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**Transboundary Water: cooperation and conflict  
at different levels of government**

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## **ARTIGO 8**

### **The crossed border disputes over sharing Colorado River between the American Southwestern States: A sociological perspective on environmental policies**

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#### **Abstract**

The sharing of the Colorado waters has always been a cross-border issue between Arizona and California since the beginning of the 20th century. The current drought faced by these two states has reignited the tensions on both sides of the border. Our guiding thesis is: the territorial struggles in the past between Arizona and California still serve as structuring elements for current drought issues in the West. We start this article by highlighting the complex and multi-level decision-making process related to the USA water policies. Secondly to illustrate this point, we draw on exemplary career profiles and lobbying actions, in order to show this territorial competition between states over water resources. Thirdly, we show how tensions between the states over how the Colorado River should be shared were politically neutralized in the 1970's. In conclusion, however, we stress that the tensions in the past over water resources between California and Arizona keep on structuring the debates over current drought issues in the West.

**Keywords:** Colorado River, drought, water resources, political system, water politics

### **Disputas fronteiriças sobre o compartilhamento do Rio Colorado nos estados do Sudoeste dos Estados Unidos: uma perspectiva sociológica sobre políticas ambientais**

#### **Resumo**

A partilha das águas do Colorado foi, desde o início do século 20, permanentemente uma questão transfronteiriça entre Arizona e Califórnia. A atual seca enfrentada por estes dois estados tem reiniciado as tensões em ambos os lados da fronteira. Nossa tese guia é: disputas territoriais no passado entre Arizona e Califórnia permanecem sendo elementos estruturantes do atual problema da seca no Oeste. Iniciamos este artigo evidenciando o processo complexo e multinível de tomada de decisão nas políticas sobre água adotadas pelo EUA. Segundo, para demonstrar essa questão, nós traçamos perfis e ações de lobistas, com finalidade de mostrar essa competição territorial entre estados pelos recursos hídricos. Terceiro, nós mostramos como

as tensões entre estados sobre como deveria ser dividida a água do Rio Colorado foram politicamente neutralizadas na década de 1970. Concluimos, contudo, salientando que as tensões do passado sobre os recursos hídricos entre Califórnia e Arizona continuam em discussões estruturais sobre os atuais problemas da seca no Oeste.

**Palavras-Chave:** Rio Colorado, seca, recursos hídricos, sistema político, política hídrica

## **I. Introduction**

It is a morning of September 2014 on a city in the south west of the USA. A public meeting involving the leading managers of the water policies in the city and the county takes place. Issues involving CAP water loom large in the day's meeting as they discuss how to handle the drought, which will become increasingly common in the years to come. Implemented in 1992, the CAP is made up of 336 miles of aqueducts, tunnels, pipelines and pumping stations, the purpose of which is to transport water from the Colorado River to the counties of Pima, Pinal and Maricopa in the south of Arizona. We learnt during the meeting that the water reserves of the two main dams on the Colorado have already reached critical levels: 51% for Lake Powell, and 39% for Lake Mead. However, figures for the region's other, smaller reservoirs make for happier reading (between 75% and 95%). Soon, the Colorado River will not have enough water for everyone.

One of the officials present in the meeting says that priority would be given to urban users, who need at least 1.1 million acre feet (maf) per year. This is still a great deal less than 4.4 million, which the neighboring state of California refuses to negotiate and it seems that California was at the center of preoccupations. It is not clear whether the State of Arizona or the CAP – which is, by definition, an inter-state entity – will be responsible for managing shortages, or, in other words, deciding who will suffer their consequences. In this last case, California's influence is greatly feared, although always mentioned transversally.

In the 1960s, the Central Arizona Project had been promoted to fight the effects of past and future drought and bring an end to trans-border conflicts based on unequal water distribution. If we replace this meeting in the historical perspective of the construction of water policies in the Western United States, it does not appear anecdotal: it provides a crash course in the complexity of the regulation of water resources, which implies a number of levels of decision-making – municipal, regional, state, inter-state and federal. And, historically, both the tensions and the articulations between these levels have fashioned water policies, and with them a certain idea of the economic development of the West.

The major aim of this article is to show to what extent the territorial struggles in the past between Arizona and California still serve as structuring elements for current drought issues in the West. First, we highlight the way in which water projects have been structured from a complex and multi-level decision-making process in which federal agencies, Congress and Supreme Court have played a part to promote one state at the expense of another or to settle the disputes over water resources between states. Second, to illustrate this point, we draw on exemplary career profiles and lobbying actions, in order to show how this territorial competition between states over water resources is mirrored in professional strategies oriented

towards law or politics. Thirdly, thanks to the authorization of the CAP by the Congress, we show how tensions between the states over how the Colorado River should be shared were politically neutralized in the 1970's. In conclusion, however, we stress that the tensions in the past over water resources between California and Arizona keep on structuring the debates over current drought issues in the West. Our research is based on a review of the existing literature, on secondary information and data, on the archives of the protagonists of the conflicts, and on the gray literature associated with them. It constitutes the first part of a larger survey of disputes about water, the logic that underpins them, and their social effects.

