

University of Colorado Law School

Colorado Law Scholarly Commons

Arizona v. California Collection

1960

Arizona v. California : no. 9 original, October 1959 term: offer of proof : table of contents, text of documents submitted by California defendants.

Follow this and additional works at: <https://scholar.law.colorado.edu/arizona-v-california>

Recommended Citation

"Arizona v. California : no. 9 original, October 1959 term: offer of proof : table of contents, text of documents submitted by California defendants." (1960). *Arizona v. California Collection*. 85.
<https://scholar.law.colorado.edu/arizona-v-california/85>

This Book is brought to you for free and open access by Colorado Law Scholarly Commons. It has been accepted for inclusion in Arizona v. California Collection by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

William A. Wise Law Library
University of Colorado Law School



Arizona v. California Collection

Offer of Proof[,] Table of Contents[,] Text of
Documents Submitted by California Defendants[,]
August 17, 1960[,] New York City, New York, Arizona
v. California, No. 9 Original, 1959 Term (U.S.).

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

OCT 26 1960

Arizona, complainant.

LAW LIBRARY

Arizona v. California

No. 9 Original, October 1959 Term

OFFER OF PROOF

Table of Contents
Text of Documents

Submitted by California Defendants
August 17, 1960
New York City, New York

951.45
A7
C2
no. 1

8089/87
DH

Identification of Documents

California
Exhibit

- 7501 Extracts from "Second Report of the Colorado River Commission of Arizona, December 31, 1928"
- 7502 Extracts from "The Boulder Canyon Project--A Compilation of Data and Information Relative to the Colorado River Development" by the Colorado River Commission of the State of California, dated September 10, 1930
- 7502-A Application to Hon. Ray Lyman Wilbur, Secretary of the Interior, from The Metropolitan Water District of Southern California, for Changes of Contract dated April 24, 1930, between the United States of America, acting by and through the Secretary of the Interior, and The Metropolitan Water District of Southern California, for the Delivery of Water from the Boulder Canyon Project
- 7503 Motion for Leave To File Bill of Complaint and Bill of Complaint, No. 19 Original, October Term, 1930
- 7503-A Letter from R. F. Walter, Chief Engineer, Bureau of Reclamation, to Commissioner, with enclosure, Memorandum from E. B. Debler, "Bill of Complaint--Arizona vs Other States and the Secretary of the Interior," dated November 17, 1930
- 7504 Extracts from Arizona's Brief in Support of Motion for Leave To File Bill To Perpetuate Testimony, October Term, 1933
- 7505 Protest and Brief of the States of Colorado, New Mexico, Utah and Wyoming against the Execution of Said [Arizona 1934] Proposed Contract, Filed Before the Department of the Interior by the Governor and the Attorney General of the Respective States of Colorado, New Mexico, Utah, and Wyoming

California
Exhibit

- 7506 Motion for Leave To File Bill of Complaint and Statement in Support of Motion, Bill of Complaint, and Petition for Rehearing, Filed by Arizona, October Term, 1935
- 7507 Extracts from Statement of Governor R. C. Stanford of Arizona to Boulder Dam Power Conference, dated April 16, 1937
- 7508 Postal Telegraph from R. C. Stanford, Governor of Arizona, to Nathan Margold, Solicitor, Department of the Interior, dated May 24, 1937
- 7509 Letter from Herbert B. Maw, Governor of Utah, to Secretary of the Interior Harold L. Ickes, dated August 16, 1943, with enclosure, Letter from William R. Wallace, Grover A. Giles, Ora Bundy, and Ed. H. Watson to Secretary of the Interior Harold Ickes, dated July 15, 1943
- 7510 Extracts from Hearings on California's Objections to Proposed Contract Between United States and Arizona for Delivery of Water from Lake Mead [February 2, 1944]
- 7511 Extracts from Statement on Behalf of the State of Arizona in Support of Execution of the Proposed [Arizona Water Delivery] Contract Before the Department of the Interior, Hon. Harold L. Ickes, Secretary, dated January 1944
- 7512 Letter from Governor Sidney P. Osborn of Arizona to Governor Earl Warren of California, dated March 12, 1947, with supporting documents: (1) Letter from Governor Warren to Governors Osborn of Arizona and Pittman of Nevada, dated March 3, 1947; and (2) Letter from Governor Pittman to Governor Warren, dated March 6, 1947

California
Exhibit

- 7513 Extracts from H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947): Department of the Interior, Bureau of Reclamation, The Colorado River--Interim Report on the Status of the Investigations Authorized To Be Made by the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act
- 7513-A Letter of Transmittal from the Secretary of the Interior to the Speaker of the House of Representatives, July 24, 1947, contained in H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947)
- 7513-B Letter from Commissioner of Reclamation to the Secretary of the Interior, July 17, 1947, approved and adopted by the Secretary of the Interior, July 19, 1947, contained in H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947)
- 7513-C Comments of the State of Arizona, November 22, 1946, addressed to Mr. William B. Warne, Acting Commissioner, Bureau of Reclamation, contained in H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947)
- 7513-D Extracts from Comments of the State of Colorado, December 17, 1946, addressed to the Secretary of the Interior, contained in H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947)
- 7513-E Extracts from Regional Directors' Report; Report from the Regional Directors, Regions III and IV, to the Commissioner of Reclamation, March 22, 1946, re: "A Comprehensive Report on the Development of the Water Resources of the Colorado River Basin in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming"; contained in H.R. Doc. No. 419, 80th Cong., 1st Sess. (1947)

California
Exhibit

- 7514 Extracts from H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949), Central Arizona Project: Letter from the Secretary of the Interior Transmitting a Report and Findings on the Central Arizona Project

Letter of Transmittal from the Secretary of the Interior to the Speaker of the House of Representatives, September 16, 1948, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949) [Ariz. Ex. 70]

- 7514-A Letter from Commissioner of Reclamation to Secretary of the Interior, dated May 20, 1948
- 7514-B Letter of Comment from the Governor of the State of Arizona to the Commissioner of Reclamation, April 24, 1948, on the Central Arizona Project Report, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949)
- 7514-C Letter of Comment from the Colorado Water Conservation Board, State of Colorado, to the Secretary of the Interior, May 17, 1948, on the Central Arizona Project Report, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949)
- 7514-D Letter of Comment from the State Engineer, State of Nevada, to the Commissioner of Reclamation, February 26, 1948, on the Central Arizona Project Report, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949)
- 7514-E Letter of Comment from the State Engineer, State of New Mexico, to the Secretary of the Interior, May 7, 1948, on the Central Arizona Project Report, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949)

California
Exhibit

- 7514-F Extracts from United States Department of the Interior, Bureau of Reclamation, Report on Central Arizona Project, Project Planning Report No. 3-8b.4-2, December 1947, contained in H.R. Doc. No. 136, 81st Cong., 1st Sess. (1949)
- 7515 Extracts from United States Department of the Interior, Bureau of Reclamation, Appendices to Report on Central Arizona Project, December 1947
- 7551 Opinion No. M-25151 from Solicitor E. C. Finney to the Secretary of the Interior, dated April 24, 1929
- 7552 Memorandum for Solicitor [E.C.] Finney from Secretary of the Interior Ray Lyman Wilbur, dated April 4, 1929; Letter from Governor C. C. Young to President Herbert C. Hoover, dated March 5, 1929; Letter from Governor C. C. Young to Secretary of the Interior Ray Lyman Wilbur, dated April 29, 1929; Letter from Secretary of the Interior Ray Lyman Wilbur to Governor C. C. Young, dated May 3, 1929
- 7553 Telegram from Secretary of the Interior Ray Lyman Wilbur to Rudolph W. Van Norden, dated September 27, 1929, with supporting document, Memorandum for Commissioner Mead from Burlew, dated September 26, 1929
- 7559 Memorandum for the Solicitor, Department of the Interior, from Frederick Bernays Wiener, Assistant Solicitor, re: "Proposed Contract with Arizona for Delivery of Boulder Dam Water," dated September 1, 1934, with supporting documents: (1) Memorandum from Stinson and Roddis, dated August 30, 1934; and (2) Draft of Contract for Delivery of Water submitted with Memorandum dated August 30, 1934

California
Exhibit

- 7600 Letter from Secretary of the Interior Harold L. Ickes to B. B. Moeur, Governor, State of Arizona, dated June 29, 1933, with supporting documents: (1) Memorandum from Roddis to the Solicitor, Department of the Interior, dated June 13, 1933; and (2) Memorandum from Commissioner of Reclamation Elwood Mead to Roddis, dated June 19, 1933
- 7601 Memorandum for the Secretary from Acting Commissioner H. W. Bashore, dated April 26, 1943
- 7602 Memorandum for the Secretary of the Interior from Acting Commissioner H. W. Bashore, dated May 22, 1943
- 7603 Letter from Commissioner H. W. Bashore to Clifford H. Stone, dated November 20, 1943, with supporting documents: (1) Memorandum to the Members of the Committee of Fourteen, Colorado River Basin, from Clifford H. Stone, Chairman, dated November 8, 1943; and (2) Letter from Clifford H. Stone, Chairman, Committee of Fourteen, Colorado River Basin, to Commissioner H. W. Bashore, dated November 8, 1943
- 7604 Memorandum for the Solicitor from Clifford E. Fix, Assistant Chief Counsel, Bureau of Reclamation, dated January 29, 1944
- 7605 Summary Memorandum signed by H. W. Bashore, dated February 8, 1944
- 7606 Letter from Commissioner H. W. Bashore, Bureau of Reclamation, to Secretary of the Interior Harold L. Ickes, dated February 8, 1944
- 7607 Memorandum by Secretary of the Interior Harold L. Ickes re Hearing February 2, on California's Objections to the Proposed Contract Between the United States and Arizona for the Delivery of Water from Lake Mead, dated February 9, 1944

California
Exhibit

- 7608 Letter from Secretary of the Interior
Harold L. Ickes to Governor Earl Warren,
Sacramento, California, dated February 21,
1944
- 7609 Letter from Secretary of the Interior
Harold L. Ickes to Judge Clifford H. Stone,
Denver, Colorado, dated February 21, 1944
- 7610 Letter from Acting Secretary of the Interior
Abe Fortas to Representative John R. Murdock,
dated December 13, 1945, with supporting
documents: (1) Letter from Representative
John R. Murdock to Secretary of the Interior
Harold L. Ickes, dated March 17, 1945; and
(2) Letter from Secretary of the Interior
Harold L. Ickes to Representative John R.
Murdock, dated May 3, 1945
- 7611 United States Department of the Interior, Bureau of
Reclamation, Boulder Canyon Project, Contract
with City of Yuma for Delivery of Water, dated
November 12, 1959; Contract, City of Yuma and
Arizona Water Company, dated November 12, 1959,
approved by Secretary of the Interior
Fred A. Seaton, March 25, 1960
- 7651 Letter from Acting Secretary of the Interior
Abe Fortas to Alfred Merritt Smith, Secretary,
Colorado River Commission of Nevada, dated
August 24, 1943, with supporting document,
Letter from Alfred Merritt Smith to Acting
Secretary Abe Fortas, dated May 28, 1943

California
Exhibit

- 7652 Letter from Commissioner H. W. Bashore to Alfred Merritt Smith, Secretary, Colorado River Commission of Nevada, dated August 28, 1943, with supporting documents: (1) Letter from Alfred Merritt Smith, Secretary, Colorado River Commission of Nevada, to Secretary of the Interior Harold L. Ickes, dated April 29, 1943; and (2) Extract from a draft of the Nevada Water Delivery Contract enclosed with said Letter dated April 29, 1943
- 7701 Extracts from Memorandum to the Secretary--"The Colorado Conference"--from Commissioner Elwood Mead, dated January 10, 1930
- 7702 Memorandum from Department of the Interior, Office of the Solicitor, May 14, 1930, re "Right to Divert Water from the Colorado River Watershed to Another Watershed in California"
- 7703 Letter from Commissioner Elwood Mead to W. F. Whitsett, Director, Metropolitan Water District, dated August 25, 1931, with supporting document: Extracts from Letter from Commissioner Elwood Mead to S. C. Evans, Executive Director, Boulder Dam Association, dated February 28, 1931
- 7751 Extracts from a Protest of the States of Colorado, New Mexico, Utah, and Wyoming Against the Gila Valley Irrigation Project in Arizona, dated February 5, 1936
- 7752 Letter from Acting Commissioner John C. Page to Senator Carl Hayden, dated June 16, 1936
- 7753 Memorandum for Commissioner John C. Page from "R.M.P.," dated April 9, 1937

California
Exhibit

- 7754 Memorandum for the Commissioner of the Bureau of Reclamation from Acting Solicitor Frederic L. Kirgis, dated April 14, 1937
- 7755 Letter from Commissioner John C. Page to L. Ward Bannister, dated April 16, 1937, with supporting document, Letter from L. Ward Bannister to Commissioner John C. Page, dated March 26, 1937
- 7756 Letter from Commissioner John C. Page to William A. Duvall, Clerk, House Committee on Appropriations, dated April 16, 1937
- 7757 Extracts from Hearings Before a Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1938, 75th Cong., 1st Sess., pt. 2 (1937)
- 7758 Protest of the States of Colorado, New Mexico, Utah, and Wyoming Against the Gila Valley Irrigation Project in Arizona, 1937
- Letter from Acting Secretary of the Interior Charles West to the President, dated June 8, 1937 [Ariz. Ex. 60]
- 7759 Letter from Acting Secretary of the Interior Charles West to Senator Carl Hayden, dated June 10, 1937
- 7760 Extracts from Statements of Charles A. Carson, Special Attorney for the State of Arizona in Connection with Colorado River Matters, and R. Gail Baker, Reclamation Engineer for the State of Arizona, Presented in Hearings Before the House Committee on Irrigation and Reclamation on H.R. 5434, Reauthorizing the Gila Project, 79th Cong., 2d Sess. (1946)

California
Exhibit

- 7761 Statement by Representative John R. Murdock of Arizona, July 30, 1946, re "Analysis and Brief Summation of Testimony on H.R. 5434 [Reauthorizing the Gila Project, Arizona]"
- 7762 Statement of Chairman John R. Murdock of Arizona, August 2, 1946, to the House Committee on Irrigation and Reclamation re Hearings on H.R. 5434, Reauthorizing the Gila Project, 79th Cong., 2d Sess. (1946)
- 7801 Extracts from an Opinion Rendered to the Colorado River Commission of Arizona by Arthur T. LaPrade, Attorney General of Arizona, and Charles A. Carson, Special Assistant, dated July 12, 1933
- 7802 Memorandum by James R. Moore, Special Assistant Attorney General for Arizona, dated July 1, 1935
- 7851 Letter from Chief Engineer R. F. Walter, Bureau of Reclamation, to Commissioner [John C. Page], dated June 10, 1937
- 7852 Letter from Commissioner John C. Page to Chief Engineer R. F. Walter, Bureau of Reclamation, dated June 17, 1937
- 7853 Teletype from Commissioner of Reclamation H. W. Bashore to Bureau of Reclamation, Denver, Colorado, dated March 31, 1944; responding to the supporting document, Teletype No. D 3007 from [E. B.] Debler [Bureau of Reclamation, Denver, to Commissioner, Washington, D.C.], dated March 31, 1944
- 7854 Memorandum from Director, Branch of Project Planning, to Regional Director, Boulder City, Nevada, Bureau of Reclamation, entitled "Water Available From Colorado River for Central Arizona Project--Lower Colorado Basin," dated March 24, 1945; with enclosure dated March 23, 1945

California
Exhibit

- 7855 Letter from John C. Page, Consulting Engineer, Bureau of Reclamation, to Commissioner of Reclamation, dated May 24, 1945; with two enclosures: (1) Memorandum from Director, Branch of Project Planning, Bureau of Reclamation, to Regional Counsel, Los Angeles, California, dated May 2, 1945; and (2) Reply Memorandum from Regional Counsel to Denver Office, dated May 5, 1945
- 7856 Letter from Acting Commissioner Kenneth Markwell to John C. Page, Consulting Engineer, re "Arizona Highline Canal," dated June 16, 1945
- 7857 Memorandum from Director, Branch of Project Planning, to Commissioner of Reclamation, entitled "Report on Central Arizona Project--Colorado River Basin," dated June 25, 1945
- 7858 Memorandum from John C. Page, Consulting Engineer, to Commissioner of Reclamation, entitled "Water Supply Appendix for Selection [of Routes] Report--Central Arizona Project," dated June 29, 1945
- 7859 Memorandum from Commissioner, Bureau of Reclamation, to Regional Director, Boulder City, Nevada, dated January 2, 1946, re "Interim Report--Central Arizona Project--Lower Colorado River Basin"

CALIFORNIA DEFENDANTS

Exhibit No. 7501

Identification:

Admitted:

EXTRACTS FROM "SECOND REPORT OF THE COLORADO
RIVER COMMISSION OF ARIZONA, DECEMBER 31, 1928"

Document is California Exhibit 1350
for identification.

State of Arizona)
) ss
County of Maricopa)

I, Mulford Winsor, depose and say:

That I am the Director of the Department of Library and Archives of the State of Arizona:

That among the records and files in the custody of the Department of Library and Archives is a volume containing the "First Report of the Colorado River Commission of Arizona" and "Second Report of the Colorado River Commission of Arizona, December 31, 1928."

That the photostatic reproduction to which this affidavit is attached is a true and correct copy of such Reports.

/s/ Mulford Winsor

Director, Department of Library and Archives

Subscribed and sworn to before me this 6th day of June, 1956.

(SEAL)

/s/ Alice B. Good

Notary Public

My commission expires January 23, 1959.

DIVISION OF WATER—AUTHORIZATION OF TRI-STATE
AGREEMENT

Section 4 provides that the Act shall not become effective until (1) the Colorado River Compact shall have been ratified by the seven States of the Colorado River Basin, or (2) if the Compact be not so ratified within six months, then not until six States, including California, shall have so ratified and consented to waive the seven-State provision contained in the Compact, and the California Legislature, by act, shall have entered into an irrevocable covenant with the United States that the "aggregate annual consumptive use of water of and from the Colorado River * * * in the State of California, * * * shall not exceed four million two hundred thousand acre-feet of the waters apportioned to the lower basin States by * * * the Colorado River Compact; plus not more than one-half of any * * * waters unapportioned by said Compact. This limitation upon California's use of water is an amendment to the original measure. An additional amendment authorizes the States of Arizona, California and Nevada to enter into a tri-State agreement, and the terms of this agreement, "to take effect upon the ratification of the Colorado River Compact by Arizona, California and Nevada," are set forth in detail. In this tri-State agreement 300,000 acre-feet of the water allocated by the Compact to the lower basin would be apportioned to Nevada and 2,800,000 acre-feet to Arizona, and Arizona would be permitted to use one-half of the unallocated water; Arizona would have the exclusive beneficial consumptive use

of the Gila, and the waters of that stream would not be subject to diminution by any allowance which may hereafter be made to Mexico. The proposal for a tri-State agreement does not make clear the method of computing the unallocated waters, of which California and Arizona would each be entitled to use one-half, but inasmuch as "all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River Compact," it would appear that the waters of Arizona streams, including the Gila, which constitute the bulk of the unallocated or surplus waters, would be embraced in the computation. This would make California the beneficiary not merely of one-half of the unallocated flow of the main stream, as it comes down from the upper basin (in addition to the allocation of 60 per cent of the water allotted to the lower basin), but as well of one-half of the flow of the Virgin River and of the Arizona streams. While none of the Gila River waters could be taken from Arizona, because of its prior appropriation, her use of such waters would be charged against her half of the unallocated flow and would apparently result in the reduction of Arizona's allocation of water in the main stream. The situation may be illustrated by the following set-ups, the figures referring to acre-feet:

Allocated waters:

Total to Lower Basin States.....	7,500,000
California	4,400,000
Arizona	2,800,000
Nevada	300,000
	<hr/>
	7,500,000

Unallocated waters:

Estimated total average amount of water annually available at Laguna Dam (U. S. G. S.)	9,380,000
Less allocation to lower States.....	<hr/> 7,500,000

Surplus or unallocated water in main stream (including flow from Arizona streams above the Gila).....	1,880,000
Plus Gila, estimated flow.....	<hr/> 3,000,000

Total unallocated water.....	4,880,000
Less suggested allotment to Mexico (based on present uses).....	<hr/> 1,000,000

Unallocated water remaining for division between Arizona and California, one-half, or 1,940,000 acre-feet to each.....	<hr/> 3,880,000
--	-----------------

Recapitulation:

Allocated water	7,500,000
Unallocated water	<hr/> 4,880,000

Total flow available in Lower Basin.....	<hr/> 12,380,000
--	------------------

Divided as follows:

To California—	
Allocated	4,400,000
One-half unallocated (less allowance to Mexico)	1,940,000
	<hr/> 6,340,000
To Nevada—allocated	300,000
To Mexico—unallocated	<hr/> 1,000,000
To Arizona—	
From Gila	3,000,000
From the Colorado and Arizona tributaries exclusive of the Gila (remainder of total flow)	<hr/> 1,740,000
	<hr/> 4,740,000
	<hr/> 12,380,000

These figures indicate that while Arizona, under the proposed tri-State treaty, would have a definite allotment of 2,800,000 acre-feet of the allocated waters of the main stream, her election, should she abide by this Swing-Johnson measure, to reserve the flow of the Gila for her exclusive beneficial consumptive use, would operate to reduce that allocation to 1,740,000 acre-feet, or about the amount of water necessary for the reclamation of 450,000 acres of land, of which nearly half would be absorbed by the Yuma Project and the Parker Indian Reservation, and an additional amount by projects on the Little Colorado River and other Arizona tributaries exclusive of the Gila. With a million or more acres of Arizona land susceptible of practical reclamation from the Colorado, this division of water would be neither adequate nor just. If, by another way of figuring, it was the intention of Congress to wholly eliminate the Gila from all reckonings, thus reducing the amount of unallocated waters in the main stream to 880,000 acre-feet, after checking off an allowance of a million acre-feet to Mexico, Arizona would then receive her proposed allocation of 2,800,000 acre-feet, plus a possible 440,000 acre-feet of unallocated water, or a total from the main stream of 3,240,000 acre-feet, as against 4,840,000 to California. This would permit the total development in Arizona of approximately 800,000 acres of land from the main Colorado River and from the Arizona tributaries of the Colorado exclusive of the Gila. However, the language of the measure does not justify this latter assumption.

CALIFORNIA DEFENDANTS

Exhibit No. 7502

Identification:

Admitted:

EXTRACTS FROM "THE BOULDER CANYON PROJECT--
A COMPILATION OF DATA AND INFORMATION
RELATIVE TO THE COLORADO RIVER DEVELOPMENT"
BY THE COLORADO RIVER COMMISSION OF THE
STATE OF CALIFORNIA, DATED SEPTEMBER 10, 1930

The Boulder Canyon Project

"To Convert a Natural Menace Into a
National Resource"

A Compilation of Data and Information Relative to the
Colorado River Development

BY

THE COLORADO RIVER COMMISSION
OF THE
STATE OF CALIFORNIA

JOHN L. BACON	-	-	-	-	Chairman
W. B. MATHEWS	-	-	-	-	Commissioner
EARL C. POUND	-	-	-	-	Commissioner
F. H. MEYER	-	-	-	-	Secretary



LETTER OF TRANSMITTAL

Gov. C. C. YOUNG,
Sacramento, California.

SIR: There is hereby submitted a brief compilation of facts in connection with the Colorado River, and the Boulder Dam Project.

There has been an increasing demand for accurate information bearing on this most important development, particularly those elements affecting the policy of the Colorado River Commission of California in dealing with other states.

It is to meet this demand that this pamphlet has been compiled. No attempt is made to give full detailed information but a short bibliography is appended to aid in obtaining further information if such is desired.

Respectfully submitted.

CALIFORNIA-COLORADO RIVER COMMISSION,
By JOHN L. BACON, Chairman.

San Diego, California,
September 10, 1930.

DIVISION OF LOWER BASIN WATER

According to the terms of the compact there is available in the lower basin what might be termed three kinds of water (See Colorado River Compact, Appendix B), paragraph III (a) water, i. e. 7,500,000 acre-feet, paragraph III (b) water, i. e. 1,000,000 acre-feet, and physical water actually present in the system over and above (a) and (b) water. For the purpose of discussion this might be termed (c) water.

From this (c) water must be taken any water used to satisfy any Mexican obligation, the balance is available for use in the lower basin. In making an estimate of the water available for use in the lower basin it is assumed that the upper basin use may reach, but not exceed the 7,500,000 acre-feet apportioned to that basin by paragraph III (a) of the pact.

The pact defines Colorado River System as the Colorado River and its tributaries within the United States. The water considered in the pact is all the water in the *system* and the division of water is that of the *system*. The pact proceeds to divide the system into the Upper Basin and the Lower Basin, the point of division being Lee Ferry. No mention is made in the pact of dividing main stream water, but in every case it is the water of the *system*.

As a terse, clear explanation of the meaning of the pact in connection with the above points the replies by the Secretary of Commerce Herbert Hoover, who was Chairman of the Commission which drew up the Colorado River Compact, to questions submitted by Congressman Carl Hayden and published in the Congressional Record under the Exten-

sion of Remarks of Congressman Hayden, January 30, 1923, is given in Appendix C.

The figures given in Table I have been accepted as being reasonably indicative of the amount of water that may be counted on.

The water actually physically present in the Lower Basin must meet four demands—water uses in

- 1—Arizona.
- 2—California.
- 3—Nevada.
- 4—Mexico.

Any water passing Lee Ferry, under the terms of the pact, in excess of 7,500,000 acre-feet per year, must be used to satisfy the Mexican demand before the Upper Basin can be called on to meet a further obligation. Under the terms of the pact the Lower Basin is allowed the use of 8,500,000 acre-feet out of all the water in the Lower Basin system. As there is approximately 3,000,000 acre-feet of water in the Lower Basin system more than this allowed use, it is inconceivable that the Upper Basin could ever be called on to supply any deficiency, hence this assumption that the Lower Basin must meet all of the Mexican demands.

There is no treaty between the United States and Mexico affecting the use of water of the Colorado River. There is an agreement or contract between the owners of the canal in Mexico and the Mexican Government which permits Mexican lands to take one-half of the water flowing in the canal.

Water used in Mexico from the canal system during the last few years has represented a diversion from the Colorado River of approximately 750,000 acre-feet annually.

Under the terms of the Boulder Canyon Project Act not over 4,400,000 acre-feet of III (a) water may be used by California each year. The use of water in Nevada from the Colorado River system is limited by nature. The water is only available at the bottom of deep canyons and the agricultural lands that it is practical to water from these deep canyons is limited by the topography. It has been generally conceded that Nevada could never use more than 300,000 acre-feet and probably such use would never exceed 200,000 acre-feet.

Arizona would naturally receive, after deducting 4,400,000 acre-feet for California and the 300,000 acre-feet for Nevada, the balance of the 7,500,000 acre-feet or 2,800,000 acre-feet.

Careful study of the Boulder Canyon Project Act is necessary in order to determine the status of the extra 1,000,000 acre-feet that the Lower Basin is allowed to use each year under the compact (Article III(b)).

The Act lays down only one definite limitation on water and that condition is briefly as given above, i. e. California to restrict her use to 4,400,000 acre-feet of water apportioned by Article III, paragraph (a) of the Colorado River Compact, plus one-half of the excess or surplus waters unapportioned.

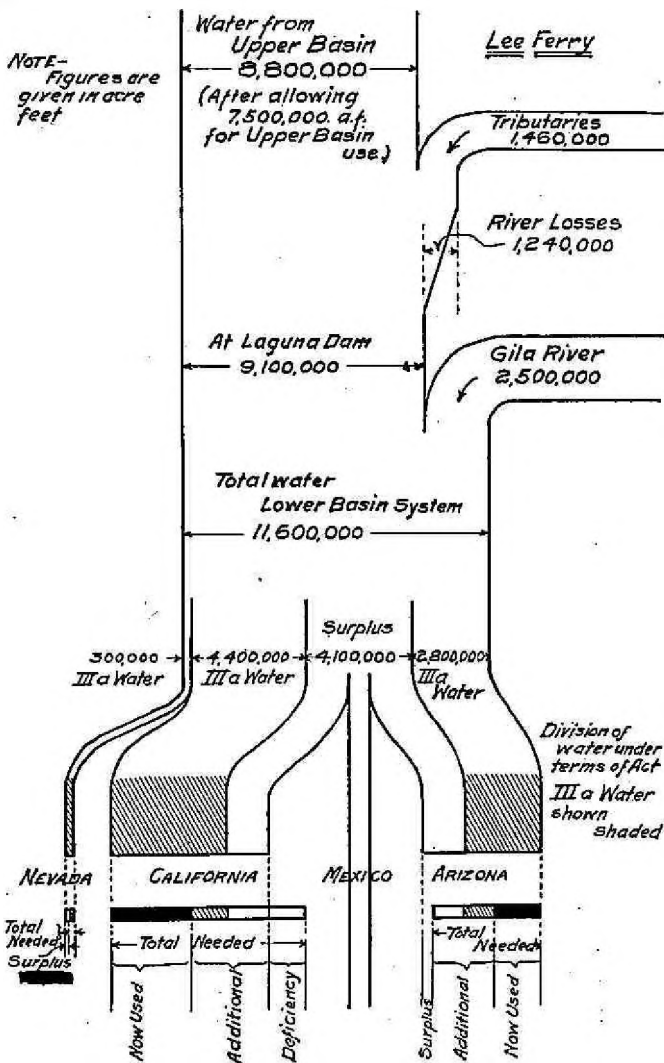
The Act also outlines a suggested possible Tri-State compact between Arizona, California and Nevada (this suggested compact is not binding

on anyone and is not suggested as the "will of Congress" (Congressional Record, 70th Congress, 2d Session, page 484 et seq.)). This suggested Tri-State compact does not apportion any water to California but apportions 300,000 acre-feet to Nevada, and 2,800,000 acre-feet to Arizona and then states that Arizona may have one-half of the excess or surplus waters.

No mention is made in either the California limitation laid down in the bill or in the suggested Tri-State compact of the 1,000,000 acre-feet of water mentioned in Article III (b) of the compact. Arizona contends that because this 1,000,000 acre-feet is not mentioned in the Act that the State of Arizona would automatically be given the right to use the entire 1,000,000 acre-feet. In the suggested Tri-State compact in the Act, Arizona is limited to 2,800,000 acre-feet of water from the 7,500,000 acre-feet and is allowed to use one-half of the excess or surplus (exactly the same language as used in connection with California's limitation in the preceding paragraph of the Act). If Arizona's assumption regarding the California limitation is correct, then the use of the same language in the suggested Tri-State compact would in that case prohibit Arizona's use of the 1,000,000 acre-feet of Article III (b) water.

From the above it would seem logical to suppose that Congress had no intention of making any effort to even suggest a division of this 1,000,000 acre-feet but that it was to be considered a part of the surplus and excess water and would be open to appropriation by either State. This assumption is further borne out by the debate which took place in the Senate at the time the Act was adopted, it being the evident intention to have the California limitation and the suggested Tri-State compact, if adopted, tie up together and leave all water in the lower basin system over and above the 7,500,000 acre-feet to be considered as surplus or excess water. No other interpretation than this will work out consistently when both paragraphs of the Act are considered. The same assumption must of course be used in interpreting both paragraphs of the Act and if the assumption is made that 1,000,000 acre-feet is not included in the surplus or excess water then one paragraph of the Act, if taken alone, gives California 1,000,000 extra acre-feet and the other paragraph, if taken alone, would give Arizona 1,000,000 extra acre-feet and the two would not be consistent. By considering 1,000,000 extra acre-feet as being a portion of the excess or surplus water and water to which simply a firmer or more certain title would attach, then there is no trouble in making the two clauses of the Act read consistently.

Table III gives the division of water that would result from the assumption of interpretation made by California.



**COLORADO RIVER WATER
LOWER BASIN SYSTEM**
WATER AVAILABLE, AND APPORTIONMENT UNDER ACT
(SEE TABLES 1, 3 & 4)

CALIFORNIA COLORADO RIVER COMMISSION
July - 1930 - P

PLATE V

TABLE III

Under the provisions of the Boulder Canyon Project Act and the seven-State compact it would seem that the division of water between the three lower basin states would be practically as follows:

California Water—

Apportioned III (a) water.....	1,400,000 acre-feet
One-half surplus or excess (Tab. I)	2,050,000 acre-feet

6,450,000 acre-feet

(Assuming Arizona and Nevada use
balance of water on basis of proposed
tri-State compact in Act.)

Arizona Water—

Apportioned III (a) water.....	2,800,000 acre-feet
One-half surplus or excess (Tab. I)	2,050,000 acre-feet

4,850,000 acre-feet

Nevada Water—

Apportioned III (a) water.....	300,000 acre-feet
--------------------------------	-------------------

11,600,000 acre-feet

Note:

From above amounts any water going to Mexico must be deducted. Present use in Mexico approximately 750,000 acre-feet. This divided equally between Arizona and California would make net figures as follows:

Arizona	4,475,000 acre-feet
California	6,075,000 acre-feet
Nevada	300,000 acre-feet
Mexico	750,000 acre-feet

11,600,000 acre-feet

Plate V gives diagrammatically the distribution or division of water among the lower basin states in conformity with Table III.

Arizona has as yet (July, 1930) agreed to no compact or limitation of use of water from the Colorado River nor is she bound to any limitation by the present Boulder Canyon Project Act or any compact. Assuming the conditions laid down in the compact and in the Act Arizona's allocation of water would be:

III (a) water.....	2,800,000 acre-feet
One-half of excess (See Table I)	2,050,000 acre-feet

4,850,000 acre-feet

From the above must be deducted any share that Arizona would have in meeting the Mexican obligation.

It has been felt in California that this amount is in excess of any quantity that Arizona could ever use, while California has thousands of acres needing Colorado River water that must go dry. Should Arizona be allocated more water than can be used in that state, such excess will flow down the river and be used in Mexico, as California by accepting such an allocation would be prohibited from use. Such an allocation could only work to the detriment of all the United States interests.

It has been suggested that if unused water allocated to Arizona was actually present and flowing down the river, California would use this water. Unfortunately it is not practical to develop land dependent on a water supply that may be cut off at any time. It would be very unwise for California to be dependent upon water that Arizona might at any time claim and take away.

CALIFORNIA DEFENDANTS

Exhibit No 7502 - A

Identification:

Admitted:

APPLICATION TO HON. RAY LYMAN WILBUR, SECRETARY OF
THE INTERIOR, FROM THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA, FOR CHANGES OF CONTRACT
DATED APRIL 24, 1930, BETWEEN THE UNITED STATES
OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF
THE INTERIOR, AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA, FOR THE DELIVERY OF WATER
FROM THE BOULDER CANYON PROJECT

The April 24, 1930, contract is Ariz. Ex. 38.

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

AUG 5 1907

19

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior: _____

TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

Wm. H. H. H. H. H.
Chief Clerk.

ORIGINAL

186

A P P L I C A T I O N

-to-

HON. RAY LYMAN WILBUR,
Secretary of the Interior,

-from-

THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA,

for changes of contract dated April
24, 1930, between the United States
of America, acting by and through
the Secretary of the Interior, and
The Metropolitan Water District of
Southern California, for the
delivery of water from the Boulder
Canyon Project.

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

222 South Hill Street

LOS ANGELES, CALIFORNIA

Phone FAber 4211

BOARD OF DIRECTORS

ARABIAN—W. FRANKS
BEVERLY HILLS—PAUL E. SCHWAB
BURBANK—HARRY E. BLUCE
COLORADO—W. S. HUTCHINSON
GLENDALE—J. TURNER FOX
LOS ANGELES—JOHN D. HAYES
LOS ANGELES—JOHN S. BISHOP
LOS ANGELES—W. D. WHITNEY
PASADENA—FRANKLIN THOMAS
SAN BERNARDINO—W. S. HARRIS
SAN MARINO—HARRY L. HOFFER
SANTA ANA—S. M. FINLEY
SANTA MONICA—EEO. H. HUTTON

OFFICERS

W. D. WHITNEY, CHAIRMAN
FRANKLIN THOMAS, VICE-CHAIRMAN
S. M. FINLEY, SECRETARY

August 12, 1930.

Hon. Ray Lyman Wilbur,
Secretary of the Interior,
Washington, D. C.

Dear Sir:

The Metropolitan Water District of Southern California
begs to submit herewith the following papers:

(a) Copy of an agreement, dated June 21, 1930,
between The Metropolitan Water District of Southern
California and the so-called Agricultural Groups of the
Colorado River valley, in California, including the
Imperial Irrigation District, Coachella Valley County
Water District and Palo Verde Irrigation District (and
for the benefit also of lands of the Yuma Irrigation
Project, California).

(b) Copy of stipulation, dated February 21,
1930, and signed by various persons representing the
foregoing parties, and others.

(c) Copy of Resolution No. 36 of said
Metropolitan Water District, to which reference is made
in the agreement of June 21, 1930.

Particular reference is hereby made to the proposed
division of water from the Colorado River, as between The
Metropolitan District and the Agricultural Groups, as set forth
in said agreement of February 21, 1930, out of the waters made
available for use in California under the Boulder Canyon Project
Act in subordination to the Colorado River compact, to-wit:

Hon. Ray Lyman Wilbur.

August 12, 1930.

-2-

* "Class A Water: Agricultural Groups,	3,850,000	acre	feet	per	annum
Metrop. District,	550,000	"	"	"	"
Total	4,400,000				

Next 550,000 acre feet per annum,
available for California use Metrop. Dist. 550,000 acre feet
per annum

All water in river available for
California use in excess of above
4,950,000 acre feet per annum Agricultural group all."

In the month of June last, prior to the 21st, at meetings between the Board of Directors of The Metropolitan Water District and representatives of the said Agricultural Groups, in the City of Los Angeles, California, the question arose and was considered as to whether, under such proposed division of water, the allocation of the 550,000 acre feet of Class A water to The Metropolitan Water District should be made equal in rank or subordinate in right to the allocation of the remainder of said Class A water, to-wit: 3,850,000 acre feet, to said Agricultural Groups. The directors of the District contended against such subordination and urged that the underlying and controlling understanding expressed in the stipulation of February 21, 1930, did not contemplate any priority in the division of Class A water; also that it was only through inadvertence that said Resolution No. 36 varied from said stipulation of February 21, 1930, in respect of such division of Class A water.

On the other hand, the representatives of the Agricultural Groups insisted that in the division of said Class A water, priority should be provided for in favor of the allocation to the Agricultural Groups as against the allocation to the Metropolitan District.

That the representatives of the Agricultural Groups also demanded and insisted that a formal contract should forthwith be entered into by and between the District and the Agricultural Groups covering such division of water and providing for such priority in favor of the Agricultural Groups.

* Class A water (4,400,000 acre feet) being a portion of the 7,500,000 acre feet apportioned from the Colorado River system under paragraph (a) of Article III of the Colorado River compact to the Lower Basin.

-3-

That, at the time such meetings were being held and the question of division of water was being discussed, as aforesaid, a proposed appropriation of \$10,660,000 was pending in the Congress of the United States for the commencement of work on the Boulder Canyon Dam under the Boulder Canyon Project Act. That the Board of Directors of the District felt and insisted that it was extremely urgent and important that such proposed appropriation should be made by Congress during its then session.

That the representatives of the Agricultural Groups contended and insisted that, unless a contract for the division of water and the creation of priority in favor of such Agricultural Groups as demanded by them, was immediately made, then said representatives of the Agricultural Groups would file written objections in Congress and before the committee or committees thereof having such proposed appropriation under consideration, protesting against such appropriation and insisting that it should not be authorized until the claims and demands of said Agricultural Groups against said District regarding such division of water and priority of allocation were acceded to and complied with by The Metropolitan Water District of Southern California.

That thereupon the representatives of said Agricultural Groups, as an inducement to the Board of Directors of The Metropolitan Water District to assent and agree to the making of such allocations from Class A water, with priority of right in favor of the Agricultural Groups, proposed the following:

That a contract be entered into by and between the District and the Agricultural Groups providing, among other things,

(1) That the District should agree to re-affirm and abide by said Resolution No. 36, and said agreement of February 21, 1930.

(2) That the District agree to ask the Secretary of the Interior to incorporate in the water contract between the United States and The Metropolitan Water District of Southern California, dated April 24, 1930, the following addition, to-wit: By inserting in paragraph 6, page 3, line 14, after the words "flood control", the following language:

"and/or rights of other parties which the District has recognized or may recognize by contract with others than the United States (including that certain agreement with the Imperial Irrigation District, Coachella Valley County Water District, Palo Verde Irrigation District (made for the benefit also of lands of the Yuma Project in California) made on the 21st day of February, 1930, as

embodied in and approved by resolution No. 36 of the Board of Directors of The Metropolitan Water District, adopted April 25th, 1930)."

Also, by inserting in paragraph 6, page 3, line 21, after the words "Colorado River Compact", the following language:

"IT IS AGREED that the United States does not by anything contained in this instrument become bound by or a party to the aforesaid agreement of February 21st, 1930, or any other contract or contracts between the District and others than the United States, but, nevertheless, the Secretary reserves the right to make any disposition of the water to which the District thereby has relinquished or may relinquish claim."

Also by inserting in said water contract a provision granting to said District the right to accumulative storage of water in the Boulder Canyon reservoir out of The Metropolitan Water District's allocation, not exceeding at any one time a total of five million (5,000,000) acre feet, which said District shall have the right to store in said reservoir and the exclusive right to withdraw as needed.

Such agreement, as proposed by the representatives of the Agricultural Groups, also to contain a provision whereby the Agricultural Groups should agree that they will immediately request the Secretary of the Interior to amend said water contract between the United States and said The Metropolitan Water District, dated April 24, 1930, so as to grant to said District the right to accumulative storage of water in the Boulder Canyon reservoir out of The Metropolitan Water District's allocation, not exceeding at any one time a total of five million (5,000,000) acre feet which the District shall have the right to store in said reservoir and the exclusive right to withdraw as needed; and the Agricultural Groups also to agree that so far as their rights are concerned, the District shall have the full right to said accumulative storage and the exclusive right to withdraw any water so stored as the District may require.

That the Board of Directors of the District, being extremely anxious for the authorization of such appropriation at the session of Congress then in progress, assented to the making of the proposed contract, and thereupon, joined in the execution of said agreement of June 21, 1930, a copy of which is hereto attached.

August 12, 1930.

-5-

The Metropolitan Water District, in conformity with the agreement of June 21, 1930, requests that the water contract between the United States and The Metropolitan Water District, dated April 24, 1930, be amended by making the insertions and additions therein as above set forth, and, as provided for in the agreement of June 21, 1930, between said District and said Agricultural Groups, a copy of which is hereto attached.

And said District further represents, regarding the proposed plan for providing accumulative storage for the use and benefit of such District,

(1) That such plan for accumulative storage will not necessarily involve any change in the proposed operation of the Boulder Canyon reservoir. The power output as provided for in the contracts of April 26, 1930, secured by the Secretary of the Interior in financing the construction of that project, and the corresponding turbine discharges will be the controlling demand for water from the reservoir, probably until, at least, after the amortization period, as provided for in the Boulder Canyon Project Act. There will, therefore, be no damage or loss to the United States from such accumulative storage as no reduction in the revenue of the project can result, but rather a slight increase in the net income during periods of water shortage, due to the more uniform demand for water through the aqueduct of such District for domestic use, as compared with other uses.

(2) No water user outside of California can be adversely affected by the grant of such accumulative storage. The maximum permissible California diversions are defined and limited by the Colorado River Compact and the Boulder Canyon Act. Hence, the effect of this amendment to the water contract can only be to alter slightly, in periods of acute shortage, the distribution of water available to California among users in that State entitled to be supplied.

(3) The withdrawal of water under such plan of accumulative storage, even in periods of acute water shortage, would be an extremely remote contingency. This is clearly indicated by the Boulder Canyon Project water supply studies.

(4) Such plan of accumulative storage is extremely desirable to the District, not so much on account of any possible increase of supply for its aqueduct but especially because of the additional strength and security it would give to the bonds to be issued by the District for construction purposes. The

Hon. Ray Lyman Wilbur.

August 12, 1930.

-E-

District would thus realize a very large increase of assets, and the aqueduct project be made much more feasible financially, with resulting advantage to Government interests in connection with the Boulder Dam Project, and, therefore, to all other projects dependent for success on the Boulder Canyon reservoir.

F. E. Weymouth
Chief Engineer.
H. B. Mather
General Counsel.

Respectfully,
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
By [Signature]
Chairman of the Board of
Directors.

E X H I B I T S

(Copy)

THIS AGREEMENT made and entered into this 21st day of June, 1930, by and between representatives of The Metropolitan Water District of Southern California, first party, and Imperial Irrigation District, Coachella Valley County Water District and Palo Verde Irrigation District, hereinafter sometimes referred to as the Agricultural Group, second parties,

W I T N E S S E T H:

WHEREAS, the said parties did heretofore enter into an Agreement, dated February 21, 1930; and

WHEREAS, said Agreement was approved by Resolution No. 36, passed by the first party and by similar resolutions passed by each of the second parties; and

WHEREAS, it is the intent of the parties hereto to provide hereby for the ratification and approval of said agreement and said resolution with certain added agreements as hereinafter contained.

NOW, THEREFORE, first party does hereby agree to reaffirm and abide by said Resolution No. 36, heretofore adopted by said first party and said agreement of February 21, 1930.

First party further covenants and agrees to ask the Secretary of the Interior of the United States of America to incorporate in the water contract between the United States of America and The Metropolitan Water District of Southern California, dated April 24, 1930, the following additions, to-wit:

By inserting in paragraph 6, page 3, line 14, after the words "Flood Control", the following language:

"and/or rights of other parties which the District has recognized or may recognize by contract with others than the United States (including that certain agreement with the Imperial Irrigation District, Coachella Valley County Water District, Palo Verde Irrigation District (made for the benefit also of lands of the Yuma Project in California) made on the 21st day of February, 1930, as embodied in and approved by resolution No. 36 of the Board of Directors of The Metropolitan Water District, adopted April 25th, 1930)."

And also inserting in paragraph 6, following the words "Colorado River Compact", line 21, page 3, the following language:

"IT IS AGREED that the United States does not by anything contained in this instrument become bound by or a party to the aforesaid agreement of February 21st, 1930, or any other contract or contracts between the District and others than the United States, but, nevertheless, the Secretary reserves the right to make any disposition of the water to which the District thereby has relinquished or may relinquish claim."

And also by inserting in said water contract a provision granting to said first party the right to accumulative storage of water in the Boulder Canyon Reservoir out of The Metropolitan Water District's allocation, not exceeding at any one time a total of five million (5,000,000) acre feet which the said first party shall have the right to store in said reservoir and the exclusive right to withdraw as needed.

The second parties do each hereby mutually covenant and agree that they will support and abide by, in all particulars, the said agreement of February 21, 1930, and the said resolutions approving and interpreting the same, said resolutions being similar in form to resolution No. 36, of first party, and that they will limit their claims to water rights as against The Metropolitan Water District of Southern California to such limitations as are set up by said resolution No. 36 of The Metropolitan Water District of Southern California and the similar resolutions by the second parties.

The second parties hereby further mutually covenant and agree that they will immediately withdraw the protests which any of said second parties may have heretofore filed with the Division of Water Rights of the State of California against the filing of the City of Los Angeles and/or The Metropolitan Water District of Southern California for water from the Colorado River upon the proviso that said combined filings shall not be allowed for any amount in excess of one million one hundred thousand (1,100,000) acre feet per annum and with the further proviso that any such permit or permits be issued in accordance with and subject to the said agreement of February 21, 1930, the said resolution No. 36 of first party and this agreement.

Each and all of the second parties do hereby further covenant and agree not to file any further protest or protests and not to oppose the said water filing of the City of Los Angeles and/or said The Metropolitan Water District of Southern California subject to the foregoing provisos.

The second parties do hereby further mutually covenant

and agree that they will immediately request the Secretary of the Interior of the United States of America to amend the said water contract between the United States of America and said The Metropolitan Water District of Southern California, dated April 24, 1930, so as to grant to first party the right to accumulative storage of water in the Boulder Canyon Reservoir out of The Metropolitan Water District's allocation, not exceeding at any one time a total of five million (5,000,000) acre feet which the said first party shall have the right to store in said reservoir and the exclusive right to withdraw as needed; and second parties do hereby mutually covenant and agree that so far as their rights are concerned first party shall have the full right to said accumulative storage in said Boulder Canyon Reservoir, and the exclusive right to withdraw any water so stored as first party may require.

The parties hereto do hereby agree that it is the intention of the parties hereafter to amplify or replace this agreement by a fuller and more detailed contract but that until such instrument has been entered into and executed by all of the parties hereto this instrument shall be in full force and effect and binding upon all of the parties hereto.

IN WITNESS WHEREOF, the said first and second parties have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written. Executed in quadruplicate original.

Approved as to form

Chas. C. Cooper, Jr.
Assistant General
Counsel

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

By W. P. Whiteett
Chairman of the Board of
Directors

ATTEST:

Paul E. Schwab
Assistant Secretary of the
Board of Directors.

IMPERIAL IRRIGATION DISTRICT

By Ira Aken
President of the Board of
Directors

ATTEST:

F. H. M. Iver
Secretary of the Board of
Directors

COACHELLA VALLEY COUNTY WATER DISTRICT

By R. W. Blackburn
President

ATTEST:

W. P. Britton
Secretary

PALO VERDE IRRIGATION DISTRICT

By Tony Seeley
Its President

ATTEST:

O. W. Malmgren
Its Secretary

RESOLUTION NO. 36

WHEREAS Representatives of The Metropolitan Water District of Southern California, the Imperial Irrigation District, and Coachella Valley County Water District, and the Palo Verde Irrigation District, met at Los Angeles, on the 21st day of February, 1930, and agreed, in which agreement the Colorado River Commissioners of California and representatives of the Governor of California concurred, that the water of the Colorado River to which California, its inhabitants, agencies, and owners of land situate within said state now have the title or right to use and that which they or any of them may hereafter acquire title or right to use, (hereinafter referred to as the title or right of California) under the Colorado River Compact, the Boulder Canyon Project Act and the Act of the Legislature of California, approved March 21, 1929, should be apportioned as follows:

1. To Imperial Irrigation District, Coachella Valley County Water District, Palo Verde Irrigation District and the lands of the Yuma Project in California (without any intent hereby to apportion the same between themselves) the first and primary right to 3,850,000 acre feet per annum of the water apportioned to the lower basin by paragraph A of Article III of the Colorado River Compact.

2. To The Metropolitan Water District of Southern California, the remaining 550,000 acre feet of water per annum of the water apportioned to the lower basin by paragraph A of Article III of the Colorado River Compact, and the first 550,000 acre feet of the remainder of the water of the Colorado River to which California may have or hereafter acquire title or the right to use.

3. To Imperial Irrigation District, Coachella Valley County Water District, Palo Verde Irrigation District and the lands of the Yuma Project in California and other persons or agencies in California, for agricultural and domestic uses within the Colorado River Basin (without any intent hereby to apportion the same between themselves) the remainder of the water of the Colorado River to which California may have or hereafter acquire title or the right to use; and

WHEREAS, it appears that said agreement is equitable and just and ought to be approved:

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of The Metropolitan Water District of Southern California that said agreement above in the preamble of this resolution set out is hereby ratified, approved and confirmed; and

BE IT FURTHER RESOLVED that this District co-operate with the other districts and agencies involved in presenting said agreement, and other data to all those in authority, to the end that the rights hereby recognized may be confirmed to the respective parties involved; and

BE IT FURTHER RESOLVED that this resolution shall become effective and binding upon this District when each of the four districts in the preamble above named, including this one, shall have adopted this or a similar resolution.

I HEREBY CERTIFY that the foregoing resolution was introduced at the meeting of the Board of Directors of The Metropolitan Water District of Southern California held April 25, 1930, and was passed by the said Board of Directors at the meeting held on said 25th day of April, 1930, by the following vote, to-wit:

Ayes:

Anaheim	- Steward	- 1 vote	
Beverly Hills	- Schwab	- 6 votes	
Burbank	- Bruce	- 3 votes	
Colton	- Hutchinson	- 1 vote	
Los Angeles	- Honnold)		
	Johnson)		
	- Richards)		
	- Whitsett)	- 42 votes	
San Marino	- Heffner	- 1 vote	
Santa Ana	- Finley	- 2 votes	
Santa Monica	- Hutton	- 6 votes	
Total			62 votes

Noes:

None.

Absent:

Glendale	- Fox	- 8 votes	
Pasadena	- Thomas	- 12 votes	
San Bernardino	- Harris	- 2 votes	
Director Bullock of Los Angeles			
Total			22 votes

I FURTHER CERTIFY that the foregoing is a full, true and correct copy of said resolution adopted by the Board of Directors of The Metropolitan Water District of Southern California at its meeting held April 25, 1930.

(S. H. FINLEY)

Secretary of the Board of Directors
of The Metropolitan Water District
of Southern California

CALIFORNIA DEFENDANTS

Exhibit No. 7503

Identification:

Admitted:

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT
AND BILL OF COMPLAINT, NO. 19 ORIGINAL,
OCTOBER TERM, 1930

The opinion in this case is reported,
283 U.S. 423 (1931). This is a stipulated
document, Item 473, Pre-Trial Order.

Extracts from Item 473 are in evidence
as California Exhibits 1340 and 2042.

In the
Supreme Court of the United States

OCTOBER TERM, 1930

No. _____ (Original)

STATE OF ARIZONA,
Complainant,

vs.

STATE OF CALIFORNIA, STATE OF NEVADA,
STATE OF UTAH, STATE OF NEW MEXICO,
STATE OF COLORADO, STATE OF WYO-
MING, and RAY LYMAN WILBUR,
Secretary of the Interior,
Defendants.

MOTION FOR LEAVE TO FILE BILL
OF COMPLAINT

The State of Arizona, appearing by its Attorney General, respectfully moves and prays the Court for leave to file its Bill of Complaint herewith submitted.

K. BERRY PETERSON,
*Attorney General of the
State of Arizona, Solicitor
for Complainant.*

DEAN G. ACHESON,
CLIFTON MATHEWS,
Of Counsel.

In the
Supreme Court of the United States

OCTOBER TERM, 1930

No. _____ (Original)

STATE OF ARIZONA,
Complainant,

vs.

STATE OF CALIFORNIA, STATE OF NEVADA,
STATE OF UTAH, STATE OF NEW MEXICO,
STATE OF COLORADO, STATE OF WYO-
MING, and RAY LYMAN WILBUR,
Secretary of the Interior,
Defendants.

BILL OF COMPLAINT.

The State of Arizona, appearing by its Attorney General, by leave of court files this its bill of complaint and respectfully alleges:

I

The State of Arizona, complainant herein, and the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming, defendants herein, are States of the Union, duly admitted thereto and exercising equal sovereignty with the original and all other States of the

Union. Defendant Ray Lyman Wilbur is the Secretary of the Interior of the United States and is a citizen of the State of California.

II

The Colorado River rises in Colorado and flows in Colorado for a distance of 245 miles, thence in Utah for a distance of 285 miles, thence in Arizona for a distance of 292 miles, thence on the boundary between Arizona and Nevada for a distance of 145 miles, thence on the boundary between Arizona and California for a distance of 235 miles, thence on the boundary between Arizona and Mexico for a distance of 16 miles, thence in Mexico for a distance of 75 miles, and there enters the Gulf of California. Said river has a total length of 1,293 miles, of which 688 miles are in Arizona or on the boundary thereof. Lee Ferry is a point in the Colorado River 23 miles below the point where said river enters Arizona from Utah. Black Canyon is a point in said river 355 miles below Lee Ferry, and is in that part of said river which forms the boundary between Arizona and Nevada. Said river attains its greatest average annual flow at Black Canyon. Laguna Dam is a diversion dam in said river 276 miles below Black Canyon, and is in that part of said river which forms the boundary between Arizona and California. Said Laguna Dam is 13 miles above the City of Yuma and 18 miles above the point where said river becomes the boundary between Arizona and Mexico.

III

The principal tributaries of the Colorado River are the Gunnison River, which rises in Colorado and

flows in Colorado for a distance of 160 miles, and there enters the Colorado River; the Green River, which rises in Wyoming and flows in Wyoming for a distance of 246 miles, thence in Utah for a distance of 56 miles, thence in Colorado for a distance of 35 miles, thence in Utah for a distance of 272 miles, and there enters the Colorado River; the San Juan River, which rises in Colorado and flows in Colorado for a distance of 61 miles, thence in New Mexico for a distance of 110 miles, thence in Utah for a distance of 130 miles, and there enters the Colorado River; the Little Colorado River, which rises in Arizona and flows in Arizona for a distance of 268 miles, and there enters the Colorado River; the Virgin River, which rises in Utah and flows in Utah for a distance of 83 miles, thence in Arizona for a distance of 30 miles, thence in Nevada for a distance of 60 miles, and there enters the Colorado River; the Williams River, which rises in Arizona and flows in Arizona for a distance of 132 miles, and there enters the Colorado River; and the Gila River, which rises in New Mexico and flows in New Mexico for a distance of 115 miles, thence in Arizona for a distance of 406 miles, and there enters the Colorado River. The Gila River enters the Colorado River 10 miles below Laguna Dam, 286 miles below Black Canyon and 641 miles below Lee Ferry. The Williams River enters the Colorado River between Laguna Dam and Black Canyon. The Virgin River and the Little Colorado River enter the Colorado River between Black Canyon and Lee Ferry. All the other tributaries above mentioned enter the Colorado River above Lee Ferry. Said tributaries have a total combined length of 2,164 miles, of which 836 miles are in Arizona. No tributaries enter the Colorado River from California, nor does California contribute any appreciable quantity of water to said river.

IV

The drainage basin of the Colorado River in the United States has a total area of 240,000 square miles, of which 103,000 square miles are in Arizona, 4,000 square miles in California, 12,000 square miles in Nevada, 40,000 square miles in Utah, 23,000 square miles in New Mexico, 39,000 square miles in Colorado, and 19,000 square miles in Wyoming. Approximately 43 per cent. of the total area of said basin is in Arizona, and approximately 90 per cent. of the total area of Arizona is in said basin.

V

From the point where it enters Arizona to the point where it enters Mexico, the Colorado River has a fall of 3,230 feet, of which 2,200 feet occurs in Arizona, 650 feet on the boundary between Arizona and Nevada, 350 feet on the boundary between Arizona and California, and 30 feet on the boundary between Arizona and Mexico. That part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada flows through an almost continuous series of deep canyons, the walls of which rise on each side of said river to a height varying from a few hundred feet to more than 5,000 feet, because of which said river in said canyon region is practically inaccessible. Throughout said canyon region there are numerous rapids, cataracts and other natural obstructions, because of which, and because of the great fall and rapid flow of said river, navigation thereof in Arizona and on the boundary between Arizona and Nevada has always been and is now utterly impossible.

