Truce on the Colorado River: A Retrospective

By
Rodney T. Smith, Editor

On October 10th, four California agencies, the State of California, and the Department of the Interior finally inked the Quantification Settlement Agreement and related agreements concerning use of Colorado River water in California, including the long-term water conservation and transfer agreement between the Imperial Irrigation District and the San Diego County Water Authority. The signing culminated almost eight years of negotiations related to the Imperial/San Diego transfer, which included negotiations during the past five years to settle outstanding legal disputes that Imperial had with the Coachella Valley Water District and The Metropolitan Water District of Southern California. In addition, the scope of legal disputes expanded in the past year when the Department of the Interior launched an assault on Imperial's water rights, initially with an ill-fated legal theory rejected by a federal district court (***WS*** *March 2003*) and, more recently, by the Bureau of Reclamation asserting expanded regulatory control over water use in the Imperial Valley through an unprecedented Part 417 proceeding.

Some have heralded the closing of the QSA and related agreements as "peace on the Colorado River". Imperial's ongoing litigation with the Department of the Interior has been dismissed. The Bureau of Reclamation's expedition into new regulatory authority has been shelved. Instead, Imperial will now focus on conserving and transferring water in accordance with the terms of the large collection of agreements underlying the QSA.

The deal continues on the same general terms as announced last year (***WS*** *October 2002* for specifics), with new wrinkles related to the settlement of environmental issues that, until now, evaded a definitive solution acceptable to all parties. The agreement quantifies Priority 3a of Colorado River water as 3.1 million AF for Imperial and 330,000 AF for Coachella. Imperial's transfer to San Diego proceeds at a maximum annual transfer of 200,000 AF by the year 2022. Imperial also transfers up to 103,000 AF per year to Coachella. IID's 1988 agreement with Metropolitan is extended for the term of the QSA. The term of the QSA is 45 years, unless the transportation dispute between Metropolitan and San Diego triggers an early termination in the 2037. Finally, the agreements also provide for the lining of the All American and Coachella canals for a term of 110 years.

The Davis Administration Legacy. The completion of definitive negotiations after many years of false starts is an important legacy of the Davis Administration. Negotiations in the past three years were mired in seemingly intractable issues related to environmental mitigation programs and restoration of the Salton Sea. While federal efforts to reclaim the Salton Sea languished (***WS*** *September 2002*), environmental groups grew increasingly concerned that allowing the Imperial/San Diego transfer to proceed would become the death knell of the Salton Sea. With state legislation needed to exempt the transfer from the California Endangered Species Act, a stalemate could have easily occurred in the face of continued opposition by environmental groups.

  PO Box 963 Claremont, CA 91711 (909) 981-7808 www.waterstrategist.com

Officials from the Davis administration brought the parties together to find solutions. In October 2002, Speaker Emeritus Robert Hertzberg hammered out a revision of the Imperial/San Diego transfer and related agreements that was thought to resolve outstanding problems (***WS** October 2002*). That settlement was derailed in late 2002 as the Department of the Interior turned to threats and litigation against Imperial's water rights (***WS** December 2002, January 2003*) instead of solving unresolved environmental issues. Rather than accept failure, Governor Davis redoubled his efforts in 2003 by appointing a team of senior officials from his administration to finally bring the agreements over the finish line.

What has been accomplished? Richard Katz, senior official of the Davis Administration told ***WS*** "the Colorado River Agreement will fundamentally change the way water is viewed in the West. We are evolving from a 'use it or lose it' attitude to one of cooperation and mutual benefit to agricultural and urban users, as well as the environment. This compromise shows that everyone can win, there doesn't have to be losers."

The full impact of the QSA will not be known for years. In the meantime, much can be learned from how the obstacles were finally overcome. Anticipate four major legacies from the closing of the QSA:

- water transactions can be structured to provide environmentalists with incentives to support transfers,
- future water transfers and projects for municipal and industrial use can and should proceed without financial contributions from the state or federal government,
- consultation among the Basin States was essential to resolve an escalating legal war between Imperial and the Department of the Interior, and
- water associated with federal projects may lack the underlying property rights required for a robust role of the private sector in the management of water resources.

