The Challenge of Interstate Waterways

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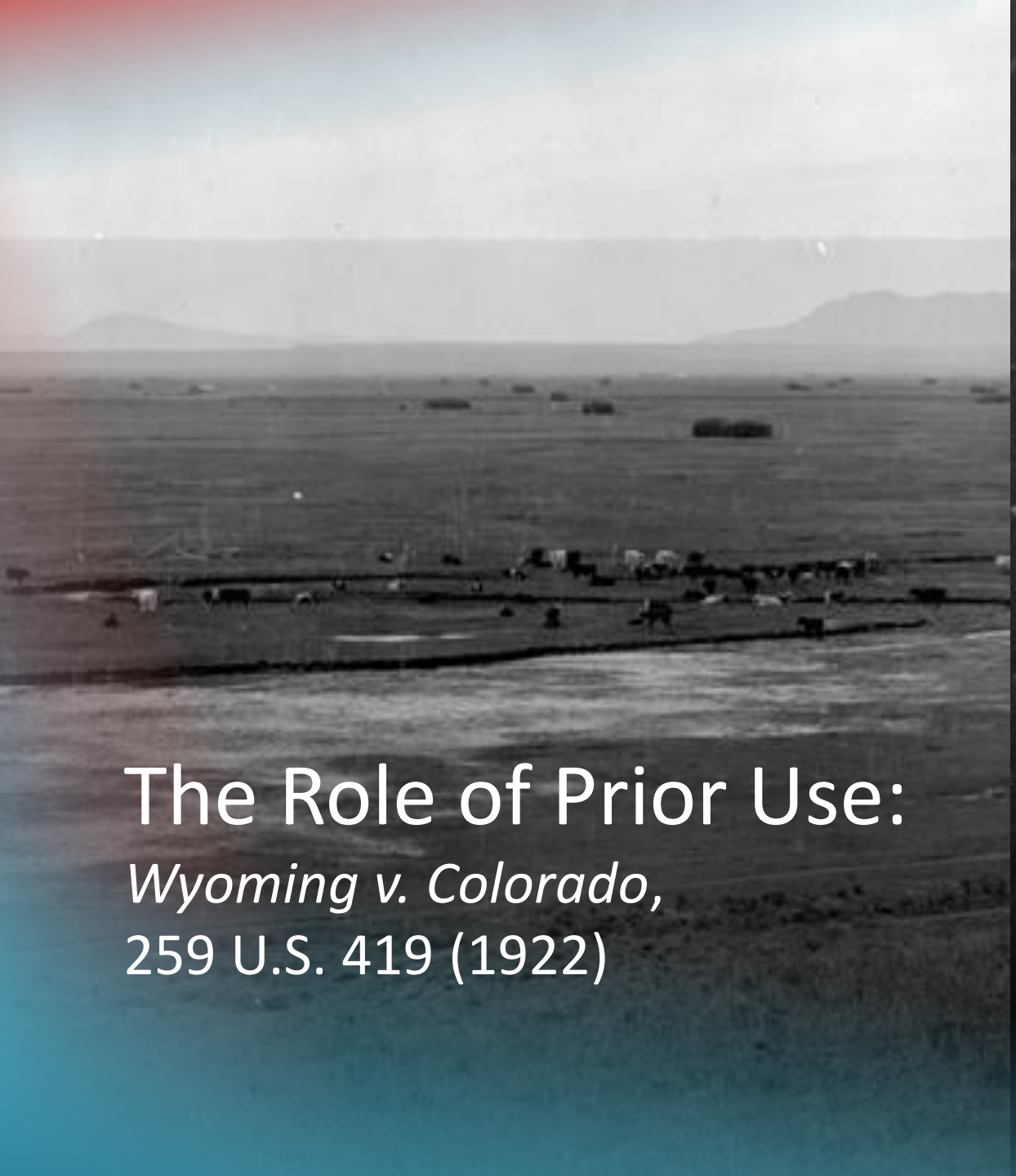
Interstate Waterways

Judicial Allocation

- “In all Cases … in which a State shall be Party, the supreme Court shall have original Jurisdiction.” – U.S. Const., art. III, § 2.