VI

That part of the Colorado River which flows on the boundary between Arizona and California and between Arizona and Mexico flows between comparatively low banks, is therefore easily accessible, and is comparatively free from rapids and cataracts, but is obstructed by numerous sand-bars and is too shallow to permit of navigation. Said river carries great quantities of silt, which are constantly being deposited within and upon the bed thereof, and which, while so carried and after being so deposited, constitute a further obstacle to the navigation of said river. Another obstacle to the navigation of said river has resulted from the construction of said Laguna Dam by the Government of the United States, and the diversion of great quantities of water from said river for irrigation and other purposes. Because of said conditions, said river has never been, and is not now, a navigable river.

VII

The total average flow of the Colorado River and its tributaries in the United States is 18,000,000 acre-feet of water annually. Of said total flow, 9,000,000 acre-feet were appropriated and put to beneficial use in the United States prior to June 25, 1929, and said appropriated water has ever since been and is now being used and consumed. Of said appropriated water, 2,500,000 acre-feet are diverted annually from the Colorado River above Lee Ferry and from tributaries entering said river above Lee Ferry, and are used and consumed in Utah, New Mexico, Colorado and Wyoming, and 6,500,000 acre-feet are diverted annually from said river below Lee Ferry and from tributaries entering said river below Lee Ferry, and are used and consumed in Arizona, California, Ne-

vada and New Mexico. Of the appropriated water so diverted below Lee Ferry, 3,500,000 acre-feet are annually diverted, used and consumed in Arizona. Of the appropriated water so diverted, used and consumed in Arizona, 2,900,000 acre-feet are diverted from the Gila River and its tributaries. Of the total flow of the Colorado River and its tributaries in the United States, 9,000,000 acre-feet were on June 25, 1929, ever since have been, and are now wholly unappropriated. All of said unappropriated water flows in Arizona and on the boundary thereof; all of it is needed and can be put to beneficial use in Arizona; and all of it is subject to appropriation under the laws of Arizona. Of said unappropriated water, 8,000,000 acre-feet are flowing in the main stream of the Colorado River, and 1,000,000 acre-feet in tributaries entering said river between Lee Ferry and Laguna Dam. All of the water of the Gila River and its tributaries was appropriated and put to beneficial use in Arizona and New Mexico prior to June 25, 1929. There was not on said date, nor has there since been, nor is there now, any unappropriated water in the Gila River or any of its tributaries. To "appropriate" water means to take and divert a specified quantity thereof and put it to beneficial use in accordance with the laws of the State where such water is found, and, by so doing, to acquire, under said laws, a vested right to take and divert from the same source, and to use and consume, the same quantity of water annually forever, subject only to the rights of prior appropriators. Such is the sense in which the word "appropriate" and its derivatives are used in this bill of complaint.

VIII

All land in the drainage basin of the Colorado River is arid in character. In those parts of said basin

which are susceptible of irrigation, the average annual rainfall is as follows: In Arizona and California, less than 5 inches; in Nevada, 6 inches; in Wyoming, 7 inches; in Utah and New Mexico, 8 inches; in Colorado, 10 inches. Throughout said basin, in order to grow crops of any kind successfully, irrigation is necessary. Because of differences in soil, climate, rainfall, length of growing season, and other conditions, the quantity of water required per acre varies in different parts of said basin. The average quantity of water per acre required annually for the purpose of irrigation is as follows: In Arizona and California, 4.5 acre-feet; in Nevada, 3 acre-feet; in Utah, New Mexico, Colorado and Wyoming, 1.5 acre-feet.

IX

Because of the arid character of its land, irrigation is of the utmost importance to the State of Arizona. During the past 20 years the population of said State has increased from 204,000 to 421,000, and the assessed valuation of taxable property in said State has increased from \$83,769,000 to \$714,945,000. A great part of said increase in population and wealth has resulted from the constantly increasing use of irrigation in said State, and the consequent development of its agricultural land. The present welfare and prosperity of said State are largely the result of irrigation, and its future growth and progress are largely dependent upon the reclamation and irrigation of additional land in said State. In addition to the land now being irrigated, there are more than 2,000,000 acres of land in said State which are not now irrigated, but are susceptible of irrigation from the unappropriated water of the Colorado River and its tributaries, and which cannot be irrigated by any other means or from

any other source. All of said land is extremely fertile and, when irrigated, will be extremely productive. More than 200,000 acres of said land are owned and held by the State of Arizona. The irrigation of said land will require all of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, as aforesaid. Said land, although at present uncultivated and practically uninhabited, will, when irrigated, be capable of supporting a population of more than 500,000, and the irrigation of said land will add greatly to the wealth and taxable resources of the State of Arizona, and to the health, happiness, prosperity and general welfare of its inhabitants. Because of the expense of constructing, maintaining and operating the dams, reservoirs, canals and other works required for the irrigation of said land, it will not be feasible to irrigate said land in small separate tracts, but it will be necessary to combine such tracts into large projects, each project being operated and administered as a single unit. The organization of such projects and the construction, maintenance and operation of such dams, reservoirs, canals and other works will require financing on a large scale, which will be impossible unless water for the irrigation of said land can be appropriated and vested rights to the permanent use thereof acquired at or prior to the time of constructing such works.

X

In that part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada, there are numerous sites suitable for the construction, maintenance and operation of the dams and reservoirs required for the irrigation of the land referred to in paragraph IX hereof. One of said sites is at Black Canyon, on the boundary between Arizona and Nevada.

By utilizing said sites, it would be possible and economically feasible to store in reservoirs situated in Arizona, or partly in Arizona and partly in Nevada, all of the water of the Colorado River, and to make all of said water available for irrigation. Said dam sites and reservoir sites are also suitable for the construction, maintenance and operation of plants for the generation of electric power from the water to be stored in such reservoirs. All the water of the Colorado River flowing past said dam sites and reservoir sites, including both the unappropriated water and water appropriated for beneficial use below said sites, is subject to appropriation for the generation of electric power at said sites. By the use of such power plants and such stored water, great quantities of electric power could be generated and sold for use in Arizona and elsewhere. The business, and all property used in connection with the business, of generating and selling such power would be subject to taxation and would yield substantial revenues to the State of Arizona, and the use of such power would add greatly to the welfare and prosperity of said State and its inhabitants. For the reasons aforesaid, the water of the Colorado River and the dam sites and reservoir sites above referred to constitute the greatest natural resource of the State of Arizona.

XI

Irrigation projects already formed and now in existence comprise more than 1,000,000 acres of the un-irrigated but irrigable land referred to in paragraph IX hereof. More than 100,000 acres of the land in said irrigation projects are owned and held by the State of Arizona. None of the land in said projects is now irrigated, but all of it is susceptible of irrigation. The irrigation of

said land is practicable and feasible at the present time, and definite plans have been made for the irrigation thereof. Such irrigation will require 4,500,000 acre-feet annually of the unappropriated water now flowing in the main stream of the Colorado River. Permits for the appropriation of said water have been granted by the State Water Commissioner of the State of Arizona. In order to appropriate and use said water for the irrigation of the land in said projects, it will be necessary to store said water by means of dams and reservoirs to be constructed and maintained in that part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada, and to utilize for that purpose the dam sites and reservoir sites mentioned in paragraph X hereof. Said plans contemplate the construction and use of such dams and reservoirs for the storage of the water to be used in irrigating said lands. There have also been formed and are now in existence certain power projects, whose purpose is to utilize said dam sites and reservoir sites for the generation and sale of electric power. Definite plans have been made for carrying out said purpose. The generation of said power will require the construction, maintenance and operation of dams, reservoirs and power plants at said sites. Plans and specifications therefor have been submitted to and approved by the State Engineer of the State of Arizona. But for the passage of the Boulder Canyon Project Act hereinafter referred to, the work of constructing said dams and reservoirs for the irrigation of said lands and for the generation of said electric power would long since have commenced, and if said act shall be held unconstitutional, as hereinafter prayed, said work will be immediately commenced and prosecuted to completion. Numerous persons and corporations desire to engage in

the business of storing and selling water, and in the business of generating and selling electric power in Arizona, and to utilize said dam sites and reservoir sites, including the one at Black Canyon, for that purpose. Said businesses and the property used in connection therewith would be subject to taxation and would yield substantial revenues to the State of Arizona.

XII

The State of Arizona was admitted to the Union on February 14, 1912. Upon its admission to the Union, said State acquired, has ever since possessed and exercised, and now possesses and exercises, sovereign jurisdiction and control of all water within its boundaries, including the water of the Colorado River and its tributaries. The Constitution of the State of Arizona provides that the common law doctrine of riparian water rights shall not obtain or be of any force or effect in said State. Statutes of the State of Arizona, heretofore duly enacted and now in force, being sections 3280 to 3286, inclusive, of the Revised Code of 1928, and sections 1 and 3 of Chapter 102 of the Session Laws of 1929, regulate and control the storage, diversion, appropriation and use of water, and the construction, operation and maintenance of dams and reservoirs in said State. A copy of said statutes is appended hereto at page 43. Said statutes provide that all water flowing in streams or other natural channels belongs to the public and is subject to appropriation; that the person first appropriating water shall have the better right thereto; that any person intending to appropriate water shall apply to the State Water Commissioner for a permit to make such appropriation; that if such application is approved by said Commissioner, the applicant may appropriate such water and construct

such works as may be necessary for that purpose; that if such application is rejected, the applicant shall take no steps toward appropriating such water or constructing such works; that when any such application, or the proposed use of the water sought to be appropriated, is a menace to the safety or against the interests and welfare of the public, it shall be rejected; that all dams shall be under the jurisdiction of the State Engineer; and that it shall be unlawful to construct, operate or maintain any dam except upon the approval of said Engineer. Under and by virtue of said statutes, all of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, was on June 25, 1929, ever since has been, and is now, subject to appropriation in Arizona. Said water cannot, nor can any part thereof, be lawfully appropriated, stored, diverted, used or disposed of, except as provided in said statutes.

XIII

Legislation was enacted in the year 1921 by the legislatures of the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming and by the Congress of the United States, providing for the appointment of commissioners by the Governors of said States and by the President of the United States, and authorizing such commissioners to negotiate a compact for the equitable apportionment of the water of the Colorado River and its tributaries, and to submit such compact to the legislatures of said States and to the Congress of the United States. Such commissioners were appointed and did draft and submit to said legislatures and to Congress a proposed compact entitled and hereinafter referred to as the Colorado River Compact, a copy of which is appended hereto at page 50. Said compact provides that,

as used therein, the term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States; that the term "Colorado River Basin" means all of the drainage area of said Colorado River System and all other territory within the United States to which the water of said system shall be beneficially applied; that the term "Upper Basin" means those parts of Arizona, Utah, New Mexico, Colorado, and Wyoming within and from which water naturally drains into said Colorado River System above Lee Ferry, and also all parts of said States located without said drainage area which are now or shall hereafter be beneficially served by water diverted from said system above Lee Ferry; that the term "Lower Basin" means those parts of Arizona, California, Nevada, Utah and New Mexico within and from which water naturally drains into said Colorado River System below Lee Ferry, and also all parts of said States located without said drainage area which are now or shall hereafter be beneficially served by water diverted from said system below Lee Ferry; that there is apportioned from said Colorado River System, in perpetuity, to said Upper Basin and to said Lower Basin, respectively, the exclusive, beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist; that if the United States shall recognize any right in Mexico to the use of any water of said system, such water shall be supplied from water unapportioned by said compact; that further equitable apportionment of the water of said system unapportioned by said compact may be made at any time after October 1, 1963; that inasmuch as the Colorado River has ceased to be navigable for commerce, and the reservation of its water for navigation would seriously

limit the development of its basin, the use of its water for purposes of navigation shall be subservient to the use of such water for domestic, agricultural and power purposes; and that said compact shall become binding and obligatory when it shall have been approved by the legislatures of all the signatory States (Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming) and by the Congress of the United States.

XIV

Said Colorado River Compact is grossly inequitable, unjust and unfair to the State of Arizona, for the reasons and in the respects following, to-wit:

(1) Said compact attempts to apportion to said Upper Basin more, and to said Lower Basin less, than an equitable share of the water of said Colorado River System. Said compact attempts to apportion to each of said basins the same quantity of water, to-wit, 7,500,000 acre-feet annually, but said Lower Basin needs and can put to beneficial use more than twice the quantity of water which is needed or can be put to beneficial use in said Upper Basin. That part of said Lower Basin which is in Arizona needs and can put to beneficial use more than the total quantity of water which said compact attempts to apportion to said entire Lower Basin. Said Lower Basin includes practically all of Arizona. None of the water of said Colorado River System can be put to beneficial use in that part of Arizona which is in said Upper Basin. The 7,500,000 acre-feet of water which said compact attempts to apportion to each of said basins includes all water necessary to supply existing rights, which means all water heretofore appropriated and now being used. In said Lower Basin such appropriations amount to 6,500,000 acre-feet of water annually, whereas

in said Upper Basin they amount to only 2,500,000 acre-feet annually. Thus said compact attempts to apportion to said Lower Basin only 1,000,000 acre-feet of unappropriated water, whereas it attempts to apportion to said Upper Basin 5,000,000 acre-feet of unappropriated water annually. Under said compact, said 5,000,000 acre-feet of unappropriated water could not, nor could any part of it, be appropriated in said Lower Basin. Thus said compact attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 5,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona.

(2) Said compact does not apportion or attempt to apportion all of the water of said Colorado River System, but attempts to apportion only 15,000,000 acre-feet thereof, and leaves unapportioned the remaining water of said system, aggregating 3,000,000 acre-feet annually. Said unapportioned water is a part of the unappropriated water of said Colorado River System. Said compact attempts to withdraw said unapportioned water from appropriation and to prohibit the appropriation thereof. This said compact attempts to do by providing that Mexican rights shall be supplied from said unapportioned water, and that said unapportioned water shall be subject to apportionment after October 1, 1963. Thus said compact attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 3,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona.

(3) Said compact defines the term "Colorado River System" so as to include therein the Gila River and its tributaries, of which the total flow, aggregating 3,000,000 acre-feet of water annually, was appropriated

and put to beneficial use prior to June 25, 1929. The State of New Mexico has but a slight interest, and the States of California, Nevada, Utah, Colorado and Wyoming have no interest whatever in said water. Since said compact provides that the water apportioned thereby shall include all water necessary to supply existing rights, the effect of including the Gila River and its tributaries as a part of said system would be to reduce by 3,000,000 acre-feet annually the quantity of water now subject to appropriation in Arizona.

(4) Said compact defines the terms "Colorado River Basin," "Upper Basin" and "Lower Basin" so as to include therein not only the actual drainage basin of the Colorado River, but also all parts of Arizona, California, Nevada, Utah, Colorado, New Mexico and Wyoming outside of said drainage basin, which are now or shall hereafter be beneficially served by water diverted from said Colorado River System. Thus said compact pretends to recognize and attempts to establish a right to use said water outside of the actual drainage basin of the Colorado River, which pretended right the State of Arizona expressly denies. Arizona is almost wholly within the actual drainage basin of the Colorado River. No part of Arizona outside of said drainage basin is or can be beneficially served by water diverted from said system. Hence the State of Arizona would not be benefited, but would be greatly injured, by including in said Upper and Lower Basins areas situated outside of said drainage basin and served by water diverted from said Colorado River System. The effect of such inclusion would be to reduce the quantity of water now subject to appropriation in Arizona by such quantity as might be diverted for use in such outside areas.

For the reasons aforesaid, and for other good and sufficient reasons, the Legislature of the State of Arizona has never ratified or approved said compact, and said compact is therefore inoperative, void and of no effect.

XV

On December 21, 1928, the Congress of the United States passed, and the President approved, an act entitled "An Act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River Compact, and for other purposes." The short title of said act is "Boulder Canyon Project Act." A copy of said act is appended hereto at page 58. Said act provides in section 1 thereof that, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River and providing for the storage and delivery of the water thereof for reclamation of public lands and other beneficial uses, and for the generation of electric power as a means of making the project therein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre-feet of water, and to construct, equip, operate and maintain at or near said dam a complete plant and incidental structures suitable for the fullest economic development of electric power from the water discharged from said reservoir. Said dam and reservoir, if constructed, will be partly in Arizona and partly in Nevada, and will occupy one of the sites mentioned in paragraph X hereof. Said dam and reservoir will store all of the

8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said act does not require the Secretary of the Interior to comply with the laws of the State of Arizona in carrying out the provisions of said act, but contemplates that he shall disregard said laws and proceed in violation thereof.

XVI

Said act further provides in section 1 thereof that the Secretary of the Interior is authorized to construct, operate and maintain a canal and appurtenant structures connecting Laguna Dam with the Imperial and Coachella Valleys in California, and that no charge shall be made for water or for the use, storage or delivery of water for irrigation or potable purposes in said Imperial or Coachella Valleys. Said canal and appurtenant structures will cost approximately \$40,000,000, and will be used for the purpose of diverting and conveying to said valleys in California, for use therein, the water to be stored in said reservoir, including the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said canal and appurtenant structures will greatly aid and facilitate the diversion to and use of said water in California. Said act does not provide any similar facilities, or any facilities whatever, for the benefit of water users in Arizona, nor does said act exempt Arizona water users from the payment of charges for water or for the use, storage or delivery of water for irrigation or potable purposes.

XVII

Said act provides in section 2 (b) thereof that the Secretary of the Treasury is authorized to advance, from

time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of said act, but that the aggregate amount of such advances shall not exceed the sum of \$165,000,000. Said act provides in section 3 thereof that there is authorized to be appropriated from time to time such sums of money as may be necessary to carry out the purposes of said act, not exceeding in the aggregate \$165,000,000.

XVIII

Said act provides in section 4 (a) thereof that it shall not take effect and that no authority shall be exercised thereunder unless and until (1) the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming shall ratify the Colorado River Compact, and the President by public proclamation shall so declare, or (2) if said States shall fail to ratify said compact within six months from the date of the passage of said act, then until six of said States, including the State of California, shall ratify said compact and consent to waive those provisions thereof which require its approval by the legislatures of all the signatory States, and shall approve said compact without conditions, save that of such six-state approval, and the President by public proclamation shall so declare, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States, for the benefit of the States of Arizona, Nevada, Utah, New Mexico, Colorado and Wyoming, that the aggregate annual consumptive use of water of and from the Colorado River for use in California shall not exceed 4,400,000 acre-feet of the water apportioned to said Lower Basin by the Colorado River Compact, plus not more than one-half

of any excess or surplus water unapportioned by said compact, such uses always to be subject to the terms of said compact. The State of Arizona has not ratified or approved said compact, but the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming ratified said compact prior to June 25, 1929, and consented to waive those provisions thereof which require its approval by all the signatory states, and approved said compact without conditions, save that of such six-state approval, and on said last mentioned date the President of the United States by public proclamation so declared. The State of California, by an act of its legislature approved March 4, 1929, made the agreement provided for in section 4 (a) of said Boulder Canyon Project Act.

XIX

Said act further provides in section 4 (a) thereof that the States of Arizona, California and Nevada are authorized to enter into an agreement which shall provide that, of the 7,500,000 acre-feet of water apportioned to said Lower Basin by the Colorado River Compact, there shall be apportioned to the State of Nevada 300,000 acre-feet, and to the State of Arizona 2,800,000 acre-feet, for exclusive beneficial consumptive use in perpetuity; that all of the provisions of said proposed agreement shall be subject in all parts to the provisions of said compact; and that said proposed agreement shall take effect upon the ratification of said compact by the States of Arizona, California and Nevada. Said proposed apportionment of 2,800,000 acre-feet of water is less than the quantity of water already appropriated in Arizona, and would provide no water for future appropriation in said State. Thus, under said proposed agreement, the State of Arizona, its citizens, inhabitants and property owners, would be de-

prived of their right to appropriate any of the unappropriated water of said Colorado River System, aggregating 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona. The States of Arizona, California and Nevada have not entered into said proposed agreement, nor have they entered into any agreement whatsoever.

XX

Said act provides in section 4 (b) thereof that, before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues, by contract, in accordance with the provisions of said act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States, and the repayment, within 50 years from the date of the completion of said works, of all amounts advanced by the United States for the construction of said works (other than said canal and appurtenant structures), together with interest thereon at the rate of four per cent. per annum. The facts regarding the pretended contracts by which said Secretary has attempted to provide such revenues are set forth in paragraphs XXXII and XXXIII hereof. By an act approved July 3, 1930, and known as the "Second Deficiency Act, Fiscal Year 1930", Congress appropriated the sum of \$10,660,000 for the commencement of construction of said dam and incidental works.

XXI

Said Boulder Canyon Project Act provides in section 5 thereof that said Secretary is authorized, under such general regulations as he may prescribe, to contract for the

storage of water in said reservoir, for the delivery thereof for irrigation, domestic use and generation of electric power, and for the delivery thereof to States, municipal corporations, political subdivisions and private corporations, upon charges that will provide revenue which, in addition to other revenue accruing under the Reclamation Law and under said act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under said act, and the payments to the United States provided for in section 4 (b) thereof; that contracts respecting water for irrigation and domestic use shall be for permanent service; and that no person shall have or be entitled to the use of the water stored in said reservoir except by contract with said Secretary. The effect of said act would be to withdraw from appropriation all of the water to be stored in said reservoir, including the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona; to prohibit the appropriation of said water; and to prohibit the use thereof, except by contract with the Secretary of the Interior. Under said act, said Secretary could not be required to deliver or to contract for the delivery of any of said water for use in Arizona, but could, if so minded, refuse to deliver or to contract for the delivery of any such water for any such use, and could thus withhold all of said water from use in Arizona. If said Secretary should choose to deliver or to contract for the delivery of any of said water for use in Arizona, he would be required by said act to make a charge for the storage and delivery of such water for such use, but said act does not require or permit said Secretary to make any charge for the storage or delivery of water for use in the Imperial and Coachella Valleys of California, it being

expressly provided in section 1 of said act that no such charge shall be made. In authorizing said Secretary to contract for the delivery of said stored water, said act does not restrict the use thereof to the drainage basin of the Colorado River, but permits said Secretary to contract for the delivery of said water for use outside of said basin.

XXII

Said act further provides in section 5 thereof that after repayment to the United States of all money advanced, with interest, charges shall be on such basis as may hereafter be prescribed by Congress; that the revenues derived therefrom shall be kept in a separate fund to be expended in said Colorado River Basin; and that general and uniform regulations shall be prescribed by said Secretary for the awarding of contracts for the sale and delivery of electric power, and for renewal of such contracts.

XXIII

Said act provides in section 6 thereof that said dam and reservoir shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights; and third, for power; that the title to said dam, reservoir, power plant and incidental works shall forever remain in the United States; that the United States shall, until otherwise provided by Congress, control, manage and operate the same; that said Secretary may lease a unit or units of said power plant, with the right to generate electric power, or may lease the use of water for the generation of such power. Said act does not provide for the levy or collection by the State of Arizona of any tax or taxes on said dam, power plant and other

works, or on the operation thereof, but contemplates that the same shall be exempt from all taxation. The effect of said act would be to have said Secretary, on behalf of the United States, engage in the business of storing and selling water, the business of generating and selling electric power and the business of leasing water and equipment for the generation of such power; to utilize for that purpose the water and other natural resources of the State of Arizona; to prevent the use of said water and natural resources by other persons or corporations desiring to engage in such businesses; and thus to deprive said State of its right to levy and collect taxes on such businesses and on the property used in connection therewith.

XXIV

Said act provides in section 8 (a) thereof that the United States, its permittees, licensees and contractees and all users and appropriators of water stored, diverted, carried or distributed by said reservoir, canals and other works shall observe and be subject to and controlled by the Colorado River Compact in the construction, management and operation of said reservoir, canals and other works and in the storage, diversion, delivery and use of water for the generation of power, irrigation and other purposes, anything in said act to the contrary notwithstanding; and that all permits, licenses and contracts shall so provide. The pretended contracts hereinafter referred to, do so provide.

XXV

Said act provides in section 13 thereof that the Colorado River Compact is approved by the Congress of the United States; that those provisions of said compact

which require its approval by the legislatures of all the signatory States, are waived; and that said approval by Congress shall become effective when the State of California and at least five of the other signatory States shall approve said compact and consent to said waiver. The States of California, Nevada, Utah, New Mexico, Colorado and Wyoming have approved said compact and consented to said waiver. Thus the effect of said act would be to subject the State of Arizona to said compact, and to enforce said compact and make it effective in Arizona notwithstanding said State has never ratified or approved said compact.

XXVI

Said act further provides in section 13 thereof that the rights of the United States in or to the water of the Colorado River and its tributaries, and the rights of those claiming under the United States, shall be subject to and controlled by the Colorado River Compact; that all patents, grants, contracts, concessions, leases, permits, licenses, rights of way or other privileges from the United States or under its authority necessary or convenient for the use of said water, or for the generation of electric power by means thereof, or for the transmission of such power, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof shall be subject to and controlled by said compact; and that said conditions and covenants shall be deemed to run with the land, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing such patent, grant, contract, concession, lease, permit, license, right of way or other privilege, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Nevada, Utah, New

Mexico, Colorado and Wyoming, and the users of water therein or thereunder, by way of suit, defense or otherwise, in any litigation respecting the water of the Colorado River or its tributaries. All lands in Arizona are owned and held either by the United States or by those claiming under the United States. All rights to the use of water for irrigation in Arizona are appurtenant to land, and such rights have no existence separate and apart from the land to which they are appurtenant. Consequently, the water of the Colorado River and its tributaries cannot be used for irrigation in Arizona except by those holding land under patents, grants, contracts, concessions, leases, permits or licenses from the United States or under its authority. Moreover, in order to irrigate Arizona land, it is frequently necessary to utilize rights of way over public land of the United States. Thus, under said act, all users of water for irrigation in Arizona would be subjected to the Colorado River Compact, notwithstanding said State has never ratified or approved said compact.

XXVII

Said act provides in section 16 thereof that any commission or commissioner duly authorized under the laws of any State ratifying the Colorado River Compact shall have the right to act in an advisory capacity to and in co-operation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4 and 5 of said act, and shall at all times have access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request. Duly authorized commissions and commissioners of the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming have exercised and

are exercising the rights and privileges conferred by said section 16.

XXVIII

Said Boulder Canyon Project Act is in excess of the powers granted to Congress by the Constitution of the United States, and is unconstitutional and void, for the reasons following, to-wit:

(1) Said act attempts to deprive the State of Arizona of its sovereign jurisdiction and control of the water and other natural resources of said State, particularly the water of the Colorado River and its tributaries flowing in said State and the dam sites and reservoir sites situated therein; to vest such jurisdiction and control in the United States; to abrogate and supersede the laws of said State respecting the appropriation and use of said water and other natural resources; and to prohibit such appropriation and use, except as authorized and provided for in said act.

(2) Said act attempts to subject the State of Arizona to the Colorado River Compact, and to enforce said compact and make it effective in Arizona, notwithstanding said State has never ratified or approved said compact. Thereby said act attempts to deprive said State, its citizens, inhabitants and property owners, of their right to appropriate the 5,000,000 acre-feet of unappropriated water which said compact attempts to apportion to said Upper Basin, and of their right to appropriate the 3,000,000 acre-feet of unappropriated water which said compact leaves unapportioned and attempts to withdraw from appropriation, as aforesaid. Said 5,000,000 acre-feet of unapportioned water and said 3,000,000 acre-feet of unapportioned water are a part of the un-

appropriated water of said Colorado River System, all of which is now subject to appropriation in Arizona.

(3) Said act attempts to authorize the Secretary of the Interior to construct, operate and maintain a dam and reservoir in the Colorado River at Black Canyon; to store in said reservoir the 8,000,000 acre-feet of unappropriated water now flowing in said river, all of which is now subject to appropriation in Arizona; to withhold all of said water from appropriation and to prohibit the appropriation thereof; to withhold all of said water from use in Arizona, or, if he permits any such use, to require payment of such charges therefor as he may prescribe; and to sell and dispose of any part or all of said water for use in other States, even to the extent of selling and delivering it for use outside of the drainage basin of the Colorado River; all of which is to be done without the consent of the State of Arizona and in violation of its laws. Thereby said act attempts to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate said 8,000,000 acre-feet of unappropriated water, and of their right to use any of said water in Arizona, except by contract with the Secretary of the Interior and upon payment of such charges as he may prescribe.

(4) Said act attempts to discriminate against the State of Arizona in favor of the State of California by providing that the water to be stored in said reservoir shall be delivered without charge for use in the Imperial and Coachella Valleys in California, whereas all water users in Arizona are required to pay for said stored water such charges as the Secretary of the Interior may prescribe, and by providing a canal and other facilities to enable water users in California to divert and use said

water, whereas no similar facilities, nor any facilities whatever, are provided for the benefit of water users in Arizona. Thereby said act attempts to aid and facilitate the use of said stored water in California, and to hinder and prevent the use thereof in Arizona. Said stored water will include the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona.

(5) Said act attempts to authorize the Secretary of the Interior, on behalf of the United States, to engage in the business of storing and selling water, the business of generating and selling electric power and the business of leasing water and equipment for the generation of such power; to utilize for that purpose the water and other natural resources of the State of Arizona; to prevent the use of said water and natural resources by other persons or corporations desiring to engage in such businesses; and to deprive said State of its right to levy and collect taxes on such businesses and on the property used in connection therewith.

The power to do all or any of the things so attempted by said act has not been granted to Congress by the Constitution of the United States.

XXIX

The recital in said act that the purpose thereof is the improvement of navigation and the reclamation of public land is a mere subterfuge and false pretense. That the improvement of navigation is not the purpose of said act is evident from the fact that the Colorado River is not navigable, and from the further fact that said act ratifies and approves the Colorado River Compact, and provides that the United States shall observe and be sub-

ject to and controlled by said compact in the construction, management and operation of said reservoir, canals and other works, and the storage, diversion, delivery and use of water for the generation of power, irrigation and other purposes, anything in said act to the contrary notwithstanding, and from the further fact that said compact provides that, inasmuch as the Colorado River has ceased to be navigable for commerce, and the reservation of its water for navigation would seriously limit the development of its basin, the use of its water for purposes of navigation shall be subservient to the use of such water for domestic, agricultural and power purposes. Even if said river were navigable, the diversion, sale and delivery of water therefrom, as authorized in said act, would not improve, but would destroy, its navigable capacity. That the reclamation of public land is not the purpose of said act is evident from the fact that 75 per cent. of all land which will or can be reclaimed or benefited by the construction of the dam, reservoir, power plant and other works authorized in said act, or by the storage and delivery of water as in said act provided, is privately owned land. Except for the purpose of having the Secretary of the Interior engage in the water and power business, as hereinabove alleged, the dam, reservoir, power plant and other works provided for in said act are unnecessary and inappropriate. If reclamation of public land were the true purpose of said act, a dam and reservoir having one-fifth of the capacity and requiring one-fifth of the expenditure authorized in said act would accomplish said purpose as adequately and efficiently as the dam, reservoir and other works therein authorized.

XXX

Notwithstanding the unconstitutionality of said act, defendant Ray Lyman Wilbur, Secretary of the In-

terior, has proceeded and is now proceeding thereunder, and has threatened and now threatens to enforce and carry out the provisions of said act, and, unless enjoined therefrom, will enforce and carry out all of said provisions, and will thereby accomplish and effect all of the things attempted by said act, as set forth in paragraph XXVIII hereof. Pursuant to and under color of said act, said defendant has seized and taken possession of all that part of the Colorado River which flows in Arizona and on the boundary thereof, and all of the water flowing in said river, including the 8,000,000 acre-feet of unappropriated water now flowing therein, and all of the dam sites and reservoir sites mentioned in paragraph X hereof, and now has said river, said water and said sites in his possession; has excluded and is now excluding the State of Arizona, its citizens, inhabitants and property owners from said river, said water and said sites, and from all access thereto; has prevented and is now preventing said State, its citizens, inhabitants and property owners from appropriating any of said 8,000,000 acre-feet of unappropriated water, all of which is now subject to appropriation in Arizona; has thereby prevented and is now preventing the irrigation of the land in the irrigation projects mentioned in paragraph XI hereof; and, unless enjoined therefrom, will continue so to do.

XXXI

Pursuant to and under color of said act, said defendant Ray Lyman Wilbur has made surveys, plans and specifications for, and has commenced, the construction of the dam, reservoir, power plant and other works provided for in said act. According to said plans and specifications, said dam will have a height of 727 feet, said reservoir will have a storage capacity of 29,500,000

acre-feet, and said power plant will have a generating capacity of 1,200,000 horsepower. Also, pursuant to and under color of said act, said defendant has made and prescribed general regulations respecting contracts for the storage of water in said reservoir and for the delivery thereof for irrigation and domestic use. A copy of said regulations is appended hereto at page 78. Said regulations provide that water stored in said reservoir will be sold upon such terms and conditions as the Secretary of the Interior may fix from time to time, but that no charge shall be made for water, or for the use, storage or delivery of water for irrigation or potable purposes in the Imperial or Coachella Valleys of California; that no person shall have or be entitled to the use of any water stored in said reservoir, except by contract made in pursuance of said regulations; that contracts respecting water for domestic use shall be for permanent service; and that all purchases of water shall be subject to the terms and provisions of the Colorado River Compact and of the Boulder Canyon Project Act.

XXXII

Pursuant to and under color of said act and of said regulations, said defendant Ray Lyman Wilbur has made a pretended contract with the Metropolitan Water District of Southern California, a municipal corporation of the State of California, for the storage of water in said reservoir and for the diversion, sale and delivery of said water to said District for transportation to and consumptive use in said District. A copy of said pretended contract is appended hereto at page 79. Said District consists of the City of Los Angeles and the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Glendale, Pasadena, San Bernardino, San Marino, Santa Ana and

Santa Monica, which are municipal corporations of the State of California. Said District is situated on the Pacific Coast approximately 300 miles distant from the Colorado River and outside of its drainage basin. No public land of the United States is contained within the limits of said District. Said pretended contract is for permanent service, and provides for the delivery to said District of 1,050,000 acre-feet of said stored water annually, and for the payment by said District of 25 cents per acre foot for water so delivered. Said 1,050,000 acre-feet of water, if sold and delivered to said District, as in said pretended contract provided, cannot, nor can any part thereof, be used for the reclamation of public land of the United States. Said water is a part of the 8,000,000 acre-feet of unappropriated water now flowing in the Colorado River, all of which is now subject to appropriation in Arizona. Said 1,050,000 acre-feet of water, together with the 6,500,000 acre-feet of water heretofore appropriated and now being used in said Lower Basin, will exceed the full amount of 7,500,000 acre-feet of water which said compact attempts to apportion to said Lower Basin. The delivery of said 1,050,000 acre-feet of water to said District, as in said pretended contract provided, would exhaust said apportionment, and, by the terms of said compact and of said Boulder Canyon Project Act, no water would then be available for or subject to appropriation in said Lower Basin, although there would still remain in said Colorado River System 7,950,000 acre-feet of unappropriated water per year. Thus the effect of carrying out the provisions of the Boulder Canyon Project Act and of said pretended contract would be to deprive the State of Arizona, its citizens, inhabitants and property owners, of their right to appropriate any of the unappropriated water of said Colorado River System, aggregating,

as aforesaid, 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona.

XXXIII

Pursuant to and under color of said act, said defendant Ray Lyman Wilbur has made and prescribed general regulations for the lease of electric power to be generated at said dam. A copy of said regulations is appended hereto at page 89. Pursuant to and under color of said act and of said regulations, said defendant has made a pretended contract with said City of Los Angeles and Southern California Edison Company, Limited, a corporation of the State of California, for the lease of power privileges at said dam, and a pretended contract with said Metropolitan Water District of Southern California for the sale of electric power to be generated at said dam. Said pretended contract for the lease of power privileges provides for the leasing of certain generating machinery to be installed by said defendant, part to said City and part to said Company; for the generation by said lessees of all electric power allotted by said defendant; for the delivery to said lessees of falling water from said reservoir sufficient to generate all power so sold; for the sale to said lessees, respectively, of amounts of electric power specified therein; and for the payment by said lessees of the cost of said machinery, and certain further sums on account of electric power to be taken by said lessees. Said pretended contract is for a period of 50 years. The pretended contract with said District in this paragraph referred to provides for the sale to said District of specified amounts of electric power annually for a period of 50 years. Said power is to be used for the sole purpose of pumping into and in a proposed aqueduct, to be constructed by said District, the 1,050,000 acre-feet of

water to be sold and delivered to said District, as provided in the pretended contract referred to in the last preceding paragraph hereof. The three pretended contracts hereinabove referred to are made upon the express condition that all rights thereunder shall be subject to and controlled by the Colorado River Compact. For the reasons heretofore stated, all of said pretended contracts are void and of no effect. Nevertheless, said defendant, unless enjoined therefrom, will carry out all the provisions of said pretended contracts.

XXXIV

Said defendant Ray Lyman Wilbur has not complied and will not comply with the laws of the State of Arizona referred to in paragraph XII hereof, but has disregarded and will wholly disregard said laws in carrying out the provisions of said act. Said defendant has not applied and will not apply to the State Water Commissioner of the State of Arizona for a permit authorizing the construction of said dam, reservoir, power plant or other works, or the storage, use, diversion, sale or delivery of the water to be stored in said reservoir, nor has any such permit been granted. Said defendant has not applied and will not apply to the State Engineer of the State of Arizona for his approval of said dam and reservoir, nor has any such approval been granted.

XXXV

Pursuant to and under color of said act, the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming, defendants herein, have caused and are causing their duly authorized commissions and commissioners to act, and said commissions and commissioners have acted and are acting, in an advisory capacity to and in

co-operation with said defendant Ray Lyman Wilbur in the exercise of the authority vested or attempted to be vested in him by sections 4 and 5 of said act. Said defendant States, by their said commissions and commissioners, have claimed and are claiming an interest in the three pretended contracts made by said defendant Ray Lyman Wilbur, as hereinabove alleged, for that, after repayment to the United States of all money advanced, with interest, the revenues to be derived from said pretended contracts are to be kept in a separate fund and expended within the Colorado River Basin, as provided in said section 5, and said defendant States have claimed and are claiming an interest in said fund. Also, pursuant to and under color of said act, said defendant States have claimed and are claiming that the Colorado River Compact became effective when approved by Congress and by said defendant States, and that the State of Arizona, its citizens, inhabitants and property owners, are subject to and controlled by said compact, notwithstanding said State has never ratified or approved said compact. Said defendant States have also aided and abetted, are aiding and abetting, and, unless enjoined therefrom, will continue to aid and abet, said defendant Ray Lyman Wilbur in carrying out the provisions of said act.

XXXVI

If the defendants shall enforce and carry out the provisions of said act and of said pretended contracts, the State of Arizona, its citizens, inhabitants and property owners, will be thereby prevented from appropriating any of the unappropriated water of the Colorado River and its tributaries, aggregating 9,000,000 acre-feet annually, all of which is now subject to appropriation in Arizona, and from using any of said unappropriated

water, except in accordance with and subject to the Colorado River Compact, and from using any of the 8,000,000 acre-feet thereof now flowing in the main stream of said river, except by contract with the Secretary of the Interior, and upon payment of such charges as he may prescribe; it will be impossible to appropriate water for the irrigation of the whole or any part of the 2,000,000 acres of unirrigated but irrigable land referred to in paragraphs IX, X and XI hereof; it will be impossible to finance the irrigation projects referred to in said paragraphs, or any other irrigation project in Arizona, or to construct the dams, reservoirs, canals and other works necessary for the irrigation of the whole or any part of said land; all of said land will remain forever unirrigated, uncultivated, uninhabited, unused, and incapable of use; it will be impossible for the power projects mentioned in said paragraph XI to carry out their plans for generating and selling electric power at plants to be constructed at the sites mentioned in said paragraphs X and IX; the great increase in population, wealth, prosperity and taxable resources of said State, which would have resulted from the irrigation of said land and from the use of said power sites, will be prevented and made impossible; and said State will thereby suffer great and irreparable injury, for which it has and can have no adequate remedy at law.

WHEREFORE, your complainant prays that the Colorado River Compact and the Boulder Canyon Project Act, and each and every part thereof, be decreed to be unconstitutional, void and of no effect; that the defendants and each of them be permanently enjoined and restrained from enforcing or carrying out said compact or said act, or any of the provisions thereof, and from carrying out the three pretended contracts hereinabove

referred to, or any of them, or any of their provisions, and from doing any other act or thing pursuant to or under color of said Boulder Canyon Project Act; and that the State of Arizona recover its costs herein expended, and have such other and further relief as to this Court may seem just and equitable.

K. BERRY PETERSON,
*Attorney General of the State
of Arizona, Solicitor for Com-
plainant.*

DEAN G. ACHESON,
CLIFTON MATHEWS,
Of Counsel.

CALIFORNIA DEFENDANTS

Exhibit No. 7503 - A

Identification:

Admitted:

LETTER FROM R. F. WALTER, CHIEF ENGINEER,
BUREAU OF RECLAMATION, TO COMMISSIONER,
WITH ENCLOSURE, MEMORANDUM FROM E. C. DEBLER,
"BILL OF COMPLAINT--ARIZONA VS OTHER STATES
AND THE SECRETARY OF THE INTERIOR," DATED
NOVEMBER 17, 1930

The Bill of Complaint referenced is
Calif. Ex. 7503.

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

AUG 5 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Letter from the Chief Engineer, Bureau of Reclamation, to the Commissioner, dated November 17, 1930, transmitting copy of a memorandum by E. B. Debler commenting on the Bill of Complaint in Arizona v. California et al.

TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.



[Signature]
Chief Clerk.

TRANSFER CASE

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

140-012
COLORADO RIVER

Denver, Colorado, November 17, 1930

Rept. Oct. 1930

[Signature]

From Chief Engineer
To Commissioner
Subject Suit, Arizona v. California, et al., in the
Supreme Court of the United States, Boulder
Canyon Project.

1. In compliance with your letter of November 7, 1930, your telegram of November 15, 1930, and my answer thereto of the same date, there are transmitted two copies of a memorandum by Mr. Deblor.

2. The need for an early answer on this matter was not apparent to me until too late to permit me to familiarize myself sufficiently with the intricate details of the compact controversy to enable a personal discussion of the Arizona complaint.

3. Mr. Offutt is preparing a memorandum, which he hopes to forward later in the day.

A. D. Falter

Encls.

BILL OF COMPLAINT - ARIZONA VS OTHER STATES AND THE
SECRETARY OF THE INTERIOR

Comment by E.B. Dahler

The complaint may be stated to center around the following
claims:

- (1) That the average annual flow of the Colorado River and its
tributaries is 18,000,000 acre feet, of which 2,800,000
acre feet are in actual use by the Upper Basin, 6,800,000
acre feet by the Lower Basin, and 9,000,000 acre feet remain
for further use.

That of the 6,800,000 acre feet in use in the Lower Basin,
3,500,000 acre feet are in use in Arizona, 2,900,000 from
Gila River. That of the 9,000,000 acre feet remaining
unappropriated, 8,000,000 is from the main Colorado River,
and 1,000,000 from tributaries entering in the Lower Basin
above the entry of the Gila River.

These claims are not in accordance with our estimates of flow
or use, a comparison being presented herewith, the term appropriated being
used in the same sense as in the complaint.

	As claimed	As estimated
	by Arizona	by me.
Original flow of Colorado River	18,100,000	17,700,000
" " Gila River	2,900,000	2,000,000
Total	18,000,000	19,700,000
In use by Upper Basin	2,800,000	2,800,000
Now available for use in ^{Lower} Basin:	15,500,000	17,200,000
Now in use in Lower Basin in U.S.		
In Arizona, on Gila River	2,900,000	1,500,000
" " , otherwise	600,000	300,000
Subtotal	3,500,000	1,800,000
By other states	3,000,000	
California, Imperial Valley:		2,200,000
" , otherwise		250,000
Other states		150,000
Subtotal		2,600,000

NOV 20 1933

	As claimed by Arizona	As estimated by me.
Total in use, Lower Basin	5,500,000	4,400,000
Remaining unused, total	9,000,000	12,600,000
" " , Gila River	0	500,000
" " , Colorado & other tributaries	9,000,000	12,300,000

- (2) That the unused waters are available for appropriation by Arizona. (Art. VII). Under the Colorado-Wyoming decision on Laramie River waters, Arizona must recognize Upper Basin priorities. Initiated projects in the Upper Basin will require for their completion a material part of the unused waters. There is also for consideration the extent of valid claims by California with its dual system of appropriative and riparian rights. The actual extent of unappropriated water could be determined only by a suitable proceeding in a court of competent jurisdiction.
- (3) That the unappropriated waters are required for the irrigation of 2,000,000 acres of feasible projects in Arizona. (Art. IX and XI).
Without details regarding these projects, their defects can not be pointed out. No projects even approaching in magnitude the ones claimed are believed feasible either now or in the near future. A general denial would probably be best on this point.
- (4) That the reservoir and damsites on Colorado River in Arizona and along its boundary are required for the irrigation of Arizona lands. (Art. X).
The only plans so far advanced by Arizona contemplate diversion above Black Canyon. Physically all Arizona lands can be reached with dams located upstream from Black Canyon. Black Canyon is not required for that purpose.
- (5) That projects already formed and in existence to utilize Colorado River waters in Arizona comprise 1,000,000 acres. (Art. XI). No such projects have been carried to point where financing may be considered even remotely accomplished.
- (6) That the compact apportionments to the Upper Basin 5,000,000 acre feet and to the Lower Basin only 1,000,000 acre feet more than now appropriated. (Art. XIV).
As estimated by me, Upper Basin is using 2,500,000 acre feet of 7,500,000 acre feet allotted, while Lower Basin is using 4,400,000 acre feet of 7,600,000 allotted. However, the compact further allots 1,000,000 acre feet to the Upper Basin. On the basis of my estimates, the Upper Basin may increase its use by 5,000,000

acre feet and the Lower Basin by 4,100,000 acre feet. These allowances, relatively speaking, are in fair accord with development opportunities of equal feasibility.

- (7) That most states have no interest in Gila River. (Art. XIV, 3)
The interest of other states in Gila River is equal to, for instance, the interest of Arizona in Gurnison River.
- (8) Transmountain diversions denied in Arizona. (Art. XIV, 4)
Other states, with equal right, have authorized such diversions.
- (9) That the All-American Canal will use 8,000,000 acre feet of unappropriated water. (Art. XVI)
Imperial valley has a vested right of at least 2,200,000 acre feet and possibly even to the extent of all waters required for its development, estimated at 5,700,000 acre feet.
- (10) That Arizona is now using more than the 2,800,000 allotted to the States (Art. XIX)
Actual use by Arizona at this time is estimated at 1,800,000 acre feet, leaving further development of 1,000,000 acre feet before the initial allotment is exhausted. Further allotments are contemplated.
- (11) That the Secretary is required to make a charge for Arizona water. (Art. XXI)
The Secretary has reported to Congress, that he has adequate contracts to repay the cost of the project. He is not, therefore, required to charge Arizona for water, since the financial requirements of the Boulder Canyon Act have been met.
- (12) That the State will be deprived of taxation income on the project. (Art. XXIII)
The Act provides that 37% of the surplus over certain repayment requirements will be distributed equally to the States of Arizona and Nevada. Present estimates indicate that the payments to Arizona will exceed ordinary taxation rates.
- (13) That the Colorado River is not navigable. (Art. V, VI, and XXIX)
Colorado River has in fact been navigated to mouth of Virgin River, experimentally by U. S. Army officers, (see W.S. Paper #595, page 19) and by Mormons commercially about 1850. The project will provide navigation for some distance above Virgin River where none now exists, and improve navigation between Black Canyon and Laguna Dam by stabilized flow.
- (14) That a reservoir one-fifth of proposed capacity and costing one-fifth as much will accomplish irrigation benefits as adequately as proposed reservoir. (Art. XXX)

A reservoir one-fifth as large would lose all of its capacity by silting within fifty years. Such a capacity even if it could be retained would be inadequate to regulate river flows. In a typical low flow period such as occurred in 1900 - 1904, even with a large storage capacity provided in other reservoirs upstream, the accumulation of deficiency in runoff, below the average, reaches over 20,000,000 acre feet. In order to carry agriculture through such a period, this amount of storage must be provided. The small cost mentioned for a small reservoir is unobtainable.

- (15) That the contract for delivery of 1,050,000 acre feet to the Metropolitan District together with present uses of 6,500,000 acre feet exhaust the Lower Basin allotment. (Art. XXXII) Present uses in Lower Basin total 4,400,000 acre feet leaving 3,100,000 acre feet for additional use out of the initial allotment. Furthermore, there is an undetermined amount unallotted. The contract is made subject to the Colorado River Compact, and the United States has not guaranteed the indicated delivery.

The Bill of Complaint fails to give recognition to the most important feature of the Boulder Canyon project, which is flood control for the protection of lands in Nevada, Arizona, and California, including material areas owned by the United States. This feature is the primary justification of the project. The state denies the right of the United States to construct a dam or dams in that part of the Colorado River where such a dam must be built to be effective for purposes of flood control, claiming that it plans to utilize such damsites for purposes of enhancing property values within the State.

CALIFORNIA DEFENDANTS

Exhibit No. 7504

Identification: Admitted:

EXTRACTS FROM ARIZONA'S BRIEF IN SUPPORT
OF MOTION FOR LEAVE TO FILE BILL TO
PERPETUATE TESTIMONY, OCTOBER TERM, 1933

The opinion in this case is reported,
292 U.S. 341 (1934). This is a stipulated
document, Item 486, Pre-Trial Order.

Extracts from Item 486 are in evidence
as California Exhibits 1433 and 2044.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1933

No. (Original)

STATE OF ARIZONA

Complainant,

VS.

STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF NEVADA, STATE OF NEW MEXICO, STATE OF UTAH, STATE OF WYOMING, HAROLD L. ICKES, Secretary of the Interior of the United States, PALO VERDE IRRIGATION DISTRICT, a public corporation of the State of California, IMPERIAL IRRIGATION DISTRICT, a public corporation, of the State of California, COACHELLA VALLEY COUNTY WATER DISTRICT, a public corporation of the State of California, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public corporation of the State of California, CITY OF LOS ANGELES, a municipal corporation of the State of California, CITY OF SAN DIEGO, a municipal corporation of the State of California, and COUNTY OF SAN DIEGO, a public corporation of the State of California,

Defendants.

BRIEF OF COMPLAINANT STATE OF ARIZONA
IN SUPPORT OF ITS MOTION FOR LEAVE TO
FILE BILL TO PERPETUATE TESTIMONY AND
IN ANSWER TO BRIEFS FILED IN SUPPORT OF
OBJECTIONS THERETO

ARTHUR T. LAPRADE,
*Attorney General of the
State of Arizona, Solicitor
for Complainant.*

CHARLES A. CARSON, JR.
A. M. CRAWFORD,
Of Counsel.

ARGUMENT

1. Has this Court jurisdiction, in a proper case, to entertain an original bill to perpetuate testimony? (P. 6.)

* * * *

2. Would the proposed testimony, if perpetuated, be admissible in a later action?

The Colorado River Compact (Bill p. 14 to 24) has not been ratified by complainant State of Arizona and complainant is not bound thereby. It is suggested on page 17 of defendant Harold L. Ickes' brief that since Arizona has not ratified the compact, she cannot claim thereunder, whatever its true meaning, although this suggestion is later modified on the same page of the brief. Of course the Boulder Canyon Project Act does in substance enact the Colorado River Compact as a law of the United States, and further imposes upon the State of California, for the express benefit of complainant State of Arizona (and the other Colorado River basin states) a limitation upon the use of water of the Colorado River in the State of California (p. 7) and in defining such limitation, specifically refers back to the provisions of the Colorado River Compact (Boulder Canyon Project Act-Bill p. 30).

The Legislature of the State of California, in accordance with the above cited provision of the Boulder Canyon Project Act, has by Chapter 16 of the Laws of California of 1929, limited forever, irrevocably and unconditionally, and for the benefit of the State of Arizona (and the other Colorado River basin states) the aggregate annual consumptive use of

water of and from the Colorado River in the State of California, to not exceeding 4,400,000 acre-feet of the waters apportioned to the lower basin states by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Compact (Bill p. 55). (P. 8.)

* * * *

As set out in the Bill, page 63, defendant Harold L. Ickes has contracted with California users for delivery of 5,362,000 acre-feet of water per annum from the main stream of the Colorado River for use in the State of California and as stated in the Bill, page 65, defendant Harold L. Ickes and California defendants now assert that all waters heretofore or hereafter contracted to be delivered for use in the State of California in excess of 4,400,000 acre-feet, relate to and comprise, 1. the 1,000,000 acre-feet of water permitted to the lower basin by Article III(b) of the Colorado River Compact, and 2. one-half of the surplus water unapportioned by the Colorado River Compact. In this way the California defendants and the defendant Harold L. Ickes propose to avoid and violate the limitations imposed upon the State of California for the benefit of the complainant State of Arizona by the Boulder Canyon Project Act and the Act of the Legislature of the State of California, hereinabove referred to. In reality they propose to use in California, from the main stream of the Colorado River, 4,400,000 acre-feet of the water apportioned to the lower basin by Article III(a) of the Colorado River Compact (Bill, p. 17), the entire 1,000,000 acre-feet permitted to the lower basin by Article III(b), (Bill, p. 18) and

one-half of the very small surplus remaining in the river. The limitation was im- (p. 9) posed for the benefit of the State of Arizona and the State of Arizona is entitled to enforce that limitation according to its true meaning and intent, and is not to be subjected to any such strained construction as is necessary to permit the California defendants to deprive complainant and those claiming under it of the entire benefit of that limitation. (P. 10.)

CALIFORNIA DEFENDANTS

Exhibit No. 7505

Identification:

Admitted:

PROTEST AND BRIEF OF THE STATES OF COLORADO,
NEW MEXICO, UTAH AND WYOMING AGAINST THE
EXECUTION OF SAID [ARIZONA 1934] CONTRACT,
FILED BEFORE THE DEPARTMENT OF THE INTERIOR
BY THE GOVERNOR AND THE ATTORNEY GENERAL OF
THE RESPECTIVE STATES OF COLORADO, NEW MEXICO,
UTAH, AND WYOMING

UNIVERSITY OF COLORADO LIBRARIES

223.02
COLORADO RIVER
11/1/11

BEFORE THE
Department of the Interior
OF THE
UNITED STATES

HONORABLE HAROLD L. ICKES, Secretary,
WASHINGTON, D. C.

**IN RE: THE PROPOSED CONTRACT OF THE
STATE OF ARIZONA, PENDING BEFORE THE
SECRETARY OF THE INTERIOR, PROVIDING
FOR THE STORAGE AND DELIVERY OF
WATER FROM THE BOULDER CANYON PROJ-
ECT RESERVOIR.**

**PROTEST AND BRIEF OF THE STATES OF COLO-
RADO, NEW MEXICO, UTAH AND WYOMING
AGAINST THE EXECUTION OF SAID PRO-
POSED CONTRACT.**

STATE OF COLORADO,

By **ED. C. JOHNSON,**
Governor.

PAUL P. PROSSER,
Attorney General,

SHRADER P. HOWELL,
CHARLES ROACH,
Assistant Attorneys General.

STATE OF NEW MEXICO,

By **A. W. HOCKENHULL,**
Governor.

E. K. NEUMANN,
Attorney General.

STATE OF UTAH,

By **HENRY H. BLOOD,**
Governor.

JOSEPH CHEZ,
Attorney General.

STATE OF WYOMING,

By **LESLIE A. MILLER,**
Governor.

RAY E. LEE,
Attorney General.

L. WARD BANNISTER,
SILMON SMITH,
JAMES D. PARRIOTT,
R. C. HECOX,
Of Counsel for Colorado.
WILLIAM W. RAY,
Of Counsel for Utah.

INDEX.

	PAGE
Protest	1
Grounds of Protest	2
Preliminary Statement regarding Colorado River Compact and Project Act	3
Brief and Argument	7
I. Proposed Contract contains many provisions in violation of Project Act	7
(a) Provisions of Project Act designed for protection of Upper Basin States	11
(b) Specific violations of Project Act by proposed Arizona Contract	14
II. The Secretary of Interior is without power under Project Act to enter into contracts involving sale and disposal of consumptive use of Colorado River water	30
III. The Secretary of Interior has power only to contract for storage and delivery of waters Colorado River to those who in some legal manner have already acquired rights to consumptive use thereof	33
IV. The proposed contract attempts to accord to Arizona rights to waters of Colorado River, which can be secured only by Compact or by decree of United States Supreme Court	34
V. The proposed contract is in other respects beyond the legal power of the Secretary to execute	38
(a) Because not a contract for revenue.....	38
(b) Because Arizona has not formally ratified the Compact	39

	PAGE
VI. Numerous obscurities and ambiguities of proposed contract	40
VII. Proposed contract greatly injurious to Upper Basin States	42
VIII. The contract if executed would be subject to judicial annulment	43
Summary	43
Request to file reply brief and for oral argument.....	44

BEFORE THE
Department of the Interior
OF THE
UNITED STATES

HONORABLE HAROLD L. ICKES, Secretary,
WASHINGTON, D. C.

**IN RE: THE PROPOSED CONTRACT OF THE
STATE OF ARIZONA, PENDING BEFORE THE
SECRETARY OF THE INTERIOR, PROVIDING
FOR THE STORAGE AND DELIVERY OF
WATER FROM THE BOULDER CANYON PROJ-
ECT RESERVOIR.**

**PROTEST AND BRIEF OF THE STATES OF COLO-
RADO, NEW MEXICO, UTAH AND WYOMING
AGAINST THE EXECUTION OF SAID PRO-
POSED CONTRACT.**

The States of Colorado, New Mexico, Utah and Wyoming, comprising the Upper Basin States of the Colorado River Basin, hereby present their joint Protest and Brief in opposition to the execution of the contract proffered to the Honorable Secretary of the Interior by the State of Arizona providing for storage of water of the Colorado River in the reservoir now being constructed pursuant to the Boulder Canyon Project Act, and for the delivery of said water.

GROUPS OF PROTEST.

I.

The proposed contract contains many provisions in violation of specific sections of the Project Act designed for the protection of the States of the Upper Basin.

II.

The Secretary of the Interior is without power under the provisions of the Boulder Canyon Project Act (45 Stat. 1057, hereinafter referred to as the Project Act) to enter into any contract which involves the sale and disposal of the right to the consumptive use of the waters of the Colorado River impounded in the Boulder Canyon Reservoir.

III.

The Secretary of the Interior has power only to enter into contracts for the storage and delivery of the waters of said Colorado River to those who in some legal manner have already acquired rights to the consumptive use thereof.

IV.

The object of the proposed contract is to accord to the State of Arizona, rights to the use of water of the Colorado River, which rights can be secured to her only by a compact among the States affected or by decree of the Supreme Court of the United States.

V.

The proposed contract in still other respects is beyond the legal power of the Secretary of the Interior to execute.

