Lessons of Inter-State Water Dispute Settlement in the United States and Beyond

Seminar: Transboundary Water Dispute Prevention and Settlement in Europe: Do We Have Effective Tools and Mechanisms at Hand? Budapest, 1 December 2016

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Overview

• The Arid American West and the Colorado River
• Inter-State Water Dispute Settlement in the United States: Lessons Learned
• Similar Experience Other States
• Conclusions
The impact of climate change

IPCC Fifth Assessment Report (2014):

• “Climate change is projected to reduce raw water quality, posing risks to drinking water quality even with conventional treatment . . . .” (Emphasis added.)

• “Climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions . . . , intensifying competition for water among sectors . . . .” (Emphasis added.)

• In other words, most arid regions will become even more dry
In the Western United States, this situation presents . . .

• Possibilities for conflict, OR

• Opportunities for cooperation
“Whiskey’s for drinkin’ and water’s for fightin’ over”

• Attributed to Mark Twain, speaking of the Western U.S. in the late 1800s

• This is perhaps even more true today
In fact, Arizona almost went to war with California over Colorado River water

In 1934, Arizona Governor B.B. Moeur called out the state’s National Guard to halt the construction of Parker Dam. It requisitioned a ferry boat which newspapers dubbed the “Arizona Navy”
Case Study: The Colorado River

• For present purposes, will focus on the U.S. portion of the basin
The Colorado River

• Most important source of water in the Southwestern United States
• Provides water to millions of people from San Diego, California to Denver, Colorado,
  – including the country’s fastest-growing city, Las Vegas, Nevada
• “The most legislated, most debated, and most litigated river in the entire world” – Mark Reisner, *Cadillac Desert*
While ca. 90% of the river’s flow comes from the Upper Basin States (Colorado, New Mexico, Utah and Wyoming), most of the demand is in the Lower Basin States (Arizona, California and Nevada).

- This relationship is also typical of many international drainage basins (e.g., the Columbia, the Nile, the Euphrates and the Mekong, not to mention those in the ECE region).
The Colorado River is located in one of the most arid regions of the United States, as we have seen
The “Law of the River” governs:

• Allocations among U.S. Basin States;
• Allocations between the U.S. and Mexico; and
• The responsibility for water deliveries to the Lower Basin States

Note that the focus is on water quantity, not water quality, which has been an issue only in re salinity
Key components of the “Law of the River” include:

- the 1922 Colorado River Compact (between the 7 basin states)
- the 1928 Boulder Canyon Project Act
- the 1944 Mexico-United States Treaty
- the 1948 Upper Colorado River Basin Compact
- the Colorado River Storage Project Act of 1956
- the 1963 U.S. Supreme Court decision in Arizona v. California
- the 1968 Colorado River Basin Project Act
- the 1973 Minute 242 agreement between Mexico and the United States re Colorado River salinity
- the 1992 Grand Canyon Protection Act
- As well as other statutes, court decisions and decrees, contracts, and administrative decisions.
The severe drought in the basin has caused anxiety concerning the sufficiency of future Colorado River water supplies
FIGURE 2-9 Glen Canyon Dam and Lake Powell, August 2004. Note the residual ring around the top of the lake caused by declining water levels. 

SOURCE: Courtesy of Brad Udall, University of Colorado.
Thus, the situation does not look good for the states in the Colorado River Basin

• But it has led them to strengthen their cooperation and pursue strategies for extending water supplies such as:
  – Desalination (16 operating or planned coastal desal. facilities in California today)
  – Agricultural and urban water conservation
  – Offstream water banking and reserves (often through groundwater recharge) – including interstate offstream storage agreements (e.g., water stored underground in Arizona for later use by Nevada
And, there is always the threat or use of recourse to the U.S. Supreme Court, which has original (trial) jurisdiction in cases between U.S. states

- There have been ten such cases from 1931-2000 between Arizona and California alone, by far the most litigious pair of Colorado River Basin states
- Could the ECJ perform a similar function within the EU?
Other analogous experience

• In addition to the wealth of US Supreme Court decisions in water disputes between states, there is also experience in other countries with federal systems, such as Argentina, India and Switzerland.

• In India, for example, the Supreme Court recently intervened in a long-running dispute among several states over the Cauvery River.
• Under the Inter-State Water Disputes Act 1956, the Supreme Court in 1990 ordered the Central government to constitute a tribunal to settle a dispute between the states of Karnataka and Tamil Nadu. The Cauvery Waters Tribunal was constituted on June, 2, 1990. It rendered its final allocation decision in 2007.
• But difficulties persisted
  – Karnataka failed to release water to Tamil Nadu
  – Tamil Nadu filed an interlocutory petition in the Supreme Court in August, 2016, seeking release of water as per guidelines set by the Cauvery Tribunal
  – In September, 2016, the Court directed Karnataka to release 15,000 cusecs of water to Tamil Nadu for 10 days to save samba crops

• Stay tuned!
Action by the Supreme Court of India in the Indus Basin

• The Supreme Court of India ruled in November, 2016:
  – The state of Punjab was required to share Ravi-Beas river waters with Haryana and other states and comply with its two judgments for completion of the Sutlej-Yamuna Link (SYL) canal.
  – The Punjab Termination of Agreements Act 2004, by which Punjab had purported to terminate its pacts with Haryana, Himachal Pradesh, Rajasthan, Jammu and Kashmir and Delhi for sharing the waters of the two rivers, was invalid.
Action by the Supreme Court of India in the Indus Basin (cont.)

• This again demonstrates the value of a tribunal with jurisdiction to settle water disputes

• As in the United States, the mere existence of the possibility of recourse to the Court can influence the willingness of the states concerned to settle their disputes and comply with any existing agreements
Thank You!