaty.

**4. UPPER *COLORADO* *RIVER* BASIN COMPACT** [[25]](#footnote-26)25

It should be noted, again, that the ***Colorado*** ***River*** Compact of 1922 did not apportion water to the respective states, but only to the Upper and Lower Basins of the ***Colorado*** ***River***. Twenty-six years after the ***Colorado*** ***River*** Compact was signed, the Upper ***Colorado*** ***River*** Basin states through their various commissioners signed the Upper ***Colorado*** ***River*** Basin Compact at Santa Fe, New Mexico, on October 11, 1948. This compact was subsequently ratified by all five Upper ***Colorado*** ***River*** Basin state legislatures, including Arizona, which had at long last ratified the ***Colorado*** ***River*** Compact in 1944.

**5. *COLORADO* *RIVER* STORAGE PROJECT ACT** [[26]](#footnote-27)26

Like all western ***rivers***, the ***Colorado*** ***River***'s annual flows are highly erratic. In recent history, the annual flow of the ***river*** at Lee Ferry has fluctuated from a high of about 23 million acre-feet to a low of about 5.6 million acre-feet. Without holdover storage above Lee Ferry, there have been years in which no water would be available to the Upper Basin if a delivery of 75,000,000 acre-feet in every consecutive ten-year period were made at Lee Ferry. This fact was fully recognized when the ***Colorado*** ***River*** Compact was negotiated in 1922. The solution discussed during the compact deliberations was the construction of a major reservoir or reservoirs above Lee Ferry, which would then permit a relatively equalized annual flow at Lee Ferry.

**[\*348]** In addition to the problem of making the specified Lee Ferry water deliveries, the Upper Basin was faced with the major financial task of financing Upper Basin projects that would permit the Upper Basin to utilize its apportioned share of water. After the Upper ***Colorado*** ***River*** Basin Compact was signed in 1948, the unified Upper Basin states began a concerted effort to obtain congressional authorization of legislation that would make it possible for the Upper Basin states to utilize their total allocated water supply governed by the ***Colorado*** ***River*** Compact. The result was the enactment of the ***Colorado*** ***River*** Storage Project Act in 1956. [[27]](#footnote-28)27

Early in the game, it was perceived that the Upper Basin would need considerable financial assistance if it were to develop its apportioned waters. Since large reservoirs have the capability of generating considerable electrical energy, the obvious solution to the financial problem was an apportionment of power revenues to the Upper Basin states. There was some disagreement among those states, however, as to how these revenues should be apportioned. One suggestion was that an Upper Basin fund be created from which the Upper Basin states could draw revenues in accordance with their needs. The idea of a common fund did not appeal to ***Colorado***, and it insisted that the revenues be apportioned on the basis of water allocations under the Upper ***Colorado*** ***River*** Basin Compact. New Mexico, which has the smallest water allocation, objected to this method of apportioning power revenues.

The dispute over the apportionment of power revenues threatened the unity of the Upper Basin states for a while. Eventually, a compromise was reached by which revenues were specifically apportioned to the respective states, but on a basis which differed slightly from the water allocations. ***Colorado*** agreed to a revenue reduction of 5.75 per cent, which went to increase New Mexico's allocation, and Utah agreed to a reduction of 1.5 per cent, which went to Wyoming's allocation. The resulting allocation of power revenues to the respective states was as follows (water allocations shown in parentheses):

|  |  |
| --- | --- |
| State of ***Colorado*** | 46 percent (57.75 per cent) [[28]](#footnote-29)28 |
| State of New Mexico | 17 per cent (11.25 per cent) [[29]](#footnote-30)29 |
| State of Utah | 21.5 per cent (23 per cent) [[30]](#footnote-31)30 |
| State of Wyoming | 15.5 per cent (14 per cent) [[31]](#footnote-32)31 |

