

2393

# THE COLORADO WATERS DISPUTE

RECEIVED  
MAY 15 1964  
COLLEGE  
LIBRARY

By NORRIS HUNDLEY, JR.

*Reprinted from*

**FOREIGN  
AFFAIRS**

AN AMERICAN QUARTERLY REVIEW



*April, 1964*

---

FOREIGN AFFAIRS  
AN AMERICAN QUARTERLY REVIEW

APRIL 1964

- The Presidency and the Peace ..... *McGeorge Bundy*  
Our Defense Needs: The Long View .... *Roswell L. Gilpatric*  
The World Order in the Sixties ..... *Roberto Ducci*  
The Labor Party's Defense and Foreign Policy  
*P. C. Gordon Walker*  
Latin America: A Broad-Brush Appraisal .... *Philip W. Quigg*  
Loneliness in the Beloved Country ..... *C. W. de Kiewiet*  
Russia and Europe ..... *Zbigniew Brzezinski*  
Agrarian Reform in Asia ..... *Wolf Ladejinsky*  
Kuwait: A Super-Affluent Society ..... *Fakhri Shehab*  
Shifts in Soviet Strategic Thought ..... *Thomas W. Wolfe*  
The Soviet Military Budget ..... *Timothy Sosnovy*  
The Colorado Waters Dispute ..... *Norris Hundley, Jr.*  
Recent Books on International Relations .. *Henry L. Roberts*  
Source Material ..... *Donald Wasson*

HAMILTON FISH ARMSTRONG  
*Editor*

PHILIP W. QUIGG  
*Managing Editor*

*Editorial Advisory Board*

ALLEN W. DULLES	WILLIAM L. LANGER	PHILIP E. MOSELY
ALFRED M. GRUENTHER	JOHN J. McCLOY	ISIDOR I. RABI
GEORGE F. KENNAN		HENRY M. WRISTON

58 East 68th Street • New York 21, N. Y.  
Subscriptions, \$6.00 a year, post free to any address.

---

Copyright 1964, Council on Foreign Relations, Inc.  
PRINTED IN U. S. A.

## THE COLORADO WATERS DISPUTE

*By Norris Hundley, Jr.*

ONCE again the diplomatic relations of the United States and Mexico are troubled by controversy over the waters of the Colorado River. The latest dispute, though building up slowly, is potentially more serious than earlier ones because of the vast agricultural development of the Southwest and the urgency of hemispheric solidarity. Water with heavy salt content draining back into the Colorado from irrigated land in the United States is endangering Mexican crops further downstream. At a time when the Johnson Administration particularly wants the friendship of Mexico and the rest of Latin America, the controversy provides Mexican leftists with a popular rallying point for their attacks on their own government as well as that of the United States. Unfortunately, the treaty of 1944 which divided Colorado River water and guaranteed orderly development of the region was drawn in haste and without clear provision for handling certain obvious problems. These omissions are the source of the present quarrel and may become the basis for action by the World Court.

Since the turn of the century, Mexico and the United States have been concerned about Colorado River water, and the attitude of each is understandable. This valuable stream drains some of the most beautiful and driest land in the world—about 242,000 square miles in the United States (parts of Wyoming, Colorado, Utah, Nevada, New Mexico, Arizona and California) and 2,000 square miles in Mexico. From its source high in the snow-capped Rocky Mountains, it flows nearly 1,400 miles in a southwesterly direction through a majestic countryside—painted deserts, Grand Canyon, fertile valleys—where water is as precious as gold. Crossing the international border near Yuma, Arizona, the Colorado winds its last 100 miles through Mexico before emptying into the Gulf of California.

Despite its vast watershed and artery of tributaries, the Colorado is not a heavy flowing stream. In the entire basin the average precipitation is only 15 inches and evaporation quickly reduces runoff by 90 percent. On the basis of records kept since 1922, the remaining 10 percent amounts to less than 15,500,000 acre-feet, only a thirty-third of the volume of the Mississippi and a twelfth that of the Columbia.

But it is obvious to all familiar with the area that, even if the Colorado were fully exploited, thousands of square miles would still remain desert. There is simply not enough water to irrigate all the available land or to provide for more than a handful of cities and industries. This situation has led to bitter disputes between individuals, states and, perhaps most serious of all, between Mexico and the United States. The two nations sparred with one another from the turn of the century until 1944, when they agreed to a treaty which should have settled their differences.