Three of four legacies are for the good. The last legacy is ironic achievement for an administration purportedly in favor of market forces and property rights.

The Final Obstacles

The road to the QSA was long, tortuous, and seemingly without end.

The parties came within an eyelash of closing at the end of the Clinton Administration when outgoing Secretary of the Interior Bruce Babbitt adopted the interim surplus guidelines on the eve of President Bush's inauguration (see ***WS** January 2001*). However, as environmental review under federal and state law proceeded during 2001, the impact of Imperial's proposed efficiency conservation and transfer activities on the inflows into the Salton Sea emerged as a key stumbling block. The water agencies searched for environmental mitigation plans that would satisfy permitting agencies. In the end, state and federal permitting agencies concluded that there was no feasible plan to mitigate the environmental impacts of the original Imperial/San Diego transfer based solely on efficiency conservation.

Troubled Deal. The first two-thirds of 2002 was the time of political mud-wrestling over land fallowing. Land fallowing was believed to be more benign on the Salton Sea than efficiency conservation. Each AF of efficiency conservation is assumed to reduce inflows into the Salton Sea by 1 AF. In contrast, each AF conserved by land fallowing is assumed to reduce inflows into the Salton Sea by only 1/3 AF. Moreover, more land fallowing could be undertaken to fully maintain inflows into the Salton Sea at pre-

project levels—an environmentalist's nirvana! An emerging coalition was boarding the "fallowing train." State legislation was introduced contemplating that all conservation (transfers up to 300,000 AF/year and any necessary mitigation) over a 75-year term would be created by land fallowing.

The only problem was that Imperial, the holder of the water rights, bargained for transfers based on efficiency conservation. Imperial believed that efficiency conservation strengthened its water rights by responding to its critics who argued that Imperial must enhance its already high level of efficiency of water use. Imperial also understood that efficiency conservation would provide a significant and long-term economic stimulus to the local economy. In contrast, land fallowing did not enhance Imperial's efficiency vis-a-vie its critics (although state legislation was ultimately passed that addressed the legal issue). The Environmental Impact Statement for the Imperial/San Diego transfer concluded that long-term land fallowing would have a devastating impact on the local economy.

The political tanks rolled during spring. San Diego, Coachella, and Metropolitan supported legislation that would require Imperial to undertake long-term land fallowing. The State Water Resources Control Board's hearing on the Imperial/San Diego transfer and QSA brought great focus on the environmental impacts on the Salton Sea and the land fallowing debate (***WS** May 2002*). Governor Davis even banged the drums for a fallowing cramdown on Imperial for a period of time. Senator Feinstein sent a letter telling Imperial to agree to "fallow or else" (***WS** June 2002*). Meanwhile, Imperial's board stood firm in their opposition to land fallowing. The entire QSA seemed on the verge of breaking up on the shoals of the Salton Sea and land fallowing.

Resurrection. On behalf of the Davis administration, Speaker Emeritus Robert Hertzberg reconvened the water agencies and other interested parties (including landowners in the Imperial Valley) to renegotiate the QSA and related transfers (***WS** October 2002*). The major changes involved a reduction in the quantity of transfers for the first 15 years (in order to provide a window for state and federal authorities to develop a restoration plan for the Salton Sea), a significant component for land fallowing during the 15-year period, and funding for mitigation of the socioeconomic impacts of land fallowing. A key provision was that Imperial's financial responsibility for environmental mitigation was capped at $30 million. All other environmental costs were to be assumed by the other parties (Coachella, Metropolitan, San Diego, State of California) pursuant to a cost-sharing agreement that was to be negotiated after the October 16, 2002 announcement of the revised terms.

Unraveling. Responsibility for environmental mitigation, the "loose-end" from the Hertzberg negotiations, proved to be the Achilles heal of the hope that the QSA would close by year-end 2002. Anticipated mitigation costs were hundreds of millions of dollars above Imperial's cap of $30 million. The other three water agencies were reluctant to commit to pay the costs. With year-end rapidly approaching, the Imperial Board rejected the QSA in early December due to the inability of the water agencies to close on the terms contemplated from the Hertzberg negotiations (***WS** December 2002*). The water agencies spent the remaining weeks of December trying to reconstitute the deal. By New Year's Eve, only Imperial and San Diego found common ground on how to close the QSA (***WS** January 2003*).