In the early 1950's, the Upper Basin states began an intensive effort to secure congressional authorization of the ***Colorado*** ***River*** Storage Project Act. This effort was strenuously opposed by various congressmen from southern California, but had some support by congressmen from northern California. Arizona and Nevada also supported the passage of the legislation. **[\*349]** The act was passed in 1956. The three major provisions of the act are as follows: First, it provided for the construction of the Glen Canyon Dam on the ***Colorado*** ***River*** in Arizona a few miles above Lee Ferry, the Flaming Gorge Dam in Utah on the Green ***River***, the Navajo Dam in New Mexico on the San Juan ***River***, and the Curecanti Dams in ***Colorado*** on the Gunnison ***River***. The total combined storage capacity of these four major projects is in excess of 30 million acre-feet. [[32]](#footnote-33)32 Second, it authorized the construction of participating projects in the Upper Basin, subject to a finding of feasibility. [[33]](#footnote-34)33 Third, it established the Upper ***Colorado*** ***River*** Basin Fund from apportioned power revenues to assist in the repayment of participating projects. [[34]](#footnote-35)34 To date, approximately two billion dollars have been authorized as expenditures to further the purposes of the ***Colorado*** ***River*** Storage Project Act.

**6. THE SUPREME COURT CASE OF *ARIZONA V. CALIFORNIA*** [[35]](#footnote-36)35

As has previously been stated, the State of Arizona stubbornly refused to ratify the compact for over twenty years after the signing of the ***Colorado*** ***River*** Compact in 1922. The primary reason for its refusal was the fact that the waters of the Gila ***River*** in Arizona were clearly subject to apportionment pursuant to the terms of the compact. Arizona argued during the compact negotiations that the Gila ***River*** should not be considered as part of the ***Colorado*** ***River*** System for compact purposes. The compact became such an explosive political issue in Arizona that no political candidate dared run for public office without condemning the ***Colorado*** ***River*** Compact. At least one governor threatened to use the Arizona National Guard to prevent the reservoir constructions on the ***Colorado*** ***River*** that would benefit California.

The substantial agricultural industry of Arizona is sustained almost entirely by diversions from the Gila ***River*** and by heavy ground water with-drawals, the latter constituting the major source. Aggravated by the drought period of the 1930's and the expanded agricultural production of the World War II period to the present, the State of Arizona had become increasingly alarmed about its rapidly dwindling ground water supply. In such a climate, the State of Arizona began a massive effort to import waters from the ***Colorado*** ***River*** to the Central Arizona Basin. That effort finalized into the project now known as the Central Arizona Project.

The authorization and construction of the Central Arizona Project posed a formidable legal dilemma to the State of Arizona. Arizona had not ratified the ***Colorado*** ***River*** Compact and had refused to enter into a compact with the Lower Basin states as Congress suggested in the Boulder Canyon Project Act. Arizona attempted to solve this sticky problem by asking the United States Supreme Court to determine its rights regarding the ***Colorado*** ***River***. The Supreme Court originally refused to accept jurisdiction. **[\*350]** Arizona finally decided that it had to ratify the ***Colorado*** ***River*** Compact if it were to have any standing in court or in Congress. This it did during World War II by legislative action on February 24, 1944.

After this ratification, Arizona renewed its efforts to get congressional authorization of the Central Arizona Project, which would export water from the lower ***Colorado*** ***River*** into the Central Arizona Basin. Since there was still no agreement among the Lower Basin states as to how their apportioned waters would be divded among those states, the Arizona effort was strenuously opposed by California and to varying degrees by the other states of the ***Colorado*** ***River*** Basin. As a result of this opposition, the House Committee on Interior and Insular Affairs adopted a resolution on April 18, 1951, to the effect that it would not consider any legislation authorizing the Central Arizona Project until the Lower Basin states' rights to the ***Colorado*** ***River*** waters had been determined either by litigation or by voluntary agreement. Faced with this political reality, the State of Arizona, again, invoked the original jurisdiction of the United States Supreme Court by filing a complaint against the State of California in 1952. This time the Supreme Court accepted jurisdiction.

The suit requested adjudication between the States of Arizona and California as to the division of the waters of the ***Colorado*** ***River*** and its tributaries between those two states. After the complaint was filed, the United States and the States of Nevada, New Mexico, and Utah were joined as parties. The Supreme Court referred the case to Mr. George I. Haight as Special Master. Mr. Haight died in 1955 and the case was then referred to Mr. Simon H. Rifkind as successor to Mr. Haight.