## **II. Water projects in the American West at the heart of interstate relations and federal decision**

Until 1914, decision-making in the sphere of water projects was shared by the Department of the Interior, its technical agency (the Reclamation Service), and the White House. Presidents could leapfrog Congress and green light the federal budgets required to develop the West. This coalition can be explained in regard to the fact that Congress, strongly represented by the elites of the East at a time when the states of the West were constructing their legitimacy, saw no interest in voting through budgets for projects which did not directly affect their constituencies. A series of water projects was therefore authorized, primarily to the advantage of California, which had achieved statehood in 1850. This situation created tensions with other, younger states in the West, including Arizona (founded in 1912), that fought to protect the control of the use of their natural resources against the federal government, while at the same time aspiring to economic development. From the 1930s, the more delegations from the states of the West organized themselves and gained influence, the more decision-making powers they acquired. The battle to obtain federal funding took place in the Congressional arena, in the House of Representatives and the Senate, in which representatives of the states of the East and the West engaged in debates about the wisdom of initiating major projects such as the construction of dams. Some Arizona elites understood this and, in order to promote the development of water projects, attempted to develop a united front instead of systematically opposing the federal government.

The growing influence of Congress was accompanied by bureaucratic change. In the early years of the century, the Reclamation Service's irrigation projects still focused on precise territories within single states, an approach that exacerbated state interests in Congress. The new policy of the late 1920s, which was continued with the New Deal and on into the post-War period by focusing, beyond irrigation systems, on the large-scale production of electricity and controlling the flow of rivers, generated effects far beyond the territorial power structure, encompassing inter-state relations within the federal government. This situation presupposed compromise and consensus in Congress. The change in policy also had an impact on bureaucratic practices which, in order to provide a framework for multipurpose regional projects, needed, in order to attain legitimacy, to enlarge their zones of influence to the national level.

Other sociological transformations should also be taken into account. Between the 1940s and the 1960s, the Bureau of Reclamation was not only a breeding ground for engineers, but also employed a considerable number of assistants who provided a link with Congressmen.

Some of those assistants were promoted to the level of directors. During this period, the Bureau was no longer able to count on the support of the Secretary of the Interior and the White House in the promotion of its technical projects, since it was Washington politicians who now held decision-making powers. But to their technical resources, the Bureau added political support, courting politicians less because of their party affiliation, and more because they shared a common interest, namely the development of the West.

But while, in contrast with the preceding period, the decision-making process was now associated with Congress, the Supreme Court had also become an institutional actor, its verdicts influencing the authorization and implementation of water projects. Negotiations in Congress did not always succeed in smoothing tensions between states confronting one another over rights of access to rivers. The struggles between Arizona and California over sharing Colorado River that lasted from 1920's to 1968 is an exemplary illustration of the importance of the "law of the river," and therefore of the Supreme Court, in arbitrating relations between the states, represented in Congress and the federal administration. It was in these three spheres – the political, the administrative and the legal – that the issues of the decision-making process in regard to water projects were played out.

In Arizona, support for the Central Arizona Project had its origins in a struggle between individual states, anxious to develop their economies, for a share in the Colorado River. The New Deal period is considered to have been very profitable to the expansion of California, notably thanks to the policy of building dams to irrigate agricultural land. The completion of the Hoover Dam on the Colorado River in 1936 consecrated the legitimacy of the federal government's approach to the development of the state. However, the American West neither begins nor ends at the Californian border, and other states had a major interest in controlling and exploiting the river that Reisner (1985) called the "American Nile." The Arizona elites envied California's economic prosperity, while at the same time accusing it of overexploiting the Colorado River.

In Arizona, the struggle with California over access to the Colorado River manifested itself in various ways depending on whether the elites concerned were state leaders or advocates of the interests Arizona in Washington. The conflict can also be interpreted in reference to two general characteristics of policies on the West, namely, on the one hand, political individualism, which emphasized local interests, and, on the other, political pragmatism, which rejected ideology in favor of an approach based on problem-solving (Thomas 1991: 9). The opposition between these two approaches has been described as an expression of the "political paradox of the West" or, in other words, "the political manifestation of the contradictions between the myth and the reality of western development (Thomas 1991: 14). This took the form of a denial, on the part of certain political elites in the West, that financial aid from the federal government had played a part in the region's development. As we shall see, this paradox tended to dissipate as the objectives of the CAP became increasingly better defined, and as the elites attempted to reconcile individualism and political pragmatism.

When, in the 1930s, against the backdrop of the New Deal, the Department of the Interior decided to sign a contract with the Californian water distributor – the Metropolitan Water District – to build the Parker Dam in Arizona, Benjamin Baker Moeur, the Democrat Governor of the time, informed federal officers that if Arizona's rights in the matter were not clearly defined he would oppose the deal (August 1999). In effect, he considered that a dam could not be built to divert the Colorado River without the consent of his state. When the project

was given the go ahead, Governor Moeur declared martial law on the site, bringing in the Arizona National Guard and accusing the federal government of calling Arizona's sovereignty into question. Since any negotiations with the State of Arizona were doomed to fail, the federal government took its case for building the Parker Dam to the Supreme Court. The dispute took an unexpected turn when the Supreme Court ruled in favor of Arizona, ruling that the federal government had failed to demonstrate that the dam had been authorized. But, shortly after the verdict, Congress authorized the dam's construction.