VI.

The proposed contract contains numerous obscurities and ambiguities, and therefore should not be executed.

VII.

The awarding of the proposed contract to the State of Arizona, which State is not a signatory to the Colorado River Compact, would constitute a gross injury and injustice to the Upper Basin States.

VIII.

The contract proposed by the State of Arizona is so manifestly illegal that, if executed, it would be subject to judicial annulment.

Preliminary Statement Regarding the Colorado River Compact and Boulder Canyon Project Act.

The Project Act, under which the dam is being built and the Arizona contract is proffered, is predicated upon the Colorado River Compact, whether signed by all seven of the Colorado River States, or as it was in fact, only by six. The Act as will appear presently, is so worded, purposely so, that when carried out Arizona's signature to the Compact as one of the seven states, from the practical point of view, through the Government's exercise of its authority over its dam and public domain, becomes unnecessary, although legally required.

The Compact had for its purpose the equitable apportionment in perpetuity of the water of the entire Colorado River System between the Upper and the Lower Basins as defined by the Compact; the states principally interested in the Upper Basin apportionment being Colorado, New Mexico, Utah and Wyoming, and the states princi-

pally interested in the Lower Basin apportionment being Arizona, California and Nevada.

The passage of the Project Act in 1928, containing as it did the ratification of the Colorado River Compact already negotiated by the states, was the last step necessary to give the Compact legal effect. The proposal of the idea of apportionment by Compact as distinguished from apportionment by litigation, the hearings given by the Colorado River Commission, the ensuing interstate negotiations and state ratifications, had occupied a period of some eight years.

At the time the Compact went into effect less than half of the estimated total waters of the River System had been put to use, and the respective apportionments made by the Compact to the two Basins were more than sufficient to include the part of the water already put to use in each, so the existing uses of one Basin were not injured by the apportionment to the other.

The reason for the negotiation of the Compact lay in the fact that friction was developing among the states over their respective water uses and particularly over the Project now being built, which at that time was only in contemplation. The friction arose from the fear that the principle of priority, or use of water giving priority of right to the waters of the interstate stream, might govern as among the states, in which event it would be possible for some one or two states to acquire, if only a given project or projects should call for water enough, as against the other states, an exclusive right to all of the then unused water of the interstate stream and thus block the further economic development of the other states. Such a result would have been intolerable and all the more so if a particular project were a federal project, built with federal money, which is derived from all the states

including those prejudiced by the state or states which the project might favor. That there was ground for the fear thus entertained that the principle of priority regardless of state lines, might to a great extent be applied had already been indicated by the United States Supreme Court in the case of *Wyoming v. Colorado*, 259 U. S. 419.

To avoid the grave danger mentioned, and untold years of litigation, the states—acting under the Federal Constitution, paragraph 2, Section X, Article I, which provides:

“ * * * No state shall, without the consent of congress, * * * enter into any agreement or compact with another state, or with a foreign power, * * * ”

—with the consent and approval of the Congress, entered into the Colorado River Compact which is the very core of the Project Act under which the dam referred to in the Arizona proposal is being built, and from which the Secretary of the Interior draws his authority, if any there be, to enter into the contract thus proposed.

The Colorado River Compact involves more states than any interstate agreement thus far entered into. It constitutes the greater water charter of the Colorado River System. Had the Congress not thought its terms just as among the states, consent thereto would not have been given in the Project Act. Had the Congress not regarded the Compact as fair to the United States, the Congress would not have subordinated to the Compact its own water interests, its construction and operation of the dam, and its public domain, as has been done by the Project Act.

Under the Project Act, which is the sole source of the Secretary's authority, all contracts made by the Sec-

retary, whether relating to the storage and delivery of water or to electrical energy, and whether made with states, municipalities, corporations or individuals, must be subject to certain conditions and covenants, namely, those of the Colorado River Compact. The conditions and covenants imposed by the Project Act are to be found in Sections 1. 8 (a), 13 (b), 13 (c), and 13 (d) thereof. These will be referred to later at length. Under said Act these conditions are part of any contract made, whether set forth in the contract or not, but said Act, in Section 13 (c) provides that they must be set forth expressly.

It follows from the requirements of the Act that any departure in the contract from the Compact conditions of the Act is *ultra vires* and a nullity. All six of the states signatory to the Compact, including the four uniting in this protest and brief, brand the proposed Arizona contract as a subterfuge and evasion, and as an out and out violation of the Compact-terms of the Act. They regard it as a document that should not be executed and, if executed, subject to judicial annulment. They demand of Arizona that she observe the terms of the Project Act.

BRIEF AND ARGUMENT.

I.

The Proposed Contract Contains Many Provisions in Violation of Specific Sections of the Project Act Designed for the Protection of the States of the Upper Basin and if Executed Would be Void.

Since the Project Act subjects all contracts to the Colorado River Compact, it becomes important in determining whether the Arizona contract follows the Act to note the purport of the Compact itself respecting the apportionment of water, and then of those provisions of the Project Act stamping the apportionment upon all of the seven Colorado River states whether all seven ratified the Compact or only, as was the fact, the six.

The Compact, after dividing the entire Colorado River Basin into two basins, the Upper and the Lower, and defining each [Article II (f), and (g) of the Compact], apportions to each Basin 7,500,000 acre feet per annum, which is to include the water for existing rights, and allows to the Lower Basin if needed for beneficial consumptive use an additional 1,000,000 acre feet per annum and then to Mexico whatever by treaty with her may be awarded, with the deficiency, if any, occasioned by such award to be borne equally by the two Basins, and finally leaves the remainder, if any, to be apportioned between the two Basins at a future date. [Compact Article III (a), (b), (c) and (f).]

The apportionment is from the "River System" and not from any particular part of it or from any particular tributary. The fact that a tributary may be so situated physically that only one of the Basins, or for that matter, only one of the States can use it may be material to that Basin or State as the supply from which that Basin or State would actually be served in part as the result of

the apportionment from the entire system, but the "system" as a whole is none the less, under Article III of the Compact, the declared source for purposes of the apportionment.

By Article III (d) of the Compact the Upper States bind themselves to turn down to the Lower Basin (which would include Arizona, California and Nevada) an average of 75,000,000 acre feet over a period of ten years, the exact language being as follows:

"The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact."

This provision of the Compact is to be considered along with the other provisions in determining whether Arizona's proposed contract violates the sections of the Project Act hereinafter cited.

Although Arizona only signed the Compact and did not ratify it, her land area is made part of the two Basins, nearly all in the Lower, by the other six states for the purposes of their Compact, and likewise by the United States, the owner of the greater part of the Arizona land area, for the purposes of the Project Act.

The effect of the Compact is that each of the two Basins shall enjoy only the quantum of water, inclusive of that represented by already existing water rights therein, assigned it by the Compact no matter what the date of the uses in the other Basin; and the purport of the Project Act is, among other things, that the dam shall be operated by, all contracts for the use of water therefrom shall be governed by, all water interests of the United

States anywhere in the Colorado River System shall be subject to, and all permits and licenses issued anywhere upon the River System by any Department of the Government controlled by, and all rights of way and their use upon the public domain of the United States for the transportation or storage of water from any part of the entire River System by anybody likewise shall be subject to, the Colorado River Compact; that is, principally to the apportionment of water made by the Compact to each of the two Basins. In other words, all these provisions of subjection to the Compact are to the end that each Basin shall have and enjoy only such additional water as when added to the water already put to use in that Basin shall not exceed the apportionment made to it by the Compact.

Speaking more specifically of the rights and privileges which could be granted, after the passage of the Act, for the storage or transportation of water upon or across the public domain of the United States and of the use of the same [see Project Act, Section 13 (c)], the effect of the Act is that these uses of the public domain shall be limited in such wise that the water stored or transported thereby in each Basin shall not, when added to the water represented by all other water rights in that Basin, exceed the apportionment made by the Compact to that particular Basin.

It is by limiting the maximum quantity of water that can be used in either Basin as against the other that the various sections, hereinafter cited, protect the right of the protesting Upper States to the apportionment of water made to their basin by the Compact. Many of these protective sections of the Project Act were drafted by the Upper States themselves. They know with what actual intention they were drafted and they are certain that they succeeded in making that intention effective by the language chosen. It was because Arizona had not ratified the Compact, and might never do so, that these

states drafted and procured the insertion of the protective sections referred to. These sections were not needed as to California and Nevada, the other states of the Lower Basin, for the simple reason that the states of the Upper Basin were already protected as against them by the Compact itself. The provisions were needed as against Arizona alone.

The average of 7,500,000 acre feet per year, that the upper States must turn down, assures to the lower Basin States part of the 8,500,000 acre feet that is apportioned out of the entire River System to that Basin. The River System is made up of the main stream and all its tributaries in both Basins, including the Gila.

The water for which Arizona seeks a delivery contract from the Secretary, who must contract only in compliance with the Compact, is part of the very water the Upper States are required, by Article III (d) of the Compact, to turn down to the Lower Basin, inclusive of Arizona, to make it possible for that Basin to realize its apportionment. Article III (d) of the Compact does not create any title or apportionment. The apportionment to the Lower Basin is not made by Article III (d), but by Article III (a) and (b), and is out of the entire river system, inclusive of all tributaries.

Arizona therefore puts herself in the unseemly position, as will appear presently from an analysis of her proffered contract, of wanting to take part of the water the Compact obliges the Upper States to give up, but of being unwilling to let them keep the part the Compact provides they may retain. Yet the Project Act requires that Arizona and every one else wanting water from the Secretary must take it subject to the Basin allotment made by the Compact.

The Compact apportions water only between Basins and not among the States belonging to either Basin. If

the States of either Basin divide the water among themselves, they must do so by interstate agreement subordinate to the main Colorado River Compact, or, failing in that, then through judicial decision with the application of whatever principles the Supreme Court of the United States may lay down as governing, in their case, a division of water among them. In the meantime the Lower Basin with its three principal States, Arizona, California and Nevada is the more favored for it has a present apportionment of 8,500,000 acre feet to be subdivided as against the Upper Basin of four principal States with a present apportionment for subdivision of only 7,500,000 acre feet, despite the fact that the Upper States contribute approximately eighty per cent of the total flow of the river system.

**ENUMERATION OF PROVISIONS PROTECTIVE OF UPPER
BASIN STATES.**

The protective provisions of the Project Act above referred to and which are violated by Arizona's proposed contract are as follows:

Section 1 of the Act, which conditions the exercise of the authority of the Secretary of the Interior everywhere under the Act, no matter what the particular project or contract may be, as being "subject to the terms of the Colorado River Compact hereinafter mentioned";

Section 8 (a), which deals chiefly with the operation and control of the Boulder Canyon Project both as to the United States and those claiming under it, and which is as follows:

"The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and

controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide,";

Section 13 (b), which subordinates the water interests of the United States and of all persons claiming under it to the Colorado River Compact, whether those interests are initiated in the main stream of the River System or in a tributary, and which is as follows:

"The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.";

Section 13 (c), which subordinates to the Colorado River Compact all grants, rights of way, privileges, etc., from the United States or under its authority, also the rights of the recipients of those grants, etc., to waters out of the River System, also the very exercise of the grants and privileges; and *requires that the conditions and covenants of subordination shall be contained in the granting instrument* issued by the Government.

Said Section 13 (c) is as follows:

"Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use

of waters of the Colorado River, or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this act, the Federal water power act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.”;

Section 13 (d), which provides that the conditions and covenants referred to in Section 13 (c), above quoted, shall be effective whether embodied in the granting instrument or not and shall be subject to suit thereon by any of the Colorado River states and their water users, and is as follows:

“The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.”

**SPECIFIC VIOLATIONS OF THE PROJECT ACT BY THE
ARIZONA PROPOSAL.**

With the general purpose and purport of the Project Act and of its included Colorado River Compact thus stated, and the principal protective provisions of the Act set forth, the Upper States now point out specific instances wherein the proposed contract violates these provisions.

PARAGRAPH 4 OF THE ARIZONA CONTRACT:
This paragraph recites that Arizona has not ratified the Compact and does not "accept" it. Arizona can do nothing else than "accept" if she wants any water from the Project. Every other contract holder for water has in its contract "accepted" the Compact by declaring the contract subject thereto and without any denials of acceptance, any evasions, constructions, interpretations, or reservations. Arizona is willing to "accept" this part of the Compact compelling the Upper States to surrender water to her own Basin, but does not "accept" the part allowing them to have something in return. This paragraph is in violation of all of the Project Act Sections above set forth, which are meant, as applied in the present instance, for the protection of these Upper States.

PARAGRAPH 6 OF THE ARIZONA CONTRACT:
This paragraph contains a threat to the effect that if the Secretary does not sign this contract he may have trouble in preventing Arizona from interfering with the Secretary's deliveries of water to the other contract holders, for the paragraph states one of its purposes to be "to assure the *peaceable* and uninterrupted construction of the works required for the diversion and delivery of water under all of said contracts." This is a defiance of the entire Project Act which authorizes the Secretary to go ahead, build a dam and necessary works and make contracts for water deliveries. Yet, the United States

Supreme Court said in the *State of Arizona v. the State of California et al.*, 283 United States 423, that under the power of Congress to improve navigation the Secretary of the Interior had the right under the Act to enter the State of Arizona and, without her consent, construct a dam and incidental works. How unseemly it is that Arizona after that defeat should now by the contract she tenders graciously permit the United States to agree to deliver water to her and her citizens in order that the Government may enjoy its right to the peaceable and uninterrupted construction of the public works mentioned.

PARAGRAPH 7 OF THE ARIZONA CONTRACT:

This paragraph is a violation of all of the Project Act Sections above set forth asserting the subordination to the Colorado River Compact, since Article VII of the Compact has nothing to say about the Colorado River Indian Reservation, or any particular Indian Reservation, but only about Indian Tribes, and has nothing to say about water "reserved" for any Indian Reservation or tribe or water "appropriated" therefor.

The Compact language is as follows:

"ARTICLE VII. Nothing in this Compact shall be construed as affecting the obligations of the United States to Indian Tribes."

What "obligations" there may be, we do not know. If any at all, they might arise from treaty or from statute, and might exist to Indians either in the Upper Basin or in the Lower. It is not so likely that the "obligation" would arise from an "appropriation" of water made by diversion and application to use. The Upper States do not want to see Arizona add to rights in the Lower Basin against the Upper beyond those prescribed by the Compact and ratifying Project Act. To do so would be to encroach upon the Upper Basin apportion-

ment. By the language Arizona has chosen she either means what the Compact already says, in which event there is no occasion to insert the objectionable provision at all unless in the same language as that of the Compact; or else she means something different, in which event the paragraph violates the above quoted Sections of the Act by violating Article VII of the Compact.

PARAGRAPH 8 OF THE ARIZONA CONTRACT:
This paragraph providing for storage "without prejudice" to other rights of Arizona violates the protective Sections of the Act above set forth, namely: 1, 8 (a), 13 (b), 13 (c) and 13 (d). Those Sections stamp the Compact with its water apportionment upon the entire Colorado River Basin and its constituent Upper and Lower Basins. The Sections have this effect whether the holder of a contract from the Secretary of the Interior be state, municipality, corporation or individual.

Arizona, by the paragraph now discussed, seeks a contract "without prejudice to whatever rights" she and others in Arizona may have immediately prior to the moment of entering into the contract. This she cannot do any more than could any one else. Every one taking a contract from the Secretary is compelled to "prejudice" his rights to the extent of subordinating them to the Compact; in other words, to the extent that the contract-water added to the water represented by all other rights then or thereafter existing in the Basin concerned shall not exceed the quantity apportioned to it by the Compact. If this were not true the apportionment to the other Basin would not be inviolate. Arizona cannot escape the protective provisions intended by the Upper States and by the Congress to hold in check her obvious designs to exceed the allotment made to the Lower Basin, and encroach upon that of the Upper Basin in which the Upper States are interested.

PARAGRAPH 11 OF THE ARIZONA CONTRACT (Introductory portion): Not only is Arizona by this paragraph violating the protective Sections of the Act, but it is evident that she knows she is doing so. The paragraph recites that the delivery of water to be made to her under the contract is to be "from water available in the reservoir created by the Boulder Dam." She does not say *legally* available, for the simple reason that she wants to add to the 2,800,000 acre feet of contract water still other waters represented by other rights in Arizona, even though the aggregate would exceed the apportionment to the Lower Basin.

The other contract holders who have received contracts from the Secretary specifically provide in their contracts that their deliveries are to be from waters available under the Compact and the Project Act. The language of the Metropolitan Water District contract (Paragraph 6) is "subject to the availability thereof for use in California under the Colorado River Compact and the Boulder Canyon Project Act" and "available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act." The contract with the Imperial Irrigation District (introduction to Article 17 thereof), the contract with the City of San Diego (introduction to Article 7 thereof), and all other contracts read the same. Why does Arizona alone ask a contract worded differently unless she has designs against the apportionment of water to the Upper Basin?

If the position taken by Arizona in numerous other paragraphs of her contract to the effect that her tributaries are to be exempted from the Compact is sound, then her proposal that she receive by contract 2,800,000 acre feet is in violation of the protective provisions of the Act, particularly Section 8 (a), above set forth, re-

quiring the Secretary to administer the Project in accordance with the Compact.

The total reconstructed, or natural, flow of the river and its tributaries is, on the average, only about 18,000,000 acre feet. It follows that the Lower Basin cannot be permitted to use more than its apportionment under the Compact without encroaching upon the apportionment of the Upper Basin, to say nothing of encroachment upon a further apportionment which the Upper Basin, under the Compact, may receive after 1963.

The Secretary cannot legally contract water from the River to Arizona or any one else in the Lower Basin, which will take water from the stream system, for consumptive use in the Lower Basin, in excess of the 8,500,000 acre feet apportioned to that Basin. Under the Compact, which governs the administration of the waters of the Colorado River System, the Secretary is empowered to let contracts only in accordance with the Compact, which will cause the Lower Basin to receive, at the present time, not more than 8,500,000 acre feet of water, contract water and other combined. The Secretary cannot contract the use of any surplus water to any one in the Lower Basin for such surplus must remain inviolate and without diminution for further apportionment between the Basins after 1963.

"Surplus" water under Article III (c) of the Compact is all water in excess of the 16,000,000 acre feet apportioned. Article III (a) and (b).

Arizona, in seeking the execution of the proposed contract, asks the Secretary to give her water, which he cannot give her. To approve this contract would give to the Lower Basin the use of water in that Basin a total of 3,162,000 acre feet, in excess of the Compact apportionment to that Basin and authorizing an annual

use of water in the amount of 1,162,000 acre feet in excess of the entire flow of the River and its tributaries. It also brings about the result of disposing of surplus waters, if any, which must remain unburdened with use, until further apportioned in accordance with the terms of the Compact. The following tabulations in acre feet disclose such results:

1. WATER IN RIVER SYSTEM.

Annual Estimated Flow of River System.....	18,000,000
Upper Basin Compact Apportionment	7,500,000
Lower Basin Compact Apportionment	8,500,000
Surplus which is to be Apportioned after 1963, or to satisfy possible obligations to Indian Tribes and the Republic of Mexico	2,000,000

2. PROPOSED AND EXISTING USES IN LOWER BASIN.

Water Contracts in Existence with California Users	5,362,000
Users in Arizona on the Gila River (Arizona's figures)	2,500,000
Other Arizona Tributary and Main Stream Claims (Arizona's figures)	1,000,000
Proposed Arizona Contract	2,800,000
<hr/>	
Total of above proposed and existing rights in Lower Basin	11,662,000
Apportionment to Lower Basin.....	8,500,000
<hr/>	
Excess	3,162,000

Without considering the Arizona proposal, contracts already let, added to existing uses, bring this total of

water to be used in the Lower Basin far in excess of that Basin's Compact apportionment.

The above has not taken into consideration the amount of water lost by evaporation in the Boulder Canyon Reservoir, etc., which has been estimated at approximately 1,000,000 acre feet per year, nor has the amount, which may be awarded by treaty for use in the Republic of Mexico, been considered, both of which would bring about further use of water greatly in excess of the annual flow of the River System. Nor has any use of water in the State of Nevada been accounted for in said tabulation, and every one concedes that State a right to use of some water from the system.

At the time of negotiation of the Compact the total average annual flow of the Colorado River System was estimated at about 20,000,000 acre feet, but more recent estimates of the average annual flow place the amount at 18,000,000 acre feet, but the annual flow is now less than the latter amount.

It follows without argument, that to bring about such a condition upon the River System is violative of the provision of both the Compact and the Project Act, and administrative difficulties would immediately arise, which could not be overcome.

PARAGRAPH 11 (a) OF THE ARIZONA CONTRACT: Here the purposes of Arizona become more apparent. It now appears clearly that the contract water is to come from the "water *physically* available for delivery in the Lower Basin under the terms of this contract in conformity with the Boulder Canyon Project Act and the Colorado River Compact." The water is not to be legally available, that is, available under the Act and the Compact, but merely happening to be physically present in the reservoir. Of course, the Secretary cannot physically prevent water from coming

down into the reservoir from the Upper States, not even water that at the time and through non-use above might happen to belong to the apportionment made to the Upper Basin. But Arizona cannot ask the Secretary to contract to deliver, in perpetuity, water that is only physically present in the reservoir as distinguished from water legally available by being in the reservoir under the Act and the Compact, as is stated in the other contracts the Secretary has made.

The fact that the contract clause carries also the words "in conformity with the Boulder Canyon Project Act and the Colorado River Compact" does not cure the objection, for between them and the earlier words "physically available" there is an irreconcilable conflict, the one meaning available whether *legally* or *illegally*, and the other meaning only *legally*.

The objectionable paragraph also purports to exempt from the effect of the contract "without prejudice . . . to the claims of the State of Arizona . . . as to . . . rights in and to the waters of the Colorado River not contracted for herein." It is asking a good deal of the Secretary to exempt such claims when he is not informed what they are. Whatever they may be, however, they cannot be exempted "without prejudice," as asked by Arizona, without at the same time violating the various protective Sections above set forth imposing a maximum limit upon the waters apportioned by the Compact to each Basin. Such a limitation might mean in turn that the particular water contract would or would not yield water to the contract holder. It would all depend upon whether or not the maximum Compact apportionment to the Basin had been exceeded. As for the relative rights of the States of the Lower Basin to the Basin apportionment, the adjustment would have to be made either through the medium of an interstate compact subordinate to the Colorado River Compact, or fail-

ing that, then through the decision of the United States Supreme Court.

PARAGRAPH 11 (b) OF THE ARIZONA CONTRACT: Here again, and in the face of the same protective provisions of the Act, Arizona asserts in the very contract she tenders that there are all sorts of questions and all sorts of contentions on her part, although not making known what they are, as to the meaning of different parts of the Compact, and asserts with the same unwarranted insistence that the contract she submits for execution is "without prejudice" to any of her contentions, whatever they may be.

Of course, the meaning and effect of the proposed contract, if executed would, in the event of dispute, necessarily be ultimately a matter for judicial ascertainment. But we respectfully submit that the Secretary of the Interior, before considering the acceptance of such a contract, should require the State of Arizona, as any other proposed contractee, to set forth in plain and unambiguous language in her proposal what her claims thereunder really are. On the contrary, she has submitted for approval and execution a contract which she not only admits but boldly avows to be of uncertain meaning in numerous vital particulars. It goes without saying that such a proposal merits nothing other than prompt rejection.

Arizona cannot exempt as unprejudiced her contentions about the meaning of the Compact. The very purpose of the protective provisions of the Act is to prejudice any and all claims inconsistent with the Compact. The meaning of the Compact when it needs definition will be declared by the Courts and not by Arizona. Meanwhile, if Arizona wants water she must agree to subordinate all her contentions as to the meaning of the Compact in all its parts and leave the result to judicial ascertainment.

That is what the other contract holders have done and is what must be done by Arizona.

PARAGRAPH 11 (e) OF THE ARIZONA CONTRACT: This paragraph seeks to exempt "claims" of Arizona to "additional water" "available for use" (probably meaning physically available as distinguished from legally available under the Act and the Compact), from the operation of the Compact; whereas, the various Sections heretofore quoted from the Act tolerate no exemptions and require subordination to the Compact without ifs or ands, equivocations, or interpretations.

PARAGRAPH 11 (e) OF THE ARIZONA CONTRACT: From this paragraph it is clear that Arizona by becoming a contract holder does not want to subject her other water rights, either already initiated and perfected or yet to be initiated, to the water-apportionment made by the Compact. She wants to have her 2,800,000 acre feet per annum from the dam and at the same time hold on to all the water represented by the existing or any future appropriations made by her or her people. This she would do even if the aggregate of her water added to that of the other States of the Lower Basin should exceed the total apportionment to the Basin and therefore represent an encroachment upon the apportionment made to the Upper Basin. This would not be subordinating Arizona's rights to the Compact and therefore would be violating the Sections so often referred to.

Arizona is under no compulsion to apply to the Secretary for a contract, but if she does apply for and receives a contract she must thereby agree under the Act to the Compact-division of waters between the two Basins and therefore to the limitation upon her own Basin and herself. If in reality she did not acknowledge this, she would not be seeking directly, or indirectly by interpretations and reservations, to withdraw so many things out

from under the Compact; rather would she take the water by a contract simply reciting that both she and it would be subject to the Colorado River Compact.

Another respect in which this paragraph violates the Act is in providing that "perfected rights * * * and the right to initiate or perfect rights * * * are unaffected by this contract." This provision is in violation of Articles III (a) and VIII of the Compact impressed upon the Basin by the Project Act. This Article III (a) provides:

"There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist."

Article VIII provides:

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this contract. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within and for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III. * * *"

The reservoir now under construction is within and for the benefit of the Lower Basin and has a storage capacity greatly in excess of the 5,000,000 acre feet requirement. All the old perfected rights in the Lower Basin, whether in Arizona or elsewhere, attach exclusively, by

force of these Articles, to the Lower Basin apportionment made by the Compact. The Act contemplates that these perfected rights as well as rights not yet initiated shall be affected by the Arizona Contract instead of being left unaffected.

PARAGRAPH 11 (f) OF THE ARIZONA CONTRACT: The deliveries of the Arizona Contract water are to be made, according to this paragraph, to individuals, districts, corporations or political subdivisions within the State of Arizona, and when made are to be construed as satisfying, to that extent, the contract. This paragraph contemplates further contracts between the United States and the various individuals, irrigation districts, corporations and political subdivisions of Arizona. Furthermore, the waters to be delivered under these additional contracts would have to be conducted across the public domain of the United States to the ultimate places of use. The public domain is so vast in Arizona, as indeed it is in other Colorado River Basin States, that, as a practical matter, no major water project can be initiated that would not require, for its execution, rights of way across the public domain for the transportation of water. Yet this paragraph nowhere provides, as required by the protective sections already set forth, that these additional contract holders and these additional contracts and the rights of way or the waters thereof, shall be subject to the Colorado River Compact. This omission is another evidence of Arizona's purpose to circumvent, if she can, the Compact apportionment of water to the Lower Basin and to encroach upon that of the Upper Basin. She is most willing to share in the water that, by the Compact, the Upper States must turn down to her Basin, but not at all willing that they retain inviolate any apportionment for their own.

PARAGRAPH 14 OF THE ARIZONA CONTRACT: This paragraph, which violates the protective provisions

of the Act already set forth, by again seeking to exempt Arizona water rights from the Compact apportionment, a point that need not be discussed again, contains the key which unlocks and explains the countless irregularities and illegalities which the proffered contract contains. By this paragraph Arizona waives any intention to "interfere by litigation or otherwise with the construction, operation or maintenance of any such dams or works," meaning dams or works connected with the delivery of water by the Government at points down the River, in return for 2,800,000 acre feet annually of free water. It is almost beyond belief that Arizona would ask 2,800,000 acre feet of water free of charge from a project costing the Government so many millions of dollars and yet not expecting to share, along with other contract holders for water and electrical energy, in the reimbursement of the Federal outlay. If other contract holders pay, why should not Arizona? Should not the attitude of the Government continue to be "millions for defense but not one cent for tribute"? The Government established in *Arizona v. California, et al., supra*, its clear right to enter Arizona under the Project Act, the constitutionality of which was based by the Court upon the Congressionally asserted improvement of navigation, and build the dam and appurtenant structures.

PARAGRAPH 16 OF THE ARIZONA CONTRACT:
Here Arizona has the United States agreeing that, if the two parties so desire, they may submit to arbitration any and all controversies arising out of the Contract. That contract contains paragraphs violating the rights of the Upper States as hereinbefore set forth, yet controversies arising between the Government and Arizona, even presumably over those paragraphs, Arizona would contemplate submitting to arbitration! Arbitration is not judicial inquiry and settlement according to law. Very frequently it is a designed—and conscious departure from

law, a settlement that comprises legal rights instead of defining them. The Secretary is supposed to administer the Act not according to arbitration but according to law, and above all things, in point of interest to the Upper States, according to the law of the Compact. If controversies arise, let the law take its course with the right of the Upper States to intervene as to matters concerning them. Arbitration to which the Upper States do not themselves consent is a violation of their rights under the protective provisions of the Act.

PARAGRAPH 18 OF THE ARIZONA CONTRACT:
Arizona appears, but reluctantly, to concede that the Compact was imposed upon and became an integral part of the Project Act itself, and here inserts a paragraph to the effect that "this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact, * * * approved by the Boulder Canyon Project Act." She might have added that Section 13 (c) of the Act is not the only one impressing the Compact upon the entire Colorado River Basin and upon her proposed Contract, but that Sections 1, 8 (a), 8 (b), 13 (c) and 13 (d) do the same thing, and that they impress it, not only upon contracts issued by the Secretary of the Interior, but upon the contract holder as well (See Section 8 (a) above quoted) and upon the United States, and upon all persons claiming any interest of any kind under the United States, and upon all patents, grants, contracts and concessions, and upon the use of the very thing conceded or granted. Arizona cannot, for her own benefit, single out only one of the protective sections of the Act when there are so many others, all of which we have quoted at length earlier in this brief.

Arizona however nullifies even the slight concession made by this paragraph in favor of the Compact by

speedily adding that the contract is without prejudice to her contentions as to the meaning and interpretation of the Compact and that she does not by her contract ratify, adopt or construe the Compact, and that her concession in favor of the Compact does not carry with it the surrender of any of her contentions as to the control of waters within her boundaries. If Arizona really wants to acknowledge the supremacy of the Compact she should say so without qualification or reservation, or if she wants to include a lot of qualifications and reservations, and still acknowledge the supremacy of the Compact, she should insert in her contract a clause to the effect that she and the contract are subject to and controlled by the Colorado River Compact, notwithstanding any and all reservations, qualifications, interpretations, claims and anything to the contrary contained in her contract. She is not willing, however, to subordinate these things to the Compact even as to a single item, much less is she willing to enter into a contract without reservations and interpretations at all, notwithstanding the fact that all of the other contract holders have done so and that the Act requires her to do the same. When parties to a contract insert therein clauses that are diametrically opposed and do not say which is controlling, each nullifies the other, and in consequence, it is questionable whether anything is agreed to. There is nothing but inconsistency between Arizona's affirmation that the contract rights shall be subject to the Compact on the one hand and her reservations as to her interpretations, etc., thereof, known only to Arizona, on the other.

The paragraph reserves not only Arizona's already existing water rights, which under the protective sections cannot be done, but also reserves the right to adopt policies and enact laws relating to the control and use of waters generally within her boundaries, except as to the 2,800,000 acre feet. By this last reservation it is her

expectation that future appropriations of water made by her shall not be subject to the Compact, whereas, under the protective sections hereinbefore set forth, she can exempt neither herself, nor any waters whatsoever, of the River System from the operation of the Compact.

Referring again to Arizona's water rights already existing and to be created hereafter, it is true that if she does not apply for contract water she will not be bound by the Compact as a signatory and ratifying state would be. But it is to be said, independently of the general question of whether the Federal Government or the State is the validating creating source of water rights in the arid west, that the Government, in the exercise of its authority under the Federal Constitution (Article IV, Sec. III), to dispose of and regulate the uses of its public lands, undoubtedly has the power to confine the use thereof for transportation and storage of water, to the storage and transportation of such quantities as the Congress may determine. *Arizona v. California, et al.*, 283 U. S. 423.

Since by protective Sections 13 (c) and 13 (d) of the Project Act the Congress has limited the quantity to such as when added to waters of already existing water rights shall not exceed the Basin apportionment, and since Arizona or any other Colorado River State because of the great land holding of the Government, cannot get water without crossing public domain, it follows that, though Arizona should never apply to the Secretary for contract water, she is, in a very *practical* way, limited and bound by the Colorado River Compact, for the simple reason that when she or her citizens, come to ask the Government for a right of way across the public domain there would have to be inserted in the instrument conferring it, under Sections 13 (c) and 13 (d), a clause of subordination to the Compact. In this manner, not by force of signing and ratifying the Compact, but rather by force of the

exercise of the authority of the Government over its lands, as expressed through the sections referred to, Arizona or her citizens automatically become bound by the Compact.

But when Arizona *does* apply to the Secretary for water under the Project Act, then she must, in the contract, subject herself and her contract to the Compact. The water that would be legally available to her would be water legally available under the Project Act and Compact.

Arizona cannot avail herself of the Compact provision, compelling the Upper Basin to turn down this water and at the same time deny the Upper Basin the latter's own present apportionment of 7,500,000 acre feet per annum and its share in the apportionment to be made later under the Compact. It was partly to prevent just such an inconsistency that the Act, through the protective provisions cited; requires Arizona to subordinate (1) herself and (2) her contract and the rights under it, to the Compact.

II.

The Secretary of the Interior is Without Power Under the Provisions of the Boulder Canyon Project Act to Enter Into Any Contract Which Involves the Sale and Disposal of the Right to the Consumptive Use of the Waters of the Colorado River Impounded in the Boulder Canyon Reservoir, Because:

(a) The respective States rather than the Federal Government have exclusive jurisdiction over unappropriated waters within their boundaries, subject only to the right of the Federal Government under the Constitution to regulate the flow of interstate streams for purposes of commerce and navigation.

(b) The waters in this Interstate Stream are not the property of, nor is the consumptive use thereof subject to disposition by the United States, except in so far as the United States itself may be an appropriator of water.

Such indeed is the doctrine asserted and contended for by the State of Arizona herself. We quote from her brief in the case of *Arizona v. California, et al.*, 283 U. S. 423 l. c. 447, as follows:

"If and wherever navigable, the Colorado River belongs to and is owned by the State in which it is situated. The State in its sovereign capacity owns the water in the river, the bed of the river, and its banks to high water mark. This is a full proprietary ownership. It is subject to the power of Congress to regulate commerce by improving navigation. It is not subject to any other restriction or limitation. The State, being the owner, has the exclusive and unrestricted right to use and dispose of the water in the river and the land under it, to authorize the use thereof by others, and to regulate and control such use in whatever manner and to whatever extent it sees fit, subject only to the power of Congress in respect to navigation.

"Even assuming the Colorado River to be navigable, the United States does not own it, and has no right to use it or control it for any purpose, except that of regulating commerce by improving navigation. Not being the owner, the United States cannot, for any purpose or upon any pretext, sell or dispose of the water in the river or the land under it."

In the case of *Kansas v. Colorado*, 206 U. S. 46, l. c. 93, the Court said:

“‘While arid lands are to be found mainly, if not only, in the Western and newer states, yet the powers of the national government within the limits of those states are the same (no greater and no less) than those within the limits of the original thirteen; and it would be strange if, in the absence of a definite grant of power, the national government could enter the territory of the states along the Atlantic and legislate in respect to improving, by irrigation or otherwise, the lands within their borders.’”

And, after discussing the claims to national control concluded as follows:

“‘But it is useless to pursue the inquiry further in this direction. It is enough for the purposes of this case that each state has full jurisdiction over the lands within its borders, including the beds of streams and other waters.’”

(c) The Colorado River Compact is based upon the premise that the waters of the Colorado River System are subject to the exclusive jurisdiction of the Compacting States rather than of the Federal Government and that Compact, as ratified by six of the States, was approved by Congress.

(d) The Boulder Canyon Project Act itself does not purport to invest the Secretary of the Interior with power to sell, create, initiate or dispose of rights to the beneficial use of the waters of the Colorado River, but grants to the Secretary of the Interior power only to contract for the storage and delivery of said waters. See Sec. 5 (Introduction) and (c).

III.

The Secretary of the Interior Has Power Only to Enter Into Contracts for the Storage and Delivery of the Waters of Said Colorado River to Those Who in Some Legal Manner Have Already Acquired Rights to the Consumptive Use Thereof.

It follows from the principle set forth in the foregoing Division II of this Brief, that the Secretary of the Interior has no right to contract for the storage and delivery of waters of the Colorado River to the State of Arizona, unless:

(a) The State of Arizona, or appropriators, under her authority, have already made valid appropriations for the beneficial use of the waters of the Colorado River for the storage and delivery of which the proposed contract is sought, or, unless:

(b) A valid allotment or allocation of the water proposed to be stored or delivered has already been made by interstate compact, or, unless:

(c) An equitable apportionment by decree of the Supreme Court of the United States has been made whereby it shall have been finally determined that the State of Arizona and her appropriators are entitled to the beneficial use of the waters sought to be stored and delivered under the proposed contract.

Yet Arizona cannot and does not assert or claim that she or appropriators under, her authority, have in fact made appropriations for the consumptive use of the waters of the Colorado River or any thereof which are sought to be stored and delivered to her under the contract proposed; nor has there ever been an allotment or allocation made to her by interstate compact of said 2,800,000 acre-feet of water for the storage and delivery

of which she now applies; nor has there ever been any ascertainment by Decree of the United States Supreme Court that Arizona is equitably entitled to the amount of water from the Colorado River for the storage and delivery of which she seeks to contract.

IV.

The Object of the Proposed Contract is to Accord to the State of Arizona Rights to Water of the Colorado River Which Can be Secured Only by Compact Among the States Affected or by Decree of the Supreme Court of the United States.

Prior to 1922 the states of Arizona, California, Colorado, Nevada, New Mexico, Wyoming and Utah, in which states the Colorado River and its tributaries lie, were each concerned about the use of the waters of the river and of its tributaries in the development of the River Basin. The river is an interstate stream. Its course is through and between states, each of which had wholly or in part abandoned or failed to adopt the common law rule of riparian rights as to the use of water, and had in lieu thereof, in varying forms, enforced the doctrine of appropriation. It was widely asserted and contended that in these arid states under this doctrine, even as between states, prior application of the water to a beneficial use created a superior right. In order that the states of the Colorado River basin might have security, that as between themselves they might participate equitably in the waters of the river, it seemed advisable that they should secure the consent of the United States to treat upon the subject of the division of the waters of the river and attempt thereby to fix their future rights.

As a result of this situation the states procured the passage by the Congress of the United States of the legislation essential to permit them to proceed. Thus em-

powered, the states met at Santa Fe, New Mexico, in 1922, for the purpose of treating upon the subject of the equitable division of the use of the waters of the river. It was recognized that whatever compact their representatives should finally agree upon would require the approval of the legislatures of the several states and finally the sanction of the United States. In no other way known to the law could these states divide the waters of this river among themselves. The treaty powers incident to sovereignty had been denied to them by the Federal constitution except with the consent of the United States. The states could not be compelled to divide the waters—they could only be permitted so to do. Admittedly the states might have access to the Supreme Court of the United States to settle existing differences, but not for the purpose of treaty or compact. The Federal government had no power to say what the respective rights of the different states in the river should be.

After full consideration, a compact was drawn satisfactory to the commissioner for each state and was signed by such commissioners and approved by the representative of the United States. This Compact was inevitably a compromise of the claims of the states. Finally each state yielded to the other states certain asserted rights in consideration that the rights retained by them should be recognized, definite and secure.

The legislature of Arizona refused to ratify the Compact as drawn and as signed by the commissioner of that state. The other six states ratified and the United States approved. Thereafter the Compact became the subject matter of a suit in the Supreme Court of the United States brought by the State of Arizona against the Secretary of the Interior and the other six states (283 U. S. 423, 75 U. S. L. Ed. 1104). In this case the Supreme Court was required to determine the situation in which Arizona stood in relation to the compact. It uses this language:

"As we hold that the grant of authority to construct the dam and reservoir is a valid exercise of Congressional power, that the Boulder Canyon Project Act does not purport to abridge the right of Arizona to make, or permit, additional appropriations of water flowing within the State or on its boundaries, and that there is now no threat by Wilbur, or any of the defendant States, to do any act which will interfere with the enjoyment of any present or future appropriation, we have no occasion to consider other questions which have been argued. The bill is dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same.

" * * * Arizona has, of course, no constitutional right to use, in aid of appropriation, any land of the United States, and it cannot complain of the provision conditioning the use of such public land. * * * "

Obviously Arizona was not bound by the Compact as a signatory, but was bound by the public domain provisions referred to in the Court's opinion. Upon that state the Compact itself casts no burdens and from it the State of Arizona was entitled to no benefits. It could not accept a part of the Compact and reject another part of it. The Upper Basin states had agreed with the states of the Lower Basin, who were parties to the Compact, that, limited by the beneficial necessities of the Lower States, they would permit to flow unimpeded down the Colorado River, past Lee Ferry, 75,000,000 acre feet of water during each consecutive ten-year period. The upper states assumed this burden solely upon the consideration to them

that they might retain for their own consumptive use 7,500,000 acre feet of water per year, which water so retained should not be subject to the claims of the lower basin states at any future time. This was a compact with tremendous considerations moving from each party to the other. No signatory state could have any benefits of the Compact except by assuming its obligations through formal ratification.

The State of Arizona now presents to the Secretary of the Interior a contract under the terms of which that state is to receive the use in perpetuity of 2,800,000 acre feet of water per year, substantially all of which comes out of the water which is turned past Lee Ferry by the Upper Basin states under the compulsions of the compact. The Upper Basin states under the Compact are required to turn down 7,500,000 acre feet per year only when the states to whom they turn it recognize their right to retain 7,500,000 acre feet per year. This contract provides that it shall be ratified by the legislature of the State of Arizona. This certainly would not be true if it were a mere water appropriation, and likewise it would not be true if it were a reclamation project. This can only be true upon the theory that it is a compact, if the ratification required by the contract has any significance whatsoever; yet it is beyond dispute that Arizona cannot, through the medium of a mere contract with the Secretary of the Interior, enter into a compact affecting the Upper Basin states, but must make the Compact with those states direct.

As observed at the outset, Arizona was empowered to compact and refused to compact. She is now attempting, through the Secretary of the Interior, to force a compact upon the Upper Basin states whereby she casts upon those states very large burdens for which she gives nothing. Stated in simple terms, this contract adopts the Compact in so far as it requires the Upper Basin states to

deliver to Arizona 2,800,000 acre feet of water per year and then fails to recognize that part of the Compact that in consideration of such delivery Arizona recognizes the right of the Upper Basin measured by its necessities to retain for its own consumptive use as much as 7,500,000 acre feet of water per year. If this contract be signed and sustained, Arizona will take to herself the 2,800,000 acre feet of water and then if her contention be correct, will make claim to the waters which the Compact reserves to the other states. The State of Arizona has been duly empowered by Congress to compact with the Upper Basin states upon this subject, and the method of compacting is clearly established; moreover such compacts cannot be made by the United States without the consent of the states involved.

V.

The Proposed Contract in Still Other Respects is Beyond the Legal Power of the Secretary to Execute.

(a) BECAUSE NOT A CONTRACT FOR REVENUE.

PARAGRAPH 13 OF THE ARIZONA CONTRACT:
Arizona seeks by this paragraph to obtain water free of cost. It cannot be done. Sections 2 (a), 4 (b), 5 (Introduction), 5 (a), 5 (c) and 6 of the Project Act contemplate and require that all contracts awarded by the Secretary, whether relating to water or to electrical energy, shall be for revenue—revenue wherewith to reimburse the Government for the millions of dollars advanced for construction purposes.

There is no room for contracts which do not produce cash revenue. They are ultra vires. They are illegal and unfair as to the State of Nevada which is interested under Section 4 (b) of the Act in eighteen and three-fourths per

cent of certain revenues. The other contract holders, like the Metropolitan Water District [Metropolitan Contract Section 12 (10)], and the City of San Diego [San Diego Contract Section 12 (11)], pay for their water at the rate of twenty-five cents per acre foot. Free contracts are illegal and unfair as against the Government itself which puts up the construction money. If Arizona were to pay what those other contract holders pay, twenty-five cents per acre foot, she would turn in \$700,000.00 per annum. What has Arizona done that the water should be given to her free of cost? That no charge is made to the Imperial and Coachella Valleys is due to the action of the Congress itself. (Section I of the Act.) The reason currently reported for this exemption was because of the fact that these Valleys already had old water rights, and contract-water would be substantially supplemental. However this may be, Congress had the authority to create exemptions but has denied it to the Secretary and has required that all the contracts he makes shall be on a cash revenue basis, under and in pursuance of the Project Act. (Section 5.)

On account of the evident intention of Arizona to make inroads upon the water apportionment to the Upper Basin, the states of that Basin must insist that Arizona be allowed no contract that is not upon a revenue producing basis.

**(b) BECAUSE ARIZONA HAS NOT FORMALLY RATIFIED
THE COMPACT.**

Arizona is not entitled to any contract under the Act until she ratifies the Colorado River Compact in the same formal manner in which it has been done by other states. She is not an individual citizen, or private corporation; she is the State itself. She cannot expect to participate in the benefits of the Compact-agreement among the other

states and with the Government, without becoming a party in like formal manner. When the Upper Basin states agreed in the Compact (Article III (d)) for the benefit of the entire Lower Basin, Arizona included, that the Upper Basin States would turn down to the Lower Basin a guaranteed average of 7,500,000 acre feet of water if needed, per annum, regardless of the effect upon them, they assumed a tremendous and dangerous burden. They assumed it, however, in consideration of the apportionment to their own Basin. Arizona presumes now to benefit by that guaranty. It is submitted that a fair interpretation of the Act and Compact requires, since she is the State and not a citizen of the State, that if she would avail herself of the benefits of the Compact and of the vast expenditures under the Act, she must give to the Compact the same formal ratification given by the other states and by the Government itself.

VI.

The Proposed Contract Contains Numerous Obscurities and Ambiguities, and Therefore Should Not be Executed.

Paragraphs 4, 8, 11 (a), 11 (b), 11 (c) and 18. *All* these paragraphs refer to constructions, claims, reservations, qualifications and interpretations which Arizona apparently is unwilling to define, which are known to her alone and which, as to many, she apparently asks of the Secretary that he accept on faith. Whatever they may mean, they are shot through with illegality because as has been shown already, they are intended at least as encroachments upon the apportionment to the Basin of the Upper States.

Paragraph 11. What does Arizona mean by "2,800,000 acre feet of water per annum from storage available in the reservoir created by the Boulder Dam *computed in the manner required under the provisions of the Boulder Canon Project Act and the Colorado River Compact and subject to such ratable reduction in the event of water shortage as may be necessary to render this contract in conformity with the said Act and Compact*"? These protesting Upper States had much to do with the drafting of both the Act and the Compact, but the meaning of this paragraph of the contract relating to manner of computation and to ratable reduction is beyond them utterly.

What manner of computation does Arizona conceive that the Project Act prescribes? As to ratable reduction, does Arizona have in mind ratable reduction of Lower Basin Rights to insure the Upper Basin apportionment against encroachment? Or does she fear danger of over contracting on the part of the Secretary with consequent need of reducing pro tanto the call of each contract? Or again does she have in mind a reduction of Lower Basin Rights in order to satisfy a treaty award, if any, to Mexico, or possible obligations of the United States to Indian Tribes? Or what does she have in mind?

Only with the meaning declared can any one determine whether the quoted language is consistent or inconsistent with any particular part of the Act or Compact.

VII.

The Arizona Proposal is Grossly Injurious and Unjust to the Protesting States of the Upper Basin.

The Colorado River System is the last water hole as much for the Upper States as for Arizona. Under the threatening shadow of the rule of "priority regardless of State lines," which many claim as the principle for dividing water between states, it is manifestly unfair for the Government to go into any State in the arid West and by use of Federal funds, which are derived from all the States, help that State to acquire what might be a prior right as against another State.

We submit that the proper way for the Government to proceed, when a major water project is involved, is to require in advance that the benefited State agree with the other State upon a reservation of water in the latter's favor to be unaffected by the project. A different procedure may be followed in the East where the riparian system prevails, but not in the arid West where the prevailing system is that of appropriation.

The Compact apportions to the Upper Basin at the present time, for division principally among four states, only 7,500,000 acre feet. Even if this were divided equally among the four each would get less than 2,000,000 acre feet. Yet Arizona wants by contract from the Secretary 2,800,000 acre feet for herself out of water the Compact requires the Upper States to turn down and then about 3,500,000 acre feet more which she now claims. The Upper States speak now not of the illegality of the contract for its illegality has been shown already. They speak of its injustice.

VIII.

The Contract Proposed by the State of Arizona is So Manifestly Illegal That, if Executed, It Would be Subject to Judicial Annulment.

Little in addition need be said in support of this proposition. It has been shown clearly enough that the Secretary's authority which Arizona invokes must be found in the Project Act; that the Act impresses the Compact upon the two Basins and upon any one seeking a contract from the Secretary; that the contract offered by Arizona violates the terms of the Act protective of the Upper States and also goes beyond the powers of the Secretary even if those terms were complied with.

Clearly under such circumstances Arizona is seeking a contract which, if executed, would be subject to judicial annulment, and its attempted fulfillment to injunction at the hands of the Supreme Court of the United States in a suit brought by the other six States of the Colorado River Basin.

SUMMARY.

Therefore for these reasons: Illegality as against the Upper States, lack of power on the part of the Secretary, obscurities and ambiguities, injustice to the Upper States aside from any question of legality, these protesting Upper States submit that Arizona's proposed contract should be rejected.

REQUEST FOR ORAL ARGUMENT.

Because of the vast importance of the matter involved, the protesting Upper States request leave to reply to any answering brief filed by Arizona, and, also, for the privilege of oral argument upon the Briefs and upon such new matter as may arise.

Respectfully submitted,

STATE OF COLORADO,

By ED. C. JOHNSON,
Governor.

PAUL P. PROSSER,
Attorney General,

SHRADER P. HOWELL,
CHARLES ROACH,
Assistant Attorneys General.

STATE OF NEW MEXICO,

By A. W. HOCKENHULL,
Governor.

E. K. NEUMANN,
Attorney General.

STATE OF UTAH,

By HENRY H. BLOOD,
Governor.

JOSEPH CHEZ,
Attorney General.

L. WARD BANNISTER,
SILMON SMITH,
JAMES D. PARRIOTT,
R. C. HECOX.

Of Counsel for Colorado.

WILLIAM W. RAY,
Of Counsel for Utah.

STATE OF WYOMING.

By LESLIE A. MILLER,
Governor.

RAY E. LEE,
Attorney General.

CALIFORNIA DEFENDANTS

Exhibit No. 7506

Identification: Admitted:

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT
AND STATEMENT IN SUPPORT OF MOTION, BILL OF
COMPLAINT, AND PETITION FOR REHEARING, FILED
BY ARIZONA, OCTOBER TERM, 1935.

These are stipulated documents, Items
497 and 502, Pre-Trial Order.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

IN THE
Supreme Court of the United States

OCTOBER TERM, 1935

No.....Original

STATE OF ARIZONA,

Plaintiff.

vs.

STATE OF CALIFORNIA,
STATE OF COLORADO,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF UTAH and
STATE OF WYOMING,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arizona, by its Attorney General and Special Attorneys, asks leave of the Court to file its Bill of Complaint against the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming, submitted herewith.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

November, 1935.

Statement in Support of Motion

The purpose of this suit is:

(1) To obtain an equitable apportionment of the waters flowing in the Colorado River and its tributaries among the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and to quiet Arizona's title to her equitable portion of said waters against the adverse claims of the defendants; and

(2) To obtain a judicial determination of the quantum of said waters which California may legally use within the limitation upon her use fixed by an Act of her legislature, approved March 4, 1929, enacted pursuant to the provisions of Section 4 (a) of the Boulder Canyon Project Act.

This Court, in *United States vs. Arizona*, 55 S. Ct. 666, decided April 29, 1935, held that Arizona's jurisdiction in respect of the appropriation, use and distribution of an equitable share of the waters flowing in said river is unaffected by the Colorado River Compact or Federal reclamation laws. The State of California, nevertheless, asserts under the law of appropriation a prior right as against Arizona to divert and use some 14,000,000 acre feet of the waters of said stream annually, which is substantially the entire average annual flow of said stream at Boulder Dam after allowing for about 2,500,000 acre feet of existing annual upstream depletions.

In order that Arizona may proceed by orderly development in the use of her equitable share of the waters of said river, it is necessary that the quantum thereof be judicially determined and that her title thereto be quieted against the adverse claims of the defendants, and particularly of the State of California.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

November, 1935.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1935

No. Original

STATE OF ARIZONA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

STATE OF COLORADO,

STATE OF NEVADA,

STATE OF NEW MEXICO,

STATE OF UTAH and

STATE OF WYOMING,

Defendants.

BILL OF COMPLAINT

The State of Arizona, by its Attorney General and Special Attorneys, brings this suit against the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming to obtain a judicial determination of:

(a) The quantum of the equitable share of the waters flowing in the Colorado River which she and those claiming under her are entitled to appropriate and to quiet her title thereto against adverse claims of the defendants; and

(b) The maximum quantity of the waters of the

Colorado River which California may divert and consumptively use under the limitations imposed upon such use by Section 4 (a) of Boulder Canyon Project Act and an act of the Legislature of California, approved March 4, 1929, entitled, "An Act to limit the use by California of the waters of the Colorado River, etc."

Plaintiff accordingly alleges:

I

Geography of Colorado River

The Colorado River rises in Colorado and flows in Colorado for a distance of 245 miles, thence in Utah for a distance of 285 miles, thence in Arizona for a distance of 292 miles, thence on the boundary between Arizona and Nevada for a distance of 145 miles, thence on the boundary between Arizona and California for a distance of 235 miles, thence on the boundary between Arizona and Mexico for a distance of 16 miles, thence in Mexico for a distance of 75 miles, and there enters the Gulf of California. Said river has a total length of 1,293 miles, of which 688 miles are in Arizona or on the boundary thereof.

II

Principal Tributaries

The principal tributaries of the Colorado River are:

Gunnison River, which rises in Colorado and flows in Colorado for a distance of 160 miles, and there enters the Colorado River;

Green River, which rises in Wyoming and flows in Wy-

oming for a distance of 246 miles, thence in Utah for a distance of 56 miles, thence in Colorado for a distance of 35 miles, thence in Utah for a distance of 272 miles, and there enters the Colorado River;

San Juan River, which rises in Colorado and flows in Colorado for a distance of 61 miles, thence in New Mexico for a distance of 110 miles, thence in Utah for a distance of 130 miles, and there enters the Colorado River;

Little Colorado River, which rises in Arizona and flows in Arizona for a distance of 268 miles, and there enters the Colorado River;

Bill Williams River, which rises in Arizona and flows in Arizona for a distance of 132 miles, and there enters the Colorado River; and

Gila River, which rises in New Mexico and flows in New Mexico for a distance of 115 miles, thence in Arizona for a distance of 406 miles, and enters the Colorado River 3 miles above the City of Yuma, Arizona, 10 miles below Laguna Dam, 286 miles below Boulder Dam and 641 miles below Lees Ferry.

Said tributaries have a total combined length of about 2,000 miles, of which 836 miles are in Arizona.

No tributaries enter the Colorado River from California, nor does California contribute any appreciable quantity of water to said river.

III

Landmarks

Lees Ferry is a point on the Colorado River 23 miles below the point where said river enters Arizona from Utah.

Boulder Dam is built across the Colorado River at a point 355 miles below Lees Ferry and is in that part of said river which forms the boundary between Arizona and Nevada. It creates Boulder Reservoir in the bed of said river, the high-water line of which extends 115 miles upstream from said dam.

Parker Dam Site is a point in said river approximately 150 miles south of Boulder Dam and about 5 miles south of the confluence of Bill Williams River and the Colorado River and is in that part of the river which forms the boundary between Arizona and California.

Imperial Dam Site is a point in said river about 100 miles south of Parker Dam Site, about 18 miles above the City of Yuma, Arizona, and $4\frac{1}{2}$ miles above Laguna Dam, and is in that part of the river which forms the boundary between Arizona and California.

Laguna Dam is built across said river at a point $4\frac{1}{2}$ miles south of Imperial Dam Site, 13 miles above the City of Yuma, Arizona, and 18 miles above the point where the Colorado River becomes the boundary between Arizona and Mexico, and also is in that part of the river which forms the boundary between California and Arizona.

IV

Drainage Area

The drainage basin of the Colorado River, including the Gila, in the United States has a total area of 240,000 square miles, of which 103,000 square miles are in Arizona, 4,000 square miles in California, 12,000 square miles in Nevada, 40,000 square miles in Utah, 23,000 square miles in New Mexico, 39,000 square miles in Colorado, and 19,000 square miles in Wyoming. Approximately 43 per cent. of the total area of said basin is in Arizona, and approximately 90 per cent. of the total area of Arizona is in said basin.

The Gila River has an estimated drainage area of 56,000 square miles, approximately 50,000 of which are in Arizona, 5,000 in New Mexico and 1,000 in the Mexican Republic.

Map of Colorado River Basin

There is attached hereto as an exhibit United States Bureau of Reclamation Map No. 23,000 of the Colorado River Basin showing the source and course of the Colorado River and its tributaries, the location of the landmarks mentioned in Paragraph III of this Bill of Complaint, the location of the irrigated and irrigable areas in, and the boundaries of, said basin, as estimated and determined by said Bureau. Said map, however, is in error in that approximately three-fourths of the area of said basin shown to be in California drains into the Salton Sea, 280

feet below sea level; also, in that it shows only about one-sixth of the land in Arizona feasibly irrigable by the waters of the main stream of said river.

V

Topography of Lower River

From the point where the Colorado River enters Arizona to the point where it enters Mexico it has a fall of 3,230 feet, of which 2,200 feet occur in Arizona, 650 feet on the boundary between Arizona and Nevada, 350 feet on the boundary between Arizona and California and 30 feet on the boundary between Arizona and Mexico. That part of the river which flows in Arizona and on the boundary between Arizona and Nevada is in a practically continuous series of deep canyons, the walls of which rise on either side of said river to a height varying from a few hundred feet to more than 5,000 feet. The part of said river which flows on the boundary between Arizona and California and between Arizona and Mexico flows between comparatively low banks.

VI

Virgin Flow of River

The average annual virgin or undepleted flow (sometimes called reconstructed flow) of the Colorado River, in acre feet, at Lees Ferry, Boulder Dam and Imperial Dam during the period of 1897-1934, inclusive, as estimated by the United States Bureau of Reclamation, would have been, except for artificial upstream depletions:

Lees Ferry	16,660,000
Boulder Dam	17,720,000
Imperial Dam	16,840,000

Similarly, the average annual virgin flow of the Gila River at its confluence with the Colorado River from 1895 to 1933, inclusive, would have been 1,331,000 acre feet.