Equitable Apportionment

Kansas v. Colorado, 206 U.S. 46 (1907)



The Role of Prior Use:

Wyoming v. Colorado,
259 U.S. 419 (1922)

The Problems of Equitable Apportionment

- Distributional Claiming
  - No collaborative creation
- *Parens Patriae*
  - Top down
  - Limited stakeholder role
- Undermines Trust
  - Creates divisions
- Litigation Straight Jacket
  - Seldom settle
- Typical Litigation Problems
  - Lengthy
  - Costly

Interstate Compacts

Drivers & Problems

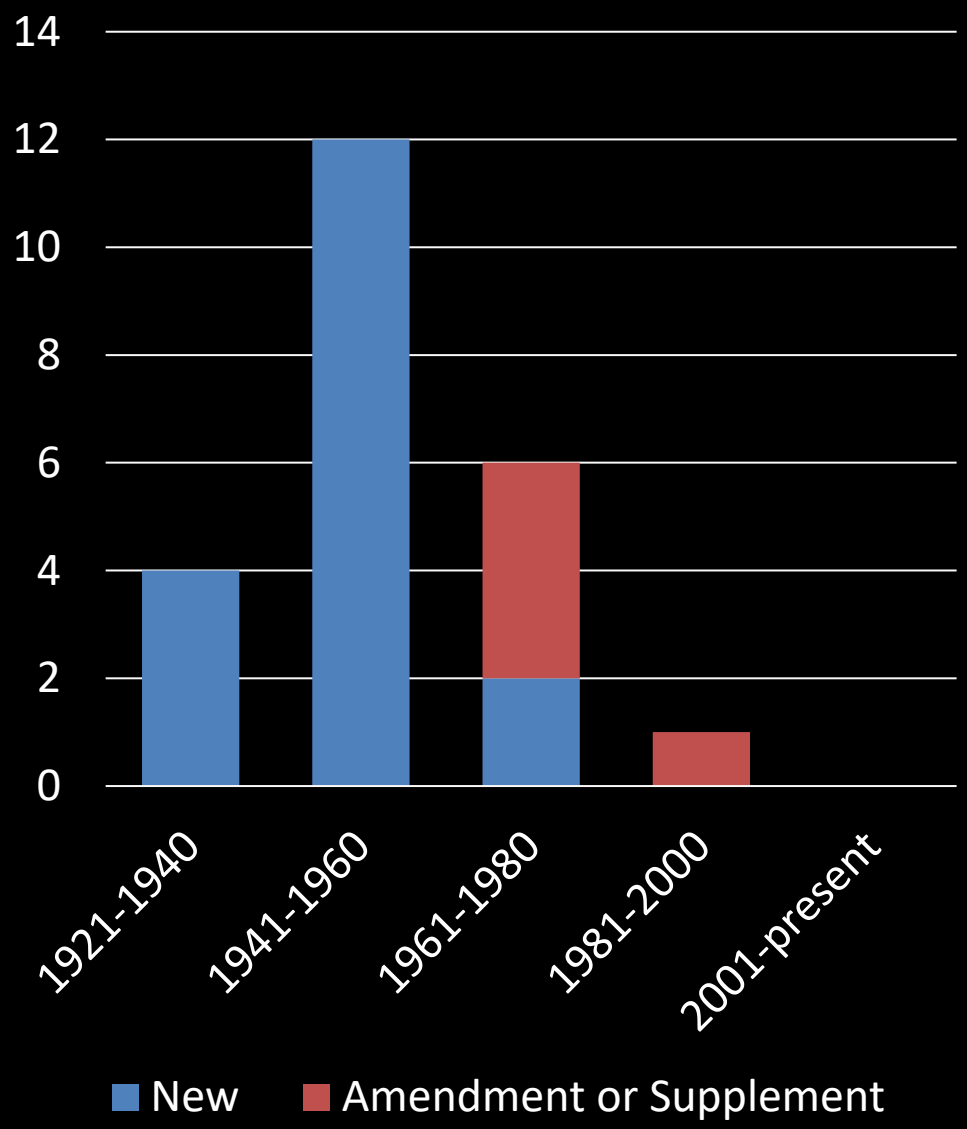
- Condition for federal funding
- Storage eased choices
- Charismatic advocate
  - Delph Carpenter
- But
  - Long negotiations
  - Often ambiguous
  - Poorly crafted