This conflict between Arizona and California is not just one episode among others. Indeed, on many occasions in the 1930s Arizona used the Supreme Court as an arbiter to impose its sovereignty and legitimacy over the Colorado River. Estimating that it had been poorly treated in regard to water resources (Hundley 1975: 289), the state refused to ratify the Colorado River Compact, designed to regulate water distribution between the river's Upper and Lower States. However, the Supreme Court declined to uphold Arizona's complaints about California, preferring instead to emphasize the rights of the federal government to elaborate water policy in the watersheds of the American West.

Figure 1: Colorado River in California and Arizona borders



Source: <http://geography.howstuffworks.com/united-states/the-colorado-river.htm>

### III. Law and politics as professional weapons in cross border issues

The interstate disputes over the Colorado River in the name of economic prosperity were handled through the use of various legal tactics and political strategies deployed in the Congress and the Supreme Court, as the careers of the senator Carl Hayden and the lawyer Mark Wilmer profile and CAP association's lobbying actions show.

### **III.1 Carl Hayden, Western lawmaker: from the Salt River Project to the Central Arizona Project**

The use and distribution of water is central to the public career of Senator Carl Hayden. Born in Arizona in 1877, Hayden enjoyed a 57 year career as a Congressman and Senator. After spending ten years as a local politician, he represented the brand new state of Arizona, first in the House of Representatives, from 1912 to 1927, and then in the Senate, from 1927 to 1969. Although he is famous for the part he played in developing the American West by means of the CAP, Carl Hayden was a product of the legendary conquest of the “frontier.”

Hayden’s father, Charles Trumbull Hayden, was born in Connecticut on April 4, 1825. He was one of the pioneers who left the East to make their fortune out West. While working the region to the north of Salt River Valley as a manufactured product salesman, Hayden saw the potential of this arid and hostile territory. His ambition was to transform Salt River Valley into a canal-irrigated agricultural empire. In the mid-1870s, the irrigation community – based on the south shore of Salt River – in which he lived, assumed a pioneering role thanks to a variety of rapidly expanding firms (grain fields, mills, orchards, etc.). As well as this family success, Hayden recalls that, at the time, his parents’ farm was repeatedly hit by drought and flooding. The farmers and businessmen of the Valley asked the government for aid to halt the flooding and provide water storage facilities. These environmental problems occurred in the context of the irrigation movement of the 1880s, led by its promoters, Maxwell and Smith, who organized meetings dedicated to the “conquest of arid America,” which Charles Hayden attended. Distributing tracts and magazines at conferences, he initiated the young Carl to the problems of his community and other territories in the states of the West. His family spent considerable sums of money in the cause of preserving the rights of these territories, winning and losing cases along the way. During his time at California’s Stanford University, one of the West’s pioneering academic institutions, a career in law and politics with a focus on water issues seemed an obvious choice to Carl:

I want to make water law a specialty not only because it is a new and open field where the prizes are large to the winner, but also because through it I can have a greater power for good and evil than at any other branch of the law. I know that the law of water is not taught in schools nor found in books, but that is all the more reason why it will be so valuable when known”. (...) “I have no fear of not getting along in this world. Just let me train rightly for the right thing and the result is not in doubt. I am going into politics – I shall make honest water laws and see that they are honestly executed (August, 1999: 24).

The project was somewhat delayed by the death of his father: he spent a number of years successfully running the family business. However, he did not give up politics, which he considered useful in solving local problems. Later, he gradually left his business interests to one side, starting out in politics at the local level, where he immediately sought aid from Washington to develop water distribution networks. He later started campaigning in state, and later federal elections. His Washington ambitions can be explained in reference to a series of factors: Carl Hayden and other local leaders, aware of the economic potential of Roosevelt’s new federal policy, encouraged the development of water projects with a view to enticing

people to set up in arid areas. On March 4, 1903, the Salt River Project, for which he was the spokesman in Washington, was the first of 26 projects authorized by the Department of the Interior in the first decade of the national irrigation program. This successful experience was the point of departure for his political campaigns for election to Congress, where he dedicated the best part of his political career to issues concerning the development of water distribution in the West.