The average annual virgin flow of the Gila River into the Phoenix, Arizona, area is 2,359,000 acre feet. Irrigation development has reduced the escape of such flow to approximately 644,000 acre feet annually and has reduced the annual average discharge of the Gila into the Colorado River near Yuma to about 350,000 acre feet. Further development on the Gila in the neighborhood of Phoenix now under construction will reduce the escape from that area to an average of about 300,000 acre feet and the discharge into the Colorado at Yuma to about 100,000 acre feet annually, which will occur as the peaks of extraordinary floods which cannot practicably be conserved.

The water discharged by the Gila into the Colorado River under both virgin and depleted conditions is not, and never has been, of any economic value for irrigation or other beneficial uses for the reason that it occurs as floods of comparatively short duration and for the further reason that for probably six months of each year the Gila discharges no water into the Colorado River. The river in its lower reaches is wholly undependable as a supply of water for irrigation or other uses.

VII

Depletions of Virgin Flow

Of the total virgin flow of the Colorado River and its tributaries, exclusive of the Gila, approximately 6,100,000 acre feet per annum have been appropriated and put to beneficial use in the United States and the Mexican Republic and are now being used and consumed. Of said water so appropriated approximately 2,500,000 acre feet are diverted annually from the Colorado River above Lees Ferry and from tributaries entering said river above that point and are used and consumed in Utah, New Mexico, Colorado and Wyoming; and 3,600,000 acre feet are diverted annually below Lees Ferry and from tributaries, other than the Gila, entering said river below Lees Ferry and are used and consumed as follows:

Arizona	585,000
California	2,475,000
Mexican Republic	500,000
Nevada	40,000

Non-diversion river losses between Boulder and Imperial Dams plus evaporation from Boulder and Parker Reservoirs will aggregate 1,400,000 acre feet annually and about offset the river's gains between Lees Ferry and Boulder Dam. Of the virgin flow of the Gila in the Phoenix area, 2,885,000 acre feet per year have been used and appropriated in Arizona and 15,000 in New Mexico. A large quantity of the waters of the Gila used for irrigation in and above the Phoenix area returns to the stream and is again

diverted and used, with the result that the diversions exceed its virgin flow.

VIII

Water Available for Future Appropriation

Of the virgin flows of the Colorado River and its tributaries, other than the Gila, at Lees Ferry, Boulder Dam and Imperial Dam, after deducting existing appropriations, reservoir evaporations and river losses between Boulder Dam and Imperial Dam, there remain in said river for future appropriation the following annual average quantities of water, in acre feet:

Lees Ferry	10,500,000
Boulder Dam	11,100,000
Imperial Dam	9,720,000

IX

Discharge from Boulder Reservoir Under 1938 Conditions

The United States Bureau of Reclamation estimates that by the Spring of 1938 irrigation will have been resumed on approximately 100,000 acres of land above Boulder Dam that have been developed in the past and are now dormant, and that transmountain diversions from the watershed now under construction in Colorado will have been completed; that the total depletions above Boulder Canyon will then aggregate 2,644,000 acre feet per year; and that the flow of the Colorado River into and out of

Boulder Reservoir will then average 15,069,000 acre feet per year.

X

Precipitation and Duty of Water

In those parts of the Colorado River Basin which are susceptible of irrigation, the average annual rainfall is: In Arizona and California, less than 5 inches; in Nevada, 6 inches; in Wyoming, 7 inches; in Utah and New Mexico, 8 inches; in Colorado, 10 inches.

The average quantity of water per acre required annually for the purpose of irrigation (exclusive of canal losses) is as follows: In Arizona and California, 4 acre feet; in Nevada, 3 acre feet; in Utah, New Mexico, Colorado and Wyoming, 1.5 acre feet.

XI

Irrigated Areas

About 2,027,000 acres are under irrigation by water diverted from the Colorado River and its tributaries, other than the Gila, distributed among the Colorado River Basin States as follows:

Arizona	72,120
California	464,653
Colorado	856,413
New Mexico	45,937
Nevada	12,308
Utah	347,452
Wyoming	228,699

Approximately 525,000 acres of land in the Gila River Basin are irrigated from the waters of the Gila and its tributaries, 520,000 acres of which are located in the State of Arizona and the remaining 5,000 acres in the State of New Mexico.

XII

Further Reclamation in Arizona and Its Economic Aspect

Because of the arid character of her land, irrigation is of the utmost importance to the State of Arizona. During the past 25 years the population of said state has increased from 204,000 to 500,000, and the assessed valuation of taxable property in said state had increased from \$83,769,000 to \$714,945,000 at the beginning of the depression. A great part of said increase in population and wealth resulted from the constantly increasing use of irrigation in said state, and the consequent development of its agricultural land. The present welfare and prosperity of the state are largely the result of irrigation, and its future growth and progress are largely dependent upon the reclamation and irrigation of additional land. In addition to the land now being irrigated, there are more than 2,000,000 acres of land which are not irrigated, but are now susceptible of economic irrigation from the unappropriated water of the Colorado River and its tributaries, other than the Gila, and which cannot be irrigated from any other source. There are an additional 5,000,000 acres of land in Arizona potentially susceptible of economic irrigation from said

waters. All of said land is fertile and, when irrigated, will be highly productive. More than 500,000 acres of said land are owned and held by the State of Arizona. Said land, although at present uncultivated and practically uninhabited, will, when irrigated, be capable of supporting a population of more than 1,500,000 people, and its irrigation will add greatly to the wealth and taxable resources of the state, and to the health, happiness, prosperity and general welfare of her inhabitants.

XIII

Storage and Power

In that part of the Colorado River which flows in Arizona and on the boundary between Arizona and Nevada, there are numerous sites suitable for the construction, maintenance and operation of the dams and reservoirs required for the irrigation of the land referred to in Paragraph XII hereof.

Said dam sites and reservoir sites are also suitable for the construction, maintenance and operation of plants for the generation of electric power from the water to be stored in such reservoirs. All the water of the Colorado River flowing past said dam sites and reservoir sites is subject to appropriation for the generation of electric power at said sites. By the use of such power plants and such stored water, great quantities of electric power could be generated and sold for use in Arizona and elsewhere. The business, and all property used in connection with the business, of

generating and selling such power would be subject to taxation and would yield substantial revenues to the State of Arizona, and the use of such power would add greatly to the welfare and prosperity of said State and her inhabitants. For the reasons aforesaid, the water of the Colorado River and the dam sites and reservoir sites above referred to constitute the greatest natural resource of the State of Arizona.

XIV

Unreclaimed Irrigation Projects in Arizona

Irrigation projects already formed and now in existence comprise more than 1,000,000 acres of the unirrigated but irrigable land referred to in Paragraph XII hereof. More than 100,000 acres of the land in said irrigation projects are owned and held by the State of Arizona. None of the land in said projects is now irrigated, but all of it is susceptible of irrigation. The irrigation of said land is practicable and feasible at the present time, and definite plans have been made for the irrigation thereof. Such irrigation will require 4,000,000 acre feet annually, plus canal losses, of the unappropriated water now flowing in the main stream of the Colorado River.

XV

Colorado River Compact

Legislation was enacted in the year 1921 by the legislatures of the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming and by the Congress

of the United States, providing for the appointment of commissioners by the Governors of said states and by the President of the United States, and authorizing such commissioners to negotiate a compact for an equitable apportionment of the water of the Colorado River and its tributaries, and to submit such compact to the legislatures of said states and to the Congress for ratification. Commissioners were appointed and did draft and submit to said legislatures and to Congress a proposed compact entitled and hereinafter referred to as the "Colorado River Compact." Said compact provides that, as used therein, the term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States; that the term "Colorado River Basin" means all of the drainage area of said Colorado River System and all other territory within the United States to which the water of said system shall be beneficially applied; that the term "Upper Basin" means those parts of Arizona, Utah, New Mexico, Colorado, and Wyoming within and from which water naturally drains into said Colorado River System above Lees Ferry, and also all parts of said states located without said drainage area which are now or shall hereafter be beneficially served by water diverted from said system above Lees Ferry; that the term "Lower Basin" means those parts of Arizona, California, Nevada, Utah, and New Mexico within and from which water naturally drains into said Colorado River System below Lees Ferry, and also all parts of said states located without said drainage area which are now or shall hereafter be beneficially

served by water diverted from said system below Lees Ferry.

The compact does not make an apportionment of the waters of the Colorado River System among the several states located within the Colorado River Basin as contemplated by state and congressional legislation, but divides the water between the Upper Basin and the Lower Basin, as defined in said compact, the point of division being Lees Ferry.

Paragraphs (a) and (b) of Article III of the Colorado River Compact read as follows:

“(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

“(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.”

It was provided in said Compact that the same should become binding and obligatory when approved by the legislatures of the signatory states (Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming) and by the Congress of the United States.

XVI

Boulder Canyon Project Act

On December 21, 1928, the Congress of the United States passed, and the President approved, an act entitled "An Act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River Compact, and for other purposes." The short title of said Act is "Boulder Canyon Project Act." Said Act provides:

In Section 1, that for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River and providing for the storage and delivery of the water thereof for reclamation of public lands and other beneficial uses, and for the generation of electric power as a means of making the project therein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River Compact, is authorized to construct, operate and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre feet of water, and to construct, equip, operate and maintain at or near said dam a complete plant and incidental structures suitable for the fullest economic development of electric power from the water discharged from said reservoir;

Also, in Section 1, that the Secretary of the Interior is

authorized to construct a main canal and appurtenant structures, located entirely within the United States, connecting the Laguna Dam, or other suitable diversion dam which the Secretary of the Interior is authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California;

In Section 4 (a), that it shall not take effect and that no authority shall be exercised thereunder unless and until (1) the States of Arizona, California, Nevada, Utah, New Mexico, Colorado and Wyoming shall ratify the Colorado River Compact, and the President by public proclamation shall so declare, or (2) if said states shall fail to ratify said compact within six months from the date of the passage of said Act, then until six of said states, including the State of California, shall ratify said compact and consent to waive those provisions thereof which require its approval by the legislatures of all the signatory states, and shall approve said compact without conditions, save that of such six-state approval, and the President by public proclamation shall so declare, and,

“further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado

River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed 4,400,000 acre feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact ;”

Further, in Section 4, that the States of Arizona, California and Nevada are authorized to enter into an agreement for the apportionment among them, in the proportions and upon the terms and conditions set forth in said Section 4, of the waters of the Colorado River apportioned to the Lower Basin by paragraph (a) of Article III of the Colorado River Compact ;

In Section 5, that the Secretary of the Interior is authorized to contract for the storage of water in said reservoir and for the delivery thereof for irrigation and other beneficial uses and that such contracts respecting water for irrigation and domestic uses shall be for permanent service and conform to paragraph (a) of Section 4 of said Act.

Six states, namely, California, Nevada, Utah, New Mexico, Colorado and Wyoming, having ratified said compact and waived those provisions thereof which required its approval by all the signatory states, and California, by her legislature, having agreed with the United States to limit her use of the waters of the Colorado River as speci-

fied in Section 4 of the Boulder Canyon Project Act, the President of the United States by proclamation dated June 25, 1929, declared said Act to be effective that day.

XVII

California's Limitation of Her Use of the Waters of the Colorado River

Pursuant to the provisions of Section 4 of the Boulder Canyon Project Act, quoted in the preceding Paragraph XVI, it was enacted by the Legislature of the State of California, by an act entitled, "An Act to limit the use by California of the waters of the Colorado River in compliance with the act of congress known as the 'Boulder canyon project act,' approved December 21, 1928, in the event the Colorado river compact is not approved by all of the states signatory thereto," approved by the Governor of the State of California on March 4, 1929, as follows:

"Section 1. * * * the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming as an express covenant and in consideration of the passage of the said 'Boulder canyon project act' that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado river for use in the State of California including all uses under

contracts made under the provisions of said 'Boulder canyon project act,' and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

"Section 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4 (a) of the said 'Boulder canyon project act' and this act shall be so construed."

XVIII

California's Maximum Legal Rights

The net virgin flow of the Colorado River and its tributaries is the sum of the undepleted flows of said river at Imperial Dam and of the Gila at its confluence with the main stream at Yuma. By deducting from the net flow so obtained the waters apportioned by the Colorado River Compact we obtain the "excess or surplus waters unapportioned by said compact" within the meaning of Section 4 (a) of the Boulder Canyon Project Act and the Act of the Legislature of California, approved March 4, 1929. The unapportioned water is computed in the following manner:

Virgin flow Colorado River at Imperial Dam	16,840,000
Virgin flow Gila at confluence with the Colorado River	1,331,000
Net virgin flow Colorado River	18,171,000
Less water apportioned by Compact	16,000,000
Surplus waters unapportioned	2,171,000

Therefore the maximum quantity of Colorado River water which California may legally divert and consumptively use is:

Of water apportioned by par. (a), Art. III,	
Compact	4,400,000
One-half waters unapportioned	1,085,500
California's maximum legal rights	5,485,500

The foregoing quantities are in acre feet per year and are based upon average annual discharges of the Colorado and Gila for the last thirty-seven years for which records are available.

XIX

Water Contracts Between Secretary of Interior and California Corporations

The Secretary of the Interior, pursuant to the provisions of Section 5 of the Boulder Canyon Project Act, during the years 1931 and 1933 entered into contracts with the California corporations named below for the storage in Boulder Reservoir and the delivery of Colorado River water for domestic and irrigation purposes in California, in acre feet per year, as follows:

Metropolitan Water District	1,100,000
Imperial Valley and others	3,850,000
City of San Diego	112,000
Palo Verde	300,000
Total	5,362,000

Plaintiff alleges that the total of the waters for the storage and delivery of which it was so contracted is substantially the entire amount which may legally be diverted from said river and consumptively used in the State of California under the terms of said statutory contract between the State of California and the United States, and is far in excess of California's equitable share of said waters.

XX

Boulder Canyon Dam and Reservoir

The Secretary of the Interior, pursuant to the provisions of the Boulder Canyon Project Act and appropriations made by Congress, has constructed Boulder Dam across the Colorado River at Black Canyon and created Boulder Reservoir, at a cost of approximately \$170,000,000.00. Said reservoir has a storage capacity of 30,500,000 acre feet and will so regulate the discharge of the river as to provide a constant flow of 15,000 second feet of water per year at Boulder Dam, less future upstream depletions.

XXI

Parker Dam

The United States, acting through the Secretary of the Interior, on February 10, 1933, entered into a contract

with The Metropolitan Water District of Southern California, a California corporation, by the terms of which the United States agreed to construct for said district Parker Dam across the Colorado River, at a point about 150 miles downstream from Boulder Reservoir, at a cost of \$16,000,000.00, to be paid by said district as required during the course of construction. Said dam is now in course of construction with money supplied to the Metropolitan Water District by the United States Treasury through various federal agencies. Said dam will create a reservoir with a capacity of approximately 700,000 acre feet.

XXII

Los Angeles Aqueduct

The Metropolitan Water District of Southern California is now constructing an aqueduct from Parker Dam to the vicinity of Los Angeles for the purpose of diverting 1,100,000 acre feet per year from the Colorado River at Parker Dam and transporting the same to the coastal plain of Southern California for irrigation and domestic purposes.

The estimated cost of said aqueduct is \$220,000,000, which is being advanced as needed from the United States Treasury.

XXIII

All-American Canal and Imperial Dam

The United States, acting by the Secretary of the Interior, pursuant to the provisions of Section 1 of the

Boulder Canyon Project Act, on December 1, 1932, entered into a contract with the Imperial Irrigation District, a California corporation, for the construction of Imperial Dam across the Colorado River at a point 18 miles above the City of Yuma, Arizona, and a main canal, known as All-American Canal, and appurtenant structures, located entirely within the United States, connecting said dam with the Imperial and Coachella Valleys in California. The contract price of said dam and canal is \$38,500,000.00, which is being furnished by the United States. Said canal is being constructed with a capacity of 15,000 second feet, the equivalent of 10,950,000 acre feet of water per year, which will be annually diverted from the Colorado River and consumptively used for power and domestic uses and to irrigate 1,031,000 acres of land in the Imperial and Coachella Valleys of California.

XXIV

United States Subsidies to California

Exclusive of the cost of Boulder Dam (built primarily for the use and benefit of the State of California), the United States is now energetically engaged in building and in financing the building by others of dams, canals and other works and structures at a cost of approximately \$250,000,000.00 to enable California and its residents to divert and consumptively use 12,050,000 acre feet per year of the waters of the Colorado River within the State of California.

XXV

Proposed Uses by California Corporations

Notwithstanding the fact that California, by said Act of her legislature, agreed irrevocably and unconditionally with the United States, for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, as an express covenant and in consideration of the passage of the Boulder Canyon Project Act, to limit her aggregate annual consumptive use of the waters of the Colorado River to an amount not exceeding 5,485,500 acre feet, California and her corporations hereinafter named propose to divert from said river and consumptively use in California an aggregate of 14,330,000 acre feet per year, in which they are being aided and abetted by the United States by its construction and financing of works and facilities by means of which said diversions and uses will be effectuated. Pursuant to said purpose, said corporations have made applications to the Division of Water Resources, Department of Public Works of the State of California, for permits to divert and appropriate annually from said river the following quantities of water:

<i>Name of Corporation</i>	<i>Second Feet</i>	<i>Acre Feet</i>
Metropolitan Water District of Southern California	1,500	1,100,000
City of San Diego	155	120,000
Coachella Valley Water Company.....	1,300	500,000
Imperial Irrigation District (for irrigation and domestic use)	10,000	7,300,000

Imperial Irrigation District (for power)	3,000	2,190,000
Coachella Valley County Water Dis-		
trict	2,000	1,460,000
Total	17,955	12,670,000

The State of California will grant the permits so applied for upon completion by said corporations of the necessary diversion works.

In addition, the Imperial Irrigation District is obligated, under its contract with the United States Government for the construction of Imperial Dam and All-American Canal, to divert from the Colorado River at Imperial Dam and deliver 2,000 second feet of water, continuous flow (the equivalent of 1,460,000 acre feet per year), to the United States Government at Siphon Drop, California, to be used for irrigation and power. Approximately 200,000 acre feet so to be delivered to the United States will be siphoned across Colorado River and used for the irrigation of 45,000 acres of land in the United States Yuma Reclamation Project in Arizona. The remainder of said water will be used for irrigation of the Yuma Indian Reservation in California and for power. The water so to be used for power will be wasted back to the river at a point where it cannot be recaptured for further use within the United States.

By means of the water so to be diverted by said California corporations and the United States Government it is purposed to irrigate 1,328,000 acres of land in California and 850,000 acres of Mexican lands owned

by California residents. An additional 400,000 acre feet is to be used for desilting the waters diverted into All-American Canal at Imperial Dam. The waters so to be used for power and desilting will be wasted back to the river at points at and below which it cannot be recaptured for further use in the United States.

Of the water to be diverted at Imperial Dam into the All-American Canal by Imperial Irrigation District approximately 2,200,000 acre feet per year is to be used for power by said district at Pilot Knob, California, and wasted back into the river below the Mexican border so as to be available for the irrigation of the Mexican lands, hereinabove mentioned, by means of the existing Alamo or Imperial Canal, which has its headgate at a point on the Mexican border on the west side of the river and is now used for delivery of water for irrigation in the Imperial Valley and in Mexico. Said canal, upon completion of All-American Canal, will be abandoned by Imperial Irrigation District and its full capacity of about 3,000,000 acre feet per year will become available to deliver water from the Colorado River for the irrigation of said Mexican lands.

XXVI

Local Laws Governing Use of Water

The common-law rule respecting riparian rights in flowing waters has never obtained in the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming and the waters of flowing streams in said states have always

been open to appropriation for irrigation, mining and other beneficial uses under the doctrine of appropriation as it exists in the arid regions of the United States. Under said doctrine, the diversion from a stream and the application of the water to a beneficial use constitutes an appropriation, and the appropriator is treated as acquiring a continuing right to divert and use the water to the extent of his appropriation, but not beyond what is reasonably required and actually used. This is deemed a property right and, as between appropriators from the same stream, the one first in time is deemed superior in right. Under the doctrine of relation, a completed appropriation is regarded as effective from the time the purpose to make it is definitely formed and the formalities of statutory requirements with reference to notice complied with or actual work thereon is begun, provided the work is carried to completion and the water applied to beneficial use with reasonable diligence.

Under the doctrine of appropriation a water right is real property and it is so treated under all the rules of law appertaining to such property; and a suit to quiet title to a water right and to determine the right to divert the waters from a stream for irrigation purposes is in the nature of an action to quiet title to real estate, and an injury to a water right or a wrongful diversion of the waters of a stream is an injury to real property.

The State of California has retained the common law of riparian rights, in modified form, and at the same time adopted the doctrine of appropriation. Accordingly, she

has a dual system of laws governing the use of flowing waters. She applies the doctrine of appropriation to all waters flowing in natural streams and not needed or used for beneficial purposes upon riparian lands. It may be said that in California the law of riparian rights applies to the use of water on riparian lands and the doctrine of appropriation applies to its use on non-riparian lands.

XXVII

California Claims Priority Under the Law of Appropriation

California claims and asserts against Arizona, under the law of appropriation and the doctrine of relation, as defined in the preceding paragraph, a prior right to divert and use all the waters flowing in the Colorado River and its tributaries, exclusive of the Gila, to the extent of 14,330,000 acre feet per year, and a like priority against each of her co-defendants to the use of all the waters of said stream (1) not apportioned by the Colorado River Compact, amounting to about 2,171,000 acre feet per year and (2) not appropriated prior to 1933, if for any reason the Colorado River Compact should be held invalid.

In this connection, plaintiff is advised by counsel and, upon such advice, alleges that California is not lawfully entitled to appropriate, as against the claims of her co-defendants and Arizona, more than an equitable share of the waters of said river, except insofar as she may have a

right to divert a larger quantity as against her co-defendants under the provisions of the Colorado River Compact; and that her claims of right to appropriate any greater amount of said water are fictitious and void and that in no event may she lawfully divert from said river and consumptively use in any one year in excess of 4,400,000 acre feet of the water apportioned by paragraph (a) of Article III of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by said compact.

Plaintiff alleges that to apply the doctrine of appropriation as the law governing an equitable apportionment of the waters of said river among the plaintiff and the defendants, and particularly between Arizona and California, under the facts alleged in this Bill of Complaint, would be inequitable and result in an unjust enrichment of the State of California at the expense of her co-defendants and of Arizona and of the Treasury of the United States.

XXVIII

Cloud Upon Arizona's Title

Notwithstanding the fact that California's said claims to divert and appropriate the waters of said river in the manner and to the extent as herein alleged are fictitious and void, nevertheless, such claims have and do cast a cloud upon Arizona's title to such equitable share of the waters of said river and its tributaries as is subject to ap-

propriation and use within her jurisdiction and under her laws. Said claims have wrought, and will continue to work, great damage and injury upon Arizona and will continue so to do unless and until this Court determines her equitable share of the waters of said stream and by its decree quiets her title and the titles of those claiming and to claim under her from such adverse claims of California.

XXIX

The Manner of Arizona's Damage

In the reclamation of arid lands in the western states the pioneers and those who followed first undertook the irrigation of the more accessible and inexpensive projects. It fairly may be said that each succeeding project of consequence in the several states was more expensive per acre of land reclaimed and required a larger outlay of capital than the one last reclaimed. It so continued until it became difficult and often impossible to obtain capital from private sources for any project of considerable magnitude. Recognizing this condition, the Congress enacted the first general reclamation law in 1902. From time to time it has supplemented and extended said law and appropriated vast sums of public money for reclamation.

The United States, however, concerns itself only with the utilization of unused waters in the reclamation of arid land. When the waters of a stream are fully beneficially used, it undertakes no further reclamation by use of the waters of said stream and it has no concern as to whether

one state, riparian or tributary to an interstate stream, is using or has appropriated or attempted to appropriate more than its fair share of said waters against the claims of other states similarly situated.

Upon the completion of Boulder, Parker and Imperial Dams, Los Angeles Aqueduct and All-American Canal, the United States, at public expense, will have provided California with works and facilities of sufficient capacity to enable her to divert and consumptively use the entire flow of the Colorado River and its tributaries, except the Gila, less existing diversions and appropriations in other states above Imperial Dam. The river then will be fully developed and thereafter there will be no point in the United States' undertaking, nor will it undertake, the reclamation of other lands in the Colorado River Basin.

By reason of the facts stated herein, all future reclamation of lands in the Colorado River Basin by irrigation from said river must necessarily be accomplished by means of private capital.

Because of the expense of constructing, maintaining and operating the dams, reservoirs, canals and other works required for the irrigation of arid land in Arizona by waters of the Colorado River, it will not be feasible to irrigate said land in small separate tracts but it will be necessary to combine such tracts into large projects, each project being operated and administered as a single unit. The organization of such projects and the construction, maintenance

and operation of such dams, reservoirs, canals and other works will require financing on a large scale, which will be impossible unless water for the irrigation of said land can be appropriated and unclouded, undisputed and incontestable rights to the permanent use thereof acquired at or prior to the time of constructing such works. Otherwise, private capital will not hazard the risk and the arid lands in Arizona susceptible of irrigation from said river must necessarily remain unreclaimed.

XXX

Mexico's Rights in River

Plaintiff is advised that under the principles of International Law the Mexican Republic is entitled, as against the United States of America, to divert and beneficially use in Mexico an equitable share of the waters of the Colorado River. In this connection plaintiff alleges that negotiations have been pending between the Mexican Republic and the United States for a number of years with the view of reaching an agreement between said nations under the terms of which the quantum of Mexico's share would be determined and confirmed by treaty. In the course of said negotiations the Mexican commissioners have proposed that Mexico's share be fixed at 3,000,000 acre feet per year while the commissioners for the United States have suggested 750,000. No agreement has thus far been reached and the matter is still under consideration and negotiation by said commissioners.

The largest quantity of the waters of said stream which the Mexican Republic has ever used in any one year is 750,000 acre feet. Plaintiff alleges that under natural conditions, and except for the regulated flow of said stream created by Boulder Dam, Mexico's equitable share of the economically dependable flow of said stream available for irrigation at the Mexican border does not exceed 500,000 acre feet per year and that Mexico's annual average uses have not exceeded 400,000 acre feet per year.

Plaintiff is further advised by counsel and, upon such advice, alleges that should Mexico use for any considerable time all or any portion of the greater quantity of the waters of said river to be made available to her by the State of California, as set forth in Paragraph XXV, she probably would acquire such an equity to its use in perpetuity as the treaty-making power or an international tribunal, in case of submission, would feel constrained to recognize and confirm. Plaintiff suggests that it would be inequitable to burden the equitable shares of Arizona and of California's co-defendants in the waters of said stream with contributions to any augmentation of Mexico's equitable share of said water under natural conditions which may result from her enlarged use of said waters so artificially made available to her by the State of California as herein alleged, and that in equity and good conscience California's equitable share of said waters should bear the entire burden of such augmentation.

XXXI**Claims of Defendants Other Than California**

The States of Colorado, Nevada, New Mexico, Utah and Wyoming assert, under the doctrine of appropriation, prior rights to the use of the waters of said stream against Arizona in the quantities which they respectively have used and that it is equitable that the existing and future rights to the use of said waters as among them and the plaintiff be measured by the law of appropriation. Plaintiff alleges that, under the artificial conditions now existing and presently to be created on the Colorado River and the facts herein alleged, it would be inequitable to apply the law of appropriation in the determination of the respective equities of plaintiff and the defendants in and to the use of said waters; that, on the contrary, it is equitable that the parties hereto hold their respective equitable shares of the waters of said stream on a parity of right; that is, that no state obtain a priority as against any other state by reason of prior use and that the equitable share of each state be at all times available for diversion and use within its jurisdiction and under its laws and that prior use of any part thereof by any other state should not have the effect of creating a priority of right.

XXXII**Negotiations Among Arizona, California
and Nevada**

The terms of the agreement which Arizona, California and Nevada were authorized to enter into by the provi-

sions of Section 4 (a) of the Boulder Canyon Project Act for the apportionment of the water allotted to the Lower Basin by the Colorado River Compact were not acceptable to any one of said states.

Arizona, foreseeing the intent and purpose of California to appropriate to her own use, by the aid of subsidies from the United States Treasury, all the waters of the Colorado River and its tributaries, exclusive of the Gila, apportioned to the Lower Basin, to the exclusion of Arizona and Nevada, and all of the waters of said river unapportioned by said compact, to the exclusion of Arizona and California's co-defendants, and to claim against them prior rights thereto under the doctrine of appropriation, declined to ratify the Colorado River Compact unless and until an agreement had been entered into among Arizona, California and Nevada under the terms of which there would be apportioned to Arizona an equitable share of the waters of the Colorado River and its tributaries apportioned to the Lower Basin by said compact. From time to time subsequent to the passage and approval of the Boulder Canyon Project Act, duly appointed, constituted and authorized representatives of the States of Arizona, California and Nevada met for the purpose of negotiating such an agreement, but the representatives of the State of California, at each of said meetings, declined to agree to proposals submitted by the representatives of Arizona and further declined to offer any basis upon which they would be willing to negotiate, until January, 1935, when the representatives of Cali-

fornia, at a meeting held in Phoenix, Arizona, suggested that they would be willing to discuss with the representatives of Arizona the terms and conditions of an agreement by which there would be apportioned to Arizona not exceeding 1,000,000 acre feet per year of the water apportioned to the Lower Basin by the Colorado River Compact, plus the waters of the Gila. Said proposal was not acceptable to Arizona and thereupon negotiations were terminated.

XXXIII

The Question of Laches

Arizona, perceiving California's purpose and intent to convert and appropriate to her own use Arizona's equitable share of the waters of the Colorado River in the manner hereinabove alleged, and being further aware of California's ability, by reason of her large, influential and active representation in the Congress, to obtain from the United States Treasury through various agencies of the Federal Government the necessary funds with which to carry her purpose into execution, has at all times sought in every legal manner to prevent the construction by the United States of the works and facilities on said river, including Boulder Dam, Parker Dam and Imperial Dam, which would enable California to effectuate her said purpose, and has from time to time, prior and subsequent to passage and approval of the Boulder Canyon Project Act, protested to the State of California and to the United States against the construction of said works. With that end in view, Ari-

zona sought an injunction in this Court, at the October Term, 1930, against the defendants and against Ray Lyman Wilbur, then Secretary of the Interior, to enjoin and restrain them from constructing Boulder Dam, but said injunction was denied; subsequently, in 1934, Arizona forcibly stopped the construction of Parker Dam in that part of the bed of the Colorado River lying east of the thread of the stream. For the past fifteen years Arizona has protested to California and to the United States as against California's said claims and purposes and has at all times asserted her right to appropriate an equitable share of the waters of the Colorado River and made known to California her intent to maintain said rights by all legal means.

Arizona has further besought the United States to provide or finance the construction of works and facilities which would enable her presently to make use of her equitable share of said waters and so enjoy a position of parity with California. Her efforts in that respect have been without success. Arizona is not now financially able to provide said works and facilities on her own credit, nor can private capital presently be obtained therefor.

XXXIV

The Quantum of Arizona's Equitable Share

Arizona alleges that her equitable share of the waters flowing in the Colorado River and its tributaries, exclusive of the Gila, and subject to appropriation and use under

her jurisdiction is not less than 7,500,000 acre feet per year and that, in addition, she is equitably entitled to use all the waters flowing in the Gila River, less such equitable share thereof as the State of New Mexico may be entitled to appropriate and use.

XXXV

Offer to Do Equity

Arizona concedes to each of the defendants the right to appropriate and use an equitable share of the waters of the Colorado River and its tributaries, exclusive of the Gila, and further concedes to the defendant State of New Mexico the right to appropriate and use an equitable share of the waters flowing in the Gila River; all on a parity of right with Arizona.

XXXVI

Arizona Has No Remedy at Law

Arizona has no plain, speedy and adequate remedy at law, and unless this Court assumes jurisdiction of the controversy here presented and determines the quantum of her equitable share of the waters flowing in the Colorado River and quiets her title thereto against the adverse claims of the defendants and each of them, and particularly those of the State of California, great and irreparable damage and injury will result to Arizona by reason of the matters and things herein stated.

Prayer for Relief

WHEREFORE, the plaintiff, State of Arizona, prays:

(a) That the defendants, State of California, State of Colorado, State of Nevada, State of New Mexico, State of Utah and State of Wyoming, be required to appear and answer this Bill of Complaint and therein to specifically set forth the nature and extent of their respective claims to divert and use for beneficial purposes the waters of the Colorado River and its tributaries.

(b) That the defendant State of California be further required to specifically set forth the maximum quantity of the waters of the Colorado River and its tributaries she claims the right to divert and use within the limitation fixed by the Act of her Legislature approved March 4, 1929, and set forth in Paragraph XVII of this Bill of Complaint.

(c) That the quantum of the plaintiff's equitable share of the waters flowing in the Colorado River, subject to diversion and use under her jurisdiction, be found and fixed by a percentage of the whole average annual flow, or such other measure as the Court may determine, and her title thereto be quieted against the adverse claims of the defendants and each of them and that they be barred and forever estopped from having or claiming any right or title therein.

(d) That the State of California be barred and forever

estopped from having or claiming any right or title to divert and use more than an equitable share of the waters flowing in said river, to be fixed by the Court, such share in no event to exceed the limitation of use of said waters as agreed and fixed by said Act of the Legislature of said state approved March 4, 1929.

(e) That it be provided in the final decree to be entered herein that the diversion and use by the defendants of any part of plaintiff's equitable share of the waters of said stream as found and fixed, pending the diversion and use thereof by the plaintiff, shall not constitute prior appropriations and give to the state so diverting and using the same, or any part thereof, a superior right over the State of Arizona in the future enjoyment and use of its full equitable share of said waters on a basis of parity of right with the defendants in a like enjoyment and use of their respective equitable shares of said waters.

(f) That it be provided in the final decree to be entered herein that in the event the equitable rights of the Mexican Republic to the use of the waters of the Colorado River, as they now exist under natural conditions on the stream, be increased by reason of the use of the larger quantity of said waters made available for the irrigation of Mexican lands by the works on said river being constructed by or for California and her use of said waters, as in this Bill of Complaint alleged, that California's equitable share of the waters of said stream shall bear the entire burden of such increase in the Mexican Republic's equitable

share and that neither the plaintiff nor California's co-defendants shall be required to make contribution thereto from their respective equitable shares.

(g) That the Court retain jurisdiction of this cause after final decree for the purpose of executing, administering and enforcing its decree, if need be, through the agency of a Commissioner or River Master, or otherwise, as the Court may elect.

(h) That the plaintiff have such other and further relief in the premises as it may be entitled to in equity and good conscience.

JOHN L. SULLIVAN,
Attorney General,
JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

November, 1935.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1935

No. Original

STATE OF ARIZONA,

Plaintiff,

vs.

STATE OF CALIFORNIA,
STATE OF COLORADO,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF UTAH AND
STATE OF WYOMING,

Defendants.

PETITION FOR REHEARING
AND
ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

JOHN L. SULLIVAN,
Attorney General,
Solicitor for Arizona.

JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys, of Counsel.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

IN THE
Supreme Court of the United States

OCTOBER TERM, 1935

No. Original

STATE OF ARIZONA,

Plaintiff,

vs.

STATE OF CALIFORNIA,
STATE OF COLORADO,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF UTAH AND
STATE OF WYOMING,

Defendants.

PETITION FOR REHEARING

Now comes the State of Arizona, by its Attorney General and Special Attorneys, and petitions the Court for an order granting to the said State of Arizona a rehearing on its Motion for Leave to File Bill of Complaint, and in support of said Petition for Rehearing the State of Arizona says that in the opinion and decision of the Court denying said Motion of the State of Arizona for Leave to File Bill

of Complaint there is manifest error, inadvertently arrived at, in this:

1. The opinion and decision of this Court finds and holds that "Arizona does not assert any right to the benefit of the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water", when in truth and in fact Arizona has at all times, and now does, assert a right to the benefit of the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its use of the water.

2. The opinion and decision of this Court finds and hold that "The allegations and prayer of the bill are of significance only if Arizona, in advance of any act of appropriation, and independently of any rights which she may have acquired under the Boulder Canyon Project Act, may demand a judicial decree exempting the available water of the river, or some of it, from appropriation by other states until the indefinite time in the future when she or her inhabitants may see fit to appropriate it" when in truth and in fact the relief sought by the State of Arizona under its bill is not independent of "any rights which she may have acquired under the Boulder Canyon Project Act" but one of the grounds for relief asserted and relied upon by the State of Arizona in its bill is the benefit of the undertaking of California, in conformity to the Boulder Canyon Project Act, limiting California's use of the water.

3. The opinion and decision of this Court herein, de-

prives the State of Arizona and the inhabitants thereof, of their property without due process of law in contravention to the Fifth Amendment to the Constitution of the United States, in that, while not over-ruling the previous opinion and decision of this Court in Arizona vs. California, 283 U. S. 423, it is directly contrary to and inconsistent with said previous opinion and decision in that the opinion and decision herein holds that the United States, by the Boulder Canyon Project Act, has appropriated all the surplus water not already appropriated, or "has undertaken, in the asserted exercise of its authority to control navigation, to impound, and control the disposition of, the surplus water in the river not already appropriated", while the opinion and decision of this Court in Arizona vs. California, 283 U. S. 423, which is not over-ruled by the opinion herein, holds and declares that "the Boulder Canyon Project Act does not purport to abridge the right of Arizona to make, or permit, additional appropriations of water flowing within the state or on its boundaries."

WHEREFORE, petitioner prays that a rehearing on petitioner's Motion for Leave to File Bill of Complaint be granted.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,

CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1935

No. Original

STATE OF ARIZONA,

Plaintiff,

vs.

STATE OF CALIFORNIA,
STATE OF COLORADO,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF UTAH AND
STATE OF WYOMING,

Defendants.

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

PROPOSITIONS 1 AND 2

Since the issues presented by the first two Propositions of our Petition for Rehearing are similar, they will be presented together.

THE COURT'S OPINION

The Court by its opinion and decision held that:

1. "Arizona does not assert any right to the benefit of

the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water”.

2. “The allegations and prayer of the bill are of significance only if Arizona, in advance of any act of appropriation, and independently of any rights which she may have acquired under the Boulder Canyon Project Act, may demand a judicial decree exempting the available water of the river, or some of it, from appropriation by other states until the indefinite time in the future when she or her inhabitants may see fit to appropriate it”.

THE ALLEGATIONS AND PRAYER OF THE BILL

The bill of complaint contains, among others, the following allegations:

At pages 6 and 7 of Bill.

“The State of Arizona, by its Attorney General and Special Attorneys, brings this suit against the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming to obtain a judicial determination of:

* * * * *

“(b) The maximum quantity of the waters of the Colorado River which California may divert and consumptively use under the limitations imposed upon such use by Section 4 (a) of Boulder

Canyon Project Act and an act of the Legislature of California, approved March 4, 1929, entitled, "An Act to limit the use by California of the waters of the Colorado River, etc."

At pages 21, 22 and 23 of Bill.

"XVI

"Boulder Canyon Project Act

"* * * * * Said Act Provides:

* * * * *

"In Section 4 (a), that it shall not take effect and that no authority shall be exercised thereunder unless and until * * * * *

'further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act in all water necessary for the supply of any rights which may now exist, shall not exceed 4,400,000 acre feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact;'

At pages 24, 25, 26 and 27 of Bill.

"XVII

"California's Limitation of Her Use of the Waters of the Colorado River

"Pursuant to the provisions of Section 4 of the Boulder Canyon Project Act, quoted in the preceding Paragraph XVI, it was enacted by the Legislature of the State of California, by an act entitled, 'An Act to limit the use by California of the waters of the Colorado River in compliance with the act of congress known as the 'Boulder canyon project act,' approved December 21, 1928, in the event the Colorado river compact is not approved by all of the states signatory thereto,' approved by the Governor of the State of California on March 4, 1929, as follows:

'Section 1. * * * the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming as an express covenant and in consideration of the passage of the said 'Boulder canyon project act' that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California including all uses under contracts made under the provisions of said 'Boulder canyon project act,' and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph 'a' of Article III of

the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

'Section 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of Section 4 (a) of the said 'Boulder canyon project act' and this act shall be so construed.'

"XVIII

"California's Maximum Legal Rights

"The net virgin flow of the Colorado River and its tributaries is the sum of the undepleted flows of said river at Imperial Dam and of the Gila at its confluence with the main stream at Yuma. By deducting from the net flow so obtained the waters apportioned by the Colorado River Compact we obtain the 'excess or surplus waters unapportioned by said compact' within the meaning of Section 4 (a) of the Boulder Canyon Project Act and the Act of the Legislature of California, approved March 4, 1929. The unapportioned water is computed in the following manner:

* * * * *

"Therefore the maximum quantity of Colorado River water which California may legally divert and consumptively use is:

"Of water apportioned by par. (a),

Art. III, Compact 4,400,000

"One-half waters unapportioned 1,085,500

"California's maximum legal rights 5,485,500

* * * * *

UNIVERSITY OF COLORADO LIBRARY
Boulder

"XIX

**"Water Contracts Between Secretary of Interior
and California Corporations**

* * * * *

"Plaintiff alleges that the total of the waters for the storage and delivery of which it was so contracted is substantially the entire amount which may legally be diverted from said river and consumptively used in the State of California under the terms of said statutory contract between the State of California and the United States, and is far in excess of California's equitable share of said waters."

At page 30 of Bill.

"XXV

"Proposed Uses by California Corporations

Notwithstanding the fact that California, by said Act of her legislature, agreed irrevocably and unconditionally with the United States, for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, as an express covenant and in consideration of the passage of the Boulder Canyon Project Act, to limit her aggregate annual consumptive use of the waters of the Colorado River to an amount not exceeding 5,485,500 acre feet, California and her corporations hereinafter named propose to divert from said river and consumptively use in California an aggregate of 14,330,000 acre feet per year, in which they are being aided and abetted by the United States by its construction and financing of

works and facilities by means of which said diversions and uses will be effectuated. * * *

At pages 34 and 35 of Bill.

"XXVII

"California Claims Priority Under the Law of Appropriation

* * * * *

"In this connection, plaintiff is advised by counsel and, upon such advice, alleges * * * that her (California's) claims of right to appropriate any greater amount of said water are fictitious and void and that in no event may she lawfully divert from said river and consumptively use in any one year in excess of 4,400,000 acre feet of the water apportioned by paragraph (a) of Article III of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by said compact."

(Brackets are ours.)

At pages 45 and 46 of Bill.

"Prayer for Relief

"WHEREFORE, the plaintiff, State of Arizona, prays:

* * * * *

"(d) That the State of California be barred and forever estopped from having or claiming any right or title to divert and use more than an equitable share of the waters flowing in said river, to be fixed by the

Court, such share in no event to exceed the limitation of use of said waters as agreed and fixed by said Act of the Legislature of said state approved March 4, 1929."

From the foregoing allegations of the bill of complaint it is clear that Arizona is asserting a right to the benefit of the "undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water" and that the allegations and prayer of the bill are, in part, dependent upon Arizona's rights under the Boulder Canyon Project Act and the undertaking of California in conformity therewith. No stronger argument can be made in support of these propositions of the Petition for Rehearing than a statement of these allegations of the bill.

**STATEMENT IN ANSWER BRIEF OF STATE
OF ARIZONA REFERRED TO BY THE
COURT IN ITS OPINION.**

The holding of the Court complained of under grounds 1 and 2 of the Petition for Rehearing appears to be based upon the following statement in the answer brief of the State of Arizona: (page 56 of Answer Brief)

"In her Bill, Arizona claims nothing either under or against the United States, the Boulder Canyon Project Act, the Colorado River Compact, or the Boulder Project itself. * * *"

Standing alone this statement may perhaps warrant the

interpretation given to it by the Court. However, considered in connection with the subject matter of the paragraph wherein the statement appears, we believe it is apparent the Court has inadvertently given to the statement an erroneous intent and meaning.

The subject of the paragraph is shown by its heading which reads as follows: (page 55 of Answer Brief)

“Granting the Relief Which Arizona Prays in Her
Bill Would Not Conflict With the Provi-
sions of the Boulder Canyon Act or the
Colorado River Project”

While we concede that the statement could have been more happily worded, what we were attempting to say was that Arizona, by its bill, claimed no *affirmative* rights under the Boulder Canyon Project Act—that is, Arizona’s claim by its bill, to a right to an equitable share of the water of the river was not based upon any claim that the Boulder Canyon Project Act affirmatively gave to Arizona a particular share of the water of the river. This is far from saying that “Arizona does not assert any right to the benefit of the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water.” The allegations of the bill quoted *supra* show that Arizona does assert a right to the benefit of this undertaking of California. But such right gives Arizona no affirmative right to water but only a right to enforce upon California the limitation which she has undertaken.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

Arizona's claim, by its bill, to an affirmative right to an equitable share of the water is based upon the right of the state to appropriate to use within the state waters of a river which flows within or through the state. Such right on the part of the State of Arizona does not arise under the Boulder Canyon Project Act, nor, under the holding of this Court in *Arizona vs. California*, 283 U. S. 423, was the assertion of this right on the part of Arizona to appropriate the waters of the river the assertion of any right in contravention to the provisions of the Boulder Canyon Project Act.

We submit that there is manifest error in the opinion and decision of the Court, inadvertently arrived at, in finding and holding that:

1. "Arizona does not assert any right to the benefit of the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water".

2. "The allegations and prayer of the bill are of significance only if Arizona, in advance of any act of appropriation, and independently of any rights which she may have acquired under the Boulder Canyon Project Act, may demand a judicial decree exempting the available water of the river, or some of it, from appropriation by other states until the indefinite time in the future when she or her inhabitants may see fit to appropriate it",

all to the injury and prejudice of the State of Arizona in the protection and enforcement of its right to the benefit

of the undertaking of California, in conformity to the Boulder Canyon Project Act, to restrict its own use of the water.

PROPOSITION 3

3. The opinion and decision of this Court herein, deprives the State of Arizona and the inhabitants thereof, of their property without due process of law in contravention to the Fifth Amendment to the Constitution of the United States, in that, while not over-ruling the previous opinion and decision of his Court in *Arizona vs. California*, 283 U. S. 423, it is directly contrary to and inconsistent with said previous opinion and decision in that the opinion and decision herein holds that the United States, by the Boulder Canyon Project Act, has appropriated all the surplus water not already appropriated, or "has undertaken, in the asserted exercise of its authority to control navigation, to impound, and control the disposition of, the surplus water in the river not already appropriated", while the opinion and decision of this Court in *Arizona vs. California*, 283 U. S. 423, which is not over-ruled by the opinion herein, holds and declares that "the Boulder Canyon Project Act does not purport to abridge the right of Arizona to make, or permit, additional appropriations of water flowing within the State or on its boundaries."

The conflict in the opinion of the Court herein with the previous opinion in *Arizona vs. California*, 283 U. S. 423, is apparent upon reading the quoted parts of the two opin-

ions. The previous opinion held that Arizona's right to appropriate all or any part of the water unappropriated at the time the Boulder Canyon Project Act became effective was not impaired by that Act. The opinion herein, on the other hand, holds that the United States by the Act has taken *under its control the disposition of all surplus water not already appropriated.*

The present opinion does not over-rule the previous opinion. By reason thereof the rights of the State of Arizona are made impossible of determination and the property of the State of Arizona and its people is taken without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

We respectfully submit that an order granting a Rehearing on the Motion of the State of Arizona to File Bill of Complaint should be entered.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

CERTIFICATE OF GOOD FAITH

Come now John L. Sullivan, Attorney General, James R. Moore and Charles L. Strouss, Special Attorneys, So-

licitors for plaintiff, and certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,
CHARLES L. STROUSS,
Special Attorneys,
Solicitors for Plaintiff.

CALIFORNIA DEFENDANTS

Exhibit No. 7507

Identification:

Admitted:

EXTRACTS FROM STATEMENT OF GOVERNOR

R. C. STANFORD OF ARIZONA TO BOULDER DAM

POWER CONFERENCE, DATED APRIL 16, 1937

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

1-460
November 1960

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

JUN 3 1960, 19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
that each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Statement of Governor R. C. Stanford of Arizona to Boulder
Dam Power Conference called by Hon. Harold L. Ickes,
Secretary of Interior at Washington, D. C., April 16,
1937.

Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.

Statement of
Governor R. C. Stanford of Arizona
To Boulder Dam Power Conference

Called by Hon. Harold L. Ickes, Secretary of the Interior,
At Washington, D. C.

April 16, 1937.

Mr. Secretary and honorable representatives of the Colorado
River Basin States:

I appear before you as governor of the State of Arizona in
response to an invitation from the Honorable Harold L. Ickes, sec-
retary of the interior, to attend this meeting on the subject of
Boulder Dam power contracts, and therefore respectfully submit the
following statement on behalf of the rights and interests of Arizona
and those claiming under it in the Colorado River and its tributaries

I
LEGAL STATUS

The power contracts which are the subject of this assembly are
pursuant to the terms of the Boulder Canyon Project Act (45 Stat.
1057) approved in 1929 and power regulations issued in accordance
therewith by the secretary of the interior on April 25, 1930. By
Section 13 (a) of said act such power contracts and water contracts
or any other privileges thereunder, as well as the act itself, are
expressly subject to the Colorado River Compact, and same is pro-
vided in Paragraph XIV of the power regulations.

These restrictions are without effect and not binding on the
State of Arizona, which has rejected the compact for fifteen years,
by virtue of decisions of the United States Supreme Court. In the
first and basic Arizona vs. California decision, 283 U. S. 522,
handed down May 13, 1931, the Supreme Court held that Arizona is
not bound nor its rights impaired by the Boulder Canyon Project
Act or the Colorado River Compact, and that "the Act interposes no
legal inhibitions" on execution of Arizona's projects or "with
the exercise by Arizona of its right to make further appropriations
by means of diversions above the dam or with the enjoyment of water
so appropriated."

The Supreme Court significantly extended this protection of
Arizona by its decision in United States vs. Arizona, 295 U. S. 182,
decided May 25, 1935, in which the Court refused to enjoin Arizona
from interfering with construction of Parker Dam by the United States,
and ruled that Arizona's "jurisdiction in respect of the appropri-
ation, use and jurisdiction of an equitable share of the waters flow-
ing therein is unaffected by the Colorado River Compact or federal
reclamation law," of which law the Boulder Canyon Project Act is

a part by Section 14 thereof. In this decision the court reiterated the Boulder Dam had been allowed for navigation only, stating that "the Boulder Canyon Project Act is an example of the exertion of that power".

* * * * *

III

THE COLORADO RIVER COMPACT

The Colorado River Compact, to which Arizona is not signatory and by which it is not bound, includes in its purported allocations present perfected water rights and both the main stream and tributaries of the Colorado River System. As alleged by the Attorney-General of Arizona in the bill of complaint, pages 8 and 22, Arizona vs. California supra, present used waters and rights thereto in Arizona in 1929 amounted to 3,500,000 acre feet, while the compact, and the supplemental tri-state compact, (Sec. 4, Boulder Canyon Project Act, supra), would limit Arizona in perpetuity to 2,500,000 acre feet which is already over-consumed and "less than the quantity of water already appropriated in Arizona and would provide for water for future appropriation in said state." Thus the compact would allocate Arizona 700,000 acre feet less than it now uses, and in dry years by Articles III and VIII thereof would have required Arizona to supply any Mexican water deficiency from its developed reservoirs, projects and cities, bring ruin to the state and its people.

The California Limitation Act, Ch. 16, Stats. of Calif., 1929 P. 35, includes the water divisions of both compacts, which would give California and Mexico practically the entire river, or 4,400,000 acre feet plus one-half of the surplus water, amounting to approximately 14,330,000 acre feet annually (Bill of Complaint, Arizona vs. California, decided May 25, 1936, 50 S. Ct. Reports, Law Editors' Advance Opinions, page 377). By articles III and VIII of the compact, Mexico would receive all surplus water.

It would be disastrous for Arizona, being situated in the higher elevations and having one-half of the irrigable land and 92% of the power to be limited to any permanently bound, stipulated amount, as all surplus waters would then be contracted or forced to Mexico. Such would prevent the maximum use obtained through re-use, reflux and reprecipitation of water, which is the major portion of the entire river and increases the amount in succeeding years, for when higher elevations are given preference, the same water will be counted as water appropriations a multiplicity of times and will serve dams and lands below. On this principle the application of water by the upper basin states within the river system will not deplete the flow of the river at the Utah-Arizona line.

* * * * *

R. C. Stanford
Governor of Arizona

Washington, April 16, 1937.

CALIFORNIA DEFENDANTS

Exhibit No. 7508

Identification: Admitted:

POSTAL TELEGRAPH FROM R. C. STANFORD,
GOVERNOR OF ARIZONA, TO NATHAN MARGOLD,
SOLICITOR, DEPARTMENT OF THE INTERIOR,
DATED MAY 24, 1937

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

1-480
November 1960

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

JUN 3 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
each annexed paper is a true copy of a document comprising part of the
records of the Department of the Interior:

Postal Telegraph dated May 24, 1937, to Nathan Margold,
Solicitor, Department of the Interior, from R. C. Stanford,
Governor of Arizona, regarding bill to reduce interest
rates provided by Section 2, Paragraphs (B) and (D) of
Boulder Canyon Project Act.

In testimony whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.

Walter D. Doherty
Chief Clerk.

P. J. TALDMAN

C. S. Y.

COLORADO RIVER

Phoenix, Arizona,
May 24, 1937.

Nathan Margold
Solicitor
Department of the Interior
Washington, D. C.

Joel David Wolfson, secretary of Boulder Dam Power Contracts Hearing before Secretary of Interior Ickes, has wired asking me to telegraph you any comments on bill you have been requested by California congressional representatives to help draw and which they intend to submit to house rivers and harbors committee, which bill reduces interest rates provided by Section 8, Paragraphs (b) and (d) of Boulder Canyon project act and present power contracts made pursuant thereto from four to three percentum per annum, defers interest payments, etc. He stated the bill does not at this time bear approval of secretary of the interior

The Boulder Canyon project act is controlled by the Senate. The Colorado River Compact which Arizona has rejected since 1923, and when congress passed said act despite Arizona's refusal to ratify the compact, Arizona was compelled to file suit in United States supreme court which held Arizona is not bound by said compact, Boulder act or dam and that Arizona's present and future rights would not be impaired thereby. I suggest that the new bill should repudiate the compact and the California-Nevada-Arizona Tri-State Compact. (Whereas Arizona is compelled to protest against this bill and all congressional address to Arizona operating thereon or including present Boulder act and contracts subject to the compact which if Arizona had been bound thereby would have caused eventual dissolution of this state.

All of Arizona's present used and future waters would be impaired by the compact since any and all surplus water that the upper basin states do not use and which surplus will include all waters given to them by the compact will eventually return to the lower basin states and Mexico but Arizona by the compact is prohibited from its use. The surplus over and above the aggregate river the upper and lower basins is also given by the compact to 2,000,000 acres owned by California land syndicates in Mexico. California by Section 4(a) of the Boulder act and the limitation act pursuant thereto passed by its legislature in 1929 has limited itself and Mexico to 2,400,000 acre feet plus one-half of the surplus or practically the whole river leaving out of the compact allotment to the lower basin 2,800,000 acre feet to Arizona which for future use would leave Arizona 700,000 acre feet less than nothing as Arizona already uses 2,000,000 acre feet. In addition to this, Arizona by the compact is dry

years practically would have to guarantee Mexico's deficiency, thereby impairing our present stored and used and future waters throughout Arizona and its tributaries. California and Nevada have no water to give.

It is inconceivable under the circumstances especially when Arizona is willing for the upper basin states to use what water they can use within the river system that they and California still insist on Arizona denuding itself by signing the compact. Arizona continues this cooperative attitude, but officially protests hereby against the compact and warns and notifies you and other concerned that combined water and power filings were initiated in 1916 and made beginning in 1923 and due diligence kept up since then for and on behalf of State of Arizona and water users before the Arizona Water Commissioner and Federal Power Commission by which the unappropriated waters of the Colorado River and its tributaries have been appropriated, which projects, filings and diligence are more fully set out in my oral and written statements and exhibits before Secretary of the Interior taken at said hearings in Washington April 16, 1937.

R. C. Stanford
Governor of Arizona

CALIFORNIA DEFENDANTS

Exhibit No. **7509**

Identification:

Admitted:

LETTER FROM HERBERT B. MAW, GOVERNOR OF UTAH,
TO SECRETARY OF THE INTERIOR HAROLD L. ICKES,
DATED AUGUST 16, 1943, WITH ENCLOSURE, LETTER
FROM WILLIAM R. WALLACE, GROVER A. GILES,
ORA BUNDY, AND ED. H. WATSON TO SECRETARY OF
THE INTERIOR HAROLD ICKES, DATED JULY 15, 1943

LIBRARIES
UNIVERSITY OF COLORADO
BOULDER

I-480
November 1944

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

MAY 31 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Letter dated August 16, 1943, to Secretary Ickes, with enclosure, regarding Utah's share of III(a) water, from Governor Herbert B. Mav, State of Utah, and reply dated August 31, 1943, from Assistant Secretary of the Interior, Oscar L. Chapman.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.

W. A. R. Roberts
Chief Clerk.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER



705
032. COLO. RIVER

COLORADO RIVER



STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY 1

HERBERT B. MAW
GOVERNOR

August 16, 1943

INTERNATIONAL
SECRETARY'S
MAIL CENTER
AUG 23 1943
TO BUREAU OF
RECLAMATION

The Honorable Harold L. Ickes, Secretary
United States Department of the Interior
Washington, D. C.

Dear Secretary Ickes:

There is enclosed herewith a statement as
to the just claim of Utah for a share of
"A" water as described by the Colorado River
Compact.

It seems unfortunate that California and
Arizona have been unable to agree upon their
respective shares, and for that reason an
unnecessary burden is placed upon your office.

Utah remains ready to meet at any time to
make an agreement with her sister States and
regrets that it seems necessary to ask your
aid in securing for her water users a fair
share of the waters of the Colorado River
and in an equal priority thereof.

Sincerely yours,

Herbert B. Maw

Governor

*Cal's 22302
101 - Utah, State of*



THE STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL
SALT LAKE CITY

July 15, 1943

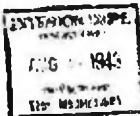
GROVER A. GILES
ATTORNEY GENERAL

S. D. HUFFAKER
DEPUTY ATTORNEY GENERAL

A. JOHN ROBERTS
CLERK & RECORER
A. V. RIFE
CLERK & RECORER
EDWARD J. SHAW
ASSISTANT ATTORNEY GENERAL

RECEIVED
AUG 23 1943
102-AM-106

Honorable Harold Ickes
Secretary of the Interior
Washington, D. C.



