Glen Canyon: current point of contention in a long-standing interstate water controversy.

What is Glen Canyon all about? Where does it fit into the Colorado River controversy? Is it important to the water users of Colorado? If so, what is your Water Conservation Board doing about it and what is your Water Congress doing about it?

Glen Canyon is the latest chapter in a long and disappointing story about Colorado's Grand River...Colorado's River? It used to be. But not anymore! And that is the story...a difficult story to tell in understandable language. Yet it should be told, over and over again, to the water users of Colorado.

The Colorado River story begins prior to 1900. Picture the setting: Colorado, a leader in early water development, claimed that she owned, and could use as she saw fit, all the waters of interstate streams flowing within her boundaries. Colorado relied not only upon her constitutional provisions, but also upon a U. S. Attorney General's opinion that an up-stream nation is under no obligation to deliver water to a lower nation.

Then came the first of a series of agonizing water losses. Kansas sued Colorado and in 1901 the U. S. Supreme Court held that there must be an equitable apportionment of benefits arising from the flow of interstate streams. Then Wyoming sued Colorado
over Laramie River rights and in 1911 the U. S. Supreme Court held that interstate streams must be divided on the basis of interstate priorities.

These decisions greatly alarmed Colorado and other upper basin states. California was pressing hard in Congress for authorization of a dam on the Colorado to protect her Imperial Valley from floods and to regulate flows for irrigation diversions to the valley. Although severe floods dramatized California's need for regulatory storage, her congressional bills ran into strong political opposition.

Result: eventual recognition that the interstate water controversy had to be settled before comprehensive development of the Colorado River could proceed. Common desire for a solution gained momentum and finally an interstate compact was proposed by Colorado's representative, Delph E. Carpenter.

Lower basin states needed the compact to gain upper basin support for proposed dams and canals. Upper basin states needed the compact to feel secure in their rights to further development of water uses. Upper states believed they would be deprived of such rights by prior appropriation and uses downstream if they did not enter into a special agreement. Both areas wanted to avoid the complete federal control of the river that probably would have resulted without an interstate agreement.

Another significant motivating factor: desire of people in the Colorado River basin to give agricultural and domestic uses priority over power in the use of water.

Colorado River compact commissioners signed the historic document in 1922. It was promptly ratified by all basin states except Arizona. In 1928, Congress passed the Boulder Canyon project act which waived the compact's seven state ratification requirement on the condition that California and five other states ratify it. This led to official ratification in 1929. Ratification by Arizona finally came in 1944.
The Colorado River compact divides the river into an upper basin (those parts of Colorado, New Mexico, Arizona, Utah and Wyoming located above Lee Ferry, Arizona) and a lower basin (those parts of Arizona, California, Nevada, New Mexico and Utah located below Lee Ferry).

It apportions to each basin in perpetuity the exclusive beneficial consumptive use of 7.5 million acre feet per year. It also gives the lower basin the right to increase its beneficial consumptive use by 1,000,000 acre feet per year, presumably from Colorado River tributaries below Lee Ferry. And it provides that Mexico's rights shall be satisfied first from waters which are surplus to these apportionments. If that is insufficient, each basin must make up half the Mexican deficiency. The compact further provides that water unapportioned under these criteria may be further apportioned after 1963, if and when either basin shall have utilized its apportioned quantity of beneficial consumptive use.

The compact prohibits upper basin states from depleting Lee Ferry flow below an aggregate of 75 million acre feet for any period of ten consecutive years. However, this provision is qualified in this way: upper basin states shall not withhold--and lower basin states shall not require--water not reasonably needed for domestic and agricultural uses.

On power: subject to compact provisions, water may be impounded and used for power generation, but such impounding and use on an interstate basis shall be subservient to domestic and agricultural purposes.

The Colorado River compact of 1922 is the basic document apportioning water rights in the Colorado River. Related documents, including the Boulder Canyon project act, the California limitation act, the Hoover Dam water and power contracts and the 1948 compact of the upper basin states, all serve to comprise what is known as the law of the river.
Both the upper and lower states affirm the sanctity of the law of the Colorado River and both appear willing to abide by it. The problem: upper and lower states have different notions as to what the law of the river actually is.

The basic controversy centers around the meaning of certain terms and provisions of the 1922 compact. For example, there is no agreement as to the meaning of the term beneficial consumptive use. This leads to consideration of uses to which water may be put under the terms of the compact. Point to remember: the compact does not apportion water...it only apportions the right to appropriate a certain amount of water to a beneficial consumptive use.

The long-standing Colorado River water war has many fields of battle. Arizona and California have been engaged for five years in an all-out Supreme Court battle relating to interpretation of the compact provision which permitted the lower basin to increase its consumptive use by 1,000,000 acre feet annually. Arizona claims the compact relates to use of Gila River water in Arizona. California says no. Result: five years of testimony before a special master...25,000 pages, 4,000 exhibits. The stakes are so big that more than $5 million has been spent on the trial. California alone maintains 60 full-time lawyers, engineers and statisticians for work on the suit.

