"This suit is not of our choosing. We were forced into it. Our sole and remaining hope is the Supreme Court of the United States. Before that Court, neither wealth nor political power can prevail. In that Court all are equal—the rich and the poor—the mighty and the meek alike receive justice from that Court... After a quarter of a century the question is to be resolved. Because we know we are right, we must prevail." (Arizona Interstate Stream Commission, 1952)

The Colorado - New Mexico water fight... What was it all about?

The issue: Disagreement over how senior water rights on the San Juan River would be supplied after construction of three proposed federal reclamation projects.

New Mexico's water chips: Authorization for Navajo and San Juan-Chama projects.

Colorado's chips: Animas-La Plata project feasibility and authorization... appropriations for Curecanti and Florida projects... authorization for the Fryingpan-Arkansas project.

This will be New Mexico's last trip to the upper Colorado River well. Navajo and San Juan-Chama projects will use up virtually all of NM's compact allotment.

The San Juan River is New Mexico's last water hole. Compacts with other states tie her hands on further utilization of the Rio Grande, Pecos and Canadian river systems.

The San Juan River rises in southwest Colorado and flows through northwest New Mexico into the Colorado River at Glen Canyon Reservoir site. Below Farmington, NM, on the San Juan are Indian water rights senior to proposed federal projects. Above Farmington, two horns of the San Juan fighting bull. One horn: The tributary Animas River, which heads above Durango, and Colorado's proposed Animas-La Plata Project.

The other horn: The upper San Juan River, Navajo Reservoir and New Mexico's Navajo and San Juan-Chama projects. Both horns can supply the senior Indian rights. The question: How much Indian water from each in times of shortage?
The Animas-La Plata project would divert water from high on the Animas and La Plata rivers to irrigate 60,000 Colorado acres and 20,000 New Mexico acres. USBR is investigating its feasibility. $800,000 already spent on studies, feasibility report due next year.

The Navajo project would irrigate 110,000 acres of Navajo Indian Reservation lands in New Mexico below Navajo Reservoir. The San Juan-Chama project would divert San Juan headwaters across the divide into the Chama River and on down the Rio Grande for Albuquerque municipal supply and for irrigation in the lower Rio Grande Valley. New Mexico had to put both projects into a single authorization bill because of slope problems similar to Colorado's.

Navajo Reservoir will support both the Navajo and the San Juan-Chama projects. It's a 1.7 million acre footer, under construction as one of the upper Colorado River storage project's big four. The others: Glen Canyon, Flaming Gorge, Curecanti. But Navajo is different. No powerplant, no benefit to Colorado, Wyoming and Utah under the upper basin compact. It's a New Mexico reservoir, to be paid for by all four upper basin states through storage project power revenues. Some say New Mexico got Navajo Reservoir in bottom card dealing with Colorado during upper basin project act negotiations. It seems to have been the price Colorado had to pay for her 46% power revenue allocation.

The upper basin compact gave New Mexico—a 5% flow contributor—an 11½% slice of the annual Colorado River flow at Lee Ferry. New Mexico's upper basin compact water has to come from the tributary San Juan. Probably the shortest flow supply stream in western Colorado. When the San Juan's low year coincides with a good water year on the mainstream Colorado, New Mexico's compact percentage may gobble up the entire flow of the San Juan at Navajo Reservoir. Result: Downstream Indian rights will be shorted.

Salt on Colorado's Navajo wounds: The upper basin compact says New Mexico gets annual deliveries of 11½%. This means she can bleed the San Juan in successive years of local drought and sock away the surplus in Navajo Reservoir cold storage.
New Mexico has been carrying some Colorado water chips on her shoulder. CWCB sat on New Mexico's Navajo, San Juan-Chama authorization proposal for years without comment. Up to two years ago, CWCB seemed unaware of SW Colorado opposition to NM's plans. It seemed to give New Mexico the impression that Colorado would support NM's proposed projects after it got around to considering them. Another chip: Some New Mexicans feel that Colorado has given them a raw deal on water deliveries under the Rio Grande Compact.

Big Chip: Colorado's Congressman Aspinall, chairman of the powerful House Interior Committee. Aspinall wouldn't call up New Mexico's authorization bill until the water fight with Colorado was settled. New Mexico's bill passed the Senate last year after almost no discussion.

The political climate between Aspinall and New Mexico's Senator Clinton Anderson has been downright cool since upper basin project act negotiation days. They are opposites in political approach. Anderson: Razor-sharp, quick after results. Aspinall: Thorough, careful, master legislative chess player. Anderson is a former Secretary of Agriculture. He is leaving the chairmanship to the Joint Committee on Atomic Energy to become chairman of the Senate Interior Committee . . . Aspinall's counterpart on water legislation. Anderson moves up on seniority following retirement of ailing 84-year old Senator James E. Murray of Montana.