Actions by the Department of the Interior proved destabilizing. On the morning of Imperial's board vote in early December rejecting the QSA, Interior informed Imperial in writing that the Hertzberg agreement

announced in mid-October was unacceptable due to the potential for early termination if environmental mitigation costs proved too expensive, or an acceptable Habitat Conservation Plan were not obtained by the end of 2003 (***WS** December 2002*). On December 27th, Interior sent an ultimatum to Imperial that unless a new QSA was finalized in the next four days that addressed Interior's objections, Interior would cut back Imperial's order for 2003 from 3.1 million AF to 2,769,600 AF (***WS** January 2003*).

With this backdrop, the QSA did not close. Understandably, Coachella and Metropolitan found themselves in a dilemma. Proceed with closing the QSA that required addressing outstanding environmental issues, or bet on a litigation lottery run by Interior, which promised a cutback of Imperial's water use of more than 300,000 AF starting within the next few days. Interior's scrapping the priority system would bestow those agencies with a huge windfall.

Order from the Court. The first quarter of 2003 found matters in disarray in California. Pursuant to federal regulations, Secretary of the Interior suspended the Interim Surplus Guidelines due to the inability of California to close on an acceptable QSA. A flurry of activity in Sacramento in January started a consensus that another try was worth the effort to close the QSA.

On March 18th, federal district court judge Thomas Whelan issued an injunction against the Secretary of the Interior's cutback of Imperial's water supply, rejecting Interior's novel legal theories held out as a defense of Interior's actions (***WS** March 2003*). If Interior wanted to cutback Imperial's water supply, he noted that it should follow its own regulations, although the judge did not rule at that time on Imperial's argument regarding the invalidity of Interior's regulations. On April 29th, Interior cutback water allocations to Coachella and Metropolitan to comply with Judge Whelan's injunction.

There was one final parallel path to travel on the QSA journey. One road involved consensus. A few days before Judge Whelan's ruling, the four agencies and the State of California reached agreement on how to proceed with the QSA (***WS** March 2003*). The Davis Administration agreed to seek $200 million in state money to fund environmental mitigation costs as well as $50 million in funding towards restoration of the Salton Sea. The California parties had closed. They now needed to complete negotiations with Interior on a Secretarial Implementation Agreement.

The other road involved conflict. The Bureau of Reclamation decided to initiate a Part 417 proceeding against Imperial in response to Judge Whelan's decision. Acting as both judge and jury, Reclamation now claimed that Imperial's water use was wasteful. Therefore, Reclamation proposed to reduce Imperial's water supply from 3.1 million AF to 2,824,100 AF in 2003. Negotiations continued as Reclamation continued its administrative process that, without a settlement, would have all the parties back in federal court in the fall before Judge Whelan.

The Legislative Bridge to Cross. The legislative forum required one more reconstitution of the QSA in order to overcome two hurdles. First, Metropolitan's board and member agencies opposed the use of state money to pay for environmental mitigation of the QSA transfers. Instead, they firmly advocated the principle that beneficiaries of transfers should pay for environmental mitigation. Without state money, the local agencies had to step forward and cover the costs. In response, the local agencies had to reexamine their benefits from the QSA and see if further financial commitments to pay for environmental mitigation were warranted. With growing skepticism about the amount of surplus water available under Interim Surplus

Guidelines, Metropolitan was only willing to contribute towards mitigation costs if all parties agreed to a levy on the total use of Colorado River water. Imperial rejected this approach as an unacceptable tax on water rights.

Second, restoration of the Salton Sea resonated politically in the California Legislature. Initially, there was a movement to allow the Imperial/San Diego transfer to proceed, but only if water reclaimed from any subsequent restoration of the Salton Sea would substitute for water conserved in the Imperial Valley. Through this substitution proposal, environmentalists wanted to use the proceeds from the transfer of conserved water to fund Salton Sea restoration. However, the potential for substituting water conserved from a restoration project would undermine the economic feasibility of QSA transfers. With this understood, the stage was set for a compromise that provided economic support for restoration of the Salton Sea while allowing the QSA transfers to proceed.