During the fourteen years he spent in the House of Representatives, he witnessed a transformation in American society. When he entered Congress in 1912, America still defined itself in terms of Jefferson's agrarian ideal of small communities, decentralization and competition. By the time Hayden became a Senator in 1927, the Progressive Era was tracing out a new America that was more urban, more centralized, more industrialized and more secular than ever before. The development of the Colorado River became a major issue in the 1920s, dominating the agenda of the politicians of the American South-West. Hayden was already involved, taking part in negotiations about the Colorado River Compact in 1922, and remaining active in the field up to and including the passage of the Colorado River Basin Project Act of 1968, which, among other things, authorized the CAP. With the development of the Colorado River, Hayden was confronted by other issues. Instead of advocating an irrigation project centered on a river in a single state, as had been the case of the Salt River Project, he was responsible for resolving the problem of how to share a river crossing seven states of the South-Western United States and a part of Mexico. Hayden also had to resist the All American Canal project promoted by California and, along with it, the advocates of the Imperial Valley. While he supported a regional conception of the development of the river, he opposed California's desire to obtain the exclusive right to access water from the Colorado with the help of the federal government with the sole objective of increasing the prosperity of the Imperial Valley: "you are now coming to Congress asking that an extraordinary thing be done by the passage of his legislation and Congress must look to the development not only of the Imperial Valley, but the Colorado River Valley as a whole, and that can only be fully developed by storage" (ibid.: 76).

Carl Hayden also fought against leaders in his state, particularly Governors Hunt and Moeur, and Senator Fred Colter, advocates of a state-based approach to rights concerning the development of the Colorado River. In 1923, promoting a federal approach, Hayden announced his support for the ratification of the Colorado River Compact. "Any fair-minded person must conclude that Arizona alone cannot undertake the development of the great river without the consent of the United States, and without understanding with the other states of the Colorado River Basin, all of which leads to the conclusion that sooner or later the Colorado River Compact must be approved by the State of Arizona" (ibid.: 92). According to Hayden; the main partner in the development of the Colorado River was the federal government. In the 1940s, a change of governor in Arizona combined with increasing urbanization within the state, created a new situation which, in turn, led to the emergence of a new approach to water policy. Senator Hayden introduced the first legislation on the CAP, a process which brought him up against Californian interests and alternative projects promoted by Arizona. Nevertheless, legislative negotiations about how water from the Colorado River was to be shared culminated in the authorization of federal funding for the CAP, crowning the Senator's political career.

### **III.2 The CAP association, a new coalition for a new project**

After the Second World War, the legacy of the New Deal was apparent in the way in which natural resources were managed. The development of the West was still envisaged in terms of the construction of more and more dams; the generation of electricity was considered a sure fire bet in that it had helped to produce the ships and planes that guaranteed victory against Germany, while the creation of irrigation systems helped agri-business. It was in this post-New Deal, post-War context, which was favorable to large-scale water projects, that the CAP, initiated by the State of Arizona, took shape. Indeed, at the time, Arizona was experiencing unprecedented demographic growth, a fact that encouraged the state's elites to find solutions to problems associated with the seasonal migration of significant numbers of "Snow Birds" who consumed water and used air-conditioning in a region in which aquifers, still the main source of water, were gradually drying up due to the needs of agriculture.

In order to ensure the legitimacy of the CAP, the elites of the State of Arizona sought federal funding, which presupposed authorization from Congress. After the ratification of the Colorado River Compact by Arizona in 1944, concrete initiatives were taken to develop a political consensus, an approach that contrasted sharply with the conflict-ridden period of the 1930s. In 1946, the CAP Association (CAPA) was set up by local decision-makers (farmers, bankers, lawyers, companies working in the general interest) who shared the belief that water from the Colorado River was of fundamental importance to the future of Arizona's economy. From the outset, the Association was closely linked to the Arizona Congressional Delegation, notably in terms of the legislative activities of the two Democrat Senators, Carl Hayden and Ernest McFarland, in favor of the CAP.

The CAP was involved in setting up hearings on early legislation about the authorization of the CAP presented by two Arizona senators, Carl Hayden and Ernest McFarland to the Senate Subcommittee on Irrigation and Reclamation. In 1948, the Association was behind the creation of a state agency, the Arizona Interstate Stream Commission, the aim of which was to advocate on behalf of the state's claims to access to the Colorado River in Congress and at the courts (Mann 1963: 128). Wayne Akin, President of the CAPA, was appointed President of the Commission by Governor Osborn. This appeared not to be a neutral choice in that, through the Association, Akin could count on the advice of the most influential local decision-makers in the state (Johnson 1977). Moreover, since graduating in the 1940s, he had been a member of the League of 14. Made up of two members from each of the seven states of the Colorado River Basin, the League's objective was to bring together decision-makers in the water sector to discuss shared problems and, where possible, to resolve their differences.

This initiative was perceived as having the potential to contribute to building a consensus around the CAP project. Furthermore, Wayne Akin could also count on Charles Carson, legal advisor to Governor Osborn and the Arizona Interstate Commission, and also a member of the Board of the Phoenix Chamber of Commerce, who had sought Akin out when the CAPA was first set up, and who later supported the legislative efforts of Congressmen Hayden and McFarland. Independently of the CAP, this form of lobby is best understood if we bear in mind that in the West, political participation was not structured exclusively around the Parties, which were considered weak, but also focused on interest groups that attempted to influence public policy in their own particular fields (Thomas 1991: 165). In the case of the promotion of the CAP in Congress, the CAPA interest group and a handful of Arizona politicians decided to put their differences to one side and work together, thus strengthening

their influence in regard to California, which was both strongly represented and highly organized.