New Mexico's political chip carriers were probably spurred on some in the brawl with Colorado by election year politics. Gov. Burroughs, leader of New Mexico's hard-hitting San Juan negotiation team, faced a stern test in a sudden death primary on May 10th. Anderson and Burroughs are both up for election in November.

The actual fighting between Colorado and New Mexico centered around a relatively small amount of water . . . probably about 4,000 acre feet a year on the average.

The question: When the Indian rights below Farmington are shorted after New Mexico's full compact bite has been taken out of the San Juan and stored in Navajo Reservoir, who makes up the shortage . . . New Mexico, or both Colorado and New Mexico?
New Mexico claimed the upper basin compact provides that the Indian shortages shall be a joint call on both the Animas and San Juan Rivers, or on both Colorado and New Mexico. Colorado feared that New Mexico's shortage-sharing principle, when applied to New Mexico's ultimate project diversions, would make the Animas-La Plata project infeasible. Colorado claimed that the Indian calls should be met by Navajo Reservoir releases to the maximum extent possible, before calling on the Animas. Logic: Colorado is paying 46% of Navajo Reservoir's cost and should obtain some benefits from it.

New Mexico wouldn't budge from her position. Colorado's Southwestern Water Conservation District wouldn't budge. In between: Colorado Water Conservation Board, with one eye cocked on Colorado's Curecanti, Florida and Fry-Ark projects. CWCB studied the matter thoroughly. It concluded that SWWCD's fears were baseless, that the A-LP project wouldn't be hurt by operation of Navajo and San Juan-Chama projects. SWWCD flatly disagreed.

While Colorado was trying to develop a united front, New Mexico flexed her congressional muscles and, without warning, started to play rough. NM's Senators Anderson and Chavez exploded a political bombshell by formally asking Congress to withhold funds for Colorado's proposed Curecanti and Florida projects. Chavez logic: "They (Colorado) need us more than we need them."

New Mexico's Florida attack: Florida would utilize water needed by New Mexico. Curecanti attack: Too high interest rate ... 4.12% compared with interest on other storage project features as low as 2.59%. The high interest rate would exhaust the upper basin fund and leave no money for N, SJ-C. New Mexico weapon: Some labeled it political blackmail. Others viewed it as practical politics.

It was a time for cool heads at CWCB. The New Mexico storm was rocking the upper basin boat violently, threatening to drown the project aspirations of all four upper basin states, if not all 17 reclamation states. Watching it all: Congressional vultures known as the foes of western reclamation.
CWCB Director Sparks: "Retaliation is a two-edged sword which can only lead to destruction of the economy of both Colorado and New Mexico. We in Colorado have no intention of being goaded into using such a weapon."

It was one of the biggest challenges to the reclamation program in recent years. It emphasized the political reality that any one of the 17 western congressional delegations can kill any reclamation project if it chooses. It's a sink or swim together proposition.

After five months of intensive, high-level negotiations, CWCB decided upon amendments to the Navajo, San Juan-Chama authorization bill which were acceptable to New Mexico but unacceptable to SWWCD, which claimed appeasement and surrendering of Colorado's water rights.

The Curecanti interest formula was a fight in its own right. The Senate attached a weird but effective rider to a bill authorizing construction of the $22 million Norman, Oklahoma, municipal water project. The rider: The interest rate for any new upper Colorado River project shall be the average interest on government securities for a 15-year period prior to start of construction of the project. Effect on Curecanti: Lowering of its interest rate from 4.12% to 2.75%.

The Norman rider had no difficulty passing the Senate, where there is no rule on germaneness of legislation and any proposition can be tied to any bill. In the House, Rep. Craig Hosmer of California fought the interest change bitterly, because it will permit quicker construction of upper Colorado River projects. Opposition also came from the Budget Bureau. But the Norman rider passed the House and will become law unless there is presidential veto. Recent withdrawal of Budget Bureau opposition makes veto unlikely.

Now that the smoke is clearing away from the San Juan battlefield, where do we stand? New Mexico got her House Committee hearing on Navajo, San Juan-Chama authorization but the bill hasn't much chance of passage this year. Colorado got appropriations for a start on Curecanti and Florida . . . plus removal of the New Mexico roadblock to Fry-Ark authorization next year.
Colorado got a more favorable interpretation of Navajo Reservoir operation than seems to be indicated by the upper basin compact. Or did she? There may be legal questions as to enforceability. Question: Is this an attempt to modify an interstate compact by act of Congress and if so, can it be done?