The State Close

After lengthy negotiations, the state parties finally came to agreement. The final close among the state parties was based on a tripod of something new, something finished, and another redone.

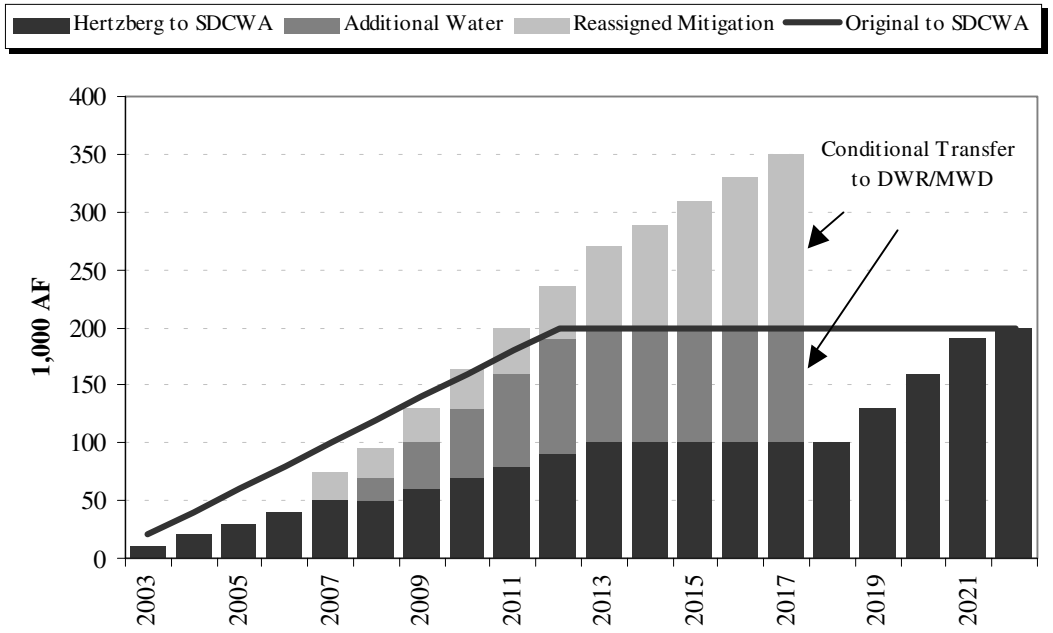
Economic Support for Salton Sea Restoration. It was agreed that California's Secretary of Resources will undertake a study to determine the preferred alternative for Salton Sea Restoration by December 31, 2006. There are four sources of economic support for Salton Sea Restoration worth at least $200 million ('03 present value).

The first two sources involve transfers of water from Imperial to the California Department of Water Resources, which would then resell the water to Metropolitan. The first transfer involves a reassignment of up to 800,000 AF of mitigation water currently planned to offset the impacts on inflows into the Salton Sea during the first 15 years of the Imperial/San Diego transfer. The second transfer involves up to 800,000 AF of new water conserved by Imperial through the year 2017. These transfers are conditioned on the completion of environmental review by DWR and require findings that they are not inconsistent with preferred alternative for Salton Sea restoration. Imperial decides the method of conservation for the newly conserved water. DWR is responsible for all mitigation costs, including environmental and any socioeconomic impacts from land fallowing used to make water available to DWR. The reassigned mitigation water would be available to DWR at no cost (Imperial would continue to receive the $50 million in scheduled payments for mitigation water funded by the local agencies). The newly conserved water would be available to DWR at a price of $175/AF ('03$). Assuming that these transfers start in 2008, DWR will earn a profit from these transfers of about $170 million ('03 present value) less any DWR mitigation costs.

The other two sources of economic support for restoration involve financial commitments by the local agencies to the Salton Sea Restoration Fund operated by the California Department of Fish and Game. Imperial, Coachella, and San Diego will jointly pay $30 million ('03 present value). Metropolitan will pay $20/AF ('03$) for all special surplus water it receives from the reinstatement of the Interim Surplus Guidelines. Given the current prospect for surplus water, Metropolitan's payments are not likely to generate more than $10 million ('03 present value) of economic support for restoration.