Dear Mr. Secretary:

We respectfully ask that the members of your legal staff who are now or soon may be examining proposed contracts for the purchase of waters of the Colorado River be advised that the State of Utah is preparing to ask for contracts upon a basis of equal priority for her share of "A" waters, as defined by the Colorado River compact. Certain facts are pertinent:

1st. The Colorado River Compact allots to the lower basin the annual consumptive use of "A" water	7,500,000 A. Ft.
and a right to the use of "B" water	1,000,000 " "
A total of	8,500,000
2nd. The Boulder Project not suggested that the 7,500,000 A. Ft. "A" water be divided:	
California	4,400,000 A. Ft.
Arizona	2,800,000 " "
Nevada	300,000 " "
Total	7,500,000 A. Ft.

This is a "suggestion" and is in no sense binding on any State. Of course, Utah and New Mexico are each entitled to a fair share of "A" waters and no contracts should be given that would in any way cloud their titles to their fair shares of "A" waters--which carry valuable priority.

The present consumptive use of "A" water in Utah (within the lower basin) from the Virgin River, Santa Clara and Kanab Creeks (on 23,000 acres) is 69,000 acre feet.

The proposed developments are:

- 1st. The building of the Bench Creek Reservoir, canals and

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

power plants (two drops--110 ft. and 500 ft.)

Reservoir Capacity	60,000 A. Ft.
Dead water	10,000 " "
Evaporation loss	9,000 " "
Leaving for annual diversion	41,000 " "

There is an alternative project (much more expensive) that would permit the use within Utah of an additional 10,000 acre feet.

2nd. The building of a reservoir on Santa Clara Creek of a capacity of 20,000 acre feet will safeguard present use, provide supplemental water for 2,000 acres now cultivated and a full water supply for an additional 2,000 acres of new land. At 3 acre feet per acre this development will require 6,000 acre feet on the new lands and 3,000 acre feet on the old lands. The evaporation loss will be 3,000 acre feet--making the additional consumptive use on Santa Clara Creek 12,000 acre feet.

3rd. Development on Kanab Creek will require the consumptive use of an additional 5,000 acre feet.

RECAPITULATION:

Present use of water in Utah within the Lower Basin:

69,000 A. Ft.

Proposed development on the Virgin River (Bennet Lake Reservoir) 60,000 " "

Or possible alternate larger Virgin River Development an additional 10,000 " "

Proposed development on Santa Clara Creek 12,000 " "

Proposed development on Kanab Creek 5,000 " "

Possible small reservoirs 10,000 " "

Total 166,000 " "

There will be a substantial return flow from the use of waters of the Bennet Lake Reservoir (or the alternate larger

reservoir at Virgin City) and a loss in the distribution system, but the return flow may be larger than the distribution loss by possible 17,000 acre feet.

It is evident that Utah should have contracts for the use of an amount of "A" water which together with the "A" water Utah now uses will total 150,000 acre feet--distinctly described in the contracts as part of the 7,500,000 acre feet "A" water allocated to the lower basin by the Colorado River Compact. New Mexico also is fairly entitled to a share of "A" waters. Contracts for the sale of "A" waters to California, Arizona and Nevada should be limited to a total amount that is less than the 7,500,000 acre feet of "A" water allocated to the lower basin by 150,000 acre feet fairly belonging to Utah and by an amount of "A" water fairly belonging to New Mexico.

It seems unfortunate that California (in 1929) was given contracts for 5,362,000 acre feet of water--plus evaporation loss estimated at 900,000 acre feet. However, under the sales contract such water is subject to "available". In answers to questions by Senator Hayden, Secretary Hoover stated there was surplus water "well it 5,000,000 acre feet" annually in the Colorado River (January 30, 1929). There is no such surplus. The proven smaller river and the fair claim of Mexico force each state to be vigilant in insisting that no violation of the terms of the Colorado River Compact be permitted.

The area in Utah within the lower basin is supporting at least 1,200 farm families upon farms that do not exceed an average of three acres per person. Citrous fruits, sugar beet seed and other intensive crops make this possible. Well kept towns, fine schools, churches, recreation halls all testify to the industry and self reliance of a sturdy people.

Nowhere could the conservation of agricultural water supply be of greater value or of higher beneficial use.

W. R. Kallgren
James A. Ariles
 Of the Seven States Committee
 of Fourteen.
Orin Bundy
 Director, Water Resources
 Development.
Ed. W. Watson
 Utah State Engineer.

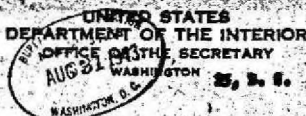
Approved:

Hubert H. Harrison
 Governor of Utah.

275
 24*

LIBRARIES
 UNIVERSITY OF COLORADO
 BOULDER

TO DIRECTOR
AUG 31 1943
POSTAGE PAID



RECL. COPY

The Honorable
The Governor of Wash.
Salt Lake City 1, Wash.

AUG 31 1943

Sir:

This will acknowledge receipt of your letter of August 16 to the Secretary, enclosing a letter dated July 15, regarding Utah's share of III(a) water, as defined by the Colorado River Compact. The Department is glad to have this information. I assume that any action taken in respect to this matter will be initiated through the Committee of Fourteen consistent with its announced policy regarding Colorado River problems.

You are aware, of course, that the existing authority of the Secretary, under Section 5 of the Boulder Canyon Project Act (15 Stat. 1977), is limited to contracting for the storage and delivery of water from Lake Mead.

Very truly yours,

((Sgd.)) OSCAR L. CHAPMAN
Oscar L. Chapman,
Assistant Secretary.

276

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7510

Identification:

Admitted:

EXTRACTS FROM HEARINGS ON CALIFORNIA'S
OBJECTIONS TO PROPOSED CONTRACT BETWEEN
UNITED STATES AND ARIZONA FOR DELIVERY
OF WATER FROM LAKE MEAD

Document is Arizona Exhibit 62-A
for identification. Arizona Exhibit 62
includes some of the same extracts.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

HEARING
BEFORE THE
SECRETARY OF THE INTERIOR

HEARING ON CALIFORNIA'S OBJECTIONS TO PROPOSED
CONTRACT BETWEEN UNITED STATES AND ARIZONA FOR
DELIVERY OF WATER FROM LAKE MEAD.

Room 5156
Dept. of Interior
Washington, D.C.
February 2nd, 1944
2:30 p. m.

BEFORE:

HON. HAROLD H. ICKES, Secretary of the Interior.

APPEARANCES:

ARVIN B. SHAW, Asst. Attorney General for
the State of California.

CHARLES A. CARSON, for the Colorado River
Commission.

SIDNEY CARTER, for the Arizona Highline
Reclamation Association.

S. O. HARPER, for the Office of the Solicitor.

- - - -

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

[Mr. Carson of Arizona:]

And all of the water for which we are contracting here, or asking you to contract, we bear the burden in Arizona of its availability, under the Act, and the Compact, and there is not in this contract now presented any construction of either the compact, the Project Act or the California limitation.

If there is any ambiguity in any of these documents, it is not in this contract. nor is there any administrative determination. But rather the ambiguity arises from the California limitation, the Colorado River Compact and the Boulder Canyon Project Act, which we leave exactly as they now are.

And Mr. Secretary, please bear in mind that Congress, following a meeting of the Governors of the Colorado River Basin states, took over and enacted into the Boulder Canyon Project Act, which is now the law of the land and of the river, provisions destined to protect Arizona, if you please, and the other Colorado River Basin states, by requiring that California, before any money should be spent under that act, must by act of her legislature agree unconditionally and irrevocably what the total use of water of the Colorado

River in California should never exceed 4,400,000 acre feet of the water apportioned to the lower basin by Article 3(a) of the Colorado River Compact, but is not more than one half of the water, surplus water, or water unapportioned by that compact.

Now, the water of Lake Mead, which is behind Boulder Dam in Lake Mead, is solely under your jurisdiction. Nobody can use it without a contract from you. There comes down the main stream of the river 7,500,000 acre feet of water a year.

California now gets 4,400,000 acre feet. We have all by common consent agreed that Nevada may have 300,000 acre feet. There is left 2,800,000 acre feet which, Mr. Secretary, under the California limitation, under the compact, the Act, can not be lawfully used anywhere else in the U.S.A. except within the Borders of Arizona. H

Now, we go further than that, in this contract submitted to you for approval, we agree, and recognize the right of the United States and the State of California to contract for water of the Colorado River for use in California up to the extent of the California limitation.

We are not making the limitation, nor are you. Whatever that may be construed to be, if it applies to present contracts, they are apply protected and they can not be hurt.

If California has in her boundaries any other lands

which she believes can be developed by waters of the Colorado River, we have agreed to that, with the only condition that it be within the California limitation, which, Mr. Secretary, is binding upon California.

It involves the honor and integrity of the sovereign state and people of California, and which, Mr. Secretary, if you please, is binding upon the United States for the benefit of the other states in the basin.

Now, I have touched upon the point made by Mr. Shaw as to any ambiguity in 7(b). There is no ambiguity, and I think in one of these meetings that Mr. Shaw himself said that there could be no possibility of any confusion or overlapping on actual deliveries of water.

As to language, it is amply protected by Article 10 of this contract, which reserves to California, as well as to us, and again, Mr. Secretary, California is not a party to this, nor bound by a word in it -- but we reserve to California as to ourselves "This contract shall not impair the right of Arizona and other states and the users of waters therein to maintain, prosecute or defend any action respecting, and it is without prejudice to, any of the respective contentions of said states and water users, as to (1) the intent, effect, meaning and interpretation of said compact and said act; (2) what part of any waters used or contracted for by any of them falls within Article

1/ Apparently the page numbers were erroneously marked by the reporter. There is no page numbered 23. [Footnote by California counsel.]

3(a) of the Colorado River Compact; (3) what part, if any, is within Article 3(b) thereof; (4) what part, if any, is excess or surplus waters, unapportioned by said compact, and (5) what limitation on use, rights of use, and relative priorities, exist as to waters of the Colorado River System, provided, however, that by these reservations there is no intent to disturb the apportionment made by Article 3(a) of the Colorado River Compact between the Upper Basin and the Lower Basin."

It can not be more clearly stated, I think, than it is in this present language of this contract.

This contract has been gone over by all these engineers and lawyers of the basin states, by the engineers and lawyers of the Bureau of Reclamation, and we think that it fully and amply protects every interest in that basin.

The question of the surplus waters, upon which Mr. Shaw has called attention, is left by this contract to whatever interpretation is placed upon the Colorado River Compact, the Boulder Canyon Project Act or the California limitation,

It is not defined in this contract what we mean by surplus waters. It is waters available for use in Arizona, under the compact, the act and the California limitation, and we take that burden, not California. Nothing in here can bind California.

Now, Mr. Secretary, as we view this, as we view the entire matter, the only result or the only benefit to anybody whatever by the denial by you of this Arizona contract would inure to land in Mexico and the people who desire to serve those lands in Mexico, and it can not aid California.

If their present contracts, or prospective uses in California are within the California limitation, we in this contract have recognized their right and your right to so utilize the waters of the river up to the extent of that limitation.

We have also recognized the rights in this contract of the states of Utah, New Mexico and Nevada, those portions of those states which are in the lower basin, to share in apportionment made to the lower basin, and in the surplus or unapportioned water, and we have agreed here to protect and recognize the rights of Wyoming, Colorado, Utah and New Mexico, and in the parts of those states which are in the upper basin.

Further than that, we come here and we recognize and ratify the Colorado River Compact before this contract can ever become effective, and then we thereby settle the questions on that river for the benefit of the United States, and all the other states, except as to the contention of California, which is left, as it must be left, to depend upon the ultimate construction of the Act, the Compact, and

the California limitation.

Why I say it must be left there is for this reason: California's request, as stated in their brief, is to say to you, Mr. Secretary, as the agent of the Government of the United States, that "I will not permit any water under my control to be put on federal lands under my control or other lands within the boundaries of the State of Arizona unless and until Arizona comes in here and agrees to the California construction of the Act, the Compact and the California limitation."

* * * * *

If this contract is approved and signed by you, I do not believe that the questions of construction, as between Arizona and California of the terms of the compact, the act and the California limitation will ever become the subject of litigation. I say that for this reason, that I believe there will be ample water in that river to supply the California contracts, and to supply our right under this contract.

If, unfortunately, anything should ever develop that would make it advisable for either state to bring that litigation, why, then the rights of California under their contracts, and the rights of Arizona under this contract would depend, not upon the terms of this contract or its language, but upon the construction of the Colorado River Compact, the Boulder Canyon Project Act, and the California

limitation, because, Mr. Secretary, we bring into this contract every term of all three documents, and it is subject to them all.

And then to protect the United States, we make the obligation of the United States to deliver water dependent upon the availability of that water, under the Act, the Compact and the California Limitation.

CALIFORNIA DEFENDANTS

Exhibit No. 75.1.1

Identification:

Admitted:

EXTRACTS FROM STATEMENT ON BEHALF OF THE
STATE OF ARIZONA IN SUPPORT OF EXECUTION
OF THE PROPOSED [ARIZONA WATER DELIVERY]
CONTRACT BEFORE THE DEPARTMENT OF THE
INTERIOR, HON. HAROLD L. ICKES, SECRETARY,
DATED JANUARY 1944

Calif. Ex. 1841 is also an extract
from this statement.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

223.02.
COLORADO RIVER

BEFORE THE
Department of the Interior
OF THE
UNITED STATES

1/18/44

HONORABLE HAROLD L. ICKES, Secretary,
WASHINGTON, D. C.

IN RE: THE PROPOSED CONTRACT WITH
STATE OF ARIZONA PENDING BEFORE
THE SECRETARY OF THE INTERIOR AND
PROVIDING FOR STORAGE AND DELIV-
ERY OF WATER FROM LAKE MEAD;
BOULDER CANYON PROJECT.

STATEMENT ON BEHALF OF THE STATE OF
ARIZONA IN SUPPORT OF EXECUTION OF
THE PROPOSED CONTRACT.

Submitted on Behalf of

SIDNEY P. OSBORN,
Governor of Arizona.
THE COLORADO RIVER COM-
MISSION OF ARIZONA,
HENRY S. WRIGHT, Chairman,
NELLIE T. BUSH, Secretary, and
THE STATE OF ARIZONA,
By CHAS. A. CARSON,
Attorney for The Colorado
River Commission of Ari-
zona.

JOHN MASON ROSS,
J. L. GUST,
GENE S. CUNNINGHAM,
CHARLES B. WARD,
Of Counsel.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

It was objected before the Committee of Fourteen by California representatives that there was no assurance the quantity of water set forth in Arizona's contract would be available, and an attempt was made to make it appear that the contract with Arizona might in some way adversely affect users of water in California.

Throughout the Arizona contract and throughout the California contract and the Nevada contracts the obligation of the Secretary to deliver water is condi-

tioned upon the availability of the water. If any part of the water should not be available, either physically or legally, under the terms of the Compact and Boulder Canyon Project Act Arizona will not get that part of the water and there would be no liability on the Secretary or the Bureau of Reclamation or any government officer. In other words, Arizona takes the full burden and the full risk of availability under the terms of the Colorado River Compact and the Boulder Canyon Project Act, and the State of Arizona assumes the burden of supplying its share of any treaty apportionment of water to Mexico and assumes the risk of any construction of the Boulder Canyon Project Act and the Colorado River Compact which might affect the legal availability of water for use in Arizona under such Act and Compact. The State of Arizona assumes the risk, if for any cause the water should not finally be available for delivery for use in Arizona, so there can be no possible merit in the California contention.

There can be no possible interference with any existing right to the use of waters in the State of California. In the contract Arizona expressly recognizes the right of California to contract with the Secretary within the California limitation.

Certainly California should recognize that limitation. It involves the honor and integrity of the sovereign State and people of California, and is binding upon the United States expressly for the benefit of the State of Arizona and the other Colorado River States, but no matter what position they take here it is legally binding upon them and upon the Secretary, and

they cannot avoid it or lawfully use or obtain a contract for any water in excess of it, and the Arizona contract recognizes their right within the limitation, clearly and fully.

Arizona does not view this contract as a substitute for the Tri-State Compact between Arizona, California and Nevada, authorized in the Boulder Canyon Project Act, and referred to above. Either with or without such Tri-State Compact it is necessary for Arizona to have a contract with the Secretary of the Interior for storage and delivery of water from Lake Mead, and this contract does not prevent or, in Arizona's view, render less desirable such Tri-State Compact.

California is not a party to this contract and is not bound by any of its terms. Arizona is bound and California is not hurt.

* * * * *

Respectfully submitted on behalf of

JOHN MASON ROSS,
J. L. GUST,
GENE S. CUNNINGHAM,
CHARLES B. WARD,
of Counsel.

STATE OF ARIZONA,
SIDNEY P. OSBORN, Governor.
THE COLORADO RIVER COMMISSION OF ARIZONA,
HENRY S. WRIGHT, Chairman,
NELLIE T. BUSH, Secretary.
By CHAS. A. CARSON,
Attorney for The Colorado
River Commission of Arizona.

CALIFORNIA DEFENDANTS

Exhibit No. **7512**

Identification:

Admitted:

LETTER FROM GOVERNOR SIDNEY P. OSBORN
OF ARIZONA TO GOVERNOR EARL WARREN OF
CALIFORNIA, DATED MARCH 12, 1947, WITH
SUPPORTING DOCUMENTS:

(1) LETTER FROM GOVERNOR WARREN TO
GOVERNORS OSBORN OF ARIZONA AND PITTMAN
OF NEVADA, DATED MARCH 3, 1947; AND

(2) LETTER FROM GOVERNOR PITTMAN
TO GOVERNOR WARREN, DATED MARCH 6, 1947^{1/}

^{1/} These letters were inserted in the
record by Senator Knowland during Hearings
Before a Subcommittee of the Senate Committee
on Interior and Insular Affairs on S.J. Res.
145, 80th Cong., 2d Sess. (1948), Ariz. Ex.
69 for iden. at 4-7.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

COLORADO RIVER WATER RIGHTS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
EIGHTIETH CONGRESS

SECOND SESSION

ON

S. J. Res. 145

A RESOLUTION AUTHORIZING COMMENCEMENT OF AN
ACTION BY THE UNITED STATES TO DETERMINE
INTERSTATE WATER RIGHTS IN THE
COLORADO RIVER

MAY 10, 11, 12, 13, AND 14, 1948

Printed for the use of the Committee on Interior and Insular Affairs



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1948

COLORADO RIVER WATER RIGHTS

APPENDIX A

STATE OF CALIFORNIA,
GOVERNOR'S OFFICE.
Sacramento 14, March 3, 1947.

Hon. SIDNEY P. OSBORN,
Governor of Arizona, Phoenix, Ariz.

and

Hon. VAIL N. PITTMAN,
Governor of Nevada, Carson City, Nev.

MY DEAR GOVERNORS: We have just completed our review of the comprehensive plan for the Colorado River system as presented by the Bureau of Reclamation, and I am more than ever impressed by the staggering size and complexity of the proposal.

It is quite apparent, and it is admitted in the comprehensive plan, that the 134 projects inventoried will, if constructed, use more water than is available in the river system. This fact will undoubtedly emphasize the differences of opinion concerning the water to be made available to each State. It is therefore of the utmost importance to the lower-basin States that we reconcile our differences as soon as possible.

The negotiations of the past have failed to bring about agreement between Arizona and California but I am of the opinion that there must be some fair basis upon which their respective rights can be determined. The only methods that occur to me are (1) negotiation of a compact, (2) arbitration, and (3) judicial determination.

I would therefore like to suggest that we three Governors of the affected States endeavor first to enter into a compact which will resolve our differences and finally determine our respective rights.

In the event you believe for any reason that this cannot be done, I suggest that we submit all our differences to arbitration, agreeing to be bound by the results thereof.

If this is not feasible, I propose that we join in requesting Congress to authorize a suit to determine our rights in the Supreme Court of the United States, which suit could, if agreeable to the States, be submitted on an agreed statement of facts.

I believe that either method could produce the desired results. If you agree with me, I suggest that the three of us meet at some time and place mutually agreeable for the purpose of further exploring the subject. If we can place our three States in a position to maintain a common front in urging the speedy and orderly development of the Colorado River system, we will have rendered a great service to our people.

Hoping that I may have your reaction to this proposal and with best wishes, I am,

Sincerely,

EARL WARREN, Governor.

APPENDIX B

STATE OF NEVADA,
EXECUTIVE CHAMBER,
Carson City, March 6, 1947.

HON. EARL WARREN,
Governor of California, Sacramento, Calif.

DEAR GOVERNOR WARREN: Replying to your letter of March 3, 1947, will say that I fully agree with you as to the necessity of the three lower Colorado River Basin States reconciling their different views regarding division of the water allotted to them under the provision of the Colorado River compact, and for maintaining a strong unified front for the proper development of the great system. The report of the Bureau of Reclamation on the Colorado River is an inventory of all possible projects and, while of much value, it does not advocate the construction of projects beyond the limit of available water, but if the States do not reach an agreement, such a chaotic condition might develop.

All through the administration of Governor Carville in Nevada, sincere efforts were made by Nevada to bring California and Arizona to an agreement on the tri-State compact authorized under section 4 (a) of the Boulder Canyon Project Act, for division of the downstream water. Nevada's interest was to make secure her small allotment of 300,000 acre-feet, together with an appropriate share of the surplus water, however that surplus might be divided between California and Arizona. Neither Arizona nor California took exception to Nevada's position, so in effect we were only trying to bring Arizona and California to an agreement.

A great number of meetings were held, the three States being represented by the Colorado River Commission of Arizona, the Colorado River Board of California, and the Colorado River Commission of Nevada, with Governor Carville or his representative usually presiding. Nothing was accomplished by these conferences. At last Nevada discontinued negotiations and contracted directly with the Bureau of Reclamation for 300,000 acre-feet of water from Lake Mead storage, as water was urgently needed for the basic magnesium project.

Our experience leads us to an opinion that California and Arizona will be unable to negotiate a compact, and may be unwilling to agree on terms of arbitration. Nevada has spent much time and money in efforts to bring the tri-State compact into being, completely without results.

I am in accord with your thought that the three States, in the absence of other agreement, should join in requesting Congress to authorize a suit in the Supreme Court of the United States to determine our respective rights, and suggest that a method of presentation before the Court be agreed upon between Arizona and California, with which agreement Nevada will concur.

My kindest personal regards.

Sincerely yours,

VAIL PITTMAN, Governor.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

COLORADO RIVER WATER RIGHTS

APPENDIX C

EXECUTIVE OFFICE, STATEHOUSE,
Phoenix, Ariz., March 12, 1937.

HON. EARL WARREN,
Governor, State of California,
Sacramento, Calif.

MY DEAR GOVERNOR WARREN: I have your letter of March 3, addressed to Gov. Vall Pittman and myself, concerning the report of the Bureau of Reclamation on the development of the water resources of the Colorado River Basin.

I presume from your letter that you have completed and sent to the Bureau your comments on the above-mentioned report. I, too, have furnished the Bureau with my comment and am enclosing a copy to you herewith. It will be appreciated if you will furnish me with a copy of your report.

Ever since I have been Governor of Arizona I have endeavored to cooperate with all other States in the Colorado River Basin in all matters of common interest. Arizona has at all times been represented on the Committees of Fourteen and Sixteen, whose name has now been changed to the Colorado River Basin States Committee. Arizona is now represented on the Colorado River Basin States Committee, which committee, as presently constituted and as heretofore constituted, has been very helpful in all matters affecting the interests of the respective States in the Colorado River. Arizona is now cooperating in plans for the utilization of Colorado River water in the respective States within the allocation of water available to them.

I will be pleased to meet you, or with you and Governor Pittman, or with the governors of other interested States, to discuss all matters of common interest to our respective States.

All seven of the Colorado River Basin States—Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming—five of which States are still represented on the Colorado River Basin States Committee, are parties to the Colorado River compact which apportions the water of the Colorado River System as between the upper basin and the lower basin and to Mexico. The compact contains provisions which make utilization of water over and above the apportionment made by the compact of interest to all of the States of the basin.

Portions of Utah and New Mexico are in the lower basin and are entitled to share in the apportionment made to the lower basin and in the use of any available water which is unapportioned by the Colorado River compact.

California, in consideration of the passage by the Congress of the Boulder Canyon Project Act and as a condition precedent to the taking effect of that act and the construction of Boulder Dam, Imperial Dam, and the All-American Canal, by chapter 16, California Statutes, 1929, entered into a statutory agreement with the United States and for the benefit of each of the Colorado River Basin States, irrevocably and unconditionally limiting California's claim to water of the Colorado River to 4,400,000 acre-feet per annum of the apportioned water, plus not more than half of the water unapportioned by the Colorado River compact. The quantity of surplus water, that is, water unapportioned by the compact, varies from year to year and is subject to further apportionment by agreement between all of the compact States after 1963.

Arizona recognizes the right of California to use the quantity of water to which California, by the statutory agreement, is forever limited.

Arizona recognizes the right of Nevada to use 300,000 acre-feet of apportioned water per annum, plus one-twenty-fifth of available unapportioned water, subject to further apportionment of the unapportioned water by agreement between the compact States after 1963.

Arizona has a contract with the United States for delivery for use in Arizona from the main stream of the Colorado River, subject to its availability for use in

Arizona, under the Colorado River compact and the Boulder Canyon Project Act, of so much water as is necessary to permit the beneficial consumptive use in Arizona of main-stream water to a maximum of 2,800,000 acre-feet of the apportioned water, plus one-half of the available surplus, less such part of the one-twenty-fifth thereof as Nevada may use, the quantity of which surplus, of course, varies from year to year, and which surplus is subject to further apportionment by agreement between all of the compact States after 1963.

Arizona does not claim the right to the use of any water to which California is entitled, nor the right to the use of any water to which Nevada is entitled, and I am sure that Nevada does not claim the right to the use of any water to which California is entitled, nor the right to the use of any water to which Arizona is entitled.

It therefore appears that California and Nevada are now in a position to join Arizona in urging the speedy consideration and passage of S. 433 now pending in the United States Senate and H. R. 1598, its companion bill, now pending in the House of Representatives, which are authorization bills to authorize the construction of the central Arizona project, and H. R. 1597, which is an authorization bill to relocate the boundaries of the Gila project heretofore authorized.

I am certain that the passage of these bills and the construction of the works which they seek to authorize, will be of great and incalculable benefit, not only to Arizona, but to California and Nevada and to the United States as a whole.

They are vitally necessary to the welfare and to the economy of the whole Southwest region. They do not in any way interfere with the full use in California and in Nevada of the water to which California and Nevada are respectively entitled.

If either California or Nevada are interested in the promotion and construction of projects for the utilization of water to which they are respectively entitled, I would like to know it in order that I may render such aid as seems appropriate.

It is difficult for me to understand what, if anything further, need be done to place either California or Nevada or Arizona in position to support the utilization in our respective States of our respective shares of the water of the Colorado River, which shares have already been determined by the Colorado River compact, the Boulder Canyon Project Act, the California Limitation Act, the water delivery contracts of the California agencies, the Nevada water delivery contracts, and the Arizona water delivery contract.

However, I will be glad to meet and discuss with you and the Governors of the other Colorado River Basin States, jointly or severally, any matters of common interest, and if at such conference or conferences it should develop that there are any substantial differences, we can consider and perhaps resolve such differences and if it should develop that anything further is necessary, we can consider the proper course to pursue.

During your incumbency we in Arizona have not had the pleasure of a visit from you. We would like to see you over in our State and I will greatly appreciate it if you can arrange to come to Phoenix as soon as possible, either alone or with Governor Pittman, or with such other Governors of the basin States as you desire to have present, in order that any matters which you may desire to further discuss can be gone into fully and thoroughly.

With all good wishes, I am,

Sincerely,

SIDNEY P. OSBORN, Governor.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. **7513**

Identification: Admitted:

EXTRACTS FROM H.R. DOC. NO. 419, 80TH CONG.,
1ST SESS. (1947): DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, THE COLORADO RIVER--
INTERIM REPORT ON THE STATUS OF THE
INVESTIGATIONS AUTHORIZED TO BE MADE
BY THE BOULDER CANYON PROJECT ACT AND
THE BOULDER CANYON PROJECT ADJUSTMENT ACT*

* H.R. Doc. No. 419 is Arizona Exhibit 64.
Concerning this document, the Special Master
ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by
one or more of the parties." (Tr. 387.)

The California defendants propose to
designate in Arizona Exhibit 64 pages 1-5,
15-18, and 55-61 of the first pagination and
pages 9 and 12-13 of the second pagination;
all set forth in the following lettered series
of California exhibits.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

The Colorado River

"A NATURAL MENACE BECOMES A NATIONAL RESOURCE"

*Interim Report on the Status of the Investigations
Authorized To Be Made by the Boulder Canyon
Project Act and the Boulder Canyon Project
Adjustment Act*

UNITED STATES DEPARTMENT OF THE INTERIOR

J. A. Krug, Secretary

BUREAU OF RECLAMATION

Michael W. Straus, Commissioner

JULY 1947

CALIFORNIA DEFENDANTS

Exhibit No. **7513-A**

Identification: Admitted:

LETTER OF TRANSMITTAL FROM THE SECRETARY OF
THE INTERIOR TO THE SPEAKER OF THE HOUSE OF
REPRESENTATIVES, JULY 24, 1947, CONTAINED IN
H.R. DOC. NO. 419, 80TH CONG., 1ST SESS. (1947)

H.R. Doc. No. 419 is Arizona Exhibit 64.
Concerning this document, the Special Master
ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by
one or more of the parties." (Tr. 387.)

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

THE SECRETARY OF THE INTERIOR

WASHINGTON, D. C.

JULY 24, 1947.

HON. JOSEPH W. MARTIN, Jr.,

Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: There is enclosed herewith a copy of my interim report dated July 19, 1947, on the status of our investigations of potential water resource developments in the Colorado River Basin in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. The report is based on a departmental report dated June 7, 1946, and a report dated March 22, 1946, by the directors of regions III and IV of the Bureau of Reclamation. The studies and investigations on which the interim and underlying inventory reports are based were authorized by section 15 of the Boulder Canyon Project Act (45 Stat. 1057, 1065) and section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 774).

Pursuant to section 1 of the Flood Control Act of 1944 the departmental report of June 7, 1946, and the regional directors' report of March 22, 1946, were transmitted to the seven affected States and the Secretary of War for comment. These reports were also transmitted to the Federal Power Commission and the Department of Agriculture. The replies of these States and of the Federal agencies are transmitted herewith and are discussed in the interim report.

As stated in the interim report, existing circumstances tend to preclude the formulation of a comprehensive plan of development of the water resources of the Colorado River Basin at this time. Accordingly, although I cannot now recommend authorization of any project, I am transmitting the report to you in order that the Congress may be apprised of this comprehensive inventory of potential water resource developments in the Colorado River Basin and of the present situation regarding water rights in that basin.

On July 19, 1947, the report was submitted to the President. The Bureau of the Budget has advised me that there would be no objection to the submission of the report to the Congress, but that the authorization of any of the projects inventoried in the report should not be considered to be in accord with the program of the President until a determination is made of the rights of the individual States to utilize the waters of the Colorado River system.

I hope that this report will be published as a House or Senate document.

Sincerely yours,

(Signed) J. A. KRUG,
Secretary of the Interior.

CALIFORNIA DEFENDANTS

Exhibit No. 7513 - B

Identification: Admitted:

LETTER FROM COMMISSIONER OF RECLAMATION TO
THE SECRETARY OF THE INTERIOR, JULY 17, 1947,
APPROVED AND ADOPTED BY THE SECRETARY OF THE
INTERIOR, JULY 19, 1947, CONTAINED IN H.R.
DOC. NO. 419, 80TH CONG., 1ST SESS. (1947)

H.R. Doc. No. 419 is Arizona Exhibit 64.
Concerning this document, the Special Master
ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by
one or more of the parties." (Tr. 387.)

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

Letters of Transmittal

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WASHINGTON, D. C.

JULY 17, 1947.

The SECRETARY OF THE INTERIOR.

SIR: On June 6, 1946, Acting Commissioner William E. Warne transmitted to you a proposed comprehensive report on the development of the water resources of the Colorado River Basin, which Acting Secretary Chapman adopted as the proposed report of the Department on June 7, 1946.

In accordance with the provisions of section 1 of the Flood Control Act of December 22, 1944 (58 Stat. 887), the proposed report was transmitted in June 1946 for review and comment to all of the States of the Colorado River Basin—viz, Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming—and to the Secretary of War. The report was also transmitted to the Federal Power Commission and the Secretary of Agriculture, for their comments. The affected States and the interested Federal agencies have all submitted comments which are transmitted herewith.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

SCOPE AND PURPOSE

The report describes the Colorado River Basin's resources, its present development, and its needs and problems. It presents an inventory of 134 potential projects for water development within the basin and evaluates the over-all benefits and costs of these projects as an indication of what might be expected from full water-resource development. Potentialities for the exportation of water from the Colorado River Basin to adjoining basins also are briefly considered.

With respect to plans for future development, the report is general in character. It states that water-supply limitations will not permit construction of all potential projects described, and also explains that the listing of projects in the report will not preclude the consideration of other projects which additional investigations may show to be desirable. For each of the within-basin projects discussed, it presents estimates of the area of land to be irrigated and the power to be produced, the nature of other expected benefits, and the estimated construction costs. Because many of the projects have not been studied in detail and because of the complex water-right situation, no selection is made of projects for inclusion in the ultimate plan of development, and no initial construction program is proposed. The report does not recommend that the Congress now authorize the construction of any project, but it does

recommend that detailed investigations of potential projects be continued and expanded to obtain adequate information through which the basin States can select and recommend projects for successive stages of development.

The scope and purpose of the report appear generally to have been understood, although, in some instances, they have been misconstrued by some of the commenting States and Federal agencies. A number of comments are directed to the lack of detail in such items as economic analysis of individual projects, water-supply studies, land classification, ground-water investigations, project-operation studies, power-output characteristics and market, quality of water, and silt control. The report, consistent with its scope and purpose, treats all of these subjects generally and does not purport to consider them in detail. The Department should continue and intensify its studies of all the problems related to the development and full economic utilization of the water resources of the basin, and the report so recommends.

With reference to projects for the exportation of water from the natural drainage basin of the Colorado River to adjoining territory, Colorado has noted that export-diversion potentialities in that State are discussed less fully than certain parallel potentialities elsewhere in the basin. In preparing the report, the policy adopted was to give little more than mention to export-diversion projects, leaving their further discussion to reports concern-

ing the territory into which the water is imported. An exception to this rule was made in the case of the Salton Sea Valley of California, since that area already makes use of large amounts of Colorado River water. With this exception, any lack of parallel emphasis on potential export projects is unintentional rather than a matter of partiality or prejudice.

DIVISION OF WATER

Serious consideration was given in the preparation of the report to the possible selection and recommendation of a group of projects for the most beneficial and fullest utilization of the available water supply, that group to comprise a comprehensive plan of development. The utility of such a selection by the Department would have been questionable, however, because of a lack of agreement among the States as to their respective rights to deplete the flow of the river system. The Colorado River compact divides the water between the upper basin and lower basin, but it makes no division among the States within each basin. Your proposed report prompted the appointment of a compact commission, which is now attempting to apportion upper-basin water among the States of the upper basin. Similar action has not yet been taken by the lower-basin States; although congressional resolutions recently have been introduced into the Congress which purport to have

the equivalent objective by calling for adjudication of the waters of the lower basin by court action. The Department of the Interior is assisting the Upper Basin Compact Commission in assembling factual information. It is equally ready to assist the States of the lower basin in the determination of their respective rights.

The water-right situation in the Colorado River Basin is highly controversial. The several documents bearing upon the matter—the Colorado River compact, the Boulder Canyon Project Act, the California Self-limitation Act, the various contracts for the delivery of water from Lake Mead, and the Mexican treaty—are, in important particulars, variously interpreted by the States which are parties to them. In the realization that it was not within the scope or authority of the report to attempt to decide such controversial questions, a deliberate effort was made in its preparation to avoid any interpretation of these documents. Colorado has criticized the report for failing to make such interpretations of the contracts and for failing to limit the inventory of potential projects in the lower basin to those which Colorado considers to be within the lower basin's water right.

Many of the comments by the basin States, particularly a number by Arizona, Colorado, and California, appear to be intended not so much to criticize the report as to explain or advance the commenting State's positions with respect to the division of water of the Colorado River system.

"CONSUMPTIVE USE" VERSUS "STREAM DEPLETION"

The manner in which the report estimates the quantitative use of water by existing and potential projects has been criticized from opposite viewpoints by the basin States. California has stated that the report departs from an important technical concept of the Colorado River compact in that it does not determine "consumptive use" at the place of water use, but instead determines "stream depletion" resulting from the various developments measured at the point where the river crosses the international boundary. Arizona advances the "stream depletion" theory as the proper measure of quantitative use. Colorado takes a similar position, but states that the report does not properly evaluate depletions because it fails to give sufficient weight to losses from the natural stream channels above Lee Ferry.

It is not intended that the report support either of the opposing positions on the question as to how water use shall be measured under the compact. Consistent with the policy of not attempting to interpret the Colorado River compact, and in order to avoid any implied definition of the term "consumptive use," that term was not used in the report. The term "stream depletions" is used to present factual information without any implication that the term is, or is not, synonymous with "consumptive use" as referred to in the compact. Channel

losses above Lee Ferry are believed to be relatively small in proportion to the depletions resulting from the existing and potential use of water and, consequently, were not separately estimated. Such an estimate would not have been justified in view of the character of the depletion studies which are necessarily general in nature.

URGENCY FOR EARLY DEVELOPMENT AND THE OBSTACLES TO THAT DEVELOPMENT

The Bureau is cognizant of the tremendously expanding requirements for electric power in both the upper and lower basins and their service areas, as pointed out by the Federal Power Commission. It is aware of the serious problems presented by the rising costs of all fuel and the growing scarcity of fuel oil. It is sympathetic with California's recommendation that an immediate and intensive investigation be made by the Bureau of Reclamation, in cooperation with other interested agencies, of possible hydroelectric projects on the Colorado River upstream from Lake Mead. It cannot agree, however, with California's representation that such projects would be largely nonconsumptive of water, since it is known that the quantity of water lost by evaporation from necessary reservoirs would be substantial.

The Bureau also agrees with the States of Arizona,

Colorado, Nevada, New Mexico, Utah, and Wyoming as to their need for new projects for irrigation, power, and other purposes. Inherent in the recommendation made in the report that the States recommend projects for the next stage of development was the hope that a construction program could be agreed upon by the States of the upper and lower basins, respectively, and that a water right for each selected project would be assured by agreement among the States. A majority of the States, acting individually, have recommended the construction of certain projects within their borders, but there is presently no agreement among the States of either the upper or the lower basin as to specific projects.

The projects not presently under construction which the various individuals States have suggested for early consideration are contained in table I below. The suggestions or recommendations of the States that early consideration be given the following projects contain numerous and, in some cases, complex qualifications. This table does not attempt to enumerate those qualifications, which are contained in the attached comments of the States.

TABLE I.—*Projects suggested by individual States for early consideration*

<i>State</i>	<i>Project</i>
Arizona	First unit of the Gila project, including the reduced Yuma-Mesa division and the Well-ton-Mohawk division thereof. Bridge Canyon and central Arizona project.

- California Possible hydroelectric projects upstream from
Lake Mead on the Colorado River.
- Colorado Paonia project.
Pine River extension.
La Plata project.
Florida project.
Silt project.
Dolores project.
Collbran project.
Little Snake development.
Mill Creek, Archuleta County.
Four Mile and Turkey Creek Lakes, Archuleta County.
Dutton Park, Archuleta County.
Buckler-Harris Lakes, Archuleta County.
- Nevada Bridge Canyon project (as a main-stream
power development).
- New Mexico Hammond project.
Pine River extension.
Animas-La Plata project (particularly the
first unit, the La Plata River project).
- Utah Central Utah (first stage).
Vernal.
Jensen.
Gooseberry.
Ouray.
Emery County.
Hurricane.
Santa Clara.
- Wyoming Sublette project (including Kendall Reser-
voir).
West Side unit.
Daniel unit.
Elkhorn unit.
Seedskaadee unit.
Eden project.
Lyman project.
Little Snake project.

Viewed from both local and national standpoints, there is no doubt as to the urgency for continuing at once the development of the resources of the Colorado River. The principal obstacle to immediate progress is the fact that, although neither the upper nor lower basin is currently using all of the water allocated to it by the Colorado River compact, there is disagreement as to how the unused water shall be distributed among the States of each of the two basins. Until these disagreements are at least partially resolved there is little hope that substantial progress can be made toward meeting the needs of the region and the Nation.

References to the selection of projects for the next stage of river development, made by some of the States in their comments, require explanation. In the process of preparing a report, a preliminary draft dated October 1945, which included a list of projects proposed for the next stage of construction, was distributed to the States for their confidential review and for suggestions as to revisions which should be made before the report was officially submitted to the Secretary, and then to the States and to the War Department. In the revised and official draft dated March 22, 1946, the list of projects proposed for next-stage construction was deleted, primarily because of the water-right situation. A number of Wyoming's comments are dated prior to March 22, 1946, and refer to the earlier unofficial draft and specifically to parts of it that were excluded from the official report.

BASIN-WIDE CONCEPT

California has commented that "projects should be analyzed and reported upon individually as to their engineering and economic feasibility and findings made relative thereto as required by law." Colorado has made a similar comment. It is agreed that each project must be considered on its own merits, but should be considered also from the standpoint of its effect upon the engineering feasibility and economic justification of an over-all plan for basin development.

NONREIMBURSABLE COST ALLOCATIONS

It is apparent from a study of the report that many projects, particularly on the main stem of the Colorado River and its principal tributaries, will result in benefits to the Nation which can properly be made nonreimbursable by the water and power users. Construction costs allocable to silt control, recreation, salinity control, the administration of the Mexican treaty, and similar purposes should be nonreimbursable.

CONCLUSIONS

My conclusions are:

(1) That a comprehensive plan of development for the Colorado River Basin cannot be formulated at this time;

(2) That further development of the water resources of the Colorado River Basin, particularly large-scale development, is seriously handicapped, if not barred, by lack of a determination of the rights of the individual States to utilize the waters of the Colorado River system. The water supplies for projects to accomplish such development might be assured as a result of compact among the States of the separate basins, appropriate court or congressional action, or otherwise;

(3) That the States of the upper Colorado River Basin and States of the lower Colorado River Basin should be encouraged to proceed expeditiously to determine their respective rights to the waters of the Colorado River consistent with the Colorado River compact;

(4) That construction costs allocated to silt control, recreation, salinity control, the administration of the Mexican treaty, and similar purposes, should be non-reimbursable.

RECOMMENDATIONS

I recommend:

(1) That you adopt this as your interim report on the status of the investigations authorized to be made by section 15 of the Boulder Canyon Project Act (45 Stat. 1057) and section 1 of the Boulder Canyon Project Adjustment Act (54 Stat. 744);

(2) That you transmit this report, together with the accompanying comments of the States and Federal agencies, your proposed report dated June 7, 1946, and the accompanying basic inventory report of the regional directors to the President, and then to the Congress, in order that they may be apprised of the contents of this comprehensive inventory of potential water resource developments in the Colorado River Basin and of the present situation regarding water rights in the Colorado River Basin, which situation precludes my recommending any projects for construction at this time.

Sincerely yours,

(Signed) MICHAEL W. STRAUS,
Commissioner.

Approved and adopted July 19, 1947.

(Signed) J. A. KRUG,
Secretary of the Interior.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7512 - C

Identification: Admitted:

COMMENTS OF THE STATE OF ARIZONA, NOVEMBER 22,
1946, ADDRESSED TO MR. WILLIAM E. WARNE, ACTING
COMMISSIONER, BUREAU OF RECLAMATION, CONTAINED
IN H.R. DOC. NO. 419, 80TH CONG., 1ST SESS. (1947)

H.R. Doc. No. 419 is Arizona Exhibit
64, and extracts from the Arizona Comments are
California Exhibit 4501 (relating to Indian
rights). Concerning this document, the Special
Master ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by one
or more of the parties." (Tr. 387.)

UNIVERSITY OF COLORADO LIBRARY
BOULDER

Comments of the State of Arizona

EXECUTIVE OFFICE

STATE HOUSE

PHOENIX, ARIZ.

NOVEMBER 22, 1945.

Mr. WILLIAM E. WARNE,
*Acting Commissioner, Bureau of Reclamation,
Department of the Interior, Washington, D. C.*

DEAR MR. WARNE: We in Arizona have reviewed the Colorado River comprehensive report on the development of the water resources of the Colorado River Basin for irrigation, power production, and other beneficial uses in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, by the United States Department of the Interior, under the supervision of the Bureau of Reclamation, dated March 1946, Project Planning Report No. 34-B-2, together with your letter of June 6, 1946, addressed to the Secretary of the Interior, as suggested in your letter of June 23, 1946, to me.

The report constitutes a very great contribution toward the progress, development, and welfare of the Colorado River Basin and discloses that a very thorough investigation has been made of possibilities of development in the basin. I desire to congratulate the Bureau and its personnel on the success achieved in the very difficult work which it is apparent from the report has been performed.

We view the report as an inventory of possible projects within the basin and as such we consider it most helpful.

We understand that there are listed alternative projects so that in many instances, if one project listed is constructed, such construction may ultimately eliminate another listed project, and we take it as a general proposition that as to many of the projects listed further investigation and detailed reports will be necessary before the Bureau of Reclamation is in a position to recommend authorization for construction of such projects.

I believe that it is now possible and very desirable for each of the States in the Basin to recommend for construction projects within that State for which the stream-flow depletions will assuredly be within the allocation of Colorado River water which has been made to that State, or which will be made to that State.

I note the suggestion that the States should now agree upon allocations of specific quantities of water to the

respective States. I agree that it is now possible and desirable that allocation be made by subcompact to the respective States in the upper basin where no allocation as between them has yet been made by compact, contract, or otherwise, apportioning among them the $7\frac{1}{2}$ million acre-feet of water per annum which is apportioned to them jointly in perpetuity by the Colorado River compact. To that end I joined in a request that a Federal representative be appointed to assist in negotiations between the upper-basin States of an upper-basin compact, subordinate and subsidiary to the Colorado River compact.

Arizona is participating in such negotiations for the reason that a part of Arizona is in the upper basin as defined by the Colorado River compact. It is hoped that an upper-basin compact will be negotiated and submitted to the various State legislatures for ratification and to Congress for approval within a reasonable time in view of the complex nature of the problems involved.

The apportionment among the States of the lower basin of the water apportioned to the lower basin by the Colorado River compact has been effected by the Colorado River compact, the Boulder Canyon Project Act, the California Limitation Act, the Mexican treaty, the contract between the United States and the State of Arizona, the contract between the United States and the State of Nevada, and the contracts between the United States and agencies of the State of California.

The Colorado River compact (art. III (a) and (b)) apportions to the lower basin $8\frac{1}{2}$ million acre-feet of water annually in perpetuity. In consideration of the passage of the Boulder Canyon Project Act and its becoming effective, the Legislature of California adopted the California Limitation Act (ch. 16, California Stats. 1929), as required by the Boulder Canyon Project Act, which limits California's use of water of the Colorado River irrevocably and unconditionally, and for the benefit of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, to 4,400,000 acre-feet of the $8\frac{1}{2}$ million acre-feet apportioned to the lower basin, in perpetuity, for use each year by the Colorado River compact.

Of the $8\frac{1}{2}$ million acre-feet apportioned to the lower basin there is thus left 4,100,000 acre-feet which cannot lawfully be used anywhere except in Arizona and Nevada and those small parts of New Mexico and Utah

UNIVERSITY OF COLORADO LIBRARY
BOULDER

which are in the lower basin as defined by the Colorado River compact. Nevada has a contract with the United States, acting through the Secretary of the Interior, for delivery of 300,000 acre-feet per year for use in Nevada, which it is believed is as much as Nevada can reasonably expect to put to beneficial use.

Deducting the 4,400,000 acre-feet for California and the 300,000 acre-feet for Nevada, there is left 3,800,000 acre-feet of apportioned water which cannot lawfully be used anywhere except in Arizona and those small parts of Utah and New Mexico which are in the lower basin.

It is indicated by your report that the total ultimate possible use of water of the Colorado River system in those parts of Utah and New Mexico which are in the lower basin, including all present and possible future uses, will amount to not more than 131,000 acre-feet per year. There is thus left 3,669,000 acre-feet per year which cannot be used lawfully anywhere except in Arizona.

Arizona is using out of the main stream of the Colorado River and out of the tributaries of the Colorado in Arizona, a grand total of 1,407,000 acre-feet of water per year. Thus there is left for Arizona, of the apportioned water in the main stream of the Colorado River, 2,262,000 acre-feet for additional apportionment and beneficial consumptive use. This quantity of water is apportioned water and does not include any water legally usable elsewhere in either the upper basin or in the lower basin and ample provision has been made for the ultimate possible uses in Nevada and those portions of Utah and New Mexico which are in the lower basin.

Arizona has a contract made with the United States, acting through the Secretary of the Interior, under which the United States agrees to deliver the quantity of water hereinabove indicated from its storage on the main stream of the Colorado River for beneficial consumptive use in the State of Arizona. The State of Arizona has appropriated \$200,000, matched by an equal amount from the Bureau of Reclamation, with which funds the Bureau of Reclamation and the State of Arizona have cooperated and are now cooperating in making investigations and surveys concerning projects in Arizona for the utilization of the water above referred to, which investigations and surveys are now nearing completion. It is believed that final reports of the Bureau of Reclamation on some projects in Arizona will be completed and submitted in the very near future.

In 1937, by Executive order, the Bureau of Reclamation was authorized to construct works for the development and irrigation of 150,000 acres of land in the first unit of the Gila project in Yuma County, Ariz. Considerable progress has been made in the construction of such works and part of that land is now in cultivation

and will be available shortly for settlement by veterans of the armed forces of the United States.

Further investigations by the Bureau of Reclamation have indicated that it would be more in the public interest to leave out of development a portion of the land in the Yuma-Mesa division, which was included in the original plans, and to rearrange the project boundaries and in lieu of the lands recommended to be eliminated on the Yuma-Mesa division of the Gila project, to include lands of approximately equal acreage in the Wellton-Mohawk division of the Gila project. Accordingly it is hoped that the next Congress will pass a bill reauthorizing the Yuma-Mesa division as reduced and authorizing the Wellton-Mohawk division, both in the first unit of the Gila project. The Wellton-Mohawk division is referred to in the comprehensive report on pages 164 and 170-172, and it is not made clear in the report that the Wellton-Mohawk division is not a new project, but constitutes merely a reorganization of the first unit of the Gila project which has been previously authorized, and I would appreciate it if your report made that fact clear.

It is hoped that the Bureau of Reclamation will soon complete its report on the Bridge Canyon and central Arizona project.

Arizona, therefore, desires to select two projects for immediate construction—the first unit of the Gila project, including the reduced Yuma-Mesa division and the Wellton-Mohawk division thereof, and the Bridge Canyon and central Arizona project. We are informed that consumptive uses of water on the first unit of the Gila project, including the Yuma-Mesa division and the Wellton-Mohawk division, will not exceed 600,000 acre-feet per year, and that consumptive uses on the Bridge Canyon and central Arizona project will not exceed 1,200,000 acre-feet per year. These combined quantities of 1,800,000 acre-feet, deducted from the 2,262,000 acre-feet to which Arizona has a clearly established right, leaves 562,000 acre-feet of main stream water to which Arizona has a clearly established right for future and further development along the main stream of the Colorado River in the Parker area and in Mohave Valley, and in the Little Colorado River Basin.

You will note that in these figures of water supply and use we have not taken into account any of the surplus water. Arizona, under our contract with the United States, is assured of delivery by the United States, for use in Arizona, of one half of the surplus in the main stream of the Colorado River in the lower basin, less one twenty-fifth of such surplus which Arizona has agreed may be utilized in Nevada in the event they should ever be able to use it.

In addition there is left in the main stream of the Colorado River 222,000 acre-feet of water in the lower basin

and there is also left in the main stream of the Colorado River in the lower basin all of the surplus, which it now appears may constitute a sizable quantity of water; however, it appears that at this time I should not propose projects that would use any part of that surplus water, leaving such projects for future consideration when the probable future course of development of Colorado River Basin as a whole has become more apparent. I do not desire to predicate the development of either of the projects herein selected upon the use of any water which might later be withdrawn by any other State, nor do we desire in any way to embarrass or prejudice developments in any other State in the basin.

The Wellton-Mohawk division and the Yuma-Mesa division of the first unit of the Gila project are very desirable and their immediate authorization and construction are very much in the national interest as well as in the interest of the State of Arizona, and I am sure they are feasible from every point of view.

The immediate authorization and construction of the Bridge Canyon and central Arizona project is essential in the national interest and in the interest of the State of Arizona and the people of the central valleys of Arizona, in furnishing a supplemental water supply to lands now inadequately irrigated in order to preserve the civilization now existing in the State of Arizona and to prevent possible economic chaos, for the reason that irrigation of lands in central Arizona has been expanded beyond the water supply of central Arizona, both by diversion from the surface streams and by pumping from the underground reservoirs to such a great extent that I am advised by engineers that the people of central Arizona are now using approximately 800,000 acre-feet of water per year more than comes into that area; in other words, they are exhausting underground reservoirs at a rate in excess of 800,000 acre-feet per year. Such a practice, of course, endangers the entire economy of Arizona and creates a very real danger to the economy of the United States and to the national interest.

In view of the rapid exhaustion of underground reservoirs, we in Arizona have determined that two things are necessary: we must adopt an underground water code which will prevent overpumping and we must obtain a supplemental supply of water by the diversion of water from the main streams of the Colorado River to central Arizona.

Bridge Canyon and central Arizona project will make possible and bring about the diversion of main stream water to the central valleys of Arizona.

We are working on an underground water code. The Legislature of Arizona appropriated \$40,000, to be matched by an equal amount from and utilized by the United States Geological Survey, cooperating with the State Land and Water Commissioner of Arizona, in

making investigations and compiling information concerning the underground water supply of Arizona. I am informed that such studies are now sufficiently advanced to permit the drafting of an adequate underground water code for Arizona and that a bill has now been drawn for presentation to the legislature which convenes in January 1947. I confidently expect that at that session an adequate, workable, and satisfactory underground water code will be adopted.

I believe that the Bridge Canyon and central Arizona project will be found feasible and highly beneficial from every point of view and that it will be found that the people of central Arizona, utilizing the main stream water to be delivered to that area through the proposed works, with the aid of revenue from the hydroelectric energy that will be generated at Bridge Canyon Dam, will be able to repay the costs properly chargeable to irrigation and power within a reasonable time to the Treasury of the United States.

The Mexican treaty allocates to Mexico, and limits Mexico's use of Colorado River water to, 1,500,000 acre-feet of water per year. The figures used in this letter make due allowance for such Mexican allocation and Arizona's proposed use of the water allocated to her does not in any way infringe on Mexico's supply.

In the following table I summarize Arizona's understanding of the water supply in the lower basin and of the apportionment of water in the lower basin and of the quantities of water available to Arizona, which table, I believe, makes our position clear:

Available supply and apportionment of water in the lower basin

	Acres-feet
Virgin flow at Lees Ferry	16,375,000
Less apportionment to upper basin (art. III (a) Colorado River compact)	7,500,000
	8,875,000
Natural gain from tributaries Lees Ferry to Boulder Dam	2,060,000
	9,835,000
Natural gain from tributaries Boulder Dam to Mexican border	1,466,000
	11,301,000
Less losses natural and reservoir, estimated	1,075,000
	10,226,000
Allocated to Mexico by treaty	1,500,000
	8,726,000
Apportioned to lower basin (art. III (a) and (b) Colorado River compact)	8,500,000
Not apportioned to lower basin but present in lower basin	226,000
Potential uses of water in other States of the lower basin apportioned to lower basin	8,500,000

UNIVERSITY OF COLORADO LIBRARY BOULDER

THE COLORADO RIVER

Available supply and apportionment of water in the lower basin—Continued

	<i>Acres feet</i>
Potential uses in California limited by California Limitation Act.....	4,400,000
Nevada contract.....	300,000
Ultimate possible uses Utah and New Mexico.....	231,000
	<hr/> 4,931,000
Usable only in Arizona.....	3,669,000
Present uses in Arizona from main stream and tributaries, including Gila.....	1,407,000
	<hr/>
Left for Arizona, additional main stream water (consumptive uses).....	2,262,000
	<i>Acres feet</i>
Consumptive use, Yuma-Mesa and Wellton-Mohawk divisions of Gila project.....	600,000
Consumptive use, Bridge Canyon and central Arizona project.....	1,100,000
	<hr/> 1,700,000
Left in main stream apportioned to Arizona for future development and consumptive use in Arizona.....	562,000

(All of the water supply figures in this table are from your report.)

We in Arizona are making economic studies and studies of the benefits which will accrue to the State and to the Nation from the construction of the projects herein selected. We expect that the information thus obtained will be available for consideration by the appropriate congressional committees at the next session of Congress.

I assure you of my appreciation of the opportunity given me to make comments upon the report, and of my desire, which I am sure is shared by all of the people of Arizona, to cooperate with the United States and with our sister States in every way to the end that the greatest possible development may be made of the use of the waters of the Colorado River in the best interests of the basin and of the United States.

Sincerely,

(Signed) SIDNEY P. OSBORN,
Governor.

CALIFORNIA DEFENDANTS

Exhibit No. 7513 - D

Identification: Admitted:

EXTRACTS FROM COMMENTS OF THE STATE OF COLORADO,
DECEMBER 17, 1946, ADDRESSED TO THE SECRETARY OF
THE INTERIOR, CONTAINED IN H.R. DOC. NO. 419,
80TH CONG., 1ST SESS. (1947)

H.R. Doc. No. 419 is Arizona Exhibit
64. Concerning this document, the Special Master
ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by one
or more of the parties." (Tr. 387.)

UNIVERSITY OF COLORADO LIBRARY
BOULDER

Comments of the State of Colorado

STATE OF COLORADO
COLORADO WATER CONSERVATION BOARD
DENVER, COLORADO

DECEMBER 17, 1946.

The SECRETARY OF THE INTERIOR.

SIR: On behalf of the State of Colorado, and pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887), there is herewith transmitted the comments, views, and recommendations of the State of Colorado concerning Project Planning Report 34-8-2 of the Bureau of Reclamation, Department of the Interior, dated March 1946, and entitled "A Comprehensive Report on the Development of the Water Resources of the Colorado River for Irrigation, Power Production, and Other Beneficial Uses in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming."

These comments, views, and recommendations are submitted under the authority of chapter 265, Session Laws of Colorado of 1937 creating the Colorado Water Conservation Board and defining its functions and in accordance with the designation of such board by the Governor, pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887), as the official State agency to act in such matters.