When the treaty was signed, not everyone received the news with joy. Californians, anxious about reclamation projects for which water might not be available, assailed the provision giving Mexico 1,500,000 acre-feet. By January 1945, when the Senate began deliberations on the treaty, proponents of the agreement sought to counter California's charge with a variety of

arguments, most of which do not concern us here. But one argument, which proved important at the time, also sheds light on the present controversy between Mexico and the United States. Treaty advocates insisted that the grant to Mexico would be made up largely of "return flow" drainage from reclamation projects in the United States. They estimated the return flow at about one million acre-feet. Consequently, of the 1,500,000 acre-feet allocated to Mexico, two-thirds of it would be satisfied with return flow—water already used at least once by the United States.

Californians immediately recognized the power of this argument for, if true, it meant that the treaty was giving Mexico little more than she would receive in the natural course of events. They wasted no time in moving to the attack. Spearheading the Senate opposition was California's Senator Sheridan Downey who considered the return-flow estimate too high and tried by relentless cross-examination to get the treaty advocates to modify their figure. He drew finally from Royce Tipton, an engineer and adviser to the American treaty negotiators, the concession that the United States would probably be able to reclaim all but 730,000 acre-feet of the return flow. Tipton admitted further that the only thing that would prevent the United States from reclaiming even more would be the poor quality of the remainder. This water, because of heavy prior use for irrigation, would be too saline for most crops. Rather than use such water, Tipton felt that it should be allowed to flow downstream, thus helping the United States fulfill its treaty obligation to Mexico.

It was shortly before this that one of the most important debates on the treaty occurred. Downey seriously doubted that the United States could get away with giving Mexico unusable water and he questioned Tipton closely on this point.

"Is there any statement in the treaty as to the quality of water that must be delivered by the United States to Mexico?"

"We are protected on the quality, sir," quickly responded Tipton. Downey saw an opening and his next question came right to the point.

"You would mean by that statement that we could perform the terms of our treaty with Mexico by delivering to her water that would not be usable?"

"Yes, sir," answered Tipton without a moment's hesitation.

"And you think," asked Downey as he pressed his examination, "that some court in the future would uphold that kind of interpretation, that we could satisfy in whole or in part our obligation to Mexico under this treaty of delivering 1,500,000 acre-feet of water, even though some or all of it were not usable for irrigation purposes?"

Tipton remained adamant. "That is my interpretation of the treaty, sir," he replied. "During the negotiations, that question was argued strenuously. Memoranda passed back and forth during negotiations indicate what the intent was. Language was placed in the treaty to cover that situation and to cover only that situation."<sup>1</sup>

The language to which Tipton referred appeared in several provisions stipulating that Mexico's allotment would come "from any and all sources," would

<sup>1</sup> Senate Foreign Relations Committee, "Hearings on Water Treaty with Mexico," 79th Cong., 1st Sess., 1945, p. 322. See articles 10 and 11 of the treaty in "United States Statutes at Large," LIX, p. 1219 f.

2397

be "for any purpose whatsoever" and would be "made up of the waters of the said river, whatever their origin." However, there is no evidence, other than Tipton's testimony, that the provisions were inserted "to cover only" the question of water quality. The memoranda to which he referred are now missing. Moreover, after additional questioning, he admitted that the Mexican negotiators had signed no such memoranda. Even so Downey tried to have them entered into evidence, but Tom Connally, powerful chairman of the Senate Foreign Relations Committee, refused to approve the request. Since Connally's home state of Texas benefited from other provisions in the treaty, he favored the agreement and shied away from anything that might have jeopardized its ratification.

The available evidence seems to suggest that the words "from any and all sources" and "waters . . . whatever their origin" were inserted primarily to give the United States maximum credit for the return flow and only indirectly—if, indeed, at all—to cover the question of quality. Some return flow would enter the river above the boundary; some would enter below the California border along the twenty-mile stretch where the river forms the common boundary between Arizona and Mexico; and some, the drainage water from the Yuma project, would never enter the river, but would flow instead across the land boundary into Sonora. To gain credit for this return flow (or at least that part of it constituting "good quality" water, according to Mexico) would seem to have been the real reason for the provisions cited by Tipton. It should be noted that neither government attempted to define "usable" or "good quality" water and scientists have not devised any hard-and-fast rule themselves.

Treaty advocates insisted that there was another provision which would compel Mexico to accept polluted water. Article 10 provided that the amount allocated to Mexico was "for any purpose whatsoever." The implication here was that Mexico would have to find another use for her water if it were too saline for irrigation. Though this provision might be construed to favor the United States, it seems unlikely that an international tribunal would interpret it in such a fashion. Besides, if the allotment were unusable, then there would be no "purpose" to which Mexico could put the water unless it were treated in a desalinization plant. But the cost of such an operation was then—and still is—prohibitive.