The conditional transfers to support Salton Sea restoration would more than overcome the scale back in transfers for the first 15 years that resulted from the Hertzberg negotiations (see chart). Under the original transfer schedule, the volume of water transferred annual increased from 20,000 AF to 200,000 AF over the first 10 years (see solid line). The Hertzberg negotiations stretched out the build up to 200,000 AF per year until 2022 (see darkest solid bar). Imperial's conditional transfers to DWR (who would then reassign the water to Metropolitan) would enable Imperial to accelerate its efficiency conservation back towards the amount contemplated under the original agreement.

Imperial Transfer Schedule for M&I Use



Two factors made the conditional transfers to DWR economically viable for Imperial. Concerning the reassignment of mitigation water (lightest shaded bar in the chart), Imperial had already offered to make that water available. (Under the Hertzberg negotiations, Imperial was to receive no compensation. When Imperial board rejected the QSA in early December last year, Imperial now receives a $50 million payment as a deal sweetener.) Therefore, Imperial agreed to allow DWR to sell the water no longer needed for mitigation without any additional compensation. Second, the additional water (the moderately-shaded bar in the chart) allowed Imperial to accelerate its investment in system conservation. Imperial concluded that the price of $175/AF ('03$) for additional water transferred to DWR was adequate to cover the cost of accelerating construction and operation of system improvements.

Paying for Environmental Mitigation. The negotiated outcome was for Imperial, Coachella, and San Diego to jointly commit $163 million, with $133 million used for environmental mitigation and $30 million contributed to Salton Sea restoration (see above). In exchange for that commitment, the State of California would relieve the water agencies of any further responsibility for funding restoration and would pay all miti-

gation costs in excess of the $133 million contributed by the three agencies. This agreement was included in the legislation signed by Governor Davis and memorialized in the Joint Powers Agreement entered into by the Department of Fish and Game (on behalf of the State of California), Imperial, Coachella, and San Diego. The agencies agreed to allocate the financial responsibilities as follows: $54 million to Imperial ($30 million toward environmental and a $24 million settlement payment for benefit of other parties), $45 million to Coachella, and $64 million to San Diego. In the end, Metropolitan successfully walked away from any financial responsibility for environmental mitigation costs. It leveraged off its positions against state money for the payment of environmental mitigation and that it would only contribute money as part of a general assessment on the total use of Colorado River water.

Rearranging San Diego/Metropolitan Relationships. San Diego and Metropolitan also renegotiated the 1998 Exchange Agreement under which Metropolitan agreed to deliver conserved Imperial water to San Diego (***WS*** *September 1998*). Under the 1998 agreement, San Diego agreed to pay a negotiated exchange fee of $90/AF (escalated at 1.55% for every year after 1998) for the first 20 years of the transfer and $80/AF (escalated at 1.44% for every year after 1998) thereafter. To bridge the gap between the exchange fee and Metropolitan's wheeling rate policy, the California Legislature appropriated $200 million to pay for the lining of the All American and Coachella Canals. In exchange for Metropolitan's right to use water conserved by the lining projects, San Diego has agreed to forgo the financial benefits of the exchange fee under the 1998 Exchange Agreement. Now, San Diego shall pay rates established under Metropolitan's wheeling policy. San Diego retains the right to challenge the validity of rates in court, but covenants not to seek new legislation on wheeling.

The Federal Close

The final close between Imperial and Interior involved legal disarmament. There were two fronts: (1) the form of the Secretarial approval of the Imperial/San Diego transfers and related administration under the QSA; and (2) the dismissal of the *IID v. U.S.* litigation.

Secretarial Approval. The *Colorado River Water Delivery Agreement* states how the Secretary shall deliver and administer Colorado River water in California during the term of the QSA. In general, the Secretary agrees to deliver water in accordance with Imperial's, Coachella's, and Metropolitan's Colorado River contracts as adjusted by the quantification of Priority 3a and the various agreements among the four California water agencies, including San Diego. Other than administration of contracts and agreements, the other major issues addressed include reinstatement of Interim Surplus Guidelines, Inadvertent Overrun and Payback Policy, and future Part 417 administrative proceedings.