Respectfully submitted.

(Signed) JOHN C. VIVIAN,
Governor and Chairman of the Board.
(Signed) CLIFFORD H. STONE,
Director of the Board.
(Signed) C. L. PATTERSON,
Chief Engineer.
(Signed) R. J. TAYLOR,
Consulting Engineer.
(Signed) IRAN S. BREITENSTEIN,
Attorney.

DECEMBER 1946.

To the SECRETARY OF THE DEPARTMENT OF THE INTERIOR:

Pursuant to the act of December 22, 1944 (58 Stat. 887), the State of Colorado herewith submits its comments, views, and recommendations concerning the plans and proposals of Project Planning Report No. 34-8-2, of the Bureau of Reclamation, Department of

the Interior, dated March 1946, and entitled "A Comprehensive Report on the Development of the Water Resources of the Colorado River Basin for Irrigation, Power Production, and Other Beneficial Uses in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming." In submitting these views and recommendations, consideration has been given to the regional directors' report, conclusions, recommendations, and substantiating materials, data, statement, and appendices, together with the letter of transmittal, dated June 6, 1946, from the Commissioner of the Bureau of Reclamation to the Secretary of the Interior.

SUMMARY OF COMMENTS, VIEWS, AND RECOMMENDATIONS

Colorado objects to the report in its present form and in the conclusions and recommendations therein contained and recommends that it not be transmitted to the Congress unless and until the requisite corrections, modifications, and additions are made in accordance with these views and recommendations. As a summary of the detailed views and recommendations hereinafter contained, Colorado submits:

1. The report improperly treats the upper basin differently from the lower basin in the following particulars:

(a) It includes areas located outside the natural basin of the river but within the States of the lower basin which are now or shall hereafter be beneficially served by water diverted from the Colorado River system and at the same time excludes similar areas in States of the upper basin;

(b) It ignores the allocations of water made by the Colorado River compact, the provisions of the Boulder Canyon Project Act, and the California Self-Limitation Act and contemplates increased uses of water by existing projects and additional uses of water by projects yet to be constructed, contrary to the provisions of the compact and the above-mentioned statutes;

(c) In estimating available water supplies and depletions it utilizes methods in the lower basin which differ from those applied to the upper basin.

2. By failing to interpret and construe the contracts between the Secretary of the Interior and the States and water users of the lower basin for the delivery of water

from Lake Mead, the report engenders further interstate controversy in that—

(a) It endeavors to impose upon the States the burden of interpreting, construing, and applying these contracts;

(b) It fails to disclose that any "surplus" water delivered to California water users under these contracts is not firm water since surplus water as defined under the compact may not be apportioned between the two basins by interstate compact before 1963;

(c) It fails to disclose that the aggregate amounts of water for delivery to the States and water users of the lower basin from Lake Mead under the contracts are inconsistent with the allocations of water made to the lower basin by the Colorado River compact, because in the contracts with Arizona and Nevada recognition is made of reservoir and channel conveyance losses while in contracts with California water users such losses are ignored.

3. The report is inconsistent in that water supplies for existing and potential projects for the diversion of water from the natural basin of the Colorado River for use in other basins in Colorado are estimated as sums or totals from one basin to another, whereas in other States of the upper basin the estimates include descriptions of individual projects.

4. The report is misleading and inconsistent in that it lists individual projects and presents estimates of construction costs, benefits to the Nation, and collectible revenues based upon the assumption that all of such projects will be constructed and operated to the limits of their ultimate capacities. At the same time the report concludes that inadequate water supplies will prohibit the construction of some of these projects. Thus in the total figures for costs, returns, and benefits, consideration is given to projects which cannot be constructed.

5. The report is unsound in that it fails to give consideration to the desirability and feasibility of individual projects and thus fails to furnish any true and usable guide for a development program.

6. The report is unsound in that it attempts to present a comprehensive development plan, but ignores the elementary fact that the desired orderly development will result from the construction from time to time of individual projects which upon full and complete investigation prove to be feasible, justified, and needed, and which will be desired by local beneficiaries after their repayment obligations are known.

7. The report is unsound in recommending that all seven of the States of the Colorado River Basin jointly agree upon a determination of their respective rights to deplete the flow of the Colorado River before major development may proceed. The Colorado River compact apportions water between the upper basin and the lower basin. Neither basin is concerned with the apportionment between States of the share allocated to the

other basin and neither basin should be restricted or delayed in its development by the failure of the other basin States to divide the water apportioned to that basin by the Colorado River compact. Colorado recognizes the desirability of an allocation of water to the individual States comprising the upper basin. While it is true that compact negotiations are in progress among the States of the upper basin, and that the construction of additional major projects should await allocation of water to the States, there are projects which will assuredly use water falling well within the equitable share of the State where located and which should not be made to await any final allocation of water.

8. The report is unsound in implying that each individual State should allocate water to specific projects within such State. Colorado adheres to the appropriation doctrine of water law and thereunder water users are entitled to water in accordance with the priority of their individual appropriations. Any change in such system in Colorado will require a constitutional amendment.

9. The report is unsound in that it recommends that the States approve projects for the so-called initial stage of development without there being available at the same time adequate data and information for the determination of the desirability, economic feasibility, or probability of authorization and construction of individual projects. Only in instances where detailed investigations are completed and individual project reports are available can there be a worth-while selection of any projects.

10. The report is unsound in that it contemplates a general group authorization of projects for construction rather than a specific authorization of individual projects.

Colorado believes that each and all of the foregoing views are fundamental and important and recommends that the report be modified to conform therewith. The report is a good inventory of development potentialities, as known at the present time, and it contains much valuable engineering data and factual information. It must be recognized that as a complete list of all construction potentialities or possibilities of using Colorado River water, the report is far from complete.

Upon the making of the report as modified in accordance with the objections, views, and recommendations noted above, Colorado believes that the Bureau of Reclamation will have satisfied the requirements of section 15 of the Boulder Canyon Project Act. There will remain, however, for the future, the task of investigating and reporting on individual projects for construction.

There follows a detailed statement of the comments, views, and recommendations of the State of Colorado. Reference is there made in paragraph 12 to particular

projects in Colorado for consideration as near-future development probabilities.

DETAILED VIEWS AND RECOMMENDATIONS

Introduction

The report contains much valuable engineering data and factual information concerning the resources, needs, and problems of the territory covered by it. This information concerns the waters of the Colorado River and its tributaries in the United States and includes estimates of the existing and present status of water utilization in each of the affected States, and of power production in the region therein designated the Colorado River Basin. The report also contains a list of so-called potential projects or units of projects considered possible of future construction, together with preliminary estimates of their probable construction costs under both prewar and current conditions, and with estimates (expressed as totals, rather than by individual projects) of the aggregate benefits to the Nation, of the total revenues probably collectible from combined water and power users, and of total depletions, reported in part as subtotals by States and in part unallocated among the States.

Colorado appreciates the value of this factual information, and recognizes that much labor, time, and money has been devoted to the preparation of the report. However, after a careful consideration of its contents, and its plans and proposals, the view reached by the State of Colorado is that the report should be modified, to eliminate its inconsistencies, improve its accuracy and completeness, and increase its utility and value to the affected States and to the Congress. To such ends, Colorado respectfully recommends that the report be modified before being adopted by the Secretary of the Interior and before being transmitted to the President and to the Congress. These comments shall be deemed objections to the plans and proposals of the Department of the Interior and the Bureau of Reclamation unless and until the report shall have been modified in accordance with these views and recommendations as hereinafter outlined.

Inconsistent Treatment of Areas Outside of Natural Basin

The so-called comprehensive report purports to cover the Colorado River Basin. Considered in the light of the proposal of the report that affected States make determinations consistent with the Colorado River compact, the report is neither comprehensive nor consistent with the Colorado River compact, since it relates to and covers a territory which differs from the Colorado River Basin as defined in the compact. The Colorado River compact, negotiated at Santa Fe, N. Mex., November 22, 1922, divides the Colorado River Basin at Lees Ferry

into an upper basin and a lower basin, and in article II thereof defines the Colorado River Basin to include all the drainage area tributary to the Colorado River system in the United States, and also all parts of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming which (though outside of said natural basin) "are now or shall hereafter be beneficially served by waters diverted from the Colorado River system." The territory covered by the report conforms to the compact definition in the lower basin, but departs therefrom in the upper basin. It includes areas outside the natural basin in California, but excludes similar areas in Colorado, and in other States of the upper basin which are parts of the Colorado River Basin as defined in the Colorado River compact. This different treatment of the upper and lower basins, and of the States of California and Colorado, is a matter to which the State of Colorado heretofore has objected, for the reason that such different treatment is not conducive to amicable relations and understandings between the two basins and the two States. The State of Colorado urges and recommends that the report be modified so as to treat both basins and all States alike, and to make it consistent in all respect with the Colorado River compact.

Inconsistent Treatment of One-basin Projects in Utah and Colorado

With respect to enterprises and projects which divert water from the Colorado River system above Lees Ferry for use outside the natural basin, the States of Utah and Colorado are not treated alike in the report. Such diversion enterprises and projects in Utah are listed by name and individually, each with specified depletion estimations. Similar diversion enterprises and projects in Colorado are not listed by name or individually, and their estimated depletions are reported merely as aggregate diversions by tributary stream basins. Colorado urges again that the report be modified so as to treat all affected States alike in the above-mentioned and all other respects.

As a Comprehensive Plan for Development the Report is Incomplete and Misleading

The report contains a list of so-called potential projects. Actually, this list constitutes an inventory of development possibilities which in most instances await detailed investigations and individual project reports. It presents estimates of construction costs, benefits to the Nation, probable collectible revenues from combined water and power users, and water-supply depletions, for what is described as a stage of ultimate development. These estimates are based on the assumption, among others, that all the so-called potential projects listed in the report will be constructed and operated to the limits

of their assumed ultimate capacities. At the same time the report concludes that inadequate water supplies will prohibit the construction of some of the so-called potential projects. Thus, these conclusions are inconsistent with each other, in that the reported total construction costs include estimates for projects which, if not constructed, will require no financing, and the reported total benefits and collectible revenues are misleading, since they include items that cannot be realized. The assumption of the report that all the so-called potential projects, or their alternates, will be constructed, disregards the findings which ultimately must be made as to individual project desirability, financial feasibility, and economic justification, and hence disregards the probability of authorization and appropriations by the Congress, which must be based on subsequent detailed investigations and reports on each project possibility. It likewise entirely overlooks the possibility of private development.

Upon investigation, some of the so-called potential projects will no doubt be discarded as undesirable or infeasible, and those which are financed and constructed will have been designed upon a basis which, instead of ultimate and largest possible capacities, will give consideration to essential needs and to proper and more economical capacities. The report speaks of "full development in the United States"—meaning a stage of development which is fixed by available water supplies, and which is something less than the ultimate stage for which estimates of construction costs, benefits, and collectible revenues are presented, but the report fails to submit information or estimates as to the supplies of water to become available for use with full development in the United States, or as to the construction costs to be encountered, or the benefits and collectible revenues to result from that stage of development.

Channel Losses in the Upper Basin Must Be Estimated and Used in Computation of Water Supply and Depletions

The report contains estimates of so-called "present" uses or depletions. Included in the reported "present" totals are items representing the present uses by existing in-basin and diversion enterprises. Colorado notes that the existing total depletions summarized in the report for the upper basin are not in agreement with the depletions employed in appendix I to estimate the water supplies at Lees Ferry.

The report also contains allowances for future uses of water by projects now under construction or authorized, and for future increased uses by reason of assumed expansions to ultimate limits under existing projects. Together, the estimated existing uses, plus the above-mentioned allowances, represent the so-called "present"

status of utilization or depletion of Colorado River water. Colorado notes that the water utilization and depletion estimates of the report are in terms which are not consistent throughout both basins and in all States. Although the reported depletion quantities are said to represent the resulting effects upon outflows from the upper basin at Lees Ferry, and from the lower basin at the international boundary, that rule appears to have been applied only on the lower Gila River at and below the Phoenix vicinity in Arizona. All other depletion estimates presented in the report are based on the rule of evaluation at the site and, to indicate their resulting effects upon outflows at Lees Ferry or the international boundary, it becomes necessary to allow for and subtract the losses which the water, if not consumed at the site, would suffer incident to its conveyance to Lees Ferry or the international boundary.

To make the necessary corrections in reported depletion quantities, information is necessary concerning channel conveyance losses. The report contains estimates of channel conveyance losses under virgin conditions on the Gila River below Phoenix, which appear to have been employed to estimate the depletions in Arizona shown in the report. It also contains estimates of channel conveyance losses under virgin conditions on the lower Colorado River below Boulder Dam. These appear to have been employed to calculate the outflows to Mexico across the international boundary, but to have been disregarded in estimating the depletions in California. The report contains no information concerning channel conveyance losses along the Colorado River and its tributaries above Boulder Dam, or in the upper basin above Lees Ferry.

Colorado recommends, since this information is essential for the determinations of water supplies available for utilization, and for the appropriate adjustment and maintenance of interstate relations, that the report be modified to include estimations of channel conveyance losses under virgin, present (existing), and full development conditions.

Water Supplies and Depletions Should be Presented in Terms Comparable to Those of the Colorado River Compact

In order that affected States may make use of, so far as possible, the plans, proposals, and recommendations of the report, it is essential that all determinations and estimations of water supplies, stream-flow depletions, and water utilization and disposal be in terms, directly comparable with apportionment provisions of the Colorado River compact. A necessary first step, in order that both basins may know what further developments are possible, and what further uses of water are permissible, within presently authorized limits, is a comparison be-

DIVISION OF COLORADO
 BOULDER
 DIVISION OF COLORADO
 BOULDER

tween present uses or depletions within each basin and the quantities of water heretofore apportioned to each basin by the Colorado River compact.

While there may be disagreement among individual States concerning interpretations of some provisions of the compact, there appears to be no basis for dispute between the two basins concerning these facts: (1) By articles III (a) and (b) thereof, the Colorado River compact apportioned 7,500,000 acre-feet of water per annum to the upper basin, and 8,500,000 acre-feet per annum to the lower basin; and (2) by article III, (f) the compact specified that at any time after October 1, 1963, if and when either basin shall have reached the total beneficial consumptive use of said quantities of water, further equitable apportionment may be undertaken of the surplus water over and above the quantities heretofore apportioned, and over and above the surplus awarded to Mexico by the treaty between the United States and Mexico.

According to the report the so-called "present" depletions or uses, in the two basins, may be summarized as follows: Upper basin, existing 2,200,000 acre-feet, increase allowance 550,000 acre-feet, total "present" 2,750,000 acre-feet; lower basin, existing 4,918,000 acre-feet, increase allowance 3,583,000 acre-feet, total "present" 8,501,000 acre-feet. Under the apportionment provisions of the Colorado River compact, and upon the findings of the report, as to present depletions of streamflows or uses of water, it is apparent that new and additional projects may be constructed in the future in the upper basin, with aggregate uses or depletions up to 4,744,000 acre-feet annually, without thereby exceeding the apportionment to the upper basin heretofore made by the compact. In the lower basin, however, no new or additional projects can be undertaken, until after October 1, 1963, except to the extent that possible future expansions under existing projects recognized by the report be correspondingly curtailed or prohibited.

The State of Colorado suggests that the report contains plans and proposals which disregard this patent fact, and recommends that the report be modified to correct this omission.

Comprehensive Planning Must Conform to Orderly Construction of Desired and Justified Projects

Concerning recommendation 3, paragraph 70, of the regional directors' report, the State of Colorado concurs in and approves of that portion of the proposal involving increased appropriations by Congress and expenditures by the Bureau of Reclamation and other agencies of the Department of the Interior, in order that more complete and accurate data concerning the production, use, and disposal of waters of the Colorado River system may become available to the Congress and the affected States.

This is also necessary to continue and expedite the completion of detailed investigations and individual project designs and reports, to the end that an orderly and progressive development of the Colorado River Basin, as defined by the Colorado River compact, may be assured. Such a development will provide supplemental water supplies as needed for municipal, irrigation, and industrial purposes and provide adequate and regulated supplies of water for lands that await reclamation by irrigation. Incidental to such reclamation development, will be the production of hydroelectric power the improvement of recreational advantages, and other opportunities in the public interest.

However, Colorado cannot subscribe to that proposal of the report which claims or infers that such appropriations and expenditures are necessary or desirable in order for the Department of Interior to formulate and carry out a comprehensive plan of development at this time or in the near future. Instead, the orderly and progressive development, above mentioned, should be carried on by the construction from time to time of those individual projects which, upon investigation, (1) are feasible, justified, and needed; (2) are within each State's equitable but as yet unestablished share of water; (3) are desired by local beneficiaries after their repayment obligations are known; and (4) entail construction costs which may be financed by congressional appropriations or otherwise.

Experience teaches that the necessary investigational program will require many years to complete; that the construction of some projects may be carried on while investigations of others are underway; that neither the needs of future generations nor the dictates of financial policies can be anticipated too far in advance. Hence the view of Colorado is that any plan for the comprehensive and ultimate development of the Colorado River Basin, which might now be formulated by the Department of Interior, will be modified from time to time. Further Colorado points out that the report itself recognizes that a comprehensive plan is contingent in a major way upon the ultimate determination of the apportionment of water to the individual States. It can be reasonably expected that upon the determination of such allocations, each affected State will exert an important influence in shaping the development within its borders and within its share of Colorado River water, consistent with common operational features on the river and the provisions of the Colorado River compact.

Joint Action of All Seven States Is Not Necessary to an Allocation of Water

The report recommends "that the States of the Colorado River Basin determine their respective rights to deplete the flow of the Colorado River consistent with

the Colorado River compact.¹³ This proposal implies that all controversies concerning the waters of the Colorado River can and should be resolved promptly by the collective action of all seven affected States. As previously pointed out, the first necessary step toward carrying out this proposal involves the apportionments heretofore made by the Colorado River compact to the upper basin and to the lower basin, recognizing that further apportionments between the two basins, over and above those heretofore made, cannot be undertaken under the compact until after 1963.

Colorado recognizes the necessity and desirability of the States of the Colorado River Basin determining their respective rights to deplete the flow of the Colorado River consistent with the Colorado River compact. That all of the States of the upper basin accept this recommendation of the report and assume that responsibility is evidenced by the fact that since the report was issued these States have initiated compact negotiations for two principal purposes, namely, (1) to determine relative rights of the respective States of the upper basin in the beneficial consumptive use of the 7,500,000 acre-feet of water per annum heretofore apportioned in perpetuity from the Colorado River to the upper basin by article III (a) of the Colorado River compact; and (2) to determine the relative obligations of the States of the upper division imposed by article III (d) of the Colorado River compact, not to cause the flow of the Colorado River at Lees Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive water-years. These negotiations were initiated under the compact clause of the Federal Constitution.

However, Colorado does not concur in the implied and often repeated assertion that controversies concerning the waters of the Colorado River can and should be resolved by joint action of all seven of the Colorado River Basin States nor does the State concede that an adjustment of all controversies in both the upper and lower basins must be settled before major developments of the water resources of the river may proceed. There are controversial matters peculiar to each basin which are unrelated to those in the other, the adjustment of which will permit development to go forward in one basin although unresolved questions remain in the other basin.

It is pertinent to point out that after initiation of compact negotiations by the States of the upper basin it was found necessary to appoint an engineering committee to review the water supply and depletion estimates and other factual information contained in the report, and to supply data not included in the report which is recognized to be necessary or desirable for the negotiation and consummation of a workable compact. It is here suggested that this fact indicates the need for

a modification of the report and the inclusion in it of data and information which it does not now contain.

In Colorado There May Be No Allocations to Specific Projects

It is asserted in the report that all the States have not made final allocations of water among projects within their borders. This implies and amounts to a proposal that final allocations to individual projects are necessary and must be made in advance of their construction. Colorado points out that no official or agency of the State is authorized to comply with or carry out such a proposal. No such authority could be granted by the legislature to any official under the constitution of the State. The right to divert and use water in Colorado is based upon prior appropriation for beneficial purposes. Any change of principle or method would require the amending of the State constitution.

Under section 8 of the Reclamation Act of 1902 the Secretary of the Interior is required to appropriate and divert water for reclamation projects in conformity with the State laws regulating appropriation, use, and distribution of water supplies. And it must be noted that when new projects are constructed, the rights of existing appropriators must be recognized and protected in order that such new projects may not adversely affect established water uses.

Colorado must, therefore, request that, on the basis of the existing laws of the State respecting water rights, that all statements contained in the report which directly or indirectly imply that final allocation to individual projects is necessary and must be made in advance of further project construction by the Bureau of Reclamation or any other public or private agency, be eliminated.

Controversies Over Contracts for Lake Mead Water Should Be Resolved by the Secretary of the Interior

The report asserts that "there is not complete agreement among the States regarding the interpretation of the compact and its associated documents—the Boulder Canyon Project Act, the California Self-Limitation Act, and the several contracts between the Secretary of the Interior and individual States or agencies within the States for the delivery of water from Lake Mead." Its authors say "this report makes no attempt to interpret the Colorado River compact or any other acts or contracts relating to the allocation of Colorado River water among the States and among projects within the States."

It is the view of Colorado that the long-standing controversies among the States in the main result from these contracts made by the Secretary of the Interior with California and agencies thereof. It is likewise the position of Colorado that the amount of water which may be delivered under these contracts must be in strict

COMMENTS OF THE STATE OF COLORADO

61

compliance with the provisions of the Colorado River compact and the Boulder Canyon Project Act. Such compliance is specified by the contracts themselves. Yet certain provisions of these contracts raise controversies which admittedly must be settled before an ultimate plan of development may be realized in the lower basin.

The report contemplates the future expansion of existing or authorized projects in California, including the Coachella. These allowances will make the total "present" use of Colorado River water in California 5,802,000 acre-feet annually. Under the California self-limitation statute California is limited to 4,400,000 acre-feet annually plus one-half of the surplus as defined by the Colorado River compact. Under that compact the surplus may not be allocated between the two basins until after 1963. These increased and expanded uses would exceed the California share by 1,402,000 acre-feet annually. The failure to recognize and apply the limitation self-imposed by California makes the report misleading.

Colorado respectfully suggests that since the Secretary of the Interior executed these contracts on behalf of the Government, it is incumbent upon him to interpret them separately and in connection with the Colorado River compact and the Boulder Canyon Project Act. Unless these questions are otherwise resolved, it would seem unreasonable and contrary to public policy for the Department of the Interior, without interpreting the acts, statutes, and contracts above mentioned, to submit this report, presaging a plan of development to the Congress.

CALIFORNIA DEFENDANTS

Exhibit No. 7513 - E

Identification:

Admitted:

REGIONAL DIRECTORS' REPORT: REPORT FROM THE
REGIONAL DIRECTORS, REGIONS III AND IV, TO THE
COMMISSIONER OF RECLAMATION, MARCH 22, 1946,
RE: "A COMPREHENSIVE REPORT ON THE DEVELOPMENT
OF THE WATER RESOURCES OF THE COLORADO RIVER
BASIN IN ARIZONA, CALIFORNIA, COLORADO, NEVADA,
NEW MEXICO, UTAH, AND WYOMING"; CONTAINED IN
H.R. DOC. 419, 80TH CONG., 1ST SESS. (1947)

H.R. Doc. No. 419 is Arizona Exhibit 64.
Concerning this document, the Special Master
ruled:

"Let me leave it in this posture.
By the end of the trial only those pages
will be used in brief or argument or in
opinion which have been designated by
one or more of the parties." (Tr. 387.)

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

Regional Directors' Report

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

MARCH 22, 1946.

From: Regional Director, Region III, Boulder City,
Nevada.

Regional Director, Region IV, Salt Lake City,
Utah.

To: The Commissioner, Bureau of Reclamation.

Subject: A comprehensive report on the development of
the water resources of the Colorado River Basin in
Arizona, California, Colorado, Nevada, New Mexico,
Utah, and Wyoming.

1. This letter is a report in brief form on the development of the water resources of the Colorado River Basin, which lies within the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. The substantiating material on which the report is based has been prepared as a presentation of the Department of the Interior, sponsored and coordinated by the Bureau of Reclamation. That material is attached.

UNIVERSITY OF COLORADO
BOULDER

Scope and Purpose

2. In order to show how the people in the basin and in the Nation can best be benefited by further development of the water resources of the basin, the report includes a description of the basin's resources, its needs and problems, and its present and potential development. Some 134 projects or units of projects are listed as possibilities for future development of the water resources within the natural drainage basin of the Colorado River. Estimates of costs, benefits, possible reimbursability and depletory effect on stream flow of these developments are presented. The report also discusses present and potential projects for the export of water from the Colorado River Basin to adjacent basins, but no estimates of construction costs, benefits, or reimbursability are presented. Because of the limited water supply all of the potential projects cannot be constructed and all of the existing and authorized projects expanded to the possible extent of their ultimate potentialities. The potential within-basin projects as a group are an index of the over-all results and benefits to be expected from the development of all the water resources of the basin. This report, with its substantiating material, provides a basin-wide perspective for planning development on a sound basis. It is intended to serve as a medium through which the Congress may be apprised of the potentialities for the development of the basin's water resources and as a guide in the selection of projects

that ultimately will comprise the comprehensive plan for the utilization of the waters of the Colorado River system for irrigation, electrical power, and other purposes.

Authority for the Report

3. This report is authorized to be made by virtue of the Reclamation Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, particularly the Boulder Canyon Project Act (45 Stat. 1057) and the Boulder Canyon Project Adjustment Act (54 Stat. 774).

Water Supply

28. In its virgin condition, before diversions were made by man, the Colorado River is estimated to have carried an average of 17,720,000 acre-feet of water annually across the International Boundary into Mexico. The annual flow varied from about 5,000,000 acre-feet to 25,000,000 acre-feet. Under the Mexican Treaty it is estimated that Mexico will receive 1,500,000 acre-feet annually, leaving for consumption in the United States an average of 16,220,000 acre-feet plus such water as was consumed under virgin conditions by natural losses, preventable in part with full basin development.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

29. Present water uses in the United States are estimated to deplete the virgin water supply at the boundary by about 7,120,000 acre-feet annually, leaving an average of about 9,100,000 acre-feet to meet expanding uses under existing or authorized projects and to supply new demands for potential projects within the Colorado River Basin States.

Division of Water

30. The Colorado River Compact, signed at Santa Fe, N. Mex., November 24, 1922, and made effective by subsequent ratification by the seven basin States, and by enactment of the Boulder Canyon Project Act (45 Stat. 1057), apportions the waters of the Colorado River system between the upper basin and the lower basin and provides that the States of the upper division (Colorado, New Mexico, Utah, and Wyoming) will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years. The compact also provides for a division of surplus waters after October 1, 1963. There is no final agreement among the States of the Colorado River Basin as to the amount of Colorado River water to be allocated to individual States nor have all of the States made final allocations of water among projects within their boundaries. There is not complete agree-

ment among the States regarding the interpretation of the compact and its associated documents (the Boulder Canyon Project Act, the California Self-Limitation Act, and the several contracts between the Secretary of the Interior and individual States or agencies within the States for the delivery of water from Lake Mead). This report makes no attempt to interpret the Colorado River Compact or any other acts or contracts relating to the allocation of Colorado River water among the States and among projects within the States.

UNIVERSITY OF COLORADO LIBRARY
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7514

Identification:

Admitted:

EXTRACTS FROM H.R. DOC. NO. 136, 81ST CONG.,
1ST SESS. (1949), CENTRAL ARIZONA PROJECT:
LETTER FROM THE SECRETARY OF THE INTERIOR
TRANSMITTING A REPORT AND FINDINGS ON THE
CENTRAL ARIZONA PROJECT*

* This document is Ariz. Ex. 71 which includes, inter alia, Ariz. Exs. 65 (Report on Central Arizona Project) and 70 (Letter from the Secretary of the Interior, transmitting to Congress the report on the Central Arizona Project).

UNIVERSITY OF COLORADO LIBRARY
BOULDER

CENTRAL ARIZONA PROJECT

LETTER

FROM THE

SECRETARY OF THE INTERIOR

TRANSMITTING

A REPORT AND FINDINGS ON THE
CENTRAL ARIZONA PROJECT



MARCH 22, 1949.—Referred to the Committee on Public Lands
and ordered to be printed, with illustrations

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1949

LETTER OF TRANSMITTAL FROM THE SECRETARY
OF THE INTERIOR TO THE SPEAKER OF THE HOUSE
OF REPRESENTATIVES, SEPTEMBER 16, 1948,*
CONTAINED IN H.R. DOC. NO. 136, 81ST CONG.,
1ST SESS. (1949)

* Ariz. Ex. 70.

LETTER OF TRANSMITTAL

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., September 16, 1948.

Hon. JOSEPH W. MARTIN, Jr.,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Pursuant to the Federal reclamation laws (act of June 17, 1902, 32 Stat. 388 and acts amendatory thereof or supplementary thereto), and in response to a request from the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, I transmit herewith my report and findings on the central Arizona project. The report proposes, subject to the conditions set forth in the report of the Commissioner of Reclamation, dated May 20, 1948, the construction of Bridge Canyon Dam and power plant on the Colorado River above Hoover Dam to develop power which is urgently needed particularly for California and the lower Colorado River Basin, and to provide electric energy for pumping water from Lake Havasu which is created by Parker Dam, for diversion through project works to the highly developed irrigated area in central Arizona. There is urgent need for this water to avert economic stagnation. The proposed construction includes pumping plants, aqueducts, related dams, irrigation and drainage system, powerplants, transmission lines, and incidental works as described in the report.

The project has engineering feasibility and the proposed reimbursable costs probably can be repaid in 78 years under the plan outlined. The benefits exceed the cost by 50 to 60 percent. The total estimated cost of the project based upon present prices is \$738,408,000 of which \$658,096,000 can probably be repaid by power, irrigation and municipal water users, and \$80,312,000 would be charged to flood control, the preservation and propagation of fish and wildlife, silt control, recreation, and salinity control. Detailed studies show that operation and maintenance expense can be met from the various sources of project revenue. The establishment of a local agency of the conservancy district type, as provided by recommendation 8 (b) of the regional director's report would make possible the realization of substantial revenue in addition to those shown in the Commissioner's proposed report of January 26, 1948, which I approved on February 5.

The ability of the United States to discharge its obligations under its treaty with Mexico for delivery of water to Mexico would not be adversely affected. The 78-year period required for return of the reimbursable costs of the project is considered fully justifiable. If such a project as this is not undertaken, the economy of the heart of Arizona is destined to deteriorate seriously with consequent losses to the State, the region and to the Nation. Those losses would far exceed the costs of the physical works that are necessary to assure continued productivity of the land and the existing values of commerce, industry, and the extensive civilization that already prevail. The requirement for

an adequate ground-water law is to assure continued stability of the developments and to avoid recurrence of the present conditions which make this type of project imperative. Such a law will also contribute to the security of the necessary Federal investment.

Copies of the report have been sent to the Secretary of the Army and to the States of Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming for their views and recommendations pursuant to the provisions of section 1 of the Flood Control Act of 1944 (58 Stat. 887). The views of Arizona, New Mexico, and Utah—in which States impoundments and project works are proposed—and of Colorado and Wyoming are, with but minor qualifications, favorable to development of the project in accordance with the plan set forth. The State of Nevada opposes the development of the proposed project mainly on the grounds of its contention that Arizona's claims to water of the Colorado River are invalid. Nevada contends, furthermore, that there are more practical ways to use the water of the Colorado River for the welfare of the Southwest and the United States. The views of the State of California have not been received. I have assured the representative of that State, however, that the views of the State, when and if received, will be forwarded promptly to the President and the Congress. The Secretary of the Army does not object to the proposed project.

Assurance of a water supply is an important element of the plan yet to be resolved. The showing in the report of the availability of a substantial quantity of Colorado River water for diversion to central Arizona for irrigation and other purposes is based upon the assumption that the claims of the State of Arizona to this water are valid. It should be noted, however, as the regional director and the Commissioner of Reclamation have pointed out, that the State of California has challenged the validity of Arizona's claim. If the contentions of the State of Arizona are correct, there is an ample water supply for this project. If the contentions of California are correct, there will be no dependable water supply available from the Colorado River for this diversion. While the necessary water supply is physically available at the present time in the Colorado River, the importance of the questions raised by the divergent views and claims of the States is apparent. The Bureau of Reclamation and the Department of the Interior cannot authoritatively resolve this conflict. It can be resolved only by agreement among the States, by court action, or by an agency having jurisdiction. The report is, therefore, transmitted to the Congress for its information and such action as it deems appropriate under these circumstances. I feel confident that, in considering the project, the Congress should and will give this conflict the full consideration it deserves. The submission of this report is not intended in any way to prejudice full consideration and determination of this controversial matter.

In view of the urgent need for power from Bridge Canyon Dam and for irrigation and domestic and industrial water supplies in central Arizona, I recommend that if the claims of Arizona are correct to a degree which will provide the necessary water supply, the project be authorized for construction in accordance with the recommendations of the Commissioner of Reclamation.

Sincerely yours,

J. A. KRUG,
Secretary of the Interior.

UNIVERSITY OF COLORADO
BOULDER

CALIFORNIA DEFENDANTS '

Exhibit No. 7514-A

Identification:

Admitted:

LETTER FROM COMMISSIONER OF RECLAMATION
TO SECRETARY OF THE INTERIOR, DATED
MAY 20, 1948

UNIVERSITY OF COLORADO
BOULDER

LETTER FROM THE COMMISSIONER OF RECLAMATION TO THE
SECRETARY OF THE INTERIOR

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington 25, D. C., May 20, 1948.

The SECRETARY OF THE INTERIOR.

SIR: On January 26, 1948, I transmitted to you my proposed report on the central Arizona project. On February 5, 1948, you adopted that report as your proposed report on the project.

In your behalf, copies of the proposed report were sent to the Secretary of the Army and to the States of Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming, for views and recommendations pursuant to the provisions of section 1 of the Flood Control Act of 1944 (58 Stat. 887), and to the agencies exercising administration over the wildlife resources of the States of Arizona, New Mexico, and Utah in accordance with the requirements of the act of August 14, 1946 (60 Stat. 1080). Copies of the proposed report were sent also to the Federal Power Commission, and the Departments of Agriculture and Commerce. Copies of the written views of the States and the Federal agencies as received are attached. Attached also is a copy of your proposed report and its substantiating materials.

The views of Arizona, New Mexico, and Utah—in which States impoundments and project works are proposed—and of Colorado and Wyoming are, with but minor qualifications, favorable to development of the project in accordance with the plan set forth in your proposed report.

The State of Nevada opposes the development of the proposed project mainly on the grounds of its contention that Arizona's claims to water of the Colorado River are invalid. Nevada contends, furthermore, that there are more practical ways to use the water of the Colorado River for the welfare of the Southwest and the United States.

The views of the State of California have not been received. I have assured the representative of that State, however, that the views of the State, when and if received, will be forwarded promptly to the President and the Congress.

The Secretary of the Army does not object to the proposed project.

Upon consideration of all comments received, I suggest no change in your proposed report. Because of the urgency of the situation in central Arizona, I recommend that you adopt this as your report and that authority be sought to carry out the plan and recommendations contained in your proposed report of February 5, 1948.

Respectfully,

MICHAEL W. STRAUS,
Commissioner.

Approved May 27, 1948.

J. A. KRUG,
Secretary of the Interior.

CALIFORNIA DEFENDANTS

Exhibit No. **7514 -B**

Identification: Admitted:

LETTER OF COMMENT FROM THE GOVERNOR OF THE
STATE OF ARIZONA TO THE COMMISSIONER OF
RECLAMATION, APRIL 24, 1948, ON THE CENTRAL
ARIZONA PROJECT REPORT, CONTAINED IN H.R.
DOC. NO. 136, 81ST CONG., 1ST SESS. (1949)

UNIVERSITY OF COLORADO
BOULDER

LETTER OF COMMENT FROM THE GOVERNOR OF THE STATE OF
ARIZONA

EXECUTIVE OFFICE,
STATE HOUSE,
Phoenix, Ariz., April 24, 1948.

HON. MICHAEL W. STRAUS,
*Commissioner, Bureau of Reclamation,
Department of the Interior, Washington, D. C.*

MY DEAR COMMISSIONER: We in Arizona have reviewed the report on the central Arizona project, Project Planning Report No. 3-8b-4-2, together with your letter of January 26, 1948, addressed to the Secretary of the Interior.

We believe the central Arizona project is engineeringly sound and financially feasible, and that the people of central Arizona, utilizing the main stream water to be delivered to that area through the proposed works with the aid of revenue from the hydroelectric energy that will be generated at Bridge Canyon Dam, will be able to repay the costs properly chargeable to irrigation and power within a reasonable time to the Treasury of the United States.

We further believe that it essential that the project be authorized and constructed as soon as possible.

We in Arizona plan to use the water to be diverted from the main stream of the Colorado River through the proposed works to furnish a supplemental water supply to lands now irrigated, but inadequately irrigated, in order to preserve the civilization now existing in the State of Arizona and to prevent possible economic chaos. The irrigation of lands in central Arizona has been expanded beyond the water supply of central Arizona both by diversion from surface streams and by pumping from underground. We are now pumping from underground in central Arizona approximately 1,000,000 acre-feet of water per year more than comes into the area underground. We are, therefore, rapidly exhausting ground water, and the surface streams in the area are insufficient to maintain in production the lands now irrigated.

Therefore, to avoid the very real danger to the entire economy of the State of Arizona and to Arizona's contribution to the national welfare and to the Treasury of the United States in income taxes, it is essential that the central Arizona project be expedited in every way humanly possible.

Arizona has a contract with the United States whereby the United States agrees to deliver for use in Arizona 2,800,000 acre-feet of apportioned water, plus one-half of the surplus, in the main stream of the Colorado River in the lower basin, less, however, one twenty-fifth of such surplus which Arizona has agreed may be utilized in Nevada in the event Nevada should ever be able to use it, all subject, of course, to the availability of such water under the Colorado River Compact and the Boulder Canyon Project Act.

The Colorado River Compact apportions to the lower basin, which includes parts of California, Nevada, New Mexico, and Utah and almost all of Arizona, the exclusive beneficial consumptive use of 8,500,000 acre-feet of such apportioned water per year.

California is forever limited by her self-limitation act adopted by her legislature in March 1929 to 4,400,000 acre-feet of such apportioned water.

Arizona has agreed that Nevada may use 300,000 acre-feet of such apportioned water, plus one twenty-fifth of the surplus available in the lower basin.

The comprehensive Report of the Bureau of Reclamation on the Colorado River, issued in March 1946, indicates that the total ultimate possible use of water of the Colorado River system in those parts of Utah and New Mexico which are in the lower basin, including all present and possible future uses, will amount to not more than 130,000 acre-feet per year.

There is thus left 3,670,000 acre-feet of apportioned water per year, which cannot be lawfully used anywhere except in Arizona.

Arizona is using out of the main stream of the Colorado River and the tributaries of the Colorado River in Arizona, a grand total of 1,408,000 acre-feet of water per year. There is left for Arizona of the apportioned water in the main stream of the Colorado River 2,262,000 acre-feet for additional beneficial consumptive use in Arizona. This quantity of water is apportioned water and does not include any water legally usable in any other State either in the upper basin or in the lower basin. Ample provision has been made for the ultimate possible uses in Nevada and those portions of Utah and New Mexico which are in the lower basin.

Last year Congress reauthorized the Gila project and the adjustment of its boundaries to include the Welton-Mohawk division and exclude part of the Yuma-Mesa land. That project, when constructed to full development, is limited to the consumptive use of 600,000 acre-feet of water per year, including 34,000 acre-feet of present uses.

It is estimated by your report on the central Arizona project that the beneficial consumptive use of water from the main stream of the Colorado River on the central Arizona project will be 1,077,000 acre-feet per year.

Deducting the 566,000 acre-feet for additional use on the Gila project and 1,077,000 for the Central Arizona project from the 2,262,000 acre-feet to which Arizona has a clearly established right leaves a balance of 619,000 acre-feet of apportioned main-stream water to which Arizona has a clearly established right for future and further

development along the main stream of the Colorado River in the Parker area, in Mohave Valley, in Cibola Valley, and in the Little Colorado River Basin.

You will note that in these figures of water supply I have not taken into account any of the surplus water which under the terms of the Colorado River Compact is subject to further apportionment between the seven States of the basin after 1963.

Arizona, therefore, is not now proposing to predicate the development of either the Gila project or the central Arizona project upon the use of any water which might later be withdrawn by any other State.

We in Arizona respect our commitments and we do not desire or intend in any way to embarrass or prejudice developments in any other State in the Colorado River Basin nor to claim any part of any water not properly and exclusively usable in Arizona.

In order to make clear Arizona's understanding of the water supply in the lower basin and of the apportionment of water in the lower basin and of the quantities of water available to Arizona, I summarize in the following table which I believe makes our position clear.

Available supply and apportionment of water in the lower basin

	<i>Acres-ft</i>
Virgin flow at Lee Ferry.....	16, 270, 000
Less apportionment to upper basin, art. III (a) Colorado River compact.....	7, 500, 000
Total.....	8, 770, 000
Natural gain from tributaries, Lee Ferry to Boulder Dam.....	1, 060, 000
Total.....	9, 830, 000
Natural gain from tributaries, Boulder Dam to Mexican border.....	1, 420, 000
Total.....	11, 250, 000
Less natural losses, estimated.....	1, 030, 000
Total.....	10, 220, 000
Allocated to Mexico by treaty.....	1, 500, 000
Total.....	8, 720, 000
Apportioned to lower basin, art. III (a) and (b) Colorado River compact.....	8, 500, 000
Not apportioned to lower basin but present in lower basin....	220, 000
Apportioned to lower basin.....	8, 500, 000
Potential uses of water, other States of the lower basin:	
Potential uses in California limited by California Limitation Act.....	4, 400, 000
Nevada contract.....	300, 000
Ultimate possible uses, Utah and New Mexico.....	130, 000
	4, 830, 000
Usable only in Arizona.....	3, 670, 000
Present uses in Arizona from main stream and tributaries, including Gila.....	1, 408, 000
Left for Arizona, additional main-stream water (consumptive uses)-	2, 262, 000
Consumptive use, Yuma-Mesa and Welton-Mohawk divisions of Gila project (authorized last year) (600,000—34,000 present uses).....	566, 000
Consumptive use, Bridge Canyon-central Arizona project (authorization bill pending).....	1, 077, 000
	1, 643, 000
Left in main stream apportioned to Arizona for future development and consumptive use in Arizona including Arizona's share of reservoir losses (after deduction for both Gila project and proposed central Arizona project).....	619, 000

At extensive hearings held before the Senate Subcommittee on Irrigation and Reclamation of the Public Lands Committee last summer, Arizona's position was made clear and we in Arizona believe that our position is sound and unassailable.

I assure you of my appreciation of the opportunity given me to make comments upon the report and of my desire which I am sure is shared by all of the people of Arizona to cooperate with the United States, and with our sister States of the Colorado River Basin in every way, to the end that the greatest possible development may be made of the use of the waters of the Colorado River under the terms of the Colorado River compact, the Boulder Canyon Project Act, the Arizona contract, the Nevada contract, and the California Self-limitation Act. Such development will be in the best interests of the basin and of the United States.

We believe that the Central Arizona project falls clearly within the framework of the best interests of all of the States of the Colorado River Basin, and of the United States, and we feel confident that Congress will authorize the project, if it can be presented to them in such a way as to bring about a clear understanding of its great importance to the welfare of the United States and we in Arizona pledge our best efforts to that end.

With all good wishes, I am

Sincerely,

SIDNEY P. OSBORN, *Governor.*

UNIVERSITY OF COLORADO
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. **7514 - C**

Identification: Admitted:

LETTER OF COMMENT FROM THE COLORADO WATER
CONSERVATION BOARD, STATE OF COLORADO, TO
THE SECRETARY OF THE INTERIOR, MAY 17, 1948,
ON THE CENTRAL ARIZONA PROJECT REPORT,
CONTAINED IN H.R. DOC. NO. 136, 81ST CONG.,
1ST SESS. (1949)

UNIVERSITY OF COLORADO
BOULDER

LETTER OF COMMENT FROM THE COLORADO WATER
CONSERVATION BOARD, STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD,
Denver, Colo., May 17, 1948.

Comments of the State of Colorado Concerning Report on Central Arizona Project (Project Planning Report No. 3-8b. 4-2), submitted pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887).

THE SECRETARY OF THE INTERIOR.

SIR: On behalf of the State of Colorado, and pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887), there is herewith submitted the comments, views, and recommendations of the State of Colorado concerning the report of the United States Department of the Interior, Bureau of Reclamation, on the central Arizona project (project planning report No. 3-8b. 4-2), dated December 1947, with the accompanying letter from the Commissioner of Reclamation to the Secretary of the Interior, dated January 26, 1948, which letter was approved by the Secretary of the Interior, February 5, 1948.

These comments, views, and recommendations are submitted under the authority of chapter 265, session laws of Colorado of 1937, creating

the Colorado Water Conservation Board and defining its functions, and in accordance with the designation of such Board by the Governor pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887), as the official State agency to act in such matters.

The comments, views, and recommendations of the State of Colorado are as follows:

1. Each State of the Colorado River Basin should decide upon the manner in which it shall use its share of Colorado River water; and that it is assumed that the Colorado River water available for the central Arizona project falls within Arizona's share of such water when considered in connection with the present and prospective uses of Colorado River water by other projects in Arizona.

2. Colorado believes Arizona's share of Colorado River water is defined by the Colorado River compact, the provisions of the Boulder Canyon Project Act, the Self-Limitation Act of California, and the physical limitations for the use of Colorado River water in the lower Basin by Nevada, New Mexico, and Utah. All of these factors are recognized in the water-delivery contract between the Secretary of the Interior and the State of Arizona, dated February 9, 1944. All Colorado River projects for the utilization of Colorado River water must be operated in accordance with such compact, statutes, and the United States-Mexican Water Treaty.

3. Colorado concludes that the authorization, construction, and operation of the proposed central Arizona project will not adversely affect the interest of Colorado in its present or future utilization of Colorado's share of Colorado River water nor that of any Colorado River Basin State; that Colorado's interests and rights under the Colorado River compact and all pertinent statutes in relation thereto will not be impaired by the operation of such project on the river; and that accordingly Colorado submits no adverse comments on the above-described report and makes no objection to the proposed central Arizona project.

Respectfully submitted.

LEE KNOUS,

Governor and Chairman of the Colorado Conservation Board.

CLIFFORD H. STONE,

Director of the Board.

R. J. TIPTON,

Consulting Engineer of the Board.

JEAN S. BREITENSTEIN,

Attorney.

UNIVERSITY OF COLORADO
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. **7514 - D**

Identification:

Admitted:

LETTER OF COMMENT FROM THE STATE ENGINEER,
STATE OF NEVADA, TO THE COMMISSIONER OF
RECLAMATION, FEBRUARY 26, 1948, ON THE
CENTRAL ARIZONA PROJECT REPORT, CONTAINED
IN H.R. DOC. NO. 136, 81ST CONG., 1ST SESS.
(1949)

UNIVERSITY OF COLORADO
BOULDER

LETTER OF COMMENT FROM THE STATE ENGINEER, STATE OF
NEVADA

OFFICE OF STATE ENGINEER,
Carson City, Nev., February 26, 1948.

HON. MICHAEL W. STRAUS,
*Commissioner, United States Bureau of Reclamation,
Washington 25, D. C.*

DEAR SIR: This letter is in reply to your communication of February 5, 1948, requesting that the views and recommendations of Nevada regarding the report on the central Arizona project be submitted at an early date.

It is with regret that we are impelled to take exception to the findings on several points in the report that are of importance to Nevada. In order to facilitate future reference to our comments and questions, if any should be made, they have been numbered.

1. There is a grave question regarding the availability of water to Arizona to supply the project. Your study and recommendation is apparently based upon an assumption by Arizona officials that sufficient water will be available. This assumption is strongly endorsed by political and financial interests in Arizona. As you have proceeded to make an exhaustive report based on Arizona's contention, it is assumed that those views are endorsed by the Bureau. On the other hand, studies have been made by California and Nevada engineers which show that there will be little or no water for the central Arizona project. There are some references in the text to the effect that the Bureau is taking no stand regarding a division of water. Pending a determination of the availability of water, and the legal right to use it, which consideration should come first with any project, why did the Bureau proceed with and complete this detailed study with the use of public funds?

Investigations and reports should be held up, or be only preliminary in character, where there is a question as to availability of water. There are various projects in the upper basin that can be reported on in detail, where there is as yet no question of sufficient water.

It seems to me that the Arizona report, and all other reports, should be based upon the present reclamation law. When the law is amended revised reports can be prepared with very little additional expense. The Arizona report in its present form advocates the project, if changes in the law are made, and as such may be considered as propaganda for new policies of the Bureau of Reclamation.

2. Mr. Straus states (p. 1, "Authority for the Report") that "the report was prepared in compliance with a directive from the Irrigation and Reclamation Subcommittee of the Public Lands Committee of the United States Senate, 1947, the report to be in accordance with the Millikin-O'Mahoney amendment to the Flood Control Act of 1944." Were not the requirements of said act exceeded in getting out this exhaustive report, while other States, with projects of greater merit under present reclamation law, await the Bureau's attention later?

3. Does not the report go somewhat further than what was contemplated by the Millikin-O'Mahoney amendment to the Flood Control Act of 1944?

4. Referring to the 376,000 acre-feet of saline waters to be released from the project (p. R-35, par. 9). It is estimated that the release of 376,000 acre-feet a year into the channel of the Gila River at Gillespie Dam would result in an increase of flow at the mouth of the Gila River amounting to 123,000 acre-feet per year. This will be highly saline water. (p. 2, par. 10.) Do you contemplate delivering this saline water to Mexico as a part of her treaty water? It would seem that the treaty calls for water to Mexico suitable for irrigation. If it is not usable, can you claim it as a credit return flow to the Colorado River? Will the releases from Gillespie Dam be handled in such a way that the 123,000 acre-feet reaching Mexico will carry the bulk of the salt?

5. Should you not have included in your estimates an ultimate delivery of 240,000 acre-feet of Arizona's mainstream water for de-

RECEIVED BY BUREAU OF RECLAMATION
BOULDER

livery at Parker Dam or the Mexican boundary, satisfactory for all uses, as Mexico undoubtedly will demand? That would be Arizona's proportion of the 750,000 acre-feet due Mexico from the lower basin.

6. I herewith present a tabulation of uses and depletions of the water allocated to the lower Colorado River Basin. If the items are correct, where can water be obtained for the Arizona project under full development of the Colorado River system?

Average annual virgin flows of the Colorado River

(1) Main stream at Lee Ferry, 48-year period, 1897-1943.....	16, 270, 000
(2) Net increment between Lee Ferry and Boulder Dam, being inflow from tributaries less natural river channel losses.....	1, 060, 000
(3) Inflow from tributaries between Boulder Dam and Mexican boundary (except Gila).....	150, 000
Total.....	17, 480, 000

Existing burdens on river below Lee Ferry (except on Gila River)

(1) Water apportioned to upper basin.....	7, 500, 000
(2) Mexico's treaty right (guaranteed minimum).....	1, 500, 000
(3) Not reservoir losses:	
(a) Lake Mead.....	640, 000
(b) Davis Dam and Lake Havasu.....	140, 000
(4) River channel losses below Boulder Dam (with full river development).....	610, 000
(5) Conceded by Arizona to California, by Arizona contract, California's prior appropriations that do not exceed her statutory limitation.....	5, 362, 000
(6) Conceded by Arizona to Nevada by Arizona contract.....	412, 000
(7) Conceded by Arizona to New Mexico and Utah by Arizona contract.....	131, 000
(8) Projects completed and under construction in Arizona:	
(a) Yuma project 61,000 acres at 4 acre-feet.....	244, 000
(b) First unit Gila project; north and south Gila 15,000 acres at 4 acre-feet.....	60, 000
Yuma Mesa, 51,000 acres at 11 acre-feet.....	561, 000
(c) Colorado Indian Reservation, 100,000 acres at 3 acre-feet.....	300, 000
(d) Aggregate uses present projects on Little Colorado, Virgin River, etc.....	130, 000
(9) Allowance for regulations and unavoidable losses (principally in delivery of 1,500,000 acre-feet to Mexico).....	300, 000
Total.....	17, 890, 000
Total available water.....	17, 480, 000
Total present and authorized project.....	17, 890, 000

Water permanently available in stream for Arizona project.....	- 410, 000
--	------------

7. The Bureau's report quite frankly states that this is a "rescue" project, designed to eliminate the threat of a serious disruption of the area's economy. It appears to be an effort to justify approval of the project on grounds other than its merit for reclamation. It is questionable if the Bureau has authority to act on the related social problems. My reading of the law does not indicate that such reasons for creating a \$730,000,000 supplemental irrigation project comes within its purview. The water shortage situation in the Salt River Valley is due to Arizona's disregard to the necessity of preventing overdraft on a limited ground-water supply. All of the Colorado River water contemplated for delivery will provide only supplemental irrigation for presently cultivated lands. The diversion will create

an overdraft upon the river in order to correct the results of Arizona's misuse of ground water resources. It can only be approved if new legislation is passed by Congress spreading the cost of repayment over a very long period of years, and allocating a part of reclamation to power. Do you think the Bureau of Reclamation is within its authority in promoting the special legislation necessary to make such a project legal? One answer to this question could be that it is just as important to maintain present development or more so, than to create new developments. However, such an unjustifiable development should not be maintained at the cost of water to other existing projects. Arizona was shortsighted in allowing overdevelopment before determining if they could rescue themselves economically. If you set this project up on such grounds is it not a dangerous precedent? Very probably California is now in the same boat in regard to some projects. Later on others could develop in other States.

8. With reference to paragraph 8, page 13, which sets out four prerequisites to the construction of Granite Reef aqueduct (an elemental part of the project) subsection (a), provision for future protection of ground water is specified. It seems that this provision, as well as a determination of available water, also might well have been prerequisite to making a detailed study, in consideration of the public funds required for it, and the uncertainty as to whether Arizona will enact such a protective law. It is also assumed in the report that one-fifth of the interest component on power over a 78-year period be included as project revenue. There is no legal provision for this, hence the major financial summary (page 3, letter to the Secretary) is somewhat a matter of conjecture.

Farm land in the Salt River Valley has an average value of \$300 per acre. Land values there are high and may decrease due to agricultural competition. The cost of supplying water for irrigation under this project will be about \$1,469 per acre. In addition there will be operation and maintenance. Is this seemingly unsound set-up justified on a socialistic instead of an economic basis? It is clear that as a new project it would not be feasible.

9. The report apparently does not contemplate the irrigation of new lands. The water is to be used for supplemental irrigation of existing cultivated lands, and for municipal purposes. It would seem that the project does not provide for much new population, or the establishment of new families, which is one of the objectives of reclamation projects. There are other prospective developments in the Colorado River Basin which would provide such new farms for veterans and their families, and for the increasing number of home seekers. Why were not such other projects for new land development considered before recommending a vast expenditure of public funds on this project?

10. Some engineers have expressed an opinion that the Bridge Canyon Dam and Reservoir cannot be utilized properly and to its full extent as a power project because of the limited storage behind the dam, 3,720,000 acre-feet. In a few years the reservoir would fill with silt, and power service would depend on natural fluctuating river flow. Would it be desirable at the same time to construct Glen Canyon Dam and Reservoir which provides 8,600,000 acre-feet capacity for river control and silt protection? A combination of these two dams and power plants would create an effective river control and power project which may not be accomplished by construction of Bridge

RECEIVED
BUREAU OF RECLAMATION
BOULDER

Canyon Dam alone, or of Glen Canyon alone, as Glen will not provide enough power head. Was the construction of Bridge contemplated mainly to supply pumping power for the Arizona project, without giving full consideration to a proper ultimate development of the river? Assuming that Bridge and Glen together are necessary for proper river development, why were not both of these dams and reservoirs included in the Arizona project?

It seems that with the Bluff and Coconino Reservoirs in there would still be 70,000 acre-feet of silt depositing in Bridge, which would fill it up in 53 years. As Bridge Reservoir capacity decreased the firm power production would be seriously affected before the end of project repayments. Decrease of silt due to upstream developments may be very slow. Even if power capital costs can be amortized in 33.4 years (p. F-28), the loss of the power resources would be serious.

11. On page 7, paragraph 28, the report states: "Financial feasibility of the project is more difficult to determine (than the engineering feasibility)". Notwithstanding this, much of the report seems to be a mathematical effort to devise a financial program that will be acceptable to the Congress based on the urgent need for more water for present irrigated lands. Is this opinion correct?

12. The proposed allocation of 300,000 acre-feet plus a share of surplus water to Nevada in the Colorado River is of great value to this State. That interest is imperiled by lack of the tri-State compact authorized between Arizona, California, and Nevada. Without the tri-State compact Nevada must rely upon State laws for the water, and our rights are junior to those of California. Our present contract with the Bureau of Reclamation to use water stored in Lake Mead at a charge of 50 cents per acre-foot for storage is not a firm water right, and delivery is contingent upon mutual consent by Arizona and California. In time of water shortage or drought they might demand our water. We would not care to go into the courts and fight either Arizona or California for that water. It will be greatly to our advantage to have the water promptly adjudicated by the United States Supreme Court, after which all downstream rights can be made firm by said compact. Certainly no great additional demand should be made on the river, such as is contemplated by the Arizona project, until the language of the Colorado River compact and the Boulder Canyon Project Act with respect to the division of the lower basin water has been clarified.

Very truly yours,

ALFRED MERRITT SMITH,
State Engineer.

CALIFORNIA DEFENDANTS

Exhibit No. **7514 - E**

Identification: Admitted:

LETTER OF COMMENT FROM THE STATE ENGINEER,
STATE OF NEW MEXICO, TO THE SECRETARY OF
THE INTERIOR, MAY 7, 1948, ON THE CENTRAL
ARIZONA PROJECT REPORT, CONTAINED IN H.R.
DOC. NO. 136, 81ST CONG., 1ST SESS. (1949)

UNIVERSITY OF COLORADO
BOULDER

LETTER OF COMMENT FROM THE STATE ENGINEER, STATE OF
NEW MEXICO

OFFICE OF STATE ENGINEER,
Santa Fe, May 7, 1948.

SECRETARY OF THE INTERIOR,
Washington, D. C.

DEAR SIR: On behalf of the State of New Mexico and pursuant to section 1 of the act of December 22, 1944 (58 Stat. 887), the following views and recommendations are submitted concerning the Bureau of

Reclamation project planning report No. 3-8b. 4-2, entitled "Report on Central Arizona Project." These views and recommendations are submitted by authority of the Governor, who has designated the State engineer as the official to act in such matters.

VIEWS AND RECOMMENDATIONS

The State of New Mexico embraces a portion of both the "upper basin" and "lower basin" of the Colorado River and because of this situation has a twofold interest in the subject report.