Another event seems to corroborate the above conclusion. In January 1944, less than a month after the negotiations, Charles Timm, another adviser to the American negotiators, was questioned about the treaty. When he was asked if it contained anything about the quality of Mexico's allotment, Timm replied, "Not in the treaty. . . . There was frankly strenuous objection on the part of Mexico. They objected to the omission of the quality but we succeeded in evading it." If the question of quality were evaded, it would certainly be stretching things for Tipton to say that both sides agreed to a provision which both understood settled the question. Moreover, it would seem highly foolish for the Mexicans to agree to accept unusable water.

The incredibility of Tipton's contention caused Downey to insist that the words "regardless of quality" be written into the treaty. That way the mean-

<sup>2</sup> Colorado River Basin Committees of Fourteen and Sixteen, Proceedings, Jan. 27-28, 1944, p. 21.

ing of the treaty would be expressly clear and the United States need not fear the adverse decision of a future arbitration tribunal. The treaty advocates rejected this suggestion, insisting that the language was clear enough. Though it obviously was not, Downey failed to convince the Senate and on April 18, 1945, the treaty received a favorable vote of 76 to 10.

Though Downey had failed to convince the Senate that the treaty needed clarification, subsequent developments in Mexico should have done so. In the summer of 1945, the two Foreign Relations Committees of the Mexican Senate conducted a series of "round table" discussions, in which interested engineers and lawyers participated. Many expressed concern over the quality of water Mexico might receive under the treaty, but officials urged them not to worry. They insisted that the treaty provided sufficient safeguards against Mexico receiving water too saline to be usable. One of the leading Mexican proponents, Adolfo Orive Alba, cited article 27 to indicate that the Mexican water was intended for irrigation. "Therefore," he concluded, "in this treaty, as in any other of its kind, it is understood that the water must be of good quality."<sup>3</sup> This meant, he asserted, that Mexico should receive water similar to that used in the lower basin of the United States so long as it was "of good quality for irrigation."

A reservation could have been attached to the treaty making the Mexican position clear, but the Mexican officials realized the inadvisability of such a move. They knew what the American negotiators had said about quality and, consequently, anticipated that a reservation might cause the United States to reject the treaty the second time around. Moreover, most of them apparently believed that if a controversy did arise which resulted in arbitration no tribunal would permit the United States to give Mexico unusable water. Satisfied, the Mexican Senate voted unanimously for ratification on September 27.

California officials followed these debates with great interest. They noted the wide divergence of opinion on the question of quality and had their Senators contact Secretary of State James Byrnes about the discrepancy. But Byrnes was surprisingly undisturbed by the report and curiously replied that, since Mexico had attached no reservations to the treaty, there was "no basis for assuming that the two Governments entertain contrary views with respect to any of the provisions of the treaty."<sup>4</sup>

Why Byrnes could take such a position in view of the obvious disagreement over interpretation is not easy to explain. Perhaps the reason lay partly in ineptness and partly in his lack of good advice due to several important shake-ups that had occurred in the State Department. While the treaty was being negotiated and signed, Cordell Hull had been Secretary of State. In December 1944, Edward Stettinius, Jr., had replaced Hull. Then in July 1945, shortly after the Senate had approved the treaty, Byrnes replaced Stettinius. Changes had also taken place on lower but equally important levels of leader-

<sup>3</sup> *El Universal*, Mexico, D. F., Aug. 1, 1945. See also *Excelsior*, Mexico, D. F., Aug. 10, 1945, and *El Nacional*, Mexico, D. F., Aug. 11, 1945. A translation of the remarks made by Orive Alba on August 1 may be found in Senate Document 98, 79th Cong., 1st Sess., 1945.

<sup>4</sup> James F. Byrnes to Sheridan Downey, Nov. 19, 1945, in "Treaty with Mexico Relating to the Utilization of the Waters of Certain Rivers" (Los Angeles: California Colorado River Board, n.d., 8 v.), v. 5.

2399

ship. For example, between 1943 and 1945 the policy-making position for Latin American affairs changed hands four times and each new appointee adopted a different program. "The ship of state zigzagged," writes Laurence Duggan, a top official in the Latin American Division at the time, and "no one could tell with certainty where it was headed."<sup>6</sup> Then, too, the end of World War II brought the State Department heavy responsibilities, including the negotiations to launch the United Nations. Moreover, many officials had come to associate the treaty, regardless of its imperfections, with the Good Neighbor Policy. They interpreted any attempt to modify the treaty as an attack on that policy and on hemispheric solidarity. Nevertheless, these problems should not have interfered with an attempt to reach a meeting of minds with Mexico. Perhaps the issue of the quality of the water represented an area on which no agreement could be reached. Though this might be true, the fact remains that Royce Tipton and others from the State Department vigorously denied any such deadlock. Obviously a conflict with Mexico was in the making, and no one who was in a position to do so was trying to prevent it.