### **III. 3 Mark Wilmer lawyer for Arizona against California. Law of the River v. prior appropriation**

Mark Bernard Wilmer was born in July 1903 in Wisconsin. The son of a farmer, he grew up in the small town of East Troy, essentially a community of farmers, dairy workers and shopkeepers. Attracted to literature and to the new, increasingly urban America, the embryonic growth of which he saw every morning on his way to Burlington College, he developed a genuine desire for mobility, a desire encouraged by his father, who wanted his son to continue his university studies. In 1926, he gained a place at the College of Law at the University of Georgetown in Washington DC. Two years after graduating in 1929, he qualified for the State Bar of Arizona in May 1931.

In the early days of his career in Phoenix, his first legal case concerned disputes between Roosevelt Water Conservation District and the Salt River Project. He did not yet know that water would become an important part of his legal career. Indeed, the complex problematic of regional rights, going beyond the merely local framework, placed him at the center of the political, environmental and legal history of the West in the 20th century. At the time, the dispute between Arizona and California was only just beginning, and he was still to establish a professional reputation. In the 1930s, his legal portfolio was essentially made up of criminal cases. He was a litigator. The skills he displayed in the local courts impressed the region's more politically-minded judges. He was invited by the District Attorney of Maricopa County and the Attorney General of the State of Arizona to help them in their work. During this period, he met Frank L. Snell, a well-known, well established attorney, a graduate of Kansas School of Law, based on downtown Phoenix, with whom he set up the Snell and Wilmer Law Firm.

Between 1940 and 1950, the Snell and Wilmer Law Firm became one of the largest in the American West. It provided a wide range of services and expertise and considerable resources to its clients, with 400 lawyers in six offices in Arizona, California, Nevada, Colorado and Utah. Due to its size, the firm helped to shape Arizona's political and economic agenda. And when Governor McFarland of Arizona, at a time when the legal battle against California seemed to have been lost, went in search of the best litigator in the state, the Association of the Bar of Arizona and the legal community as a whole recommended Mark Wilmer. In 1957, at the height of a remarkable legal career, Wilmer accepted the challenge of defending Arizona's case against California, which he did until the Supreme Court delivered its decision in 1963. By accepting the case, Wilmer entered a world defined by water (or the lack of it), as well as by culture and tradition. He familiarized himself with the legal case, the rulings of the courts, and cross-border conflicts, imbibing as much information on the state's most valuable resource as he could and defining his relationship with those against whom he applied his defensive strategy on behalf of Arizona against California.

In the field of law, Arizona's Spanish heritage was reflected in the Latin principle *qui prior est in tempore, potior est in jure*, which means "he who is earlier in time, is stronger in law." This doctrine of prior appropriation remained valid throughout the Mexican period (1881-1948), during which it was applied to regulate uses of land and water. When the Territory of Arizona was set up in 1863, the Howell Code passed by the Legislative Assembly incorporated Spanish and Mexican customs of prior appropriation. As more and more colonists gradually

arrived in the Territory, and periods of flooding were repeatedly followed by severe drought, competition for land and water intensified, giving rise to numerous legal battles. In regard to the Salt River, Judge H. Kibbey of the Territory's Supreme Court was invited, in 1882, to resolve disputes between water consumers and the canal company (Salt River Valley Land). The court's ruling reasserted the doctrine of prior appropriation: water belonged to the land rather than the canal companies and, therefore, could not be sold as a separate commodity. The Kibbey Decision linking land and water was used as the basis of water law in Arizona. Around twenty years later, on March 1, 1919, Judge Edward Kent, of Maricopa County, who worked in the Territory of Arizona, followed the Kibbey Decision in the Hurley versus Abott case (1910). This case opposed the owners of land irrigated by the Salt River Users Association which, under contract with the government, which owned canals to the north of the river, received surplus water from those canals, and the individual owners to the south of the river who had no contractual relationship with the federal government and who claimed the right to access water. The Kent Decree reaffirmed the doctrine of prior appropriation concerning cultivated plots of land, including all of the Salt River Valley connected to the Salt River. The Kent Decree was the key element in terms of water law and the administration of Arizona at the moment that it ceased being a territory and became a state in 1912.

The legal heritage of Spain and Mexico that gives primacy to prior appropriation was not exclusively applicable to Arizona and did not only govern local water supplies. Wilmer quickly realized that this legal doctrine was an issue for the states of the West who coveted the Colorado River, leading to serious disputes, notably between Arizona and California, whose explosive growth at the beginning of the 20th century constituted a regional threat in terms of rights to the Colorado River. He discovered the degree to which California was an organized entity capable of influencing the water policies of the West; indeed, the Imperial Irrigation District was one of Wilmer's most powerful legal adversaries. In 1911, Phil Swing, Imperial Valley's lawyer, who later converted his legal influence into a seat in the House of Representatives, along with the real estate developer, Mark Rose, set up the Imperial Irrigation District (IDD), which lobbied Congress and the Secretary of the Interior to develop water projects (notably, the All American Canal). This was part of a race to acquire as many prior rights to the Colorado River as possible for California. The coalition between the IDD and the federal department set alarm bells ringing in the Arizona parliamentary delegation and alerted other states with an interest in the river. Meanwhile, the City of Los Angeles attempted to secure increasing volumes of water to fulfill needs associated with its rapidly expanding population. Like Arizona, the Upper Basin States – Wyoming, Utah, Colorado and New Mexico – saw Southern California, with its urban centers and agricultural users, as a threat to their future development. Prior appropriation had to be fought.