In January of 1961, the Special Master reported his findings, conclusions, and recommended decrees to the Supreme Court. Subsequent oral arguments and briefs were presented to the Court attacking, or in some cases supporting, the Master's findings and decree. On June 3, 1963, the Supreme Court rendered its decision in the case.

In its decision the Supreme Court stated that "as we see this case, the question of each State's share of the waters of the ***Colorado*** and its tributaries turns on the meaning and the scope of the Boulder Canyon Project Act passed by Congress in 1928." [[36]](#footnote-37)36 In support of this line of reasoning the Court held that there was nothing in the ***Colorado*** ***River*** Compact which purported to divide water among the Lower Basin states and that, therefore, the ***Colorado*** ***River*** Compact did not control. [[37]](#footnote-38)37 This conclusion is somewhat baffling since the Project Act makes repeated reference to the ***Colorado*** ***River*** Compact. To put it another way, the Project Act cannot be interpreted without first interpreting the Compact.

That portion of the Boulder Canyon Project Act [[38]](#footnote-39)38 that apparently controlled and determined the Court's decision reads as follows:

The States of Arizona, California, and Nevada are authorized to enter into **[\*351]** an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the ***Colorado*** ***River*** compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the ***Colorado*** ***River*** compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila ***River*** and its tributaries within the boundaries of said State, and (4) that the waters of the Gila ***River*** and its tributaries, except return flow after the same enters the ***Colorado*** ***River***, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or other-wise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the ***Colorado*** ***River*** compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply out of the main stream of the ***Colorado*** ***River***, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the ***Colorado*** ***River*** compact, and (7) said agreement to take effect upon the ratification of the ***Colorado*** ***River*** compact by Arizona, California, and Nevada. [[39]](#footnote-40)39

In order to make the foregoing division of water fully effective, Congress further provided in the Project Act that the act would not take effect

until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, ***Colorado***, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this subchapter, that the aggregate annual consumptive use (diversions less returns to the ***river***) of water of and from the ***Colorado*** ***River*** for use in the State of California, including all uses under contracts made under the provisions of this subchapter and all water necessary for the supply of any rights which existed on December 21, 1928, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the ***Colorado*** ***River*** compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact. [[40]](#footnote-41)40

In order to get the Boulder Canyon Project constructed, the State of California at this point had little alternative except to agree to the Project Act's terms. This was done by the California legislature in 1929. The Lower Basin states, however, never entered into the agreement suggested by the Project Act.

Stated in its simplest terms, therefore, the Supreme Court arrived at its **[\*352]** decision, as did the Special Master, by applying the Boulder Canyon Project Act's terms (as referred to above). There was one significant departure, however, from the Master's decision. The Master held that in times of shortage, the shortage should be apportioned using a mathematical formula in proportion to each state's share of the allocated waters. The Supreme Court disagreed with this method of apportioning shortages on the basis that neither the project act nor the water contracts required the use of any particular formula for apportioning such shortages. The Court reasoned that since the Boulder Canyon Project was constructed for irrigational and other purposes, such as flood control, navigation, regulation of flow, and generation of electrical energy, the Secretary should not be tied to a rigid formula that would force him to distribute water for irrigation purposes only. Following this line of reasoning, the Court held that the Secretary of the Interior "is free to choose among the recognized methods of apportionment or to devise reasonable methods of his own." [[41]](#footnote-42)41

The entire essence of the Supreme Court's decision was that since the Lower Basin states had failed to agree among themselves as to a division of the ***Colorado*** ***River*** waters, Congress had done this for them via the Boulder Canyon Project Act.