All four upper basin states, and particularly 46% Colorado, received a big financial boost in lower interest rates for financing subsequent storage project starts, including Curecanti.

Colorado's fireworks with New Mexico blew a smokescreen over upper basin water development for a while. But the big fire on the Colorado River is in the lower basin. Firesetter: Judge Simon H. Rifkind, special master in the biggest, longest, most expensive original case in U. S. Supreme Court history . . . Arizona v. California.

Rifkind's draft recommendations to the U. S. Supreme Court came on May 9th. They burst over Southern California like an unexpected nuclear bombshell. In California there was shocked disbelief, bitter disappointment, outcries of "dire consequences", agonizing reappraisals of monies spent, commitments made. It was the worst jolt California has received in many years. In Arizona: Sunlight, peace and understanding, green light visions for the long-proposed Central Arizona Project . . . a probable $1 billion a year shot in Arizona's economic arm.

The special master ruled against California! He fooled the crystalballers and gave Arizona and the United States virtually everything they wanted. It was a far-reaching decision . . . a significant cornerstone in the law of the river for generations to come.

Rifkind wrote a 387-page opinion, after listening to millions of words of testimony over a 5-year period. He apportioned the lower basin's 7.5 million acre feet . . . California 4.4, Arizona 2.8, Nevada 0.3. He scrapped the first in time, first in right doctrine and equitably apportioned the Colorado River water among the lower basin states, without interstate priorities.
Rifkind said the 1922 Colorado River Compact was irrelevant to this suit because it divides water interbasin, not interstate. He ruled that the controlling documents were the Boulder Canyon Project Act of 1929, the California Limitation Act of 1929 and certain water contracts with the Secretary of Interior. He took much stock in the intent of Congress.

Phil Swing, co-author of the Boulder Canyon Project Act: "What this report proposes is that water shall be taken away from an established project in California--The Metropolitan Water District--and given to an unborn community in desert land in Arizona. Never has any interstate decision by the U.S. Supreme Court destroyed an existing project in one state in order to give water to future development in another state."

James Howard, Special Counsel for MWD: "Apparently the special master's conclusion is against California interests, not on the basis of the Colorado River Compact interpretations, but on the theory advanced by the United States as intervenor that Congress has full control of the Colorado River, that by the Boulder Canyon Project Act the Secretary of Interior was authorized to apportion water among the contending states by contract and that he has done so without priorities. This means that although the so-called Arizona contract was 15 years later than the California contracts upon which extensive investments had been made, it has the same standing."

Regarding Rifkind's contention that the intent of Congress was to establish parity, rather than to divide lower basin water on a first-come, first-served basis, Swing said: "I can't recall any language in the Act that takes that position."

Rifkind's recommendations were unexpected. Arizona's attorneys appeared to have bungled their case, up to the final stages when Arizona, in desperation, changed attorneys and reversed its position on certain key points. Southern Cal's formidable legal battery, including $100,000 a year Northcutt Ely, was in top form. Arizona had lost three suits in the U. S. Supreme Court between 1930 and 1935 in efforts to establish her Colorado River water claims.

The powerful Metropolitan Water District was so confident of a favorable decision that it went ahead and completed its 242-mile Colorado River aqueduct and 379 miles of supplemental distribution lines to ultimate delivery capacity of 1,212,000 acre feet a year, the estimated requirement in 1975. Dedication ceremonies, culminating nearly 30 years of aqueduct development costing California taxpayers $500 million,
were ironically set by MWD for May 11th . . . two days after Rifkind's bombshell blasted away half of MWD's anticipated Colorado River water supply.

Here's what happened: Arizona claimed 2.8 million acre feet of consumptive use out of the first 7.5 million acre feet of Colorado River water available to the lower basin, plus full rights to about 1 million acre feet annually from the Gila River, a Colorado River tributary running through Arizona. Also: Part of the 1 million acre feet of III-b water. Arizona claimed that the 1 million acre feet mentioned in Article III b of the Colorado River Compact was mainstream water available for use in Arizona anywhere below Lee Ferry. Present use: The Gila's 1 million acre feet. Arizona almost got it all . . . the 2.8 MAF, the Gila's 1 MAF and 46% of any compact delivery surplus over 7.5 million acre feet. Rifkind also implies that Arizona may appropriate any surplus water in lower basin tributaries above Lake Mead. Arizona didn't get III b water and she lost out in her attempt to have reservoir and channel losses prorated interstate in proportion to benefits derived.