As Mark Wilmer discovered in the Congress archives, the tensions between California and the other states of the West were at the origin of legal actions, which led to the promulgation of the Colorado River Compact of 1922, and the Boulder Canyon Act of 1928. During this period, the Governors of Arizona were strongly opposed to this legislation, which they regarded as being overly favorable to California. They took legal action defending state rights to the water of the Colorado River against the federal government and the Golden State. Forty years later, however, Wilmer used the legislation as a guideline in his legal strategy in favor of Arizona at the Supreme Court. In spite of the fact it sanctioned the construction of the Hoover Dam, the legislation abrogated the principle of prior appropriation and provided an annual

allocation of water from the Lower Colorado River Basin as follows: California, 4.4 million acre-feet; Arizona, 2.8 million acre-feet; Nevada, 300, 000 acre-feet.

The Laws of the River were constituted by legislation voted by Congress. The laws, exclusively concerned with the distribution of water from the Colorado River, excluding its tributaries, provided the key stone of Mark Wilmer's legal defense system. Wilmer attempted to convince the Supreme Court by using arguments derived from legislative history and previous debates. California, which denied Arizona any legal right over the Colorado River, took the position that the desert state already benefitted from water from its tributaries (the Gila River and the Salt River). California's lawyer, Northcutt "Mike" Ely based his case on legal history, citing the Supreme Court's decision of January 5, 1922 on a dispute between Wyoming and Colorado concerning a tributary of the Colorado River applying the priority rule to rivers running through two states. Finally, on June 3, 1963, the Supreme Court validated Mark Wilmer's defensive strategy: "We are persuaded by the legislative history as a while that the Act was not intended to give California any claim to share in the tributary waters of the Lower Basin States. [...] Where Congress has exercised its constitutional power over waters courts have no power to substitute their own notions of "equitable apportionment" for the apportionment chosen by Congress" (August 1999: 89).

#### **IV. Legislative compromises over cross border issues**

In the late 1950s, the Arizona's economy had reached a turning point. With demographic expansion concentrated in the "Sun Corridor" (Phoenix and Tucson), agriculture was no longer the main source of wealth. Indeed, there was a proliferation of new jobs in other industries (Sheridan 2012). In 1961, this context forced the Association to adopt a new approach to promoting the CAP, which recognized the demands for water from industry and the cities (Johnson 1977). At the same time, the Arizona Interstate Stream Commission ordered the Bureau of Reclamation's local agencies to re-evaluate water use in areas outside the distribution zone originally designated by the CAP, including, notably, an extension of the aqueduct toward Tucson. As part of the quest for national unity in the face of Congress, the aim of the new approach was to demonstrate that the CAP did not exclusively serve the water needs of the city of Phoenix, thus providing a tactical advantage in terms of undermining the validity of California's argument, according to which the CAP was essentially intended for agricultural purposes. In 1966, the members of the Arizona Interstate Stream Commission and the CAPA joined a task force designed to support the efforts of the Arizona Delegation to Congress, a process that culminated in the authorization of the CAP in 1968.

However, to have a chance of making their voice heard in Congress and successfully defending the CAP in the face of opposition from California, the Arizona elites had to present a united front. However, within Arizona itself, water policy went through a radical change with the election of Sidney Osborn (Democrat) as Governor in 1940. Osborn signed the Colorado River Compact in 1944, validating a regional vision of water distribution in spite of strong opposition from the state's utilities, as well as from the Arizona Highline Reclamation Association (an organization promoting the interests of the state and irrigation projects in each of the state's counties and districts, whose President was the Democrat, Fred Tuttle Colter, and from two other Senators and six Congressmen (Hundley 1975: 299). In so doing, Osborn

distanced himself from the kind of conflicts that characterized the Arizona political scene in the preceding decades, in particular the tradition of systematic opposition established by the preceding Democrat governors, George W. P. Hunt and Benjamin Baker Moeur. In effect, having exhausted all legal possibilities, the State of Arizona had practically no chance of satisfactorily settling its differences with California (Hundley 1975: 299).

This change in policy also reflected a growing awareness of the potential consequences of long-term economic growth in the state, particularly in and around Phoenix and Tucson. Not only did this growth prefigure Arizona's urban development in the following decades, it also posed the question of water supply in a state that had already experienced water and energy crises in the droughts of the 1930s and 1940s. Governor Osborn's new political orientation, represented in Washington by Senator Hayden, was also part of the effort to develop the consensus the State of Arizona needed to pass the CAP in Congress (August 1999). However, in the 1960s, the politico-legal disputes over the CAP led to the formation of new coalitions among the nation's senators.