Southern California wants to make Glen Canyon another field of battle. Why? Immediate purpose: prevention of upper basin interference with Hoover powerplant operations. Long-range strategy: delaying action to gain time required to back-up present power water demands, which are vulnerable, with a strong showing of beneficial consumptive use. Tactics: submersion of the 1922 compact in so many ambiguities and uncertainties that it will eventually have little meaning. Goal: re-negotiation of issues long ago decided by the 1922 compact, followed by re-apportionment of waters of the Colorado River to accommodate Southern California's new consumptive use requirements.
How has the Glen Canyon problem developed? Go back to passage of Public Law 485 in April 1956. It authorized four main storage reservoirs in the upper basin. Largest of these: Glen Canyon ... last point of storage control above Lee Ferry, with 26 million acre feet of storage and a 900,000 KW powerplant. Construction is now underway, with filling expected to start in 1962.

P. L. 485 requires the Secretary of Interior to report certain Colorado River Storage Project financial data to Congress each January 1st. Interior assumes that anticipated power revenues are basic to such a report. Power revenues can't be anticipated, says Interior, unless Glen Canyon filling criteria are first developed. So Interior called governors of the seven basin states to Washington in October 1957 to consider the Reclamation Bureau's filling plan for Glen Canyon. Reclamation apparently tried to take a middle-of-the-road position. Upstream people have said it gave far more to the lower states than they could expect under the compact, and that the Upper Basin Commission, rather than the governors, should have been consulted.

California came to this meeting well prepared with critical comments on reclamation's plan. Upper states were not prepared to discuss it.

Congressman Craig Hosmer of California had this to say: "I don't believe that... the cash register functions of the power projects in the upper basin are within the meaning of consumptive uses so far as the law of the river is concerned, nor that storage of water for power is within the law of the river insofar as the compact is concerned, nor that storage of water for unspecified or speculative future consumptive uses in the upper basin is a part of the intentions of the compact."

Congressman Clair Engle of California: "When this case boils down to brass tacks, what we are talking about is who is going to get the power."
Another meeting was scheduled for Las Vegas, Nevada in December 1957. There, lower states presented a counter proposal to reclamation's plan. It went far beyond both the compact requirements and reclamation's criteria. Upper states' reaction? They were not prepared to discuss it. McNichols was the only upper basin governor present. He made a general statement to the effect that upper states will stand upon compact provisions.

Lower states then organized an integrated engineering-legal group which included reclamation's water experts. Objective: development of alternatives to reclamation's filling plan for Glen Canyon...alternatives more beneficial to lower states. Motivation: delaying the filling of Glen Canyon Reservoir over the longest possible period of time...to the great detriment of upper states...to the great benefit of lower states.

Why? Lower states, particularly Southern California, are now receiving the lion's share of waters of the Colorado River. Remember: over 70 percent of the Lee Ferry flow originates in Colorado. Lower states are receiving waters apportioned by compact to the upper states. They intend to hold these waters even though they are not now able to make beneficial use of them...looking to the day when they can beneficially use them.

How? By arguing that upper states must release enough water from Glen Canyon Reservoir to enable lower basin powerplants to meet existing power contracts...by making it appear that the federal government is in the process of creating a series of interconnected powerplants on the Colorado River, of which Glen Canyon is one, in order to satisfy Southern California's power requirements.

Can they do it? Not according to the compact!

Colorado water users with senior rights by decree or stipulation, remember: interstate compacts supersede, and have priority over, state water rights and intrastate agreements.
The true fact is: upper basin development is dependent upon creation of facilities to provide storage for exchange to upstream domestic and agricultural uses....to meet Lee Ferry demands in time of water shortage...and to produce power revenues necessary to finance beneficial consumptive use projects in the upper basin. Upper states, a third of a century behind the lower basin in development, take the position that though later in time, they have the same rights that the lower basin had when it developed years ago with federal aid...Rights defined by compact.

The big question: will compact promises of the past be honored in the present? Or...can Southern California eat her cake and have it too?

Upper states look upon lower basin's Glen Canyon efforts as a breach of faith since the compact was made for the explicit purpose of guaranteeing upper basin development in exchange for upper basin support of earlier lower basin development.

Glen Canyon: the first real test of lower basin good faith.

What is being done about Glen Canyon? Your Water Congress has cut its eye-teeth on Glen Canyon. It spotlighted Glen Canyon at the June convention. On July 18th, at Durango, representatives appeared before the Water Conservation Board and urged formation of a Water Investigation Commission comprised of the state's top legal-engineering talent on water problems. Glen Canyon was pinpointed as the number one problem. Board approval followed on July 30th.

Water Investigation Commission engineering committees went to work at once...guiding and strengthening Water Conservation Board engineers, as they undertook detailed studies of Glen Canyon Reservoir operations.