Of particular interest to the Upper Basin states is the fact that Arizona contended that the ***Colorado*** ***River*** Compact apportioned only the waters of the main stream, not the main stream and the tributaries. In view of the express ***Colorado*** ***River*** Compact wording, this appears to be a ridiculous contention. The Supreme Court, however, pacified itself on this point by stating: "We need not reach that question, however, for we have concluded that whatever waters the Compact apportioned the Project Act itself dealt only with water of the mainstream." [[42]](#footnote-43)42

There is nothing in the Project Act which states that Congress was speaking only of the waters of the main stream. The Project Act, as already quoted, speaks of "the 7,500,000 acre-feet annually apportioned to the lower basin *by paragraph (a) of Article III of the* ***Colorado******River*** *compact*." [[43]](#footnote-44)43 Article III(a) of the ***Colorado*** ***River*** Compact, as referred to above within the project act, reads as follows:

There is hereby apportioned from the ***Colorado******River*** *System* in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist. [[44]](#footnote-45)44

Article II(a) of the Compact defines the ***Colorado*** ***River*** System as "that portion of the ***Colorado*** ***River*** and its tributaries within the United States of America." [[45]](#footnote-46)45

**[\*353]** Using the ***Colorado*** ***River*** Compact as the basic document in this case, an entirely different interpretation than that made by the Supreme Court can be made of the Boulder Canyon Project Act. It should be pointed out that there are Lower Basin tributaries, other than the Gila ***River***, which enter the ***Colorado*** ***River*** below Lee Ferry, above the Boulder Dam, and below the Boulder Dam.

In his decision, the Master held that his water apportionment applied only to the waters available from Boulder Dam. This decision, in effect, would have allowed the use of those tributaries entering the ***Colorado*** ***River*** between Lee Ferry and the upper end of Lake Mead without charge to the user state. The Supreme Court corrected this obvious error by stating that such use would be charged to the user state as a part of the apportionment from Lake Mead.

The United States intervened in the action for the purpose of claiming main stream and tributary waters for use on Indian reservations, national forests, and other federal lands. The Master declined to make a finding concerning tributary waters but followed the prevailing federal theory on main stream waters pertaining to the federal government's reservation of water supplies. The principal issue at stake was the amount of water needed "to satisfy the future as well as the present needs of the Indian Reservations." [[46]](#footnote-47)46 The Master determined this future need by considering the number of irrigable acres within each Indian reservation. The total amount of water allocated to the United States in the decision was about 1,000,000 acre-feet annually.

The Supreme Court agreed with the Master's conclusions and findings on this point. A very significant part of the decree that is of particular interest to the Upper Basin states reads: "finally, we note our agreement with the Master that all uses of mainstream water within a State are to be charged against that State's apportionment, which of course includes uses by the United States." [[47]](#footnote-48)47

Throughout its decision, it is apparent that the Supreme Court was preoccupied with "main stream" water. In order to justify this preoccupation, the Court had to interpret the Boulder Canyon Project Act as only dealing with main stream water. The Boulder Canyon Project Act, however, was based upon the ***Colorado*** ***River*** Compact. The ***Colorado*** ***River*** Compact obviously and expressly deals with the waters of the ***Colorado*** ***River*** System as therein defined. If such were not the case, probably none of the signatory states would have executed the ***Colorado*** ***River*** Compact, most certainly not the Upper Basin states. The most disconcerting feature of the decision is the definition of the 7,500,000 acre-feet of water apportioned to the Lower Basin as defined by the Supreme Court via the Boulder Canyon Project Act. This definition is wholly inconsistent with the plain terms of the ***Colorado*** ***River*** Compact. It is a very neat trick to say Article III(a) of the Compact has one meaning for the Lower Basin and another meaning for the Upper Basin. Notably, it has been said.

**[\*354]** With regards to the Upper Basin, however, it must be pointed out that the Supreme Court was quite careful in conveying that the case before it involved only an apportionment of waters among the Lower Basin states. The Court did not attempt to define or ascertain any obligation of the Upper Basin states with respect to either the delivery of water to the Lower Basin or to the Republic of Mexico.

The litigation lasted approximately ten years. Buoyed by its apparent victory, Arizona renewed its efforts to secure authorization of the Central Arizona Project in the United States Congress.