California claimed 4.5 million acre feet a year present consumptive use of Colorado River water, future need over 6 million acre feet, established Colorado River rights of 5,362,000 acre feet . . . plus half of any lower basin surplus. California got 4.4 million acre feet a year . . . the amount agreed to in her Limitation Act. . . plus half of lower basin surplus. California did not get the additional 962,000 acre feet contracted with the Secretary of Interior, after shutting her eyes to the Limitation Act. Rifkind found the 962,000 acre feet to be "if available" water. In losing the water war, California won some legal battles. Rifkind agreed with Cal's interpretation of the 1922 compact and with Cal's definitions of beneficial consumptive use (diversions less returns) and unapportioned water (Article III-b water). He favored California in deciding that the Limitation Act does not charge California with either reservoir evaporation losses or channel losses.

Nevada claimed 500,000 acre feet of Colorado River water a year . . . enough to meet her needs to the year 2000. Present consumptive use: 25,000 acre feet a year. Nevada got 300,000 acre feet a year, plus 4% of any lower basin surplus. Nevada has
contracted with the Secretary of Interior for 100,000 acre feet a year out of Lake Mead. New Mexico lost out in her effort to divert more water from the upper Gila. But she was allowed to continue her present Gila diversions.

Rifkind refused to decide now on Utah's claims to water from tributaries, saying Utah's claims are not now being challenged by mainstream states. He also postponed decision on all lower basin tributary water other than the Gila, saying these streams are still under appropriation and that the controversy concerning them is not "real and genuine".

Rifkind gave the United States, last-minute intervenor, virtually everything it wanted. Indians living along the Colorado River were allotted 453,315 acre feet ... enough water to irrigate all their irrigable lands. Note this: Indian uses are to be charged against the states in which the Indian lands are located. Rifkind's tomahawk dealt proposed states water rights legislation what may be a mortal blow. Federal supremacy philosophy seems to be interwoven throughout Rifkind's report.

Northcutt Ely: "The draft sustains the government's full claim to water for Indian lands. It even allows 20,000 acre feet - a magnificent water right - to the Chemehuevi Indian Reservation, an area comprising several thousand acres but ... no Indians."

Hardest hit of all by Rifkind's bombshell: Metropolitan Water District. MWD had counted on 1,212,000 acre feet a year ... 550,000 acre feet under a division of the California Limitation Act's 4.4 million acre feet ... and 662,000 acre feet under a division of the 962,000 acre feet of additional contract water, including 112,000 acre feet for San Diego. Now, only MWD's first 550,000 acre feet is secure. Even that will suffer if compact deliveries are under 7.5 million acre feet a year.

MWD is in serious trouble. Its wholesale service area is the vast Los Angeles-San Diego metropolitan sprawl ... 3,300 square miles, 89 cities, numerous unincorporated areas, a population of 7.5 million holding property worth $13 billion in assessed valuation. Last year, MWD delivered 650,000 acre feet of Colorado River water. MWD's largest underwriter, the LA Department of Water and Power, has earnestly
requested MWD to not accept any more customers. LA's water is in MWD's top priority. San Diego's water is in the shaky low priority block.

What is the aftermath reaction in California? MWD first tried to hide the panic button, saying that it can get along for at least ten years and possibly for two generations. Then it urged that the next State legislature appropriate $30 million to help launch an immediate, extensive program to replenish Southern California's depleted underground basins as quickly as possible with the extra Colorado River water available prior to use by other states.

Passage of the state water bond election next November is now virtually assured. Prior to Rifkind's recommendations, the $1.75 billion bond issue to finance the Feather River Project had encountered rough sledding, including heavy foot-dragging by MWD. The present Feather River plan for an annual 1.782 million acre foot annual north to south diversion by about 1970 may have to be vastly enlarged. But Northcutt Ely wishes he had never heard of FRP.

Northcutt Ely: "The fact that California's Feather River Project was pending at the time of the hearings was most unfortunate. Arizona talked about it constantly - that is, that California had somewhere else to go for water while she did not. The project was in the air, the whole atmosphere. Yet it was not designed as a substitute for Colorado River water but rather as a supplemental source."

Federal legislation to nullify Rifkind's opinion is likely to be pressed hard. Cal's Rep. Saund has invited Southern California water organizations to a big pow-wow in Washington D. C. this month to plan legislative action.

California's arguments before the U. S. Supreme Court will be vigorously and eloquently presented. But chances of upsetting Rifkind are very slim. Cal has submitted written objections to Rifkind, who will consider them before submitting his final recommendations to the high court. The Supreme Court's decision is expected by the spring of 1961.

How is Colorado affected? Colorado's water lawyers are studying Rifkind's bulky bombshell. Conclusions as to its legal effects on Colorado must await this analysis. But this much is inevitable: An all-out effort by Southern California to delay upper basin water project development as long as possible.