Between the Supreme Court's 1963 decision in favor of Arizona in regard to sharing the Colorado River with California and the confirmation of that ruling by Congress in 1968, the federal administrators and representatives of the states of the Colorado River Basin began to elaborate a regional plan for the development of the West. While debates in Congress primarily focused on the CAP, a new project, the Pacific Southwest Water Plan (PSWP) was promoted in 1963 by the new Secretary of the Interior, Stewart Udall, appointed to the post two years previously by President John F. Kennedy, to whom he was close (Johnson 2002). Eschewing a concept focused on national borders and, instead, promoting a regional approach to water needs, the objective was to unite the interests of Arizona and California without passively accepting the energy policy of the moment; the proposition, presented by Morris Udall, Stewart's half-brother, included the construction of two giant dams (Bridge Canyon and Marble Canyon) near the Grand Canyon National Park.

Democrat Congressman for Tucson, Morris Udall, a lawyer by training and profession, emerged as the mediator of opposing interests. For Senator Carl Hayden, the main advocate of the CAP, the PSWP was a competing and contradictory legislative initiative (August 1999). The Senator regarded the PSWP as a stalling tactic on the part of California designed to delay the authorization of the CAP. Paul Fannin (Republican), elected Governor in 1958, also thought of the PSWP as "a conspiracy against Arizona born in California." He defended Senator Hayden's approach, which consisted of promoting the idea of the CAP in a separate legislative proposition. This vision was rejected by Morris Udall, who was favorable to a more regional approach to the CAP. However, in Arizona, the reputedly influential Arizona Republic condemned Udall's future political career in Arizona by accusing him of being beholden to the California water lobby represented by James Carr, the Under Secretary of the Department of the Interior.

The administration's preference for a regional approach to developing the Colorado River in the form of the PSWP enabled Senator Hayden to gather support. In 1966, the Arizona Task Force got behind the legislative effort by uniting the main sources of expertise on water of the time (the Arizona Interstate Steam Commission, the Arizona Public Service, the CAP Association and the Salt River Project). Moreover, the CAP had the support of powerful allies in the Senate: Senator Henry Jackson (Democrat, Washington), head of the Senate Interior Committee, and Senator Clinton Anderson (Democrat, New Mexico), President of the Power

and Reclamation Subcommittee of the Interior Committee. In their struggle in favor of the CAP, these Democrat senators supported Carl Hayden against his Californian Republican opponents, Thomas Kuchel, member of the Senate Committee on Insular and Interior Affairs, and Claire Engel, who had helped torpedo the CAP project in the House of Representatives in 1951. For the real battle for the CAP was, in the end, the one waged in the House Interior Committee and the Irrigation and Reclamation Subcommittee directed by Wayne Aspinall (Democrat, Colorado), who was very wary of California (and Arizona) and what he saw as their expansionist aims and concerned at the idea that the Upper Basin States, especially Colorado, might not obtain their due from the Colorado River Compact. Hayden also clashed with John Saylor (Republican, Pennsylvania), a member of the House Interior Committee. Saylor, a conservationist, opposed the construction of dams included in the CAP; he was opposed to the continuous development of public sector electricity generation schemes. His position earned him the respect of those of an ecological persuasion.

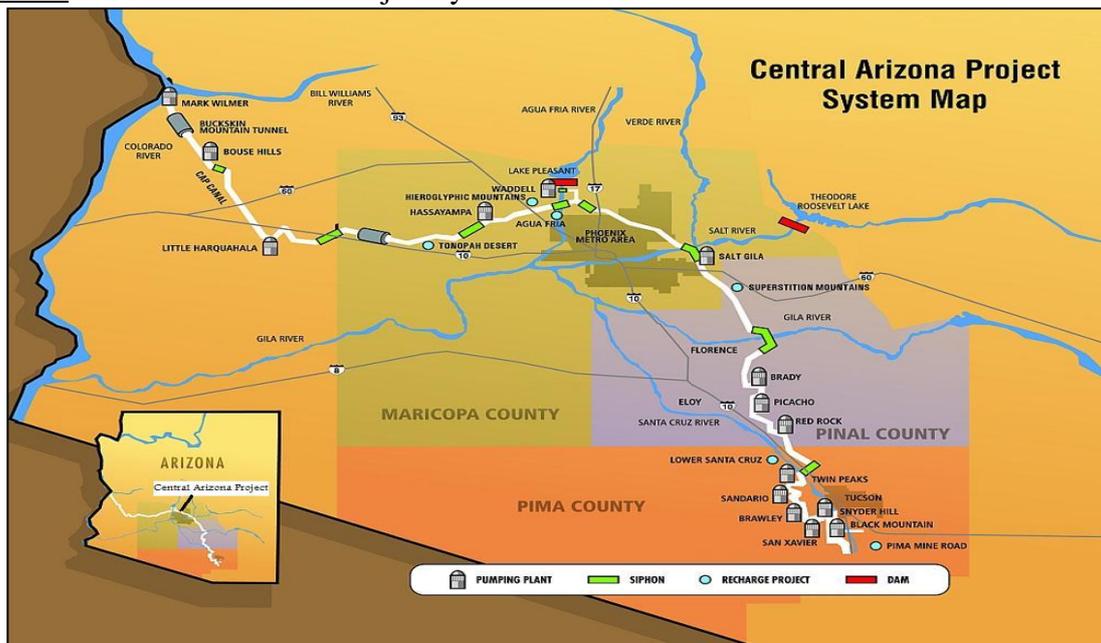
In the end, the Colorado River Basin Act of 1968 integrated the projects supported by the representatives of different states, or a single state, either completely, as in the case of the CAP, or more partially, as in the case of the Pacific Southern Water Plan. This result, produced by a compromise between the various forces at play, was based on pork barrel politics, according to which Congress' allocation of public funds served the interests of the legislators' constituencies rather than the national interest. The CAP and the Pacific Southern Water Plan that was at issue was not only the economic development of the West, but also political careers and reputations. This meant that everyone had to take into account the needs of their respective constituencies in terms of new projects and the allocation of sections of the Colorado River. While, for example, California lost the legal battle, it nevertheless obtained a guarantee of 4.4 million acre feet of the Colorado River in case of drought, which later turned out to be more than useful in countering the water crisis of the 2000s.