**7. *COLORADO* *RIVER* BASIN PROJECT ACT** [[48]](#footnote-49)48

The latest chapter in the long struggle over ***Colorado*** ***River*** waters began after the decision in the *Arizona v. California* [[49]](#footnote-50)49 case. While the decision was greeted with great enthusiasm in Arizona, the other six basin states were considerably less enthusiastic. Immediately after the decision was announced, Arizona, again, introduced legislation in order to authorize the Central Arizona Project in Congress. Much to Arizona's dismay, it quickly became apparent that such legislation would not pass without the other basin states' support. Negotiations among the seven states then started in an attempt to resolve the many issues. Representatives of the varied states' water resource agencies were the principal negotiators, and they conducted numerous meetings at various locations in an attempt to arrive at some legislative compromise.

The Upper Division states feared that authorization of the Central Arizona Project would impede further water resource development in the Upper Basin. This fear was based on the fact that a full water supply for the Central Arizona Project could not materialize without using waters allocated to the Upper Division. California, learning from its defeat in the court case, opposed the legislation for the reason that it would reduce the amount of water that California had previously been diverting. The climate for the negotiations was not good and the meetings among the negotiators were often stormy. Eventually, however, it became apparent that future water resource development in each of the seven states would be seriously jeopardized if such accommodations were not reached. An accommodation was reached and resulted in the passage of the ***Colorado*** ***River*** Basin Project Act, which was approved by the President on September 30, 1968. Some of the principal provisions of that Act include the following important premises:

a. Authorization of the Central Arizona Project [[50]](#footnote-51)50

This project, now under construction, involves the construction of pumps, canals, and reservoirs that will convey water from Lake Havasu on the lower ***Colorado*** ***River*** into the Central Arizona area (Phoenix area, and, perhaps, the Tucson area also). While the legislation does not expressly say **[\*355]** so, the amount of intended water to be diverted is 1.2 million acre-feet annually, if this amount is available. It is doubtful that this amount will ever be available, and it most certainly will not be available when the Upper Basin reaches its fully authorized depletion.

b. As against the Central Arizona Project, a Quantity Guarantee to the State of California of 4.4 Million Acre-Feet of Water Annually [[51]](#footnote-52)51

This guarantee was California's price for supporting the legislation. Through this provision, California avoids the most serious effects of the Supreme Court decision. As matters now stand, the State of Arizona gained little, if anything, as the result of the Supreme Court decision, in terms of ultimate water supply.

c. Authorization of Construction Projects [[52]](#footnote-53)52

These projects include five participating projects in ***Colorado*** and one in Utah, which were all authorized for construction. For the ***Colorado*** projects, the legislation prescribes that "as nearly as practicable" they shall be completed not later than the date of the first delivery of water from the Central Arizona Project.

d. Clarification of the ***Colorado*** ***River*** Compact

Subchapter V of the Act contains various provisions that the Upper Basin states insisted upon in an attempt to clarify some of the ambiguous provisions of the ***Colorado*** ***River*** Compact. A principal provision of that subchapter is contained in Section 1552(a) [[53]](#footnote-54)53 as follows:

In order to comply with and carry out the provisions of the ***Colorado*** ***River*** Compact, the Upper ***Colorado*** ***River*** Basin Compact, and the Mexican Water Treaty, the Secretary shall propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the ***Colorado*** ***River*** Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. To effect in part the purposes expressed in this paragraph, the criteria shall make provision for the storage of water in storage units of the ***Colorado*** ***River*** storage project and releases of water from Lake Powell in the following listed order of priority:

(1) releases to supply one-half the deficiency described in article III (c) of the ***Colorado*** ***River*** Compact, if any such deficiency exists and is chargeable to the states of the Upper Division, but in any event such releases, if any, shall not be required in any year that the Secretary makes the determination and issues the proclamation specified in section 1512 of this title;

**[\*356]** (2) releases to comply with article III (d) of the ***Colorado*** ***River*** Compact, less such quantities of water delivered into the ***Colorado*** ***River*** below Lee Ferry to the credit of the States of the Upper Division from other sources; and

(3) storage of water not required for the releases specified in clauses (1) and (2) of this subsection to the extent that the Secretary, after consultation with the Upper ***Colorado*** ***River*** Commission and representatives of the three Lower Division States and taking into consideration all relevant factors (including, but not limited to, historic stream-flows, the most critical period of record, and probabilities of water supply), shall find this to be reasonably necessary to assure deliveries under clauses (1) and (2) without impairment of annual consumptive uses in the upper basin pursuant to the ***Colorado*** ***River*** Compact: Provided, That water not so required to be stored shall be released from Lake Powell: (i) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in article III (e) of the ***Colorado*** ***River*** Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spill from Lake Powell.