As an upper basin State, New Mexico believes that diversions for the Central Arizona project may be made out of the 8,500,000 acre-feet of water allocated to the lower basin by the Colorado River compact.

It is noted in the report that the project plan contemplates construction of a reservoir at the Bluff Dam site on the San Juan River in the upper basin. This State believes that losses incidental to the operation of reservoirs constructed in the upper basin for the benefit of the lower basin are chargeable to the lower basin to the degree to which benefits accrued to the lower basin through the use of such structures.

In the event a dam is authorized for construction at the Bluff site, New Mexico will demand protection against damages upstream therefrom caused by aggravated channel aggradation, or for any other reason, attributable to the construction and operation of said reservoir.

There is no evidence in the report that the operation of the Bluff Reservoir will be subservient to and contingent upon any proposed development within the San Juan Basin or exportation of water therefrom. Operation of Bluff Reservoir cannot be assumed for any other condition than that of full development upstream therefrom. The report should be revised accordingly.

As a lower basin State, the State of New Mexico has a direct interest in the Central Arizona project because of the proposed construction of a reservoir at the Hooker Dam site within the State of New Mexico. The State believes that the reservoir is a necessary part of the Central Arizona project and should be built as one of the features of said project, provided satisfactory assurance is given for the protection of all existing water uses along the Gila River within the State of New Mexico.

In a letter to the Governor of New Mexico, the State game warden has indicated that the benefits of the proposed Hooker Dam to the wildlife and fishery resources could be substantial, provided certain operating rules can be established with regard to the reservoir. He has indicated the desirability of retaining a dead-storage pool, continuous releases during the nonirrigating period for the preservation of fish life in the river below the dam, the use of water for the operation of a hatchery and rearing ponds and of a structural design that will permit release of water from any desired elevation. The State feels that the views of the New Mexico Department of Game and Fish as expressed by the State game warden should receive consideration and be complied with insofar as possible without injury or detriment to existing irrigation interests downstream. Such operation rules should be worked out by the interested State and Federal agencies.

New Mexico approves of the recommendations set forth in the letters of the regional director and the Commissioner which accom-

RECEIVED
Boulder

pany the report, noting specifically that the regional director and the Commissioner both point out that the feasibility of the project is dependent upon modification of existing reclamation law and that a firm water supply for the project depends upon resolving the differences between the States of the lower basin concerning this matter. Further, that the letter of the regional director emphasizes that the State of Arizona will have to accomplish certain prerequisites satisfactory to the Secretary of the Interior, namely, legislation controlling withdrawal of water from ground water basins, the formation of a district which will be responsible for meeting the reimbursable costs of the project and which can give satisfactory assurance that exchanges of water will be made in accordance with the plan outlined in the report.

Since the Secretary of the Interior has found the project to be physically feasible and believes that the reimbursable cost can be met by the water uses provided certain changes in the reclamation law are made, the State of New Mexico recommends that the report be transmitted to Congress and that the project be authorized subject to the conditions stated in the letters of the Commissioner and regional director and those stated in the above views.

Very truly yours,

JOHN H. BLISS,
State Engineer.

By JOHN R. ERICKSON,
Engineer.

CALIFORNIA DEFENDANTS

Exhibit No. **7514 - F**

Identification: Admitted:

EXTRACTS FROM UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF RECLAMATION, REPORT ON
CENTRAL ARIZONA PROJECT, PROJECT PLANNING
REPORT NO. 3-8b.4-2, DECEMBER 1947,* CONTAINED
IN H.R. DOC. NO. 136, 81ST CONG., 1ST SESS.
(1949)

* Ariz. Ex. 65. These extracts are designated in accordance with the Special Master's ruling that only the pages designated by the parties are to be regarded as proof and used in briefs. See Tr. 299-301, 388-90, 3251.

Part of the material on page 150 and all of page 151 have been designated as Calif. Ex. 4502, offered for a different purpose.

BOULDER

UNITED STATES DEPARTMENT OF THE INTERIOR

J. A. KRUG, Secretary

BUREAU OF RECLAMATION

MICHAEL W. STRAUS, Commissioner

REGION III

E. A. MORITZ, Regional Director

REPORT ON
CENTRAL ARIZONA PROJECT

PROJECT PLANNING REPORT NO. 3-8b.4-2

DECEMBER 1947

3. WATER SUPPLY

(a) New water available

Under the central Arizona project, new water would be developed from four rivers, namely:

- First, the Colorado River by diversion from Havasu Lake;
- Second, the Verde River by enlargement of Horseshoe Dam;
- Third, the Gila River by construction of Buttes and Hooker Dams, and the Safford Valley improvements; and
- Fourth, the San Pedro River by construction of Charleston Dam.

(1) *Diversions from the Colorado River.*—Development of the Colorado River has caused a gradual decrease in the average annual flow and may be expected to continue to reduce the flow in the future.

It is estimated that if no man-made developments existed in the basin, the long time (1897-1943) average annual run-off of the Colorado River at Lee Ferry would be 16,270,000 acre-feet. This is termed virgin flow. The flow at Lee Ferry has been selected for analysis as this point on the Colorado River marks the division between the upper and lower basins. (Lee Ferry is a point in the main stream of the Colorado River 1 mile below the mouth of the Paria River. It should not be confused with the Geological Survey gaging station, Lees Ferry, one-fourth mile upstream from the mouth of the Paria River). It is further estimated that the virgin flow of the Colorado River at the international boundary would average 17,720,000 acre-feet annually. Included in this figure is an estimated average annual contribution from the Gila River of 1,270,000 acre-feet.

Apportionment of this water among the various States in the Colorado River Basin has long been a source of controversy and the subject of negotiations. This report makes no attempt to allocate water to States or among projects within States. However, some assumption as to the amount ultimately available for diversion to central Arizona is necessary.

A compact, treaty, and numerous contracts and agreements deal with the distribution of the waters of the Colorado River. These include the Colorado River compact, the Arizona contract, various other contracts with the Secretary of the Interior for delivery of Colorado River water, and the treaty between the United States and Mexico. Unfortunately, there are several interpretations of some of these documents. Because these are legal questions which cannot be arbitrarily settled by the Bureau of Reclamation, it is impossible to determine with finality the amount of water available to the State of Arizona from the Colorado River. The interpretations of all compacts and contracts, as used for a basis of computation in this report, are those of responsible officials of the State of Arizona. The interpretations thus expressed are not necessarily those of the Bureau of Reclamation or of all other States of the Colorado River Basin.

Computations, consistent with interpretations by Arizona, are briefly summarized in the following tabulation:

CENTRAL ARIZONA PROJECT

151

TABLE 3.—Apportionment and disposition of Colorado River water

[Acres-feet a year]

Division between upper and lower basins and Mexico:	
Virgin flow of Colorado River at International boundary	17, 720, 000
Apportioned to the upper basin by article III (a) of Colorado River Compact	7, 500, 000
Apportioned to lower basin by article III (a) and (b) of Colorado River Compact	8, 500, 000
Allocated to Mexico by terms of Mexican treaty	1, 500, 000
Subtotal	17, 500, 000
Total surplus to be allocated under the terms of art. III (f) of Colorado River compact	220, 000
Water available to Arizona:	
Apportioned to lower basin under article III (a) and (b)	8, 500, 000
Apportioned water for California under Limitations Act	4, 400, 000
Nevada contract	300, 000
Lower basin uses by New Mexico and Utah	130, 000
Subtotal	4, 830, 000
Remainder	3, 670, 000
To be allocated to Arizona under article III (f) of the compact	55, 000
Available to Arizona	3, 725, 000
Disposition of water available to Arizona:	
Present irrigation depletions:	
Little Colorado River Basin	59, 000
Virgin River and Kanab Creek Basins	3, 000
Williams River Basin	3, 000
Gila River Basin	1, 135, 000
Colorado River Indian Reservation	15, 000
Gila project	34, 000
Yuma project	157, 000
Subtotal	1, 408, 000
Losses from reservoirs on or benefitting main-stem developments of Colorado River present and future:	
Estimated total losses 900,000 acre-feet a year Arizona charged with proportion based on ultimate use of main stream Colorado River water	313, 000
Increased depletion by potential projects:	
Snowflake project	10, 000
Hurricane project	12, 000
Hassayampa project	20, 000
Colorado River Indian Reservation	285, 000
Gila project	568, 000
Central Arizona project	1, 077, 000
Unassigned water	34, 000
Subtotal	2, 004, 000
Total, all uses	3, 725, 000

CALIFORNIA DEFENDANTS

Exhibit No. 7515

Identification:

Admitted:

EXTRACTS FROM UNITED STATES DEPARTMENT
OF THE INTERIOR, BUREAU OF RECLAMATION,
APPENDICES TO REPORT ON CENTRAL ARIZONA
PROJECT, DECEMBER 1947

RECEIVED BY BUREAU OF RECLAMATION
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
J. A. Krug, Secretary

BUREAU OF RECLAMATION
Michael W. Straus, Commissioner

REGION III
E. A. Moritz, Regional Director

REPORT
ON
CENTRAL ARIZONA PROJECT

APPENDICES

PROJECT PLANNING REPORT NO. 3-8b.4-2

DECEMBER 1947

UNIVERSITY OF COLORED
BOULDER

B. WATER SUPPLY

(3) Availability of Colorado River water

(a) General. Hydrological data and legal documents appearing in other sections of this appendix are herein used to determine the amount of Colorado River water available to the State of Arizona. In addition, consideration is given to present and future depletions of water in the Lower Basin by Arizona as listed in the Bureau of Reclamation report entitled "The Colorado River" and dated March 1946. These depletions subtracted from water available to Arizona plus water estimated to be returned to the Colorado River by Arizona result in the amount of water available for diversion to the Central Arizona Project from the Colorado River.

In some cases there is disagreement on the interpretations of certain legal documents pertaining to the apportionment of water to the individual state. Where these variances occur, interpretations by responsible officials of the State of Arizona are used. It is recognized that these interpretations are not necessarily supported by all states in the Colorado River Basin.

(b) Unapportioned water. In calculations concerning the availability of Colorado River water under ultimate conditions, it should be assumed that the average annual virgin flow as determined at the International Boundary will be depleted the full amounts apportioned by the Colorado River Compact under Article III (a) and (b), and allotted by the Treaty with Mexico. These apportionments amount to 17,500,000 acre-feet per annum. The annual virgin flow of the Colorado River at the International Boundary has been computed at 17,720,000 acre-feet. The difference between these two figures equals the amount of unapportioned water or 220,000 acre-feet.

(c) Water for use by Arizona. Arizona contends that of the 8,500,000 acre-feet of water apportioned annually to the Lower Basin by the Colorado River Compact, California may use no more than 4,400,000 acre-feet as stipulated under its Limitation Act of March 4, 1929. Nevada has contracts for uses totaling 300,000 acre-feet of the apportioned water. Subtracting California and Nevada's allocations from the 8,500,000 acre-feet, leaves 3,800,000 acre-feet for Arizona.

Arizona officials recognize the rights of Utah and New Mexico to use of waters in the Lower Basin.

It is estimated that ultimate developments by New Mexico will deplete annually the Little Colorado River by 13,000 acre-feet and the Gila River by 16,000 acre-feet. Under ultimate development, it is estimated that Utah annually will deplete the Virgin River by 94,000 acre-feet and Kanab Creek by 7,000 acre-feet. Therefore, ultimate depletions in the Lower Basin by these states are estimated at 29,000 acre-feet by New Mexico and 101,000 acre-feet by Utah or a total of 130,000 acre-feet.

B. WATER SUPPLY

As provided in Article III (f) of the Compact, further equitable apportionment of the unapportioned water of the Colorado River will be made after October 1, 1963. The unallocated water is computed as 220,000 acre-feet a year. It is assumed that one-fourth of the unapportioned water or 55,000 acre-feet will be made available to Arizona.

On the basis of these assumptions, Arizona's share of the Colorado River annually under ultimate conditions is summarized as follows:

	<u>Acre-feet</u>
Water from Article III (a) and (b)	3,800,000
Less uses by New Mexico and Utah in Lower Basin	<u>130,000</u>
Net water available from Article III (a) and (b)	3,670,000
One-fourth share of unallocated water	<u>55,000</u>
Total available for Arizona	3,725,000

(d) Water for use by the Central Arizona Project. Not all of the 3,725,000 acre-feet of water claimed by Arizona as its annual share of the flows of the Colorado River system would be available to the Central Arizona Project. Depletions due to main-stem reservoir evaporation, present irrigation uses, and potential irrigation uses not a part of the Central Arizona Project, all must be deducted in order to determine the water actually available to the Central Arizona Project from the Colorado River.

(1.) Evaporative losses. As developed in the section on losses, it is estimated that under ultimate conditions, approximately 900,000 acre-feet of water will be lost annually to evaporation from the surfaces of reservoirs within the Lower Basin on or benefiting main-stream developments. This amount is in addition to the quantities lost from the same areas prior to the construction of any dams.

Inasmuch as these losses represent a depletion of the water supply of the Lower Basin as a whole, it has been assumed that these losses would be apportioned among the various states of the Lower Basin on an equitable basis. It is the contention of Arizona that a just method of apportionment would be to charge California, Nevada, and Arizona with these main-stream reservoir losses in the ratio that these states receive water from the Colorado River. On this basis, with main-stream reservoir losses of 900,000 acre-feet, Arizona would be charged with 313,000 acre-feet a year.

B. WATER SUPPLY

(ii.) Present irrigation uses. Arizona's present annual uses of water from the Colorado River system for irrigation are summarized as follows:

Little Colorado River Basin	59,000 acre-feet
Virgin River and Kanab Creek Basins	5,000 acre-feet
Williams River Basin	3,000 acre-feet
Gila River Basin	1,135,000 acre-feet
Colorado River Indian Reservation	15,000 acre-feet
Gila Project	34,000 acre-feet
Yuma Project	157,000 acre-feet
Total	1,408,000 acre-feet

(iii.) Potential irrigation uses. There are potential irrigation projects in Arizona other than the Central Arizona Project which could increase the foregoing depletions. These include such developments as the Snowflake Project, Colorado River Indian Reservation, Gila Project, Hassayampa Project, etc., which are recognized as potential units in a basin-wide plan of development.

Summarizing such potential developments and contemplated expansion of projects now under construction, the total yearly increased depletions are computed as follows:

Snowflake Project	10,000 acre-feet
Hurricane Project	12,000 acre-feet
Hassayampa Project	20,000 acre-feet
Colorado River Indian Reservation	285,000 acre-feet
Gila Project	566,000 acre-feet
Unassigned waters	34,000 acre-feet
Total	927,000 acre-feet

(iv.) Colorado River water available for the Central Arizona Project. With depletions due to reservoir evaporation, and to present and potential irrigation uses thus determined, the following summary derives that portion of Arizona's share of the Colorado River which, under ultimate conditions, would be available for the Central Arizona Project.

	<u>Acre-feet a year</u>
Total available for Arizona	3,725,000
Less:	
Reservoir losses (Arizona's share)	313,000
Present irrigation depletion	1,408,000
Future irrigation depletion	<u>927,000</u>
Subtotal	<u>2,648,000</u>
Water available for the Central Arizona Project from the Colorado River	1,077,000

B. WATER SUPPLY

(e) Colorado River water for diversion to the Central Arizona Project. Under ultimate development, it will be necessary to release water from the Central Arizona Project area in order to dispose of excess salts and establish a salinity control. A study of this condition appears elsewhere in this appendix. The net effect of such a release would be to increase the annual return to the Colorado River through the Gila River about 123,000 acre-feet. By virtue of this credit, a similar amount of additional water may be diverted from the Colorado to the Central Arizona Project. Thus the total quantity of water which may be diverted to the Project area is computed as follows:

Amount of water in the Colorado River available from Arizona's share of the Lower Basin apportionment for diversion to the project area	1,077,000 acre-feet
---	---------------------

Plus increase in return flow to the Colorado River through the Gila River due to operation of the Central Arizona Project at time of ultimate development	<u>123,000 acre-feet</u>
---	--------------------------

Total Colorado River water available for diversion to the Central Arizona Project area	1,200,000 acre-feet
--	---------------------

(r) Summary of calculations. By way of summary, the availability and disposition of Colorado River water allocated to Arizona by the Colorado River Compact, under the interpretations of the several compacts, contracts, and legislative acts as heretofore discussed, are shown in Tables B-12 and B-13.

B. WATER SUPPLY

Table B-12

AVAILABILITY OF COLORADO RIVER WATER

	<u>Acre-feet a year</u>
III (a) and (b) water allocated to the Lower Basin	8,500,000
Less:	
Water for use in California	4,400,000
Water for use in Nevada	300,000
Water for use in Utah and New Mexico	<u>130,000</u>
Subtotal	<u>4,830,000</u>
III (a) and (b) water available for Arizona	3,670,000
III (c) water available for Arizona	<u>55,000</u>
Total water available for Arizona from the Colorado River	3,725,000

Table B-13

DISPOSITION OF COLORADO RIVER WATER

	<u>Acre-feet a year</u>
Water available for Arizona from Colorado River	3,725,000
Less:	
Reservoir losses (Arizona's share)	313,000
Present irrigation uses	1,408,000
Future irrigation uses other than Central Arizona Project	<u>927,000</u>
Subtotal	<u>2,648,000</u>
Colorado River water available for the Central Arizona Project	1,077,000
Water returned to the Colorado River by the Central Arizona Project	<u>123,000</u>
Total Colorado River water for diversion to the Central Arizona Project	1,200,000

CALIFORNIA DEFENDANTS

Exhibit No. 7551

Identification: Admitted:

OPINION NO. M. 25151 FROM SOLICITOR
E. C. FINNEY TO THE SECRETARY OF THE
INTERIOR, DATED APRIL 24, 1929

RECEIVED
APR 25 1929
BOULDER

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

RECORDS OF THE BUREAU OF RECLAMATION, RG 115

General Administrative and Project Records, 1902-45

document from File #032.-

Colorado River Project - Settlement of Water Rights -
Colorado River Compact.

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 10th day of June, 1960.

Wayne C. Grover
Archivist of the United States
By John W. Thomas

032.- COLO. RIVER COMPACT.
COLORADO RIVER
United States
Department of the Interior
Office of the Solicitor
Washington

M. 25151

TRANSFER CASE

April 24, 1929.

OFFICIAL COPY FOR
EXPLANATION SERVICE

The Honorable

The Secretary of the Interior.

Dear Mr. Secretary:

I have your request for opinion as to whether the provisions of Assembly Bill No. 1070, passed by the California Legislature March 4, 1929, entitled "An act to limit the use by California of the waters of the Colorado River etc." meet the requirements laid down in section 4-a of the Boulder Act, approved December 21, 1928, Public No. 642, 70th Congress, under which the State of California is required to commit itself to a consumptive use of not exceeding a specified amount of the waters apportioned to the lower basin States under the provisions of the Colorado River compact.

Upon careful consideration of the act of the California Legislature of March 4, 1929, supra, the act of December 21, 1928, supra, and the Colorado River compact I find that the California Act embodies the express agreement required of the State by said act of Congress with

MAY-329 34597

Copy 108.6 Colo. River.
B-7. Parker
4/29

RECEIVED
Boulder

respect to the use of the waters apportioned to the lower basin States, effective when six States comply with the requirements and conditions of paragraph 2, section 4-a of the act of December 21, 1928.

If seven States ratified the compact prior to June 21, 1929, there might be a doubt as to whether the act of the California Legislature is effective to meet the requirements of the act of Congress. That contingency is so remote that it is not deemed at all probable. The Arizona Legislature has adjourned after failing to ratify, and its next regular session will not occur for two years.

Very truly yours,

(Signed) E. C. Finney

Solicitor.

Approved: Apr. 24, 1929;

(Signed) Ray Lyman Wilbur

Secretary.

CALIFORNIA DEFENDANTS

Exhibit No. 7552

Identification:

Admitted:

MEMORANDUM FOR SOLICITOR [E. C.] FINNEY FROM
SECRETARY OF THE INTERIOR RAY LYMAN WILBUR,
DATED APRIL 4, 1929; LETTER FROM GOVERNOR
C. C. YOUNG TO PRESIDENT HERBERT C. HOOVER,
DATED MARCH 5, 1929; LETTER FROM GOVERNOR
C. C. YOUNG TO SECRETARY OF THE INTERIOR
RAY LYMAN WILBUR, DATED APRIL 29, 1929;
LETTER FROM SECRETARY OF THE INTERIOR
RAY LYMAN WILBUR TO GOVERNOR C. C. YOUNG,
DATED MAY 3, 1929

Enclosures included with the letters
dated April 4 and March 5, 1929, respectively,
are omitted. The enclosures are certified
copies of California Assembly Bill No. 1069
(an act to ratify the Colorado River Compact
as a six-state compact, 1929 Laws, pp. 37-38),
stipulated document, Item 56, Pre-Trial Order;
and California Assembly Bill No. 1070 (Calif-
ornia Limitation Act), stipulated document,
Item 57, Pre-Trial Order, together with a
copy of the Boulder Canyon Project Act.

RECEIVED
JULY 1929
Boulder

1-480

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

AUG 4 1960

19

to Title 28, Section 1733, United States Code, I hereby Certify that each
annex is a true copy of a document comprising part of the official records
of the Department of the Interior:

ES ANY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.

20908 Jof
Chief Clerk.

RECEIVED. OF BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON

April 4, 1929.

8-3
Colorado River Storage
Administrative

Memorandum for Solicitor Finney:

Please find inclosed copy of the Act to Provide for the Development of the Colorado River Basing and copy of an Assembly Bill unanimously passed by both the Assembly and the Senate in the California Legislature.

I should like to ask your opinion as to whether the act as passed in California meets the requirements laid down in the item marked II, of page 3, in which the State of California must agree to commit itself not to exceed 4,400,000 acre-feet of the waters apportioned to the lower basin states.

It is important to have this taken care of at an early date, since the California Legislature is now in session, and if this should not meet fully the requirements of the Boulder Dam bill, we could ask for any necessary correction.

Rafael W. Miller

Inclosures.



State of California
GOVERNOR'S OFFICE
SACRAMENTO

C. C. YOUNG

March 5, 1929

Honorable Herbert C. Hoover,
President of the United States,
Washington, D. C.

Dear President Hoover:

In accordance with the provisions of Assembly Bill Number 1069 passed by the legislature and signed by myself yesterday, I am sending you a certified copy of a bill for six-state ratification of the Colorado River compact.

A bill ratifying the seven-state compact, enacted earlier this session, is to be supplanted by the present bill in case the required seven states have not ratified within the six months prescribed by the Swing-Johnson bill.

I am also sending you the accompanying bill relative to the limitation of California's claim for water, which the Swing-Johnson bill made a necessary condition of California's six-state ratification.

Yours very sincerely,

W. C. Clegg
Governor.

V/CS
Enclosure

RECEIVED
BOULDER

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

AUG 4 1960

19

Under Title 28, Section 1733, United States Code, I hereby Certify that each annexed is a true copy of a document comprising part of the official records of the Department of the Interior:

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

Thomas B. J. [Signature]
Chief Clerk



C. C. YOUNG
GOVERNOR

State of California
GOVERNOR'S OFFICE
SACRAMENTO

April 29, 1929.

Honorable Ray Lyman Wilbur,
Department of Interior,
Washington, D. C.

Dear Dr. Wilbur:

Thank you for the copy of the opinion rendered by the solicitor of your department relative to California's six-state ratification. I take it that there is nothing confidential relative to this opinion, and if it seems wise shall therefore make it public in the comparatively near future. California labored very diligently and patiently with Arizona, but apparently to no avail. For this reason I believe that our people ought to know that the action we have taken is approved by the legal advisers of the Interior Department.

With best personal regards, I am

Yours very sincerely,

Y/11

Calif. Gov. Y.

C. C. Young
Governor.

*Cal. R. 8-3
Administrative*

RECEIVED
BOULDER

THE SECRETARY OF THE INTERIOR
WASHINGTON

May 3, 1929.

Hon. C. C. Young,
Governor of California,
Sacramento, California.

Dear Governor Young:

I have your letter of the 29th relative to the Solicitor's opinion on the six-state ratification. I understand Congressman Swing has some ideas on the use of this opinion and is taking it up with you. I shall, therefore, defer doing anything until you have an opportunity to receive his views.

Sincerely yours,

CALIFORNIA DEFENDANTS

Exhibit No. **7553**

Identification: Admitted:

TELEGRAM FROM SECRETARY OF THE INTERIOR
RAY LYMAN WILBUR TO RUDOLPH W. VAN NORDEN,
DATED SEPTEMBER 27, 1929, WITH SUPPORTING
DOCUMENT, MEMORANDUM FOR COMMISSIONER MEAD
FROM BURLEW, DATED SEPTEMBER 26, 1929

RECEIVED BY BUREAU OF
RECORDS & COMMUNICATIONS
SEP 28 1929

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

RECORDS OF THE BUREAU OF RECLAMATION, RG 115

General Administrative and Project Records, 1902-45

document from File #032.-

Colorado River Project - Settlement of Water Rights -
Colorado River Compact.

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 10th day of June, 1960.


Archivist of the United States

By 

STANDARD FORM NO. 64
APPROVED BY THE PRESIDENT
MARCH 19, 1924

TELEGRAM

OFFICIAL BUSINESS - GOVERNMENT RATES

PERSONAL

FROM INTERIOR DEPARTMENT

BUREAU Secretary's Office

CHG. APPROPRIATION

COPY

September 27, 1929.

Rudolph W. Van Norden, c/o Louis C. Hill,
Suite 712, Standard Oil Bldg.,
Tenth St. at Hope St.,
Los Angeles, California.

Your message here. We have endeavored to keep out of all controversy regarding allocation lower water basin. Do not consider this our field. Want your help on technical questions but do not want you to represent us in any conference on allocation of lower basin water. What you may do individually is a different question.

(Sgd.) Roy Lyman Wilbur.

RECEIVED
SEP 28 1929
Boulder



032. - COLO. RIVER COMPACT,
COLORADO RIVER.

TRANSFER CASE COLORADO RIVER
THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 26 1929

Commissioner

MEMORANDUM FOR COMMISSIONER MEAD

9/27 *Asst. Comm'r*

The Secretary received the following telegraphic report from Mr. Rudolph W. Van Norden, which he has asked me to transmit for your information:

"After three days conference with California Commission and Louis Hill assisting a formula for allocation lower basin water has been drafted which it is hoped will meet Arizona's demands. On Saturday one member from Arizona one from California Cragin Hill and myself will meet informally Hill's Office Los Angeles if agreement is reached a full conference of both commissions will be called for purpose of forming tristate agreement. Please inform Mead and Donovan. Letter follows."

Marble

SEP 27 29 38/89

CALIFORNIA DEFENDANTS

Exhibit No. 7559

Identification: Admitted:

MEMORANDUM FOR THE SOLICITOR, DEPARTMENT OF
THE INTERIOR, FROM FREDERICK BERNAYS WIENER,
ASSISTANT SOLICITOR, RE: "PROPOSED CONTRACT
WITH ARIZONA FOR DELIVERY OF BOULDER DAM
WATER," DATED SEPTEMBER 1, 1934, WITH
SUPPORTING DOCUMENTS:

(1) MEMORANDUM FROM STINSON AND RODDIS,
DATED AUGUST 30, 1934; AND

(2) DRAFT OF CONTRACT FOR DELIVERY OF
WATER SUBMITTED WITH THE MEMORANDUM DATED
AUGUST 30, 1934

RECEIVED
SEP 11 1934
BOULDER

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

AUG 5 1960, 19

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
sized paper is a true copy of a document comprising part of the official records
the Department of the Interior:

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.

Howard E. Hobbs
Chief Clerk

RECEIVED
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

September 1, 1934.

Memorandum for the Solicitor:

Re: Proposed contract with Arizona for delivery
of Boulder Dam water.

I have considered the draft contract with considerable care and arrive at the following conclusions:

1. Certain minor textual changes need to be made.

(a) In Article 16, instead of "Senior Judge", substitute "Senior Circuit Judge." This is the designation in the Judicial Code.

(b) In Article 16, the date of the compact is incorrectly given as 1933; it should, of course, be 1922.

(c) In Article 22, the second reference to the Public Works Administrator should be either "Federal Emergency Administrator of Public Works", or else "said Federal Emergency Administrator."

2. There is some question in my mind as to whether the arbitration provision in Article 16 sufficiently expresses the intent of the United States. As it stands now it reads, "Whenever a controversy arises out of this contract and if the parties hereto then agree to submit the matter to arbitration * * *." In other words, the provision for the appointment of arbitrators is conditional upon a subsequent agreement by the parties that there shall be arbitration. I am wondering whether it might not be better to make a firm provision for arbitration. To some extent this is an administrative matter, and the article in question appears in its present form in the Arizona regulations approved by Secretary Wilbur on September 7, 1933. To some extent also it is a legal question whether Title 9 of the United States Code applies so as to make the arbitration provision as modified enforceable in the courts. The question would be whether this contract affects commerce. Offhand it seems to me that a contract for the delivery of water in an interstate river such as this one might well be deemed to affect commerce.

3. I agree with Messrs. Roddis and Stinson that there should be added in Article 11 the words "to be retably reduced in the event of water shortage" after the words in line 5 of that article, "water per annum." I do not agree, however, with their conclusion that the addition of the clause is unnecessary as a matter of law. It is true that the amount of water to be delivered is not to exceed 2,800,000 acre feet and that it is not a firm commitment for that amount; but the amount under the figure stated is limited by Arizona's needs. Consequently if only 2,500,000 acre feet were available and Arizona needed 2,700,000, it seems to me that the obligation would be to deliver the larger amount. Of course, it can be pointed out that Article 11 is further modified by the fact that the delivery is stated to be "from storage available", and that Article 11(a) states that the contract "relates only to water physically available", but it seems to me that the possible ambiguity ought to be resolved.

The only reason for omitting the proposed addition would be the administrative determination that, as matter of fact, the possibility of less than 2,500,000 feet for the lower basin is so remote that no provision need be made in a contract in contemplation of that possibility. This is a matter on which the judgment of the Reclamation engineers might very well be controlling.

4. As to the real bone of contention, namely the proposed addition to Article 11(a) of the draft, I agree with Messrs. Stinson and Roddis that some additional saving clause is necessary to insure against the possibility that this article might involve a commitment as to the meaning of the Colorado River Compact and the Boulder Canyon Project Act, which commitment might be at variance with the definitive construction of those two instruments, in which case the result would be that the contract would be beyond the Secretary's power. This results from the fact that under section 13(a) of the Boulder Canyon Project Act all contracts for water must be subject to the terms of that act and to the terms of the compact. At the same time I can appreciate why Arizona does not want anything in the contract which would have the effect of flagging the possible danger to its rights in the Gila River.

Consequently, I sat down with Mr. Stinson this morning in an endeavor to work out a clause which would definitely establish that the terms of the present contract did not affect in any way the underlying dispute as to the meaning of the compact and act, except in so far as the ultimate determination of the rights

under these instruments would affect the present contract which by law must be subject to them.

Accordingly I suggest, and Mr. Stinson concurs, that the following words be added after Article 11(e) as it now stands:

"except to the extent that the obligation of the United States to deliver water hereunder may be held to be modified upon definitive judicial construction of these rights in connection with the provisions of the Boulder Canyon Project Act and the Colorado River Compact, both of which, as set forth in Article 18 hereof, by law control this contract."

I think it essential, in order to remove any doubt upon the power of the Secretary to execute the proposed contract, that some such provision be included. The exact language is not important so long as the substance is there; I would be willing to make very large concessions as to wording in order to avoid offending Arizona's sensibilities.

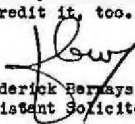
I suggest also, and Mr. Stinson agrees, that it would be better to substitute in the last line of Article 11(e) as it now stands in the draft contract, the word "unaffected" in place of the word "unimpaired." The latter word implies a confirmation, and we do not mean to confirm any rights but simply to say that we do not affect them in any way.

Subject to the above the contract is within the authority of the Secretary to make.

5. I do not approve the draft letter which has been written for the Secretary's signature, for two reasons.

(a) It seems to me more artistic and more lawyerlike to enclose with the letter a copy of your opinion as to the illegality of the provision, hitherto proposed, to dispose of the accumulated water.

(b) I do not think it desirable to suggest, as the draft letter suggests, the possibility of a different decision as to the accumulation feature. After all the Secretary is submitting the opinion of his legal advisor and he should not in the same breath look to the incorrectness of that opinion. The Secretary should not with the same breath rely on the opinion and discredit it, too.


Frederick Horvay Wiener,
Assistant Solicitor.

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

AUG 5 1950, 19

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
sexed paper is a true copy of a document comprising part of the official records
the Department of the Interior:

TIMONY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.



Lloyd B. Hobbs
Chief Clerk.

RECORDED & INDEXED

August 30, 1934.

Memorandum:

Re: Boulder Reservoir contract

The contract here submitted is one which tentatively meets the approval of Mr. Carson, Special Assistant to the Attorney General of Arizona.

We wished to include two modifications as follows:

1. In section 11 we proposed to add the words "to be ratably reduced in the event of water shortage" after the words "water per annum" in line 5 of that section.

Mr. Carson objected on the ground that no such provision is made in the California contracts. He admits that the likelihood is that such ratably reductions would be applied to all users of equal priorities in the improbable event of a water shortage, but he contends that in view of the considerable opposition to this contract in Arizona that this provision in the contract will only give an added talking point to this faction. The purpose of the clause is merely to clarify the contract, but there is no legal objection to its exclusion, particularly in view of the phraseology of paragraph 11 wherein the obligation of the United States is stated to be merely a delivery of not to exceed 2,800,000 acre feet per annum from available storage.

2. In section 11(e) we proposed to add the clause "but in so far as the rights here specified may be determined to be part of the water allotted to the lower basin by the act and the compact the obligation to furnish water under this contract shall be to that extent reduced." Mr. Carson refused to have such clause included.

The reason for desiring its inclusion is twofold:

(a) Subsection (e) as it now stands is almost sure to provoke criticism from the signatory States of the Colorado River Compact, their contention being that Arizona will have all the rights it now has as a non-compacting State under the decision of Arizona v. Cali-

formia (283 U. S. 423), and an additional right to 2,800,000 acre feet under the contract. As pointed out hereafter, the rights of Arizona are more apparent than real, the real objection being that subsection (a) as it stands, without limitation, will provoke criticism.

(b) A situation might arise where, although there was enough water available in the reservoir to supply California with 4,400,000 acre feet and Arizona with 2,800,000 acre feet, by including as part of Arizona's 2,800,000 acre feet water elsewhere appropriated by it but meant by the compact to be part of the water defined in Article III thereof, to give Arizona 2,800,000 acre feet out of the reservoir might infringe on California's right. This situation can arise in view of the uncertainty as to what water of the Colorado River system is meant by subsections (a), (b) and (c) of Article III of the compact and in view of the fact that the Secretary's authority to deliver water from Boulder Reservoir is limited to such deliveries as will not interfere or infringe on the right of California as defined in section 4(a) of the Boulder Canyon Act. California's right there defined is based on the apportionment of waters made in Article III of the compact, above referred to.

An example of such a situation follows:

Water in reservoir	5,000,000	(80 percent of the 7,500,000 necessary to supply Nevada, California and Arizona)
California	4,400,000	
Nevada	300,000	
	<u>4,700,000</u>	4,700,000
		<u>1,300,000</u>
Arizona (perfected rights above reservoir or in tributaries)		1,500,000
Arizona's contract		2,800,000

The question immediately presented is whether the Secretary must deliver to California only 80 percent of its right to 4,400,000 acre feet or whether California is entitled to its entire 4,400,000 acre feet, the latter being on the theory that under the act and compact California's right, based upon all the water apportioned to the lower basin, including 1,500,000 elsewhere appropriated by Arizona, would be infringed if its entire apportionment was not delivered to it.

BOULDER

RECEIVED

Should that situation arise, and were it determined that California's right was based on all the water apportioned to the lower basin, including the 1,500,000 acre feet appropriated by Arizona, undoubtedly Arizona could not require the Secretary to deliver water to the extent that California's right would be infringed upon. Whether Article III of the compact intended to include the waters of the tributaries in Arizona as part of the basic figure upon which California's right under section 4(a) of the act is based, is a question which is warmly contested between Arizona and California, being the principal reason why Arizona has refused to sign the compact. The contract does not purport to decide this issue and the likelihood is that a situation will not arise when it will have to be decided. In view of the fact that, in any event, the Secretary's authority to deliver water cannot be exercised so as to infringe on California's right and in view of the fact that a situation of the kind above pointed out is not likely to arise, it is perhaps immaterial to include the proposed express limitation on subsection (a). Its inclusion or exclusion is really an administrative question.

Should it be decided to include this or a similar provision, the following change is suggested:

"but in so far as rights here specified may be determined to be part of the water allotted to the lower basin, the obligation under this contract to deliver 2,800,000 acre feet is reduced to the extent that a delivery of this amount would interfere with rights given to California under section 4(a) of the act."

In other respects, the contract is submitted as being within the authority of the Secretary to make.

Accompanying this contract, is a letter in the form requested by the Arizona Colorado River Commission. This letter is not to be signed by the Secretary unless it is approved by the Solicitor and concurred in by the Secretary.

Stinson
Roads

File 66-1-35-7
Hinson
Roddie
Hanson

CONTRACT FOR DELIVERY OF WATER

This contract made this _____ day of _____, 1934, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 586), and acts amendatory thereof and supplemental thereto, all of which acts are commonly known and referred to as the Reclamation law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated as the Boulder Canyon Project Act, between the United States of America, hereinafter referred to as United States, acting for this purpose by Harold I. Ickes, Secretary of the Interior, hereinafter styled the Secretary, and the State of Arizona, acting for this purpose by the Colorado River Commission of Arizona pursuant to Chapter 3 of the 1928 Session Laws of Arizona.

WITNESSETH:

Explanatory Recitals

2. WHEREAS, pursuant to the direction of the said Boulder Canyon Project Act there is now under construction a dam known and referred to hereinafter as Boulder Dam, in the main stream of the Colorado River at Black Canyon, which dam will create a storage reservoir having a maximum water surface elevation at about one thousand two hundred twenty-nine (1229) feet above sea level (U. S. Geological Survey datum), and a capacity at the date of completion of about 30,500,000 acre-feet, and

3. WHEREAS, the Secretary is required by the said Boulder Canyon Project Act to use said dam and the reservoir created thereby, first,

BOULDER
CANYON
PROJECT
RECORDS

for river regulation, improvement of navigation and flood control; second, for irrigation and domestic use and the satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power, and

4. WHEREAS, the State of Arizona, has not ratified the Colorado River Compact and does not by entering into this contract accept, ratify or construe said Compact, and

5. WHEREAS, said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in said reservoir and for delivery thereof at such points on the river as may be agreed upon, and provides further, that no persons shall have or be entitled to have the use for any purpose of the waters stored, as aforesaid, except by contract made as therein stated, and

6. WHEREAS, the Secretary has heretofore promulgated regulations dated April 23, 1930, amended September 28, 1931, authorizing the execution of certain other water delivery contracts and it is the desire of the parties to this agreement to contract for the storage of waters and the use thereof for irrigation on lands, and for potable purposes within the State of Arizona, and, subject to the provisions of this contract, to assure the peaceful and uninterrupted construction of the works required for the diversion and delivery of water under all of said contracts, and

7. WHEREAS, by direction of Congress, water has been reserved and appropriated for lands within the Colorado River Indian Reservation in Arizona, unaffected by the Colorado River Compact, by virtue of Article VII thereof, and

8. WHEREAS, the United States and the State of Arizona, contemplating the future construction of irrigation projects in Arizona, desire to provide for the storage of water for the benefit of projects within the State of Arizona, without prejudice to whatever rights the parties hereto and other parties within the State of Arizona may have to contract hereafter for the storage and delivery of water, and

9. WHEREAS, (1) the United States has heretofore on December 1, 1932, contracted with the Imperial Irrigation District for the construction, among other things, of a dam to be known as Imperial Dam located in the Colorado River about five miles above the present Laguna Dam, and has in such contract reserved the right to divert waters thereat for use on the Yuma Project in the State of Arizona; (2) the United States has furthermore on February 10, 1933, contracted with the Metropolitan Water District of Southern California for the construction by the United States of a dam to be known as the Parker Dam located in the Colorado River shortly below the mouth of the Bill Williams River, and has in such contract reserved power privileges at said dam for use within the State of Arizona, together with the right to divert water thereat for use within the State of

RECEIVED
JAN 10 1934
U.S. DEPT. OF AGRICULTURE
BUREAU OF RECLAMATION

Arizona; (3) the United States, by the terms of said contracts, shall retain title to said dams, and (4) the United States has further reserved for use in Arizona not less than 18 percent of the firm energy to be generated at Boulder Dam and has provided in that certain contract dated the 26th day of April, 1930, as amended, leasing the power privilege at Boulder Dam to the city of Los Angeles and the Southern California Edison Company, Ltd., that the city of Los Angeles shall generate the energy reserved for Arizona,

10. ~~NOW THEREFORE~~, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to-wit:

Delivery of Water

11. The United States will deliver under this contract each calendar year, at points of diversion at or below Boulder Dam on the Colorado River, so much water as may be necessary for the beneficial consumptive use for irrigation and potable purposes in Arizona of not to exceed 2,800,000 acre feet of water per annum, from storage available in the reservoir created by the Boulder Dam, subject to the following provisions:

(a) This contract is without prejudice to the claims of the State of Arizona and other States in the Colorado River Basin as to their respective rights in and to the waters of the Colorado River not contracted for herein, and relates only to water physically available for delivery in the lower basin under the terms of this contract

and in conformity ^{with} ~~to~~ the Boulder Canyon Project Act and the Colorado River Compact.

(b) The parties hereto recognize that differences of opinion may exist between the State of Arizona and other contractors or between that State and the parties to the Colorado River Compact or any of them, as to (1) what part, if any, of the water contracted for by each or apportioned to each, falls within Article III(a) of the Colorado River Compact, which compact has not been ratified by the State of Arizona, and by the terms of which the State of Arizona is not bound except as to the use of the water herein contracted to be delivered; (2) what part, if any, is within Article III(b) thereof; (3) what part, if any, is surplus water under said compact; (4) what part, if any, is affected by section 4(a) of the Boulder Canyon Project Act; and (5) what limitations on use, rights of use, and relative priorities exist as to the water of the Colorado River system. While the United States undertakes to supply, from the regulated discharge of the Boulder Dam, water in the quantity stated by this contract, as well as contracts heretofore or hereafter made pursuant to regulations promulgated April 23, 1930, amended September 26, 1931, this contract is without prejudice as to any of the contentions set out in this paragraph on the part of the State of Arizona, or other States to the compact or on the part of holders of any contract heretofore or hereafter made by the Secretary.

BOULDER

(c) This contract is without prejudice to any right of the United States to make further disposition of water available for use in the lower Colorado River Basin, not heretofore nor herein contracted for, and without prejudice to the respective claims of the States in said lower basin to such additional water.

(d) As far as reasonable diligence will permit, the water provided for in this contract shall be delivered as ordered and as reasonably required for potable and irrigation purposes within the State of Arizona. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered for the purpose of investigation, inspection, maintenance, repairs, replacements, or installation of equipment or machinery at Boulder Dam, but so far as feasible will give reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in the delivery of water occur.

(e) Perfected rights to the beneficial use of waters of the Colorado River system and the right to initiate or perfect rights to such use in the future are ~~unaffected~~ ^{unaffected} by this contract.

(f) Deliveries hereunder shall be made for use within the State of Arizona to such individuals, irrigation districts, corporations, or political subdivisions therein of the State of Arizona, as may

qualify under the Reclamation Law or other Federal statutes. Such deliveries and contracts therefor shall be deemed, when made, as a discharge pro tanto of the obligation of this contract.

Points of diversion; measurement of water

12. The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may designate, by measuring and controlling devices or automatic gauges approved by the Secretary, which devices, however, shall be furnished, installed and maintained by the State of Arizona or the users of water therein. Said measuring and controlling devices or automatic gauges shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them and any deficiencies or inaccuracies found shall be promptly corrected by the user thereof. The United States shall be under obligation to deliver water only at diversion points where measuring and controlling devices or automatic gauges are maintained in accordance with this contract, but in the event that diversions are made at points where such devices are not maintained, the Secretary shall estimate the quantity of the diversions and his determination thereof shall be final.

No charges for storage or delivery of water

13. No charge shall be made for the storage or delivery of water at diversion points provided for herein for irrigation or for

potable purposes in the State of Arizona.

Construction of dams and other works

14. The construction of Parker Dam, Imperial Dam, other dams and appurtenant works on the Colorado River below Boulder Dam, is essential to the diversions and delivery of water within the State of Arizona under this contract. The State of Arizona, in consideration of the benefit accruing to it under this contract, agrees that it will not interfere by litigation, or otherwise, with the construction, operation or maintenance of any such dams or works. This article shall not impair the right of the State of Arizona to obtain an equitable apportionment of the waters of the Colorado River by agreement, or otherwise, and shall not impair the right of the State of Arizona and the users of water therein to maintain, prosecute or defend any action to establish relative priorities of use and right to the waters of the Colorado River system, provided that the construction of said works is not thereby hindered.

Duration of contract

15. This contract is for permanent service in perpetuity, subject to the provisions hereof.

Disputes and disagreements

16. Whenever a controversy arises out of this contract and if the parties hereto then agree to submit the matter to arbitration, the State of Arizona shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall

meet within ten days after their selection and shall elect three other arbitrators within 15 days after their first meeting, but in the event of their failure to name all or any of the three arbitrators within 30 days after their first meeting, such arbitrators not so elected, shall be named by the Senior ^{Circuit} Judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of the five arbitrators thus chosen shall be a valid and binding award.

Rules and regulations

17. The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder, but such rules and regulations shall be promulgated, modified, revised, or extended from time to time only after notice to the State of Arizona and after opportunity is given to it to be heard.

Agreement subject to Colorado River Compact

18. As required by section 13(a) of the Boulder Canyon Project Act, this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being a compact or agreement signed at Santa Fe, New Mexico, November 24, 1922²², pursuant to the act of Congress approved August 19, 1921 (42 Stat. 171), as approved by the Boulder Canyon Project Act, but is without prejudice to the respective contentions of the State of Arizona and of the parties to

said compact as to the intent, meaning and interpretation thereof, and the State of Arizona does not by this contract ratify, adopt or construe said compact. Nothing herein shall be construed as interfering with such rights as the State of Arizona now has to the waters within its boundaries, or the right to adopt such policies and enact such laws as it may deem necessary with respect to the appropriation, control and use of waters within its boundaries except as modified, so far as the water herein contracted to be delivered is concerned, by the Colorado River Compact.

Effective date of contract

19. This contract shall be of no effect unless it is ratified by an act of the Legislature of Arizona within three years from the date hereof.

Interest in contract not transferable

20. No interest in or under this contract, except as herein provided, shall be transferable by either party without the written consent of the other.

Lease of power privilege for power reserved to Arizona

21. The United States agrees that it will, subject to execution of contracts satisfactory to the Secretary, contract to deliver or cause to be delivered, for use in Arizona, the power reserved for the State of Arizona at Boulder and Parker Dams, said power reservation at Boulder Dam being made pursuant to regulations heretofore

promulgated by the Secretary and the reservation at Parker Dam being made pursuant to the contract dated February 10, 1933 made between the United States and the Metropolitan Water District of Southern California. These contracts will be made directly with irrigation districts, individuals, corporations, municipal corporations, and political subdivisions in the State of Arizona for the delivery of this reserved power for use within the State of Arizona; provided, however, that the United States reserves to itself the right to use said reserved power, or any part thereof, within the State of Arizona for the construction, operation or maintenance of irrigation projects at any time; and to make such other disposition of this power as the Secretary may determine in his discretion, pending the execution of contracts for the delivery of power for use within the State of Arizona. It is provided further that contracts for the delivery of power from Boulder Dam and contracts for the use of falling water for the generation of energy at Boulder Dam, made between the United States and Arizona or users in Arizona, shall be under such terms and conditions as the Secretary may determine from time to time, but that such contracts shall be under terms and conditions as favorable to Arizona or users in Arizona as those for other users or purchasers at that time. It is provided further that the terms and conditions prescribed by the Secretary for the disposition of power which may be developed at Parker Dam for use in Arizona shall be as favorable as practicable to Arizona or users therein.

Appropriation clause

22. The performance of this contract is contingent upon Congress making the necessary appropriations for expenditures for the completion and the operation and maintenance of Boulder Dam and power plant, or upon the Federal Emergency Administrator of Public Works making the necessary allotments therefor. The State of Arizona hereby releases the United States from all liability which may be incurred by reason of the failure of Congress to make such appropriations or of the Federal Emergency Administrator to make such allotments.

Member of Congress clause

23. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing in this paragraph, however, shall invalidate this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Secretary of the Interior

Approved as to form

COLORADO RIVER COMMISSION OF ARIZONA

Attorney General of Arizona

By _____
Chairman

By _____
Special Assistant

By _____
Secretary

CALIFORNIA DEFENDANTS

Exhibit No. 7600

Identification: Admitted:

LETTER FROM SECRETARY OF THE INTERIOR
HAROLD L. ICKES TO B. B. MOEUR, GOVERNOR,
STATE OF ARIZONA, DATED JUNE 29, 1933, WITH
SUPPORTING DOCUMENTS:

(1) MEMORANDUM FROM RODDIS TO THE
SOLICITOR, DEPARTMENT OF THE INTERIOR, DATED
JUNE 13, 1933; AND

(2) MEMORANDUM FROM COMMISSIONER OF
RECLAMATION ELWOOD MEAD TO RODDIS, DATED
JUNE 19, 1933

The general regulations are a stipulated
document, Item 82, Pre-Trial Order. The
withdrawal of regulations is a stipulated
document, Item 83, Pre-Trial Order.

BOULDER

United States of America**DEPARTMENT OF THE INTERIOR**
WASHINGTON, D. C.

JUNE 5 1959 19.....

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
annexed paper is a true copy of a document comprising part of the official records
of the Department of the Interior:

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.



[Signature]

Chief Clerk.

RECEIVED

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

June 19, 1933.

Mr. Roddie:

I believe the withdrawal should be made
and I like your attached statement to the Solicitor.

Edward Mead

Commissioner.

June 13, 1933.

Memorandum to the Solicitor:

On February 7, 1933, the Secretary of the Interior issued regulations concerning the delivery of water in Arizona from the Colorado River. As a part of the regulation there is attached a contract proposed for execution by the United States and the State of Arizona. The articles of the contract stipulate that the authorization for use of stored water by Arizona from Boulder Dam shall remain in force only so long as the State and water users therein do not interfere by litigation or otherwise with the diversions of other holders of water contracts with the United States and the diversion works constructed by or for them. The contract if made will provide for the delivery annually of 2,800,000 acre-feet of water for use in Arizona in addition to the quantity vouchsafed to Arizona from the Gila River.

The principal use of the proposed contract is set forth in paragraph 15(b) wherein it is said:

"The State of Arizona and its permittees will not interfere by litigation or otherwise, with deliveries of water under any contract between the United States and water users in the State of Nevada, * * * with the construction of diversion works by or for the holder thereof, nor with diversions or other uses affected by such works."

Paragraph 14 of the proposed contract provides that the United States would make no charge for the use, storage or delivery of water for irrigation or potable purposes.

When the proposed contract and regulations were submitted to the State officers of Arizona, the plan was rejected after personal representatives of the Secretary had conferred with the State officials. A telegram of February 25, 1933, from John M. Ross, one of the water commissioners of Arizona, to the Secretary of the Interior, states among other things:

"Arizona believes that, subject to the usual Federal rights in navigable waters, the river waters belong to the interested States; that water rights are

BOULDER

perfected by application to beneficial use; that your proposed contract would not of itself give Arizona vested right; that unless Arizona rights are otherwise protected, Arizona by all legal means opposes any diversions in lower basin and opposes proposed diversion dams for California uses. Therefore Arizona would see no desirability in your proposed contract conditioned to become forfeited if Arizona should litigate California's proposed diversions and diversion dams."

Other correspondence indicates clearly that it is the purpose of Arizona representatives to oppose by legal proceedings any attempt by the United States to construct in the Colorado River the Imperial Dam above Yuma intended to be used for the Imperial Valley and the Parker Dam intended to be used for the diversion of water for the Metropolitan Water District of California.

It is my opinion that the Secretary should notify Arizona that he withdraws the regulations issued by the Secretary of the Interior on February 7, 1933, and the proposed form of contract for the delivery of 2,800,000 acre-feet of water from Boulder Dam.

It can not be determined with unqualified accuracy that affirmative action by Arizona could complete the transaction. An offer made by the United States to a State of the magnitude expressed in the regulations should not be permitted to stand where the State has expressed its unqualified opposition to the regulations or the proposed agreement attached to them.

In the case of Arizona v. California (283 U.S. 423), the Supreme Court had under consideration the right of the United States to construct the Boulder Canyon Project and control the waters of the Colorado River. It said:

"It is conceded that the continued use of the 3,500,000 acre-feet of water already appropriated in Arizona is not now threatened. And there is no allegation that at the present time the enjoyment of these rights is being interfered with in any way. The claim strenuously urged is that the existence of the Act, and the threatened exercise of the authority to use the stored water pursuant to its terms, will prevent Arizona from exercising its right to control the making of further appropriations. It is argued that such needed additional appropriations will be prevented because Wilbur proposes to store the entire unappropriated flow of the main stream of the Colorado River at the dam; that Arizona, and those

claiming under it, will not be permitted to take any water from the reservoir except upon agreeing that the use shall be subject to the compact; that under the terms of the compact they will not be entitled to appropriate any water in excess of that to which there are no perfected rights in Arizona; and that in order to irrigate land in Arizona it is frequently necessary to utilize rights of way over lands of the United States, and since the Act provides that all such rights of way or other privileges to be granted by the United States shall be upon the express condition and with the express covenant that they shall be subject to the compact, the Act in effect prevents Arizona and those claiming under it from acquiring such rights.

This contention cannot prevail because it is based not on any actual or threatened impairment of Arizona's rights but upon assumed potential invasions. The Act does not purport to affect any legal right of the State, or to limit in any way the exercise of its legal right to appropriate any of the unappropriated 9,000,000 acre-feet which may flow within or on its borders. On the contrary, section 18 specifically declares that nothing therein 'shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of water within their borders, except as modified' by interstate agreement. As Arizona has made no such agreement, the Act leaves its legal rights unimpaired. * * * But Wilbur threatens no physical interference with these projects; and the Act interposes no legal inhibitions on their execution. There is no occasion for determining now Arizona's rights to interstate or local waters which have not yet been, and which may never be, appropriated."

From this quotation it is apparent that the State of Arizona is entitled to take water from the Colorado River for beneficial use subject to the rights of prior appropriators. It appears to me that it is not desirable for the Secretary of the Interior to endeavor to limit or qualify this right except by lawful diversions from the river which may be made by the United States for appropriate use.

When the Secretary of the Interior decides to construct the Imperial Dam or the Parker Dam, he must proceed under the Constitution and laws then existing and his rights will not be enlarged.

ENCLOSURE

or magnified by a contract with the State of Arizona. If a contract should have been made with Arizona, it would not prevent a citizen of that State from instituting and carrying to a conclusion a suit against officials or employees of the United States who were unlawfully attempting to place in the Colorado River dams or other obstructions or diverting water from the river for any use in other States.

The Secretary of the Interior should address the Governor of the State of Arizona, withdrawing the regulations filed February 7, 1933, with the attached form of contract for the sale of stored water, in order that there may be no question about the unfavorable completion of the negotiations between the United States and the State of Arizona. A letter to the Governor of Arizona for the purpose of withdrawing the regulations has been prepared and is attached.

Roddis

KSR/ABC.

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

JAN 19 1950

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

7600

TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.


Chief Clerk

BOULDER

THE SECRETARY OF THE INTERIOR

WASHINGTON

JUN 29 1933

Hon. S. B. Moore,
Governor of Arizona,
Phoenix, Arizona.

My dear Governor Moore:

In a letter addressed to you February 10, 1933, by Ray Lyman Wilbur, Secretary of the Interior, there was transmitted regulations signed by him as of February 7, and which he released February 13, relative to delivery of certain stored water of the Colorado River to the State of Arizona. Attached to the regulations and as a part of it was a proposed contract to be entered into between the United States and the State of Arizona.

In your telegram of February 18, 1933, you expressed the opinion that your contract would not be satisfactory to the State and that the Attorney General believed the contract would not satisfactorily solve the Colorado River problem from Arizona's standpoint. There is some doubt about the effect of the regulations and therefore they are hereby withdrawn.

Sincerely yours,

(Sgd) HAROLD L. ICKES

Secretary of the Interior.

83
W. R. Roddis
only
Harold
July

CALIFORNIA DEFENDANTS

Exhibit No. 7601

Identification: Admitted:

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR
FROM ACTING COMMISSIONER H. W. BASHORE,
DATED APRIL 26, 1943

FILE COPY
Surname

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON

APR 25 1943

OFFICE OF THE COMMISSIONER

MEMORANDUM for the Secretary.

Subject: Report on meeting of representatives of the State Department with the Committee of Sixteen in Santa Fe, New Mexico, on April 14, 1943, to consider treaty with Mexico for allocation of waters of the Colorado River;
and
Meeting of Committee of Sixteen scheduled for May 3 at Phoenix, Arizona, for the purpose of considering Arizona's recent draft of a proposed contract between the United States (through the Secretary of the Interior) and Arizona for Boulder Canyon Project water.

I

Transmitted herewith is Chief Engineer Harper's report on the Santa Fe meeting. You will recall that in connection with that meeting you were requested to furnish a statement, which you were unwilling to do, and that you instructed the Bureau to have Mr. Harper attend the meeting, being careful to make no commitments, and to submit a report of the meeting for your information.

I believe that I should not attempt to summarize Mr. Harper's five and one-half page report. It contains some detailed information that you should be familiar with, since in all probability the matters stated in the subject of this memorandum will be carried ultimately to you personally. I do want to note, however, that the Committee of Sixteen, with representatives from the State of California alone objecting, approved in principle the proposal submitted by the State Department as a basis for negotiations with Mexico. Also, you should give particular attention to paragraphs 10 and 11 on pages 4 and 5 of Mr. Harper's report, since they involve directly the Bureau of Reclamation and its relationships with the Imperial Irrigation District. It is my understanding that the "statement of policy" adopted by the Committee, with representatives from California objecting, is in accordance with views that have been expressed informally at least by representatives of the State Department.