In order to be able to hope to ensure that their needs were met, coalitions had to find a point of agreement; they also had to take external pressures into account deriving, in particular, from environmentalists fundamentally opposed to the construction of new dams that may have flooded one of the jewels of the West, the Grand Canyon, and favorable to alternative energy sources. In the 1970s, the rise in the number of environmentalist votes changed decision-making processes; authorization for major water projects was based not only on economic viability and technical reliability, but also increasingly reflected a new problematic involving the reconciliation between environmental protection and economic growth. Furthermore, a new legislative framework, the National Environmental Policy Act, had also been introduced in 1970. It is certainly not by chance if, during this period, the fact that a number of dam construction projects were abandoned in favor of projects based on alternative energy sources coincided with the emergence of a new generation of bureaucrats and politicians much keener on adapting to the emergence of values different to their predecessors, who had been motivated exclusively by economic considerations. And it is also probably not by chance if, also during this period, Congress's authorization for the federal funding of major water projects was accompanied by the requirement for the states concerned to meet certain legislative imperatives, notably in regard to the protection of their natural resources.

Up until this point, Congress and the Bureau of Reclamation had championed the development of the West. The need to incorporate environmental concerns was expressed by a new generation of Arizona elites, including Stewart Udall, then Secretary of the Interior. They

were doubtless helped in this by their legal background and their experience as lawyers. By suggesting that, in order to support the CAP, the Bureau of Reclamation should become a shareholder in a coal-powered electricity plant, Stewart Udall managed to echo the concerns of the environmentalist movement (to which he had dedicated a book, *The Quiet Crisis*, in 1963), while at the same time promoting the economic ambitions of the elites of the West. Finally, on September 30, 1968, the Colorado River Basin Act was passed by Congress and signed by President Lyndon Johnson; among other projects supported by Congress, it authorized the CAP. It was as if, thanks to the authorization of the CAP, tensions between the states over how the Colorado River should be shared had been politically neutralized, and that the balance of power between the fierce advocates of economic development, the promoters of dams, and the inveterate defenders of the environment had reached a new equilibrium.

**Figure 2:** the Central Arizona Project system



**Source:** <http://www.azwater.gov/AzDWR/StatewidePlanning/WaterAtlas/ActiveManagementAreas/PlanningAreaOverview/WaterSupply.htm>

However, the drought's crisis in 2000 in the Western States reveals how much the tensions of the past between Arizona and California are still high and an impediment for drought management.

**V. Conclusion: Lasting tensions between Arizona and California over water resources**

On September 2014, water reserves of the two main dams on the Colorado have already reached critical levels: 51% for Lake Powell, and 39% for Lake Mead, which is a critical situation with strong probabilities of shortages, even if figures for the other regions make for happier reading (between 75% and 95%). Even if the state of Arizona claims that priority will be given to urban users, it will be difficult to meet those needs because the neighboring state of California refuses to negotiate its right on water allotment.

An examination of the social origins of the water policies in the American West, as we did in this article, reveals that many of the contemporary questions addressed at the meeting are not new. They touch upon old conflicts between Arizona and California which have to be understood within the structure of the political system in USA, where state interests are at the forefront of public policy making. However, current drought issues may be a deeper concern already mentioned by John Wesley Powell, the father of the first irrigation projects in the West, at the end of the 19th century: “When all the rivers are used, when all the creeks in the ravines, when all the brooks, when all the springs are used, when all the reservoirs along the streams are used, when all the canyon waters are taken up, when all the artesian waters are taken up, and when all the wells are sunk or dug, there is still not sufficient water to irrigate all this arid region.” (Worster, 2001).

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