The final chapter in the continuing struggle over the waters of the ***Colorado*** ***River*** has not yet been written--and may never be.

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**End of Document**

1. 1 ***Colorado*** ***River*** Compact, 1923 ***Colo.*** Sess. Laws 684; [***COLO.*** *REV. STAT. §§ 37-61-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33S-00000-00&context=1516831) to 104 (1999). [↑](#footnote-ref-2)
2. 2 Boulder Canyon Project Act of Dec. 21, 1928, ch. 42, [*45 Stat. 1057*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5C9D-VNP0-01XN-S392-00000-00&context=1516831) (codified as amended at [*43 U.S.C. § 617*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73R7-00000-00&context=1516831) (1998)). [↑](#footnote-ref-3)
3. 3 February 3, 1944, U.S.-Mex., [*59 Stat. 1219,*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CBP-FY70-01XN-S099-00000-00&context=1516831) T.S. 994, 3 U.N.T.S. 313. [↑](#footnote-ref-4)
4. 4 Upper ***Colorado*** ***River*** Basin Compact, [*63 Stat. 31,*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S056-00000-00&context=1516831) [***COLO.*** *REV. STAT. §§ 37-62-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33Y-00000-00&context=1516831) to 106 (1999). [↑](#footnote-ref-5)
5. 5 ***Colorado*** ***River*** Storage Project Act, ch. 203, ***70 Stat. 105*** (codified as amended at [*43 U.S.C. §§ 620*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73SX-00000-00&context=1516831)-620(o) (1994)). [↑](#footnote-ref-6)
6. 6 [*Arizona v. California, 373 U.S. 546 (1963).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-7)
7. 7 ***Colorado*** ***River*** Basin Project Act, ***82 Stat. 886,*** [*43 U.S.C. §§ 1501*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-74D2-00000-00&context=1516831) to 1556 (1994). [↑](#footnote-ref-8)
8. 8 ***Colorado*** ***River*** Compact, 1923 ***Colo.*** Sess. Laws 684; [***COLO.*** *REV. STAT. §§ 37-61-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33S-00000-00&context=1516831) to 104 (1999). [↑](#footnote-ref-9)
9. 9 [*Wyoming v.* ***Colorado****, 259 U.S. 419 (1922).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-45S0-003B-H2C4-00000-00&context=1516831) [↑](#footnote-ref-10)
10. 10 *Id.* [↑](#footnote-ref-11)
11. 11 Boulder Canyon Project Act of Dec. 21, 1928, ch. 42, [*45 Stat. 1057*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5C9D-VNP0-01XN-S392-00000-00&context=1516831) (codified as amended at [*43 U.S.C. § 617*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73R7-00000-00&context=1516831) (1998)). [↑](#footnote-ref-12)
12. 12 *See* [*43 U.S.C. § 617c*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73RB-00000-00&context=1516831)(a). [↑](#footnote-ref-13)
13. 13 [*43 U.S.C. § 617.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73R7-00000-00&context=1516831) [↑](#footnote-ref-14)
14. 14 *See* [*43 U.S.C. § 617c*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73RB-00000-00&context=1516831)(a). [↑](#footnote-ref-15)
15. 15 *Id.* [↑](#footnote-ref-16)
16. 16 *Id.* [↑](#footnote-ref-17)
17. 17 *Id.* [↑](#footnote-ref-18)
18. 18 *Id.* [↑](#footnote-ref-19)
19. 19 [*Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468 (1963).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-20)
20. 20 ***Colorado*** ***River*** Basin Project Act, [*43 U.S.C. §§ 1501*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-74D2-00000-00&context=1516831) to 1556 (1994). [↑](#footnote-ref-21)
21. 21 *See* [*43 U.S.C. § 617r.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73RW-00000-00&context=1516831) [↑](#footnote-ref-22)
22. 22 Upper ***Colorado*** ***River*** Basin Compact, [*63 Stat. 31,*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S056-00000-00&context=1516831) [***COLO.*** *REV. STAT. §§ 37-62-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33Y-00000-00&context=1516831) to 106 (1999). [↑](#footnote-ref-23)