Flaws Should Not Be Surprising

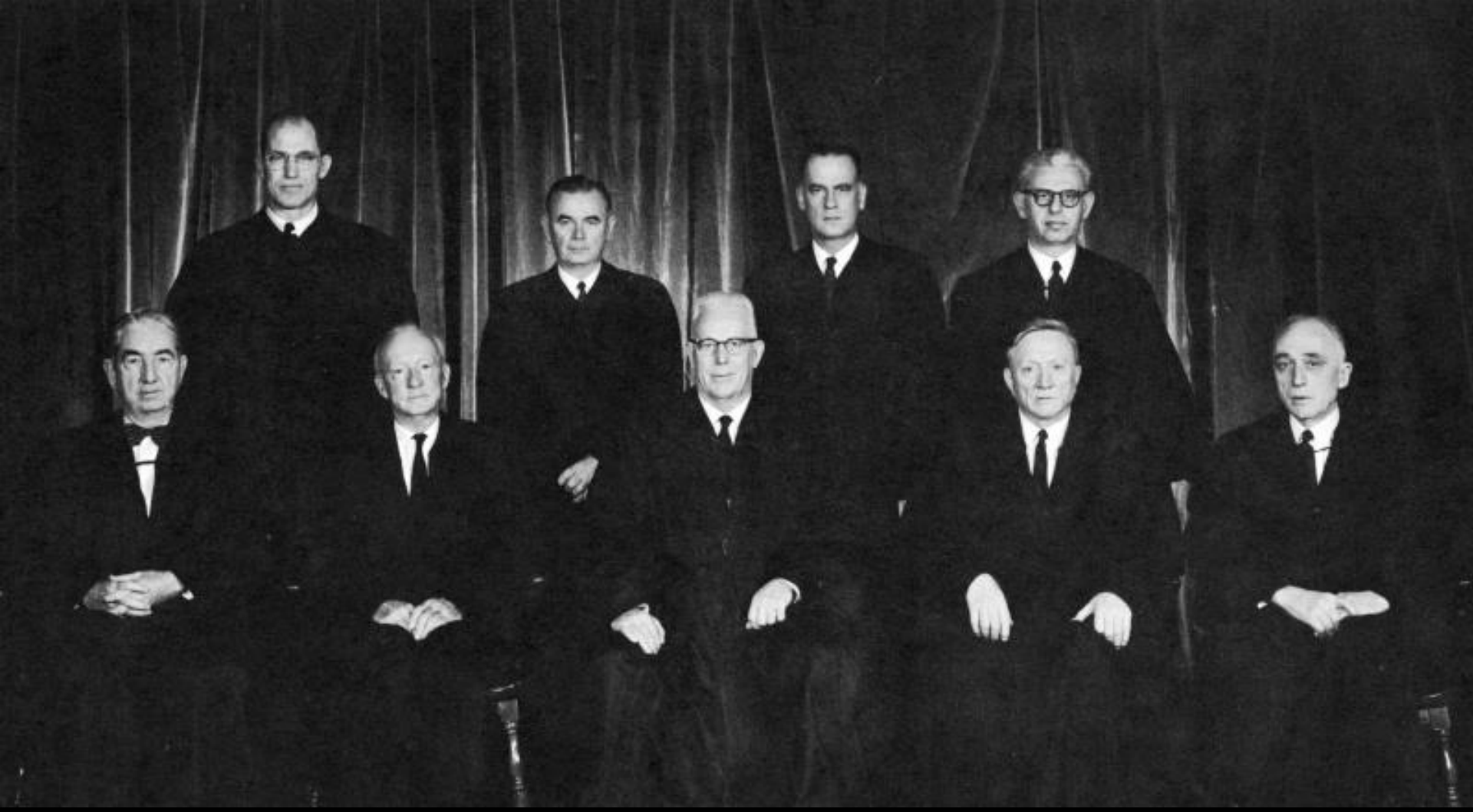
- Poor legal shadows
- “Shot-gun marriages”
- Little experience
- Broad boundaries
  - Minor customization
- Top-down negotiations
  - Engineers have dominated
- High data uncertainty

Compacts Often End Up Back in Court: *Montana v. Wyoming*

No New Allocative Water Compact in Almost Half a Century



Congressional Legislation



Arizona v. California,
373 U.S. 546 (1963)

The Federal Role?

The Feds As an Obstruction: *Florida v. Georgia*, 585 U.S. 803 (2018)

Texas v. New Mexico, 602 U.S. 943 (2024)

The Feds As Manager: Missouri River

The Feds As Nudge:

Colorado River

The Enduring Question: *How Can We Better Manage Interstate Waters?*