The Secretary finds that execution of the Colorado River Water Delivery Agreement (in conjunction with the other agreements constituting the QSA and related agreements) satisfies the conditions for reinstatement of Interim Surplus Guidelines. In effect, as long as everything proceeds according to plan, the Interim Surplus Guidelines shall remain in effect. The Inadvertent Overrun and Payback Policy will not be materially changed for at least 30 years "absent extraordinary circumstances." The Secretary also does not anticipate any further review of Imperial's reasonable and beneficial use pursuant to Part 417 through 2037. Should

the Secretary engage in any further review, the Secretary would base her decision on the purpose of the quantification of Priority 3a and the reductions in use under the transfers, the implementation of the transfers in addition to considerations of factors specified in federal regulation.

The rubber hits the road if the transfers are not implemented as planned or California's agricultural use does not meet the benchmark quantities set forth in the Interim Surplus Guidelines. The Inadvertent Overrun and Payback Policy would be suspended, although there would be no acceleration in the repayment of any previously incurred overruns. Metropolitan would not place any order for any Colorado River water otherwise available under the Interim Surplus Guidelines. The Secretary anticipates that a review of the reasonable and beneficial use of Colorado River water by the districts would be required. In any such review, the Secretary would base her decision on the factors discussed above as well as the reasons for why transfers were not implemented as planned.

Dismissal of IID v. U.S. With a satisfactory conclusion to negotiations, the case of *IID v. U.S.* was dismissed. All sides reserved the right to litigate their positions if the occasion arose in the future. The dispute for the year 2003 is definitely settled. Interior approves IID's order of 3.1 million AF for 2003, with use of Colorado River governed by the QSA and related agreements effective as of October 10th.

Legacies

Apart from the consequences of the QSA and related agreements for the contracting parties, the long road to closure yields four important lessons regarding the evolution of the western water policy:

Structuring Transfers to Benefit Environmentalists. A pending stalemate between environmental interests and the parties to the QSA was avoided. Traditionally, using public monies to fund projects and programs achieving environmental objectives solves such conflicts. The lack of a viable plan for Salton Sea restoration and California's budget crisis made the traditional tool unavailable. Instead, the conditional transfers from Imperial to DWR to Metropolitan were used to provide funding for the preferred restoration alternative to be determined by the Secretary of the Resources Agency.

The transactions served each of the three party interests: for Imperial, an acceleration of efficiency conservation on acceptable financial terms; for Metropolitan, securing a new source of water; for environmentalists, a commitment by the State of California to determine a preferred restoration alternative for the Salton Sea plus $200 million+ of funding. Due to the conditional nature of the transfers (see above), at least two water agencies (Imperial and Metropolitan) now have an incentive to support action on addressing the restoration of the Salton Sea. At the same time, environmentalists had an incentive to support the closure of the QSA to gain access to the potential economic rewards for restoration available from the conditional transfers.

The creation of a financial stake for environmentalists to support the close of a transaction may prove to be a key precedent of the QSA drama. As western water turns from the public trough (see below), the funding of environmental activities may become more closely linked to the economic gains generated by transactions. In addition to the lesser burden placed on public finances, this focus provides incentives for environmentalists to establish priorities. For example, during the State Board hearings of the Imperial/San

Diego transfer, the environmental community focused on no impact on the Salton Sea in the short term and a full restoration of the Salton Sea in the long term. With no viable restoration plan or funding on the horizon, the environmental community rethought their position on the Salton Sea. Now, the ambition for restoration has been trimmed from restoration on a grand scale to downsizing the scope of restoration, including allowing the conditional transfers to proceed in order to secure a major source of economic support for restoration.

Water Transfers and Projects for M&I Use Without State and Federal Money. Last spring's debate in Sacramento against the use of state funds for environmental mitigation of QSA transfers will also become a milestone in western water. Metropolitan's principle of beneficiary pays will and should become the new framework for financing western water investment. While Metropolitan articulated its principle of "beneficiary pays" for water transfers to M&I users, the logic equally applies to projects, including desalination, groundwater storage, and other programs. In addition, look for Metropolitan's proposed levy on an agency's water use to have a political legacy in Sacramento.