23. 23 February 3, 1944, U.S.-Mex., [*59 Stat. 1219,*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CBP-FY70-01XN-S099-00000-00&context=1516831) T.S. 994, 3 U.N.T.S. 313. [↑](#footnote-ref-24)
24. 24 *Id.* [↑](#footnote-ref-25)
25. 25 Upper ***Colorado*** ***River*** Basin Compact, [*63 Stat. 31,*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCB-R1P0-01XN-S056-00000-00&context=1516831) [***COLO.*** *REV. STAT. §§ 37-62-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33Y-00000-00&context=1516831) to 106 (1999). [↑](#footnote-ref-26)
26. 26 ***Colorado*** ***River*** Storage Project Act, ch. 203, ***70 Stat. 105*** (codified as amended at [*43 U.S.C. §§ 620*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73SX-00000-00&context=1516831)-620(o) (1994)). [↑](#footnote-ref-27)
27. 27 *See* [*43 U.S.C. §§ 620*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73SX-00000-00&context=1516831)- 620(o). [↑](#footnote-ref-28)
28. 28 *See* [*43 U.S.C. § 620d*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73T5-00000-00&context=1516831)(e). [↑](#footnote-ref-29)
29. 29 *Id.* [↑](#footnote-ref-30)
30. 30 *Id.* [↑](#footnote-ref-31)
31. 31 *Id.* [↑](#footnote-ref-32)
32. 32 *See* [*43 U.S.C. § 620.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73SX-00000-00&context=1516831) [↑](#footnote-ref-33)
33. 33 *See id.* [↑](#footnote-ref-34)
34. 34 *See* [*43 U.S.C. § 620d*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73T5-00000-00&context=1516831)(a). [↑](#footnote-ref-35)
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36. 36 [*Id. at 551-52.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-37)
37. 37 [*Id. at 566.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-38)
38. 38 Boulder Canyon Project Act of Dec. 21, 1928, ch. 42, [*45 Stat. 1057*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5C9D-VNP0-01XN-S392-00000-00&context=1516831) (codified as amended at [*43 U.S.C. § 617*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73R7-00000-00&context=1516831) (1998)). [↑](#footnote-ref-39)
39. 39 [*43 U.S.C. § 617c*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73RB-00000-00&context=1516831)(a). [↑](#footnote-ref-40)
40. 40 *Id.* [↑](#footnote-ref-41)
41. 41 [*Arizona v. California, 373 U.S. at 593.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-42)
42. 42 [*Id. at 568.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-43)
43. 43 [*43 U.S.C. § 617c*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73RB-00000-00&context=1516831)(a) (emphasis added). [↑](#footnote-ref-44)
44. 44 ***Colorado*** ***River*** Compact, 1923 ***Colo.*** Sess. Laws 684; [***COLO.*** *REV. STAT. § 37-61-101*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J33S-00000-00&context=1516831)(1999) (emphasis added). [↑](#footnote-ref-45)
45. 45 *Id.* [↑](#footnote-ref-46)
46. 46 [*Arizona v. California, 373 U.S. at 600.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-47)
47. 47 [*Id. at 601.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-48)
48. 48 ***Colorado*** ***River*** Basin Project Act, ***82 Stat. 886,*** [*43 U.S.C. §§ 1501*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-74D2-00000-00&context=1516831) to 1556 (1994). [↑](#footnote-ref-49)
49. 49 [*Arizona v. California, 373 U.S. 546 (1963).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831) [↑](#footnote-ref-50)
50. 50 *See* [*43 U.S.C. § 1521*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-74DB-00000-00&context=1516831)(a). [↑](#footnote-ref-51)
51. 51 *See* [*43 U.S.C. § 1521*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-74DB-00000-00&context=1516831)(b). [↑](#footnote-ref-52)
52. 52 *See id.* § 1521(a). [↑](#footnote-ref-53)
53. 53 *Id.* § 1552(a)(1)-(3). [↑](#footnote-ref-54)