Major initial job went to the legal committee. Its assignment: assist Colorado's Upper Basin Commissioner in defining Colorado's position on Glen Canyon in general terms prior to September 23rd...the day upper basin commissioners meet in Santa Fe.
The Water Investigation Commission made an urgent recommendation to the Water Conservation Board: assign three of Colorado's top water lawyers...Glenn Saunders, John Barnard, Sr. and Frank Delaney...to this job at once. Board approval followed.

These lawyers worked hard to develop a statement of Colorado's position on Glen Canyon operating criteria. Result: a carefully worded general statement carrying the concurrence and support of the state's major Colorado River water user organizations. Unanimous support of your Water Congress was obtained during a joint executive committee-rules committee meeting in Denver on September 16th. Capsule summary of statement: stand on the compact...no retreat!

This statement was recommended to the Water Conservation Board on September 17th. The Board approved it. Next step: Colorado's Upper Basin Commissioner, Edwin C. Johnson, will take this statement to Santa Fe and will urge its adoption by resolution as the official position on Glen Canyon of the Upper Colorado River Basin Commission.

What about Santa Fe? Will other upper states go along with Colorado? Wyoming, with similar interests, but understaffed, should concur. Utah, strongly led by water man George Clyde (now Governor), talks Colorado's position. A Utah legal committee has prepared a summary of views quite consistent with Colorado's statement.

New Mexico, well staffed and capable, may be the most difficult to convince. She talks this line: Why worry? Glen Canyon won't be needed anyway until such time as it would fill under reclamation's criteria. Basis for this attitude: some people from New Mexico have expressed understandable concern and ask: why alienate congressional support for Colorado River projects by rocking the boat at this point? Always loyal to total upper basin development, New Mexico is expected to give careful consideration to the views of other upper basin representatives.

If other upper states should be timid at the outset...then, should Colorado (with 51.75% of the upper basin water allocation) show the way, alone? This would be an important policy decision. Major lawsuit with lower states is a probability. Considerations: large expenditure of state funds to wage interstate water war...assembling a technical staff to match wits with Southern California's already-established, high-powered water team.
Water Congress viewpoint: get going, alone if necessary...it's not too late...but it will be soon. There are ways for Colorado to get dollars, but once Colorado's water is gone there is no way to get it back.

At last, Colorado is alert. Through your efforts in backing the Water Congress, Colorado's water law and water engineering talent is being brought together in a common attack on common problems for all Colorado water users.

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Water Congress funds now total over $3,500--sustaining memberships have contributed $3,475. Individual membership applications have been received from about 100 persons. The time is ripe to send in your 1958 membership application with five dollars if you have not already done so.

Colorado newspapers: Your Water Congress would like to feature a water editorial in each Newsletter. Send in these editorials, with permission to reprint.

Dates to remember: Upper Colorado River Commission meeting in Santa Fe, New Mexico, September 23, 24...1st annual convention of Colorado Water Congress, in Denver, November 7, 8...National Reclamation Association annual convention in Houston, November 19, 20, 21.

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COLORADO WATER CONGRESS
SUSTAINING MEMBERSHIPS
(9-19-58)

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$3,475
Well, it's fascinating to read that the hugest and most vital water trial in all Western U. S. history is about to conclude in San Francisco—and all Colorado officials and water experts know about it is still only what they read in the papers.

This is the trial before a U. S. Supreme Court Master who will recommend to the nation's highest court the final basis for division of Colorado river water—three-fourths of it originating in Colorado—between California and Arizona under the Colorado River Compact of 1922.

Supposedly we can't be touched by the issues. Supposedly we are innocent bystanders. Supposedly Colorado can come to no harm by the decisions arising out of this suit.

Retreating behind the compact provisions that purport to assign 75 million acre-feet each decade to the Upper Basin states, and behind the ensuing Upper Basin compact which purports to assign Colorado 51% of that water, we have assumed that the suit is none of our business, and that we need to spend no money on watching it, let alone participating.

It is not supposing, however, to say that the least Colorado could and should have done in its own behalf was to have kept a skilled observer, trained in water-law, watching this gigantic and possibly precedent-setting trial.

We have not done so. Why? Well, the assumption has been that money is more valuable than water, although you can't drink money, and money cannot make or break Colorado's future, while water or the lack of it can.

We have been too chintzy. We have been penny-wise and pound-foolish. The Assembly, perhaps not urged enough by former state administrations, wouldn't even provide the few thousand dollars necessary to insure us a transcript and copies of the exhibits.

If we ever wake up with a start to the fact that issues vital to Colorado have been decided out of our sight due to our own negligence, all the frantic scrambling and hasty provision of money won't help us.

All I know about this case either is what I read in the papers, but one paper I read is gotten out by Californians solely interested in their own water-future.

Know what appeared there recently? A story that all participants in this huge suit save Arizona, i.e. California, Nevada, New Mexico, Utah, have conceded that actual prior beneficial appropriation of water takes precedence over any written agreements! This means that such agreements become "scraps of paper", as California has always treated them.

The chief California attorney says this point, on which the master has apparently not yet ruled, makes the case of "vital importance to all the Western states". All, of course, save Colorado, which has ignored it; although it is "scraps of paper" on which we rely to save our water...