There is a large untapped potential for the ability of M&I users to pay their way for water projects and supplies. A modest $1 per month increase in the amount a family of four persons pays for water for only 20 years would generate almost $900 million (present value) in Metropolitan's service area. Given the high economic value of a reliable municipal water supply (see this issue), increases substantially more than $1 per month would be reasonable. Of course, the ability to pay need not and should not mean that any and all project and transfer opportunities should be pursued. However, opportunities that provide supplies at economically reasonable rates do not require any third party funding for M&I users. Especially given California's budget crisis and an incoming governor interested in "examining the books", look for the days of M&I users securing state money to be short-lived.

Basin State Consultation Essential to Resolving Interior-Imperial Feud. The legal conflict between Interior and Imperial was on an escalation course (see above). Despite the ability of the California parties to close on their issues, there was a real prospect that the QSA would have floundered on the inability of Interior and Imperial to settle their differences. For the parties aspiring for a successful close of the QSA, the consultation among the Basin States became the forum for a de facto mediation of the disputes. A key beneficial lesson from the QSA experience is that the Secretary of the Interior should continue her reliance on multi-state consultation in the development of federal policy.

Collateral Damage. Not all legacies are beneficial. For the Bush Administration's supporters and others who favor property rights and markets, the federal government's conduct over the past year is troubling. Interior was a destabilizing influence in the negotiations among state and local parties during the last portion of 2002 (see above). Moreover, it attempted to use regulatory authority to allocate water without regard of the priority system, initially on the basis of a bogus legal theory rejected by Judge Whelan and later through an unprecedented exercise of regulatory authority through a Part 417 proceeding. Supporters may justify these actions as the "political hardball" needed to get California to close on the QSA. However, Karl Marx that said, "the end justifies the means," not Adam Smith.

It is becoming increasing understood that markets function best when there is a clear set of legal rules governing property rights. For western water, the priority system and federal deference to state law have been the cornerstone principles since the 19th century. These principles form the bedrock for investment-

backed expectations that have guided the development and use of western water. For whatever reason, Interior chose to trample on them.

The manipulation of legal tools for political ends is not exempt from the law of unintended consequences. As the private sector contemplates investments either in or on reliance of water resources, they must now include a new form of risk assessment as part of due diligence. What is the broader meaning of Interior's conduct of the past year? When does the priority system still matter in western water? What are the risks of a taking under the guise of regulation? How can one distinguish their situation from the Colorado River? Are the alleged differences real or illusionary? How costly and how long will it take to discover the answers in political and legal forums? How significant are the risks and consequences of departures from the priority system or of expanded regulatory powers where the Bureau of Reclamation announces its decision and then later engages in administrative actions where it acts as both judge and jury? Eighteen months ago, none of these questions were part of a reasonable due diligence in western water. Today, they are.

These and other questions about Interior's actions will provide the grist for much debate and controversy. ***WS*** imagines that discussions at meetings of the Federalist Society (proponents of limited government, property rights and free markets) will differ radically from discussions at seminars in Critical Law Studies (proponents of expanded government action, restrictions on property rights and expanded regulation). What is truly remarkable about Interior's actions is that criticism is more likely to be found at a Federalist Society meeting than at a seminar in Critical Law Studies.

Conclusion

Taking from the title of a movie by another California actor-politician, the QSA was a journey into "the Good, the Bad, and the Ugly." The Imperial/San Diego transfer and QSA related agreement is not a model of market transactions, but an early prototype. Much was achieved. However, the political and legal transaction costs were astronomical. Given the historical roots of western water, perhaps this was inevitable. In the end, perhaps Lloyd Allen, President of the Board of Imperial put the whole experience in the best perspective. Mr. Allen said at the ceremonial signing of the QSA at Hoover Dam, "I'm glad that this sucker is done."

Publisher's Note: Rodney T. Smith, ***WS*** editor and author of this story, serves as an economic advisor of the Imperial Irrigation District, participated in the negotiation of the Imperial/San Diego transfer and QSA, and was an economics expert in *IID v. U.S.* and the Part 417 proceeding. The views expressed do not necessarily reflect the views of Imperial or any clients of *Stratecon, Inc.*