For 15 years all remained quiet. As long as there was sufficient water in the river, the source of conflict lay dormant. The flow of water, however, was appreciably decreasing in the years after 1945. Less rain and snowfall, increased uses, and the operation of American storage reservoirs combined to reduce greatly the volume of water reaching Mexico. Much that did cross the international boundary was return flow, containing salts that were harmful to crops, but its mixture with fresher runoff was enough to eliminate the danger of loss. Unfortunately, in February 1961, a drainage channel from Arizona's Wellton-Mohawk project was completed, which carried off the return flow of a vast agricultural area. The addition of this new salty water to the Colorado changed the quality of river water dangerously. In the winter of 1961 the salt content reached 2,700 parts per million parts of water, or approximately 2,250 parts more salt than the water should contain for maximum usage. Under the schedule of deliveries set up by the treaty, Mexico's demands during the winter were small enough to be met by return flow. Rather than accept this highly saline water, Mexicans allowed it to flow on down into the Gulf of California. The resulting shortage of irrigation water caused crop losses which the Mexicans claimed amounted to more than 100,000 acres. Angered and bewildered by their losses, the farmers demanded good water and compensation. These demands were forwarded by the Mexican Government, which accused the United States of violating the 1944 treaty.

The United States was quick to insist that the treaty imposed no obligations "with respect to the quality of the water"—an interpretation given by the State Department 15 years before. Officials realized, nevertheless, that something needed to be done and offered to send fresh water to dilute the saline flow. Even so, the State Department insisted that this act of kindness should not be interpreted as a precedent; it was merely a friendly gesture on the part of the United States.

It is too early to predict what course of action will be adopted and how the treaty will be ultimately interpreted. A special committee, authorized by both governments, has been studying the problem and the Presidents of both coun-

<sup>6</sup> Laurence Duggan, "The Americas." New York: Holt, 1949, p. 102.

tries have expressed a desire to settle the dispute as quickly as possible. Perhaps they will soon achieve a mutually satisfactory arrangement, but first they will have to contend with men like Arizona's Senator Carl Hayden, powerful chairman of the Committee on Appropriations. Hayden, though anxious to end the controversy, insists that the United States is under no obligation to send Mexico good-quality water.

In the meantime, developments are taking place which are clearly harmful to the interests of the United States. Angered at American attempts to foist polluted water on them, Mexicans are muttering about "Yankee imperialism" and threatening to take the controversy to the World Court. Particularly disturbing is the fact that all this is occurring at a time when Cuba is threatening the security of the Western Hemisphere and when the United States is trying desperately to make a success of the Alliance for Progress.

But the dispute involves far more than an international difference of opinion. For it has provided Mexican leftist and Communist groups with a rallying point for their attacks on both the Mexican and American Governments. Unrest has flared highest in Baja California, the region directly affected by the polluted water and also an area long beset by political instability. If current news dispatches are correct, insurgents there have made great headway. For example, shortly before the water controversy, Alfonso Garzon was a little known agitator with few followers. Today, after successfully capitalizing on, among other things, the discontent of farmers who suffered crop losses, he is a figure of national significance in Mexico. In fact, so many embittered farmers had joined his ranks by March 1963 that President Adolfo Lopez Mateos felt compelled to negotiate with him.

Aside from the legal and political difficulties, the problem has a very real human dimension. The people benefiting from Arizona's Wellton-Mohawk drainage operations are relatively few—about 300 or 400 farmers. On the other hand, there are about 10,400 Mexican farmers dependent on the Colorado. Moreover, the city of Mexicali, with a population in excess of 300,000, also relies on the river for part of its municipal supply. But Mexicans are not the only ones threatened by the polluted water, since the city of Yuma has also been affected.

Obviously, the mistake of 19 years ago has created an enormous headache. Had the State Department listened to the critics of the treaty in 1945, there might not be the present crisis over the Colorado River. Only time can tell how and when the dispute will finally be resolved. Certain things do seem rather clear, however. It is virtually certain that no arbitration tribunal will support the United States' contention that the treaty obligation would be satisfied by giving Mexico unusable water. Obviously, both countries have got to sit down and decide just what constitutes "good" or "usable" water. Perhaps their answer will be modified to include some of Secretary Stewart Udall's recent suggestions urging both countries to adopt better irrigation procedures and to step up water conservation projects. And, perhaps, it will incorporate some of the latest results of desalinization tests. Whatever happens, it is imperative that a solution be found quickly. Hemispheric interests compel it.