II

In paragraphs 12 and 13 of Mr. Harper's report he refers to a proposed contract between the United States, acting through the Secretary of the Interior, and the State of Arizona for the delivery of water from the Colorado River. A copy of Arizona's recent draft of the proposed contract is attached hereto. I

Noted by
Parkins

COPIES FOR THE SECRETARY'S OFFICE

783
Cal. Div.
State Ins.
Arizona

have received a letter from Mr. Charles A. Carson of Arizona, addressed to Commissioner Page, requesting that representatives of the Bureau attend the meeting of the Committee of Sixteen at Phoenix on May 3. In reply to my telegraphic inquiry, Mr. Carson advised that this meeting would probably last two to four days. I have advised Mr. Carson that the Chief Engineer or someone representing him, Assistant Chief Counsel Clifford F. Vix, and District Counsel Richard J. Coffey, will attend the meeting as representatives of the Bureau. In view of your instructions governing the Bureau's representatives at the Santa Fe meeting, and since this proposed contract to be discussed in Phoenix on May 3 is indirectly related to the international question regarding Colorado River water, I believe that the Bureau's representatives should have instructions from you to govern their action at the Phoenix meeting.

A proposed contract between the United States and Arizona was the subject of considerable controversy in 1934, culminating in a full-dress hearing before you personally, with Congressional and other representatives of each of the Basin States participating. That controversy was contemporaneous with the difficulties we had in constructing Parker Dam. The contract then proposed did not receive favorable consideration due in large part at least to the objections of the six states which had ratified the compact.

The situation has changed considerably in the last year or so. The State of Arizona has contingently ratified the compact, the contingency being execution and ratification by the Arizona State Legislature of a water contract between the United States and Arizona. The State of Arizona through its present governor and through Senator Hayden is making sincere efforts to rid itself of its bitter feelings growing out of the past controversy and to approach its Colorado River problems in a realistic manner.

I believe that the Bureau's representatives should be instructed that they may discuss at the meeting terms and provisions of a proposed contract, being careful to state openly at the meeting that they are not authorized to commit either the Bureau or the Department to any position excepting this:

On the basic issue of how much water from the Colorado River Arizona may take in accordance with the Colorado River Compact, the Bureau and the Department refuse to take a position, and refuse to side either with or against Arizona, the Bureau and the Department taking the view that the United States on this issue is in a position analogous to a stakeholder.

I am advised by counsel that this is the appropriate legal position for the Bureau and the Department. Furthermore, as a practical and political matter, it would be most unhappy if the Bureau or Department should be drawn into taking sides in the controversy.


I would like to have the Bureau's representatives consider the desirability of their suggesting at the meeting consideration of a possible contract arrangement whereby the basic issue would be presented in the contract, with carefully guarded language saving the United States from taking a position on the issue.

Revised by
C. K. K. K.

BOULDER

If this could be done, there might result a justifiable controversy which could be litigated in an action between Arizona and California and settled finally by the Supreme Court. Like an insurance company in an interpleader action, the United States does have, I believe, an interest in having the controversy between the two states settled soon. The controversy, if allowed to continue, will make increasingly difficult the discharge of Federal responsibilities and duties in the Colorado River Basin. I merely would make this a suggestion to the Bureau's representatives, since the desirability of offering it for consideration at the meeting depends on the course discussions take. Of course, if the Bureau's representatives should present it they would have to state that it is merely their suggestion and that neither the Bureau nor the Department is committed to it.

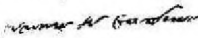
If you agree with the above proposed instructions to the Bureau's representatives, please approve, and copies of this memorandum will be furnished to the representatives.


Acting Commissioner.

Enclosure 757

APR 28 1943

I concur


Solicitor.

Approved: APR 29 1943

(Sgd.) H. L. L.
Secretary of the Interior.

Copy for the Solicitor.

Entered by
Parkus19

CALIFORNIA DEFENDANTS

Exhibit No 7602

Identification: Admitted:

MEMORANDUM FOR THE SECRETARY OF THE INTERIOR
FROM ACTING COMMISSIONER H. W. BASHORE,
DATED MAY 22, 1943

RECEIVED
MAY 23 1943

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

JUL 28 1961

19.....

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
exed paper is a true copy of a document comprising part of the official records
the Department of the Interior: _____

TIMONY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.



Chief Clerk.

ADDRESS ALL COMMUNICATIONS TO
THE COMMISSIONER

UNITED STATES

INTERIOR DEPT. DEPARTMENT OF THE INTERIOR
RECEIVED

MAY 24 1943

BUREAU OF RECLAMATION

SOLICITOR

WASHINGTON

MAY 22 1943

OFFICE OF THE COMMISSIONER

MEMORANDUM for the Secretary.

Subject: Preliminary report on meeting of representatives of the Colorado River Commission (Committee of Fourteen) Phoenix Arizona, on May 3, 1943, for the purpose of considering a proposed contract between the United States (through the Secretary of the Interior) and the State of Arizona for the delivery of Boulder Canyon project water.

Reference is made to my memorandum of April 26, 1943, regarding the desirability of having representatives of the Bureau present at the meeting of representatives of Colorado River Commission at Phoenix, Arizona, on May 3, to consider a proposed contract between the United States (through the Secretary of the Interior) and the State of Arizona for delivery of Boulder Canyon Project water. The conference recessed on May 6 and will reconvene at Denver on May 26 to consider a proposed contract to be drafted by a drafting committee of 7, representing each of the seven Colorado River states, appointed at the Phoenix conference.

I propose to submit a full report after the meeting at Denver on May 26. I wish to report at this time, however, that in the opinion of the Bureau representatives considerable progress was made at the Phoenix conference. This was in a large part due to the fact that Arizona acceded to the contention of the six Compact states that Gila River water was included in the water allocated to the Lower Basin states under Articles III(a) and III(b) of the Colorado River Compact upon condition that the question be reserved for future judicial determination as to whether III(b) water was apportioned. Arizona's position that Gila River water was not included in the water allocated under Articles III(a) and III(b) was the source of major opposition from the six Compact states when a proposed contract was submitted for your approval in 1934.

Bureau representatives at the Phoenix conference took the position, consistent with the instructions contained in my memorandum to you dated April 26, that the Department was not in a position to consider any proposed contract until the basic issues had been agreed upon by Arizona and the six Compact states, and further, on the basic issue as to the amount of water to which Arizona was entitled under the Colorado River Compact, the Bureau representatives did not propose to take any position, either for or against Arizona's contentions. While the Bureau representatives were not authorized to commit the Bureau and the Department on the specific terms of a proposed contract, the representatives assured the conferees that they would be glad to assist and cooperate in any way possible, consistent with the foregoing.



4-8
Distribution
of
Water -
General

BOULDER

I have instructed Assistant Chief Counsel Howard R. Stinson, who is in Denver, to attend the meeting on May 26 as a representative of the Bureau, and the Chief Engineer, or representatives from his office, also will be present. I believe that the instructions contained in my memorandum to you dated April 26 should also govern the Bureau representatives at the meeting on May 26, and the Bureau representatives will be so advised unless you indicate that they should be otherwise instructed.


Acting Commissioner.

CALIFORNIA DEFENDANTS

Exhibit No. 7603

Identification:

Admitted:

LETTER FROM COMMISSIONER H. W. BASHORE TO
CLIFFORD H. STONE, DATED NOVEMBER 20, 1943,
WITH SUPPORTING DOCUMENTS:

(1) MEMORANDUM TO THE MEMBERS OF THE
COMMITTEE OF FOURTEEN, COLORADO RIVER BASIN,
FROM CLIFFORD H. STONE, CHAIRMAN, DATED
NOVEMBER 8, 1943; AND

(2) LETTER FROM CLIFFORD H. STONE,
CHAIRMAN, COMMITTEE OF FOURTEEN, COLORADO
RIVER BASIN, TO COMMISSIONER H. W. BASHORE,
DATED NOVEMBER 8, 1943

1-490
November 1940

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

MAY 1941

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Letter and enclosure from the Colorado Water Conservation Board to the Commissioner of Reclamation, dated November 8, 1943, and reply to the Colorado Water Conservation Board, dated November 20, 1943.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.

240418 [Signature]
Chief Clerk

29, D. C.

NOV 24 1923

Hon. Clifford H. Stone,
Colorado Water Conservation Board,
Denver, Colorado.

Dear Judge Stone:

This will acknowledge receipt of your letter of November 9, enclosing a copy of your memorandum of that date to members of the Committee of Fourteen, regarding the proposed contract with Arizona and disavowing Utah's proposed amendment to paragraph 7(c).

Utah's proposed amendment has been carefully considered. I am reluctant to delay this matter but I would be unable to recommend acceptance to the Department of Utah's proposed amendment in its present form. It would have no objection to Utah's proposed amendment, however. If the words "and the United States" are deleted in the first line of the second sentence and no "or" is added to the word "recognize" in stating that the words "and the United States" be deleted I wish to reiterate the Department's position, stated at the Phoenix meeting and again at the recent meeting with the subcommittee, that the United States does not propose in any contract with Arizona or California to resolve any issue as to the amount of water to which Arizona or California are entitled under the terms of the Colorado River Compact or to the amount of water that any of the Colorado River states are entitled under the terms of the Colorado River Compact. For the United States to adopt Utah's request that the United States recognize that Utah's equitable share of water apportioned by the United States Compact to the Lower basin is not less than 150,000 acre feet per annum would be a deviation from this Department's announced policy.

In this connection, I question the correctness of Utah's statement, as stated in General Glenn's letter to you, that the United States is contracting with California and Nevada, and in the proposed contract with Arizona, is recognizing the rights of those states to specific amounts of water under the Colorado River Compact. Every contract the Secretary has made under Section 5 of the Boulder Canyon Project Act, and the proposed contract with Arizona, specifically provides that the delivery of the amount of water stated in the contract is subject to the availability thereof under the provisions of the Colorado River Compact and the Boulder Canyon Project Act.

In view of the foregoing, I am confident that the Utah representatives will not insist that the reference to the United States be retained in their proposed amendment to paragraph 7(c).

BOULDER

I shall appreciate receiving a copy of the transcript of the meeting on October 30 as soon as it is available.

Very truly yours,

W. W. Beahore

W. W. Beahore,
Commissioner.

Copy to CH Denver, Colo.
Asst. Reg. Dir. Yuma, Ariz.
Reg. Dir. Boulder City, Nev.
EC Los Angeles, Calif.
(with copies of Judge Stone's letter and memo of November 8 to each)

214
C. H. D.

MEMORANDUM

November 8, 1943

TO: * Members of the Committee of Fourteen, Colorado River Basin
FROM: Clifford H. Stone, Chairman
SUBJECT: Proposed Arizona Contract

Today I have a letter from Grover A. Olson, a member of the Committee of Fourteen, Colorado River Basin, which reads as follows:

"Pursuant to our telephone conversation of this morning, I am enclosing a copy of proposed revision of Section 7, paragraph (g) of the draft of contract between the United States Department of the Interior and the State of Arizona as noted on by the Committee of Fourteen at Denver on October 30, 1943. It is Utah's desire that paragraph 7 (g) as it now appears in the proposed draft of contract be revised in accordance with the enclosed proposal.

"I talked with the Assistant Manager of the Hotel Utah, Salt Lake City, yesterday concerning possibility of providing space for Committee members for the next meeting of the Committee. I was advised that upon a week's notice ample facilities could be supplied.

"Yesterday I attempted to reach Charles Carson at Phoenix, Arizona, by telephone to submit the proposed revision of 7 (g) to him but was advised he was out of the City and would not return until next Tuesday.

"While we here in Utah recognize the fact that we cannot get an allocation of water for Utah in Arizona's contract, in the light of the fact that California has specific contracts recognizing her rights, Nevada has her contract and we are consenting to Arizona's contract if our proposed revision is acceptable, we are not out of line in asking for a recognition from the various interested parties including the United States of something more definite than is specified in the present paragraph 7 (g) of Arizona's proposed contract. We think it is not too much to require a recognition of our right to share in the waters apportioned under the contract of the Lower Basin in not less than 150,000 acre feet per annum, as well as our right to share in the waters unapportioned by such compact.

BOULDER

34

NOV 10 1943 36282

"We sincerely hope that the rest of the interested parties accept our proposed revision of 7(g). We have not attempted to revise the draft as it affects New Mexico because Mr. McClure seems to be satisfied as it is now constituted.

"As you know, Mr. Wallace informed the Committee that he expected to leave Salt Lake City this coming Sunday, November 7th, to be gone about three weeks. Doubtless you will desire to submit this proposed revision to all Committee members as well as the Department of the Interior. If it is acceptable another meeting will not be necessary. If it is not acceptable, however, you will, of course, keep me posted on the wishes of the Committee members concerning the next meeting".

The amendment of paragraph 7(g) of the proposed contract between the United States and the State of Arizona for the delivery of Colorado River water, suggested by the Utah representatives on the Committee, reads as follows:

"(g) Arizona recognizes the right of New Mexico to an equitable share of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact.

"Arizona and the United States recognize that Utah's equitable share of water apportioned by the Colorado River Compact to the Lower Basin is not less than 150,000 acre-feet per annum, and that Utah also has an interest in the water unapportioned by such compact.

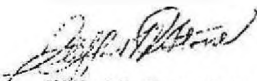
"Nothing contained in this contract shall prejudice the rights of such states".

This letter and the proposed revision of paragraph 7(g) are self explanatory. Mr. Giles had called me by phone and I suggested that he send me a copy of the revision in order that I might submit it to all of the members of the committee. He does not mention the Nevada contract in the foregoing quoted letter, but did tell me over the phone that Utah representatives would vote for approval of the proposed Nevada contract.

If all of the members of the committee approve the revision of paragraph 7 (g), above quoted, then another meeting for the further consideration of the Arizona contract will be unnecessary. On the other hand, if there is an objection on the part of any of the representatives on the committee, I assume a further meeting will be necessary. Therefore, will each state, through one of its representatives, advise me at the earliest possible date the reaction to this suggested revision.

I am sending a copy of this memorandum to the Bureau of Reclamation. Any comments received by me from the Bureau of Reclamation will be transmitted to the members of the committee.

Respectfully submitted,



Clifford M. Stone, Chairman
Committee of Fourteen
Colorado River Basin

CRS:EB


COMBAC-RIVER

DENVER 2

1943

My dear Mr. Bashford:

It seems to me quite important that the Bureau of Reclamation advise me at as early a date as possible whether or not this change would be acceptable to the Bureau of Reclamation. If the change should be acceptable to the other states, but not acceptable to the Bureau of Reclamation, then this situation in itself probably would necessitate another meeting of the Committee of fourteen.

Respectfully,

 Clifford H. Stone, Chairman
 Committee of Fourteen
 Colorado River Basin

CHS:FB
End.

Copy of reply 052-C.R. Compact

33

CALIFORNIA DEFENDANTS

Exhibit No. 7604

Identification:

Admitted:

MEMORANDUM FOR THE SOLICITOR FROM
CLIFFORD E. FIX, ASSISTANT CHIEF
COUNSEL, BUREAU OF RECLAMATION,
DATED JANUARY 29, 1944

1-480
November 1949

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

MAY 20 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
that each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Memorandum for the Solicitor, from Clifford E. Fix,
Assistant Chief Counsel, Bureau of Reclamation,
concerning a hearing on February 2, 1944, of
California's objections to proposed contract with
Arizona - dated January 29, 1944.

In Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.

210488 Doherty
Chief Clerk.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON

January 29, 1944.

OFFICE OF THE COMMISSIONER

MEMORANDUM for the Solicitor.

Subject: Hearing February 2 of California's objections to proposed contract with Arizona for the delivery of water from Lake Mead for use in Arizona.

The purpose of this memorandum is to acquaint the Secretary and you, prior to the hearing on February 2, with the factual background preceding the submission of the proposed contract; to summarize the issues between California and Arizona; and to comment briefly upon the objections raised by California to the proposed contract.

The proposed contract is made under the authority of Section 5 of the Boulder Canyon Project Act (45 Stat. 1057), which authorizes the Secretary to contract for the storage and delivery of water impounded by Boulder Dam. The proposed contract, in pertinent substance, provides:

- (1) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States agrees to deliver from storage in Lake Mead a maximum of 2,800,000 acre feet, and one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under the Compact and Act.
- (2) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and all consumptive uses of waters for uses in Arizona of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under the contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of the contract.
- (3) A charge of fifty cents per acre foot shall be made for all water diverted directly from Lake Mead, and charges for the storage or delivery of water diverted below Boulder Dam shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, provided such charges shall, in no event, exceed twenty-five cents per acre foot.
- (4) The contract shall not impair the right of Arizona and other states or the users of waters therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of the states and water users as to (1) the intent, effect, meaning and interpretation of



the Compact and Act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III(a) of the Compact; (3) what part, if any, is within Article III(b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by the contract; (5) what limitations or use, rights of use, and relative priorities exist as to the waters of the Colorado River system.

(5) The contract shall not become effective until the contract has been ratified by an act of the legislature of Arizona and until the Colorado River Compact has been unconditionally ratified by Arizona.

The facts necessary to an understanding of the underlying controversy between California and Arizona are stated chronologically under the following headings:

- (1) Colorado River Compact - 1922 (p. 2).
- (2) Boulder Canyon Project Act - 1928 (p. 3).
- (3) California contracts made by Secretary Wilbur (p. 4).
- (4) Statement of issues between California and Arizona (p. 5).
- (5) Contract negotiations with Arizona
 - (a) Prior to 1935 (p. 6)
 - (b) Contract negotiations commencing in May 1943 and culminating in proposed contract (p. 6)
- (6) Comments on California's objections (p. 8).

(1) Colorado River Compact - 1922

Congress, on August 19, 1921 (42 Stat. 171), authorized the states of Arizona, California, Nevada, New Mexico, Utah, Colorado, and Wyoming to enter into a compact or agreement for an "equitable division and apportionment among said states of the water supply of the Colorado River and of the stream's tributaries therein," subject to the approval of Congress.

The Compact representatives of each of the seven states met in Santa Fe in November 1922. A compact was agreed upon on November 22, apportioning the water of the Colorado River system between the Upper and Lower Basins. In Article II the Colorado River system is defined as "that portion of the Colorado River and its tributaries" within the United States. The "Lower Basin" is defined as those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry, and the parts of those states which can be beneficially served by waters diverted from the system below Lee Ferry. The "Upper Basin" is defined as those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into Colorado River system above Lee Ferry, and the parts of those states which can be beneficially served with waters diverted from that system above Lee Ferry. For all practical purposes based upon physical factors, the three

states constituting the Lower Basin are Nevada, Arizona and California.

By Article III, the following apportionment is made:

(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre feet per annum.

Paragraph (c) provides that if the United States should recognize in Mexico any right to the use of water from the Colorado River, such water shall first be supplied from surplus waters over and above the aggregate (a) and (b) and if such surplus is insufficient, such deficiency shall be borne equally by the upper and lower basins. Paragraph (f) also provides for further equitable apportionment of the waters unapportioned by (a), (b), (c) after October 1, 1963.

Arizona contends that the compact as first proposed did not contain Article III(b). The Arizona representatives refused to accept the proposed compact because of the inclusion of the Gila River and its tributaries without any compensating provision to Arizona. The problem was finally solved by adding paragraph (b) to Article III and it was agreed among the representatives of several states that the additional 1,000,000 acre feet apportioned by paragraph (b) was intended for and should go to Arizona to compensate it for the waters of the Gila River and its tributaries included within the definition of the Colorado River system. It was further agreed that a supplemental tri-state compact among California, Nevada and Arizona should be adopted and that such supplemental compact should so provide.

Subsequent efforts to negotiate the supplemental tri-state compact failed and Arizona, and Arizona alone, has never ratified the compact. Further attempts to negotiate a tri-state compact immediately prior to the passage of the Boulder Canyon Act likewise failed.

(2) Boulder Canyon Project Act - 1928

On December 21, 1928 Congress passed the act authorizing the Boulder Canyon Project. Congress expressly provided by Section 4(a), however, that the act should not take effect until (1) the seven Colorado River states had ratified the compact, or (2) six states, including California, had ratified the compact, and further:

until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the

4,400,000

the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

Section 4(a) also authorized Arizona, California and Nevada to enter into an apportionment agreement which, among other things, should provide:

That of the 7,500,000 acre feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre feet and to the State of Arizona 2,300,000 acre feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus water unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial use of the Gila River and its tributaries within the boundaries of said State *** (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California and Nevada.

California, by act of its legislature, March 16, 1929 (C. 16, Statutes and amendments to codes of California, 1929) agreed and bound itself to the limitation of 4,400,000 acre feet of III(a) water plus one-half of the surplus, but it has never agreed to enter into the tri-state compact authorized by Section 4.

(3) Secretary Wilbur's contracts with California.

Acting under authority of Section 5 of the Boulder Canyon Project Act, Secretary Wilbur, during the years 1930 to 1933, executed contracts with California interests under which the Secretary agreed to deliver water from Lake Mead for use in California, to the following parties and in the following amounts:

Imperial Irrigation District for use in Imperial and Coachella Valleys and Palo Verde Irrigation District.....	4,150,000 acre feet
Metropolitan Water District, for use on the coastal plain of California	1,100,000 acre feet
City of San Diego	112,000 acre feet
TOTAL	5,362,000 acre feet

It is significant that the delivery of water in each of the contracts is "subject to availability thereof for use in California under the Colorado River compact, and the Boulder Canyon Project Act." It is significant also that in each of the contracts there is specifically set forth the apportionment of the foregoing amounts of water in accordance with the following priorities:

- (1) A first priority to Palo Verde Irrigation District for 104,000 acres covering rights which had vested prior to the building of Boulder Dam.

- (2) A second priority to lands not exceeding 25,000 acres in the Yuma project in California.
- (3) A third priority to Imperial Irrigation District and Palo Verde Irrigation District for 3,850,000 acre feet, less the amounts needed for beneficial use on lands referred to in (1) and (2).
- (4) A fourth priority to Metropolitan Water District for 550,000 acre feet.
- (5) A fifth priority to Metropolitan Water District for 550,000 acre feet and to the City of San Diego for 112,000 acre feet.
- (6) A sixth priority to Imperial Irrigation District and Palo Verde Irrigation District for 300,000 acre feet.

It will be noted that the first four priorities total 4,400,000 acre feet, the exact amount California agreed by act of its legislature to accept from the water apportioned to the lower basin by Article III(a) of the compact. The total of the fifth and sixth priorities is 962,000 acre feet which obviously must come out of the "one-half of any excess or surplus unapportioned by said compact."

I have no satisfactory explanation for the reasons which prompted Secretary Wilbur to execute contracts for 962,000 acre feet of water in excess of 4,400,000 acre feet, the amount California is limited to by its act of 1929. It is abundantly clear, however, by the terms of the contracts, and the priority tables which are a part of those contracts, that the Secretary is required to deliver only 4,400,000 acre feet to California, and that he can deliver the excess 962,000 acre feet only from excess or surplus waters unapportioned by the compact after Arizona and Nevada have had delivered to them the apportioned water to which they are entitled under the compact.

(4) Statement of issues between California and Arizona.^{1/}

I have stated the foregoing facts in some detail for one purpose - to crystallize the issues between California and Arizona. Despite all that has been said by both states over a period of more than twenty years, there is now only one issue. The sole issue is whether the 1,000,000 acre feet provided for the lower basin by Article III(b) of the compact is unapportioned.

While Arizona claimed for years that the Gila River and its tributaries were not to be included in the apportionment to the lower basin, it now concedes that the Gila and its tributaries are included in the waters apportioned to the lower basin under Articles III(a) and III(b). It vests its entire case on two propositions: (1) California has limited itself to 4,400,000 acre feet of apportioned water, and (2) III(b) water is apportioned water.

While California claims it has vested contractual rights to 5,362,000 acre feet, it is fully aware that 962,000 acre feet must come out of the unapportioned surplus. If the 1,000,000 acre feet is apportioned water, it must go to Arizona because California has limited itself to 4,400,000 acre feet and Arizona is the

^{1/} The history of Arizona's litigation on the Colorado River is reported in Arizona v. California, 283 U. S. 423, 292 U. S. 341, 298 U. S. 558, and United States v. Arizona, 295 U. S. 174.

only state physically that can use it. On the other hand, if California can establish that the million acre feet is unapportioned, then the pool of surplus unapportioned waters, to which California is entitled to one-half, would be increased by that amount. It is clear from examination of all the paragraphs of Article III of the compact that III(b) waters are apportioned waters and are not surplus or unapportioned waters. The Supreme Court, in effect, so held in Arizona v. California, 292 U.S. 341. Moreover, I am convinced that California is fully aware of the weakness of its own position. With these facts in mind, the absurdity of California's "solution" (p. 23) that Arizona have all water in the Colorado River for use in the lower basin "not required to fulfill existing California contracts" and that the contract (p. 28) "shall be subject to all contracts made by the Secretary under Section 5" becomes apparent.

(5) Contract negotiations with Arizona.

(a) Prior to 1933: In February 1933, Secretary Wilbur submitted to Arizona for its consideration a proposed contract similar in many respects to the contract now under consideration. Arizona took no action and negotiations ceased after Secretary Wilbur left office. In 1934 Arizona reopened negotiations and submitted a proposed contract to the Secretary. It was opposed by California and the five other Colorado River states. The major objection of the five Colorado River states other than California was that Arizona was attempting to obtain all the benefits of the compact and the Boulder Canyon Project Act without agreeing to become a party to the compact or be bound by it; that there was no charge imposed for the storage or delivery of the water proposed to be delivered; and that the Secretary under the contract unconditionally guaranteed to deliver to Arizona 2,800,000 acre feet of III(a) water. Other objections were made, many of which were frivolous. The Secretary held a hearing on the objections on December 17, 1934. At the conclusion of the hearing the Secretary suggested that the states endeavor to agree upon a contract satisfactory to all the states. A meeting was subsequently held in Salt Lake in February 1935 but Arizona would not agree to the draft proposed at that meeting.

(b) Contract negotiations commencing in May 1943 and culminating in proposed contract: During the past year Arizona's "lone wolf" attitude has changed. Arizona, through its present Governor and Senators, undoubtedly having in mind pending and future developments of the Colorado River in Arizona, is making a sincere effort to rid itself of the bitter feeling growing out of its past controversy on the compact. On March 25, 1943 its legislature passed an act contingently ratifying the compact, the contingency being the execution and ratification by the legislature of a contract for the delivery of water from Lake Mead between the United States and Arizona. Its representatives on the Committee of Fourteen asked the Committee to consider and approve a proposed contract.

1/ I may add that the attitude of the Compact states, except California, likewise has changed. In 1934 all of the Compact states were aligned against Arizona. Now all of the Compact states, and Arizona, are aligned against California.

2/ The Committee of Fourteen is composed of two representatives of each of the seven Colorado River states appointed by the Governors. It was first organized in 1939 at a Governors conference. It has no legal entity as such but it has come to be recognized as the representative organization for the consideration of all Colorado River problems affecting the Colorado River states. When it considers Boulder power matters, it becomes the Committee of Sixteen, the two additional members being representatives of the power allottees.

The first meeting of the Committee on the proposed contract was held in Phoenix on May 3, 1943. The Bureau was invited to have representatives present. Acting under instructions approved by the Secretary, the Bureau representatives stated the position that they were not authorized to commit either the Bureau or the Department except that on the basic issue as to amount of water to which Arizona is entitled under the Colorado River Compact, the Bureau and the Department did not propose to take any position—either for or against Arizona's contention; it being our view that the United States on this issue is in a position analogous to that of a stakeholder.

Considerable progress was made at the Phoenix conference. The views of the representatives of the compact states, except California, expressed at that meeting on the apportionment of waters to the Lower Basin may be summarized as follows: That the 8,500,000 acre feet provided for in Articles III(a) and III(b) of the Colorado River Compact included the waters of Gila River and that the 1,000,000 acre feet provided for in III(b) was included for the benefit of Arizona to compensate it for the estimated beneficial consumptive use of approximately 1,000,000 acre feet on the Gila River; that III(b) water was apportioned water, and that California, by the Act of its legislature in accepting the 4,400,000 acre feet provided for in Section 4 of the Boulder Canyon Project Act, was precluded from claiming any amount in excess of the 4,400,000 acre feet from the 8,500,000 acre feet provided for in Articles III(a) and III(b); that this would leave 4,100,000 acre feet for apportionment between Arizona and Nevada, and those parts of New Mexico and Utah in the Lower Basin; that it was generally agreed that Nevada was entitled to 300,000 acre feet, this leaving the balance of 3,800,000 acre feet for Arizona and those parts of New Mexico and Utah in the Lower Basin.

Arizona concurred in these views, including the view that the waters of the Gila River were included in III(a) and III(b) water, conditionally, that condition being that the proposed contract expressly reserve for future judicial determination the issue, which solely concerned Arizona and California, as to whether California was entitled to any water in excess of 4,400,000 acre feet from the 8,500,000 acre feet provided for in Articles III(a) and III(b). California, while accepting, of course, to the views of the five compact states and Arizona that California was precluded from claiming any amount in excess of the 4,400,000 acre feet from the 8,500,000 acre feet provided for in Articles III(a) and III(b), did concur in Arizona's proposal that a contract be submitted reserving for judicial determination the issues between California and Arizona. This is the so-called "Phoenix Treaty" to which California refers on page 10 of its brief.

A draft of contract was tentatively agreed upon by the Committee. A drafting committee of seven representing each of the seven Colorado River states was appointed at the Phoenix conference to submit a final draft to the Committee at its meeting in Denver on May 26.

At the meeting in Denver, California representatives proposed a number of amendments which were rejected by the other six states. One of California's objections was that there is no authority in the Secretary to contract with Arizona for the storage or delivery of Lake Mead water without a charge. The Committee concluded, properly I think, that the fixing of charges for the storage of water is a matter primarily within the control of the Secretary of the Interior. This part of the contract was left open for such decision as the Department might make.

After the Denver meeting, Judge Stone, the Chairman, submitted to the Secretary a draft of contract approved at the Denver meeting by the Committee of Fourteen by a vote of 6 to 1, California casting the dissenting vote. In submitting the proposed contract he stated that before adjournment of the Denver conference the Committee approved the following proposals: (1) that the Chairman of the Committee appoint a subcommittee of three to participate, to such an extent as may seem advisable, in the proceedings before the Secretary for the negotiation of the contract; and (2) that the Committee be accorded the privilege of reviewing the contract as negotiated and before it is finally approved. The Secretary advised Judge Stone that both of these proposals were satisfactory to the Department.

Judge Stone appointed, in addition to himself, Mr. Carson representing Arizona and Mr. Shaw representing California as the subcommittee. The proposed contract was carefully considered in the Bureau and a number of modifications were made, including the provision for a charge for the delivery of water. District Counsel R. J. Coffey and I met with the subcommittee in Denver on October 12. At an extended conference the changes requested by us, and other changes made at the conference were accepted. At a meeting of the Committee of Fourteen in Denver on October 30, the contract as modified was approved by the Committee, California again dissenting. The contract has now been submitted by the Chairman of the Committee, recommending its approval. The hearing on February 2, as you know, was granted at the request of the Governor and Attorney General of California.

(6) Comment on California's objections.

I have not had an opportunity to make a detailed analysis of California's objections, nor do I believe, for the purposes of this memorandum, that such an analysis is necessary. I will comment briefly, however, upon the more important points raised by California. The brief is divided into two major parts. The first part (B - pp. 12-36) purports to establish that the proposed contract, in some particulars, is prejudicial to California, and the second part (C - pp. 36-56) endeavors to establish that the proposed contract would be void.

California first contends (B - I, pp. 10-17) that Article 7(b) of the proposed contract by inference defines the maximum of 2,800,000 acre feet referred to in Article 7(a) as III(a) water, and thus violates the sense of the so-called "Phoenix Treaty."

If such an inference could be drawn, which I doubt, I fail to see how California would be prejudiced in any way. Article 10 is purposely designed to prevent Arizona, or any other state, from contending that the proposed contract resolves any issues on the amounts of water which are apportioned or unapportioned by the compact. It expressly provides that the contract shall not impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning and interpretation of the compact and act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III(a) of the compact; (3) what part, if any, is within Article II(b); and (4) what part, if any, is excess or surplus waters unapportioned by the contract.

Nor does Article 7(b) contradict Article 10(4). Article 7(b) does not purport to define what part, if any, is excess or surplus water. It provides simply that the Secretary will deliver to Arizona its share of the excess or

surplus to which it is entitled, whatever that share may be under the compact and act. California neglects to point out that the Arizona share of the excess or surplus water unapportioned by the compact also is subject to its availability under the compact and act. I do not understand that California objects to the term "one-half."

In fact, I fail to see that California would be prejudiced in any way if Article 7(a) specifically referred to apportioned water. Its delivery would be "subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act." The proposed contract does not attempt to obligate the United States to deliver any water that cannot be delivered in accordance with the terms of the compact and the act. If it should so attempt, it would be meaningless, because it would not conform to Sections 1, 8(a), and 13(c) of the act which requires subjection of the contract to the terms of the compact and act. Thus, even if Article 7(a) specified apportioned water, it would mean nothing more than that the United States would deliver 2,900,000 acre feet of apportioned water if in fact Arizona is entitled to that amount under the compact and act.

California also contends (B - II, pp. 13-21) that the contract confuses certain basic terms, referring specifically to the terms "excess or surplus waters unapportioned by the compact" used in Section 4(a) of the act and "surplus" as used in the compact. The drafters of the contract were meticulous in using in the contract the same terms appearing in Section 4(a) of the act and in the compact. Again, Article 10 of the proposed contract applies with respect to any inference which may be drawn.

California also contends (B - III, IV and V, pp. 22-35) that specific amounts of water should not be granted; that existing contracts with California should be protected; and that the contract should be all inclusive.

California's contentions under these points are based upon two assumptions, both of which are erroneous:

(1) That California has vested contractual rights to 5,362,000 acre feet of water which the Secretary is required to deliver;

(2) That the Secretary is committed under the proposed contract to deliver 2,800,000 acre feet of water from Lake Mead to Arizona and thus is "overselling" the river.

I have already commented upon both of these assumptions. California has a contractual right only to 4,400,000 acre feet of apportioned water and the additional 962,000 acre feet must come from the unapportioned excess or surplus, and California is fully aware of this fact. To adopt California's solution (p. 23) would require the Secretary to recognize that California is entitled first to 5,362,000 acre feet before Arizona would be entitled to any water from Lake Mead. This obviously would require the Secretary to resolve the fundamental issue, and the only issue, in California's favor.

The second part of California's brief (C - pp. 36-54) endeavors to establish that the contract could be void because (1) it is beyond the Secretary's authority; (2) it is not supported by any consideration; (3) it seeks unlawfully to bind the Secretary and his successors in the future exercise of the discretion; (4) that the proposed contract, being an agreement to make agreements of unknown terms, would be a nullity; (5) the proposed contract gives rise to no remedy in favor of any one.

California takes this anomalous position. If the contract were so amended as to recognize that California first should obtain the full amounts of waters for which it has contracted, the proposed contract with Arizona would be acceptable to California. California then states five reasons why the contract would be void, all of which reasons would be equally applicable to the contract which California states would be satisfactory.

Commenting on these objections generally, Section 5, authorizing the Secretary to contract for the delivery of water from Lake Mead, vests broad discretion in the Secretary. In exercising that discretion the Secretary properly must consider the entire act and what Congress intended should be accomplished by that act. Any contract which is made should effectuate the intention of Congress as expressed in Section 4(a). In fact, by Section 5, contracts made by the Secretary must conform to Section 4(a). The proposed contract does not differ in material substance from the contract with the State of Nevada which California has expressly approved, and it does not differ in many respects from the California contracts which under ordinary principles of contract law and irrigation law, are subject to some of the very objections California makes against the proposed contract with Arizona. In this respect, the California contracts are contracts for the delivery in the future of unspecified amounts of water to lands generally described as "on the coastal plain of California," and "lands in Imperial and Coachella Valleys" which will be served from the All-American Canal. While these contracts were made almost fifteen years ago, but a fraction of the amounts contracted for is at this time being delivered. No one has questioned the Secretary's authority or discretion in making these contracts. If the Secretary has authority under Section 5 of the Boulder Canyon Project Act to make contracts with Nevada and California interests for the delivery of water from Lake Mead, I think his authority, and the discretion vested in him by Section 5, is broad enough to make such a contract as is proposed to be made with Arizona.

I should like to comment specifically, however, on California's contention (C - III, pp. 43-47) that the contract is not supported by any consideration and is completely lacking in mutuality which is a point of substance not involved in the Nevada and California contracts.

This point has been carefully considered by the Bureau. The Bureau insisted over Arizona's strenuous objection that there be a charge for the storage and delivery of water. This removed one of California's major objections. Article 9 provides a charge of fifty cents per acre foot for water actually diverted directly from Lake Mead, which charge shall be paid by the users of such water, and charges for the storage or delivery of water diverted below Boulder Dam shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, provided such charges shall in no event exceed twenty-five cents per acre foot. While this unquestionably is consideration running to the United States, it is no detriment imposed upon the state as such. To make a burden

...coming directly from the state, representatives of the Bureau, in conferring with the subcommittee had included in Article 9 the following sentence: "Arizona by this contract expressly guarantees the payment to the United States of any charges to users made pursuant to this paragraph." We concluded, however, that it was of doubtful validity because of the provisions of Section 7 of Article 9 of the Arizona Constitution which provides:

Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law.³

Even if this sentence were acceptable to Arizona, I would be reluctant to insist upon it in view of its doubtful validity.

Moreover, I am convinced that there is consideration running from Arizona to the United States. Arizona's agreement to ratify and become bound by the compact is of real benefit to the United States although it may be an intangible benefit. The United States proposes to invest millions of dollars in developing the Gila project in Arizona and is investigating other projects in Arizona dependent upon diversions from the Colorado River. It is of major concern to the United States that its investments in these projects not be jeopardized and that Arizona agree to recognize the rights of other compact states. Before any actual diversion is commenced, it is necessary that its relations with the state be stabilized and clarified. Also, there is further consideration for the benefit of California, Nevada, Utah, and New Mexico in that Arizona for the first time recognizes the rights of those states—the rights of California to the extent of its limitation, act, the rights of Nevada to the extent of 300,000 acre feet and 1/25 of the unapportioned surplus, and the rights of Utah and New Mexico to their equitable shares. Arizona is bound by those recognitions and the other states are benefited. The detriment to the promisee, Arizona, to the benefit of the other Lower Basin states constitutes consideration to support the contract under principles applicable to third party beneficiary contracts (Restatement of the Law of Contracts, Sec. 75, p. 80).

I think we should keep in mind that the Department has indicated its willingness to make a contract with Arizona for almost twelve years. Moreover, the contract the Department offered to Arizona in 1933 was not contingent on Arizona ratifying the compact. At the outset of the negotiations commencing last spring, the Department again indicated its willingness to contract with Arizona on

³ This provision of the Constitution was considered by the Supreme Court of Arizona in Day v. Buckeye Water Conservation and Drainage District, 28 Ariz. 466, 237 Pac. 636, and Humphrey v. City of Phoenix, 55 Ariz. 374, 102 P. (2d) 82, but the point involved here was not decided.

condition that the proposed contract should not resolve any controversial issue either for or against Arizona. If the United States should refuse to contract with Arizona on account of California's objections, the United States and Arizona are probably foreclosed from making any contract at any time unless California should consent to enter into the tri-state compact authorized by Section 4(a) of the act, and this California refuses to do.

If you concur, I suggest that the original of this memorandum, together with a copy of California's brief and a copy of Arizona's brief, be submitted to the Secretary for his information prior to the hearing on February 2. I am attaching for this purpose extra copies of the briefs.

Clifford E. Felt
Assistant Chief Counsel.

Enclosure 2400962

CALIFORNIA DEFENDANTS

Exhibit No. 7605

Identification:

Admitted:

SUMMARY MEMORANDUM SIGNED BY
COMMISSIONER H. W. BASHORE,
DATED FEBRUARY 8, 1944

1-485
November 1909

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

MAY 10 1950

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
that each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Summary memorandum signed by the Commissioner of
Reclamation concerning the proposed contract between
the United States and Arizona - dated February 8, 1944.

In Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.

Chief Clerk.

SUMMARY

Re: Proposed contract between the United States and Arizona for the delivery of water from Lake Mead for use in Arizona.

1/8/44

The attached letter submits for your approval and execution the proposed water contract between the United States and the State of Arizona. The contract is proposed to be made under the authority of Section 5 of the Boulder Canyon Project Act which authorizes the Secretary to contract for the storage and delivery of water impounded by Boulder Dam. Under the proposed contract the United States agrees to deliver annually from storage in Lake Mead a maximum of 2,800,000 acre feet of water, subject to its availability for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and one-half of any excess or surplus unapportioned by the compact to the extent such water is available for use in Arizona under the compact and act. The contract is conditioned upon the unconditional ratification of the compact by Arizona.

The proposed contract was drafted by the Committee of Fourteen after the Arizona legislature last spring passed an act contingently ratifying the Colorado River Compact—the contingency being the execution and ratification by the legislature of a contract for the delivery of water from Lake Mead. The Bureau made a number of modifications which have been accepted by the Committee and Arizona. The proposed contract has been approved by the representatives of each of the Colorado River states, except California. The hearing on February 2 was on California's objections.

California is fearful that Arizona may contend, to California's prejudice, that certain provisions of the proposed contract amount to an administrative determination that Arizona is entitled to 2,800,000 acre feet of III(a) water. California's fears are unfounded for at least two reasons. First, the delivery of water is expressly "subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act," and secondly, Article 10 was purposely designed to prevent Arizona, or any other state, from contending that the proposed contract resolves any issue on the amounts of water which are apportioned or unapportioned by the compact and the amounts of apportioned or unapportioned water which are available to the respective states, and it expressly reserves for future judicial determination any issues involving the intent, effect, and interpretation of the compact and act.

The Department has made contracts with California and Nevada for the delivery of water from Lake Mead subject to its availability under the compact and act. Now that Arizona has agreed to ratify the compact, it is my opinion that Arizona is entitled to be accorded the same consideration that the Department has accorded to California and Nevada.

The factual background, summary of issues, and comment on the objections raised by California are summarized in the Memorandum for the Solicitor dated January 29, which he transmitted to you on January 31. A copy, with certain minor modifications, is attached to this summary for ready reference.

H. S. Carson
Commissioner.

CALIFORNIA DEFENDANTS

Exhibit No. 7606

Identification:

Admitted:

LETTER FROM COMMISSIONER H. W. BASHORE,
BUREAU OF RECLAMATION, TO SECRETARY OF
THE INTERIOR HAROLD L. ICKES, DATED
FEBRUARY 8, 1944

1-480
November 1946

United States of America

DEPARTMENT OF THE INTERIOR

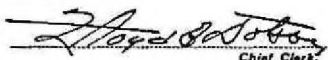
WASHINGTON, D. C.

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
that each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Letter from H. W. Bashore, Commissioner, Bureau of
Reclamation, dated February 8, 1944, to Secretary of
the Interior, submitting for approval and execution the
proposed contract between the United States and the
State of Arizona for the storage and delivery of water
from Lake Mead.

In Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk

ADDRESS ALL COMMUNICATIONS TO
THE COMMISSIONER

223-02-
COLORADO RIVER
SEARCHED INDEXED
SERIALIZED FILED
FEB 21 1971
FBI - LOS ANGELES
in triplicate, the
e of Arizona, for the
Arizona. There also is
ber 21, 1971.

2/9/14

There is submitted for your approval and execution, in triplicate, the proposed contract between the United States and the State of Arizona for the storage and delivery of water from Lake Mead for use in Arizona. There also is enclosed a copy of the letter of transmittal dated December 31, 1943 from Judge Clifford H. Stone, Chairman, Committee of Fourteen, advising that the proposed contract has been approved by each of the Colorado River states represented by the Committee of Fourteen, except California. California objects to the execution of the proposed contract and a hearing on its objections was held before you on February 2.

The contract is proposed under the authority of Section 5 of the Boulder Canyon Project Act (45 Stat. 1057), which authorizes the Secretary to contract for the storage and delivery of water impounded by Boulder Dam. The proposed contract, in pertinent substance, provides:

(1) Under Article 7(a) the United States agrees to deliver annually from storage in Lake Mead a maximum of 2,800,000 acre feet, subject to its availability for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and under Article 7(b) the United States agrees to deliver one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under the compact and act.

(2) Article 7(d) and (1) provide that the obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and all consumptive uses of waters for uses in Arizona of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under the contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of the contract.

(3) Article 9 provides that a charge of fifty cents per acre foot shall be made for all water diverted directly from Lake Mead, and charges for the storage or delivery of water diverted below Boulder Dam shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, provided such charges shall, in no event, exceed twenty-five cents per acre foot.



1111-1112

(4) Article 10 provides that the contract shall not impair the right of Arizona and other states or the users of waters therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of the states and water users as to (1) the intent, effect, meaning and interpretation of the compact and act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III(a) of the compact; (3) what part, if any, is within Article III(b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by the contract; (5) and what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system.

(5) Article 14 provides that the contract shall not become effective until the contract has been ratified by an act of the legislature of Arizona and until the Colorado River Compact has been unconditionally ratified by Arizona.

Efforts have been made since 1933 to negotiate a contract with Arizona for the delivery of water from Lake Mead. In that year Secretary Kilbur submitted to Arizona a proposed contract similar in many respects to the contract now proposed. It was not conditioned, however, upon the ratification of the Colorado River Compact by Arizona. In 1934 Arizona reopened negotiations and submitted a proposed contract for approval. It was opposed upon several grounds by California and the five other compact states. One of the major objections was that Arizona was attempting to obtain all the benefits of the compact and the Boulder Canyon Project Act without agreeing to ratify the compact and become bound by it. At the conclusion of a hearing on the proposed contract, you suggested that the states endeavor to agree upon a mutually satisfactory contract. Further efforts to agree upon a contract failed.

On March 25, 1943 the Arizona legislature passed an act contingently ratifying the compact - the contingency being the execution and ratification by the legislature of a contract between the United States and the State of Arizona for the delivery of water from Lake Mead. Arizona representatives of the Committee of Fourteen asked that Committee to consider and approve a proposed contract. At the first meeting of the Committee on the proposed contract held early in May, Bureau representatives, acting under your instructions, took the position that any contract proposed should not commit the Department as to any controversial issues regarding the amounts of water to which Arizona, or any other compact state, is entitled under the Colorado River Compact, it being the Department's view that the United States on these issues is in a position analogous to that of a stakeholder. That position has been stated repeatedly in subsequent negotiations. The states, including Arizona and California, agreed that any contract submitted should reserve for future judicial determination the issues between California and Arizona and any issues involving the intent, effect, meaning, and interpretation of the Colorado River Compact and the Boulder Canyon Project Act.

A draft of contract was tentatively agreed upon by the Committee. A drafting committee of seven representing each of the seven Colorado River states submitted a final draft to the Committee at its meeting later in May. After that meeting, Judge Clifford M. Stone, the Chairman, submitted to you a draft of contract approved by the Committee of Fourteen by a vote of 6 to 1, California casting the dissenting vote. In submitting the proposed contract, the Committee asked the Chairman to appoint a subcommittee of three to participate in proceedings before the Department for the negotiations of the contract.

The proposed contract was carefully considered in the Bureau and a number of modifications were made. Bureau representatives met with the subcommittee, comprised of Judge Stone, Mr. Charles A. Carson, representing Arizona, and Mr. Arvin B. Shaw, representing California, in Denver in October. The changes requested by the Bureau were accepted. At a meeting of the Committee of Fourteen in Denver on October 30, the contract as modified was approved, California again dissenting. The contract, as approved by the Committee of Fourteen, was transmitted for your approval in the Chairman's letter of December 31.

California's objections to the proposed contract have been very carefully considered. One of California's major objections was Arizona's proposal that the contract provide that there should be no charge for the storage or delivery of water at points below Boulder Dam. Arizona contended that it should be accorded the same rights as users in California and that since no charge was made in the contracts with Imperial Irrigation District and Palo Verde Irrigation District for the delivery of 4,150,000 acre feet, no charges should be made against Arizona. The Committee concluded, properly I think, that the fixing of charges for the storage of water is a matter primarily within the control of the Secretary of the Interior. This part of the contract was left open for such decision as the Department might make. While not conceding California's contention that the Secretary was required to make a charge under Section 5 of the Boulder Canyon Project Act, the Bureau believed as a matter of policy that provision for charges should be included, and Article 9 providing for charges was insisted upon over Arizona's objection. This removed one of California's major objections.

California also contends that subdivisions (a) and (b) of Article 7 construed together are prejudicial to California in that there is an implied inference by subdivision (b) that the maximum of 2,800,000 acre feet which the United States agrees to deliver under subdivision (a) is water apportioned to the Lower Basin under Article III(a) of the compact and that Arizona could contend, to California's prejudice, that this constituted an administrative determination that Arizona was entitled by this contract to 2,800,000 acre feet of III(a) water. California's fears in this respect are unfounded for at least two reasons. Granting that subdivision (b) does create an inference that the maximum of 2,800,000 acre feet which the United States agrees to deliver in subdivision (a) is apportioned water, the delivery of water under both subdivision (a) and subdivision (b) of Article 7 is expressly "subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act." The proposed contract does not attempt to obligate the United States to deliver any water to Arizona which is not available to Arizona under the terms of the compact and act. If it should so attempt, it would be meaningless because it would not conform to Sections 1, 8(a) and 13(c) of the act which requires subjection of the contract to the terms of the compact and act. More specifically, Article III(a) of the compact apportions from the Colorado River system 7,500,000 acre feet for use in the Lower Basin, and by Article III(b) the Lower Basin was given the right to increase its consumptive uses of such waters by 1,000,000 acre feet per annum. If it should be determined, as contended by California, that the 1,000,000 acre feet of III(b) is unapportioned, the amount of water available for delivery in Arizona under subdivision (a) would be reduced accordingly. Also, by ratifying the compact, Arizona concedes that the Gila River and its tributaries are within the "Colorado River system." If it should be determined that the consumptive uses on the Gila and its tributaries exceed 1,000,000 acre feet, it would appear that the amount of water available for delivery in Arizona under subdivision (a) would be reduced by the amount the consumptive uses on the Gila exceed 1,000,000 acre feet. Unless subdivision (b) were eliminated

entirely (an amendment proposed by California which Arizona and the other compact states expressly rejected), any modification of subdivision (b) to overcome California's objection would create the inference, which would be subject to the same objection by Arizona, that the 2,800,000 acre feet referred to in subdivision (a) was comprised of both apportioned and unapportioned water.

Secondly, Article 10 was purposely designed to prevent Arizona, or any other state, from contending that the proposed contract, or any provision of the proposed contract, resolves any issue on the amounts of water which are apportioned or unapportioned by the compact, and the amounts of apportioned or unapportioned water to which the respective states are entitled. The language of Article 10 is plain and unequivocal. However, to overcome California's fear, as expressed in its brief, that subdivisions (a) and (b) of Article 7 would control over Article 10, the words "This contract shall not impair" in the first line of Article 10 have been deleted and the words "Neither Article 7, nor any other provisions of this contract, shall impair" have been substituted therefor.

California also contends, on several grounds, that the proposed contract would be void. Section 5 authorizes the Secretary to contract for the delivery of water from Lake Mead and vests broad discretion in the Secretary. In exercising that discretion the Secretary properly must consider the entire act and what Congress intended should be accomplished by that act. The proposed contract does not differ in material substance from the contract with the state of Nevada which California has expressly approved, and it does not differ in many respects from the California contracts which are subject to some of the objections California makes against the proposed contract with Arizona. No one has questioned the Secretary's authority or discretion in making those contracts. If the Secretary has authority under Section 5 to make contracts with Nevada and California interests for the delivery of water from Lake Mead, subject to its availability under the compact and act, I think his authority, and the discretion vested in him by Section 5, is broad enough to make such a contract as is proposed to be made with Arizona. Moreover, California is not a party to this contract. It is between the United States and Arizona, and they assume the risk with respect to its validity, not California.

At the hearing on February 2 you indicated to California's representatives that you were interested in the equities between Arizona and California. Since Arizona has agreed to ratify the compact, it is my opinion that Arizona is entitled to be accorded the same consideration that the Department has accorded to California and Nevada. Briefly, the facts are: Congress provided in passing the Boulder Canyon Project Act that it should not become effective until California, by act of its legislature would agree to a limitation for use in California of 4,400,000 acre feet of the 7,500,000 acre feet apportioned to the Lower Basin by Article III(a) of the compact, plus not more than one-half of any surplus or excess water unapportioned by the compact. California passed its limitation act in 1929. Congress also authorized Arizona, California and Nevada to enter into an apportionment agreement which, among other things, should provide that of the 7,500,000 acre feet annually apportioned to the Lower Basin by Article III(a) of the compact, there should be apportioned to Nevada 300,000 acre feet and to Arizona 2,800,000 acre feet; that Arizona might use annually one-half of the excess or surplus water unapportioned by the compact; and that Arizona should have the exclusive beneficial use of the Gila River and its tributaries within the boundaries of the state. Although Arizona has agreed to enter into a tri-state compact as authorized, California has refused.

Secretary Wilbur, acting under the authority of Section 5 of the Boulder Canyon Project Act during the years 1930 to 1933, executed contracts with California interests for the delivery of 5,362,000 acre feet of water from Lake Mead subject to its availability under the compact and act. By reason of its limitation act California concedes that the 962,000 acre feet in excess of 4,400,000 acre feet must come from its share of one-half of the excess or surplus water unapportioned by the compact. It is apparent that the 962,000 acre feet can only be delivered subject to the prior rights of the other Lower Basin states to the apportioned water available to them under the compact. Also, under Article III(c) of the compact any rights for use of water in Mexico recognized by treaty must first be supplied from surplus water in the Lower Basin and, if that is not sufficient, the deficiency must be borne equally by the Upper and Lower basins. Therefore, California's concern in the amount of water available to Arizona under the compact and the amount of water which the United States by treaty may recognize for use in Mexico is apparent. I do not think any contract with Arizona would be unobjectionable to California unless it conformed to its "solution" suggested in its brief (p. 23), that Arizona have all water in the Colorado River for use in the Lower Basin "not required to fulfill existing California contracts" and that the contract (p. 23) "shall be subject to all contracts made by the Secretary under Section 5."

Arizona, after refusing for more than twenty years to ratify the compact, has now agreed to ratify it upon condition that there be executed a contract for the delivery of water from Lake Mead between the United States and Arizona. In addition to the California contracts, Nevada has a contract with the United States for the delivery of 100,000 acre feet of water from Lake Mead, subject to its availability under the compact and act, and an amendment to that contract increasing the amount to 300,000 acre feet has been submitted for execution. This contract has been expressly approved by the compact states including California. There is no reason now why Arizona is not entitled to like consideration providing, of course, the proposed contract does not commit the Department on any controversial issue regarding the intent, effect, meaning, and interpretation of the compact and act, and providing that it does not resolve any issues as to the amounts of water available to Arizona and California under the compact and act. In this respect it does not differ from the California and Nevada contracts.

The Colorado River states, except California, have expressly approved the proposed contract, including the modifications suggested by the Bureau, and have recommended its execution. Ratification of the compact by Arizona, and its recognition of the rights of the Colorado River states under the compact, is of substantial benefit to those states. It is of real benefit also to the United States. The United States proposes to invest millions of dollars in developing the Gila project in Arizona and is investigating other projects in Arizona dependent upon diversions from the Colorado River. Substantially all of the water available for use in Arizona from the Colorado River will be used on public lands of the United States. It is definitely in the interest of the United States that it take any action that it properly can to safeguard its investments in those Arizona projects. Also, it is in the interest of the United States that Arizona, by this contract and by ratification of the compact, recognize the rights of other compact states in which the United States has a large financial interest to safeguard.

For the foregoing reasons, I recommend your approval of the proposed contract and that the enclosed copies be executed in triplicate.

Respectfully,

H. W. Ransom
Commissioner.

Enclosure 2400969

Approved: FEB - 9 1944

H. L. R.

Secretary of the Interior.

UNIVERSITY OF CALIFORNIA

CALIFORNIA DEFENDANTS

Exhibit No. 7607

Identification:

Admitted:

MEMORANDUM BY SECRETARY OF THE INTERIOR
HAROLD L. ICKES RE HEARING FEBRUARY 2 ON
CALIFORNIA'S OBJECTIONS TO THE PROPOSED
CONTRACT BETWEEN THE UNITED STATES AND
ARIZONA FOR THE DELIVERY OF WATER FROM
LAKE MEAD, DATED FEBRUARY 9, 1944

1-490
November 1941

United States of America

DEPARTMENT OF THE INTERIOR

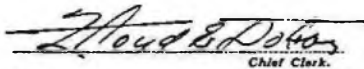
WASHINGTON, D. C.

MAY 20 1944, 19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Memorandum by Harold L. Ickes, Secretary of the Interior, dated February 9, 1944, re hearing February 2 on California's objections to the proposed contract between the United States and Arizona for the delivery of water from Lake Mead.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.


Chief Clerk.

UNIVERSITY OF COLORADO LIBRARY



THE SECRETARY OF THE INTERIOR
WASHINGTON

FEB 9 1944

MEMORANDUM re hearing February 2 on California's objections to the proposed contract between the United States and Arizona for the delivery of water from Lake Mead.

There has been submitted to me for approval and execution a proposed contract between the United States and the State of Arizona for the delivery of water from Lake Mead for use in Arizona. Section 5 of the Boulder Canyon Project Act authorizes me to contract for the storage and delivery of water impounded by Boulder Dam. Under subdivision (a) of Article 7 of the proposed contract the United States agrees to deliver annually from storage in Lake Mead for use in Arizona a maximum of 2,800,000 acre feet of water, subject to its availability for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and under subdivision (b) of Article 7 the United States agrees to deliver one-half of any excess or surplus water unapportioned by the compact to the extent such water is available for use in Arizona under the compact and act. The contract is conditioned upon the unconditional ratification of the compact by Arizona.

The proposed contract was drafted by the Committee of Fourteen after the Arizona legislature last Spring passed an act contingently ratifying the compact—the contingency being the execution and ratification by the legislature of a contract for the delivery of water from Lake Mead. Representatives of the Bureau of Reclamation worked closely with the Committee and made a number of modifications which were accepted by the Committee and Arizona. Bureau representatives under my instructions have taken the position throughout the negotiations that any contract proposed should not commit the Department as to any controversial issue regarding the amounts of water available to Arizona, or to any compact state, under the compact and the act. The proposed contract has been approved by the representatives of each of the Colorado River states, except California.

I have considered carefully the objections made by California in its printed brief and at the hearing before me on February 2. California is fearful that subdivisions (a) and (b) of Article 7 construed together create an inference that the maximum of 2,800,000 acre feet which the United States agrees to deliver under subdivision (a) is water apportioned to the Lower Basin under Article III(a) of the compact and that Arizona could contend, to California's prejudice, that this constituted an administrative determination that Arizona was entitled by this contract to 2,800,000 acre feet of III(a) water. I am convinced that California's fears in this respect are unfounded for at least two reasons. First, I wish to make it clear, and to emphasize, that the delivery of water under both subdivision (a) and subdivision (b) of Article 7 is expressly "subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act." The proposed contract does not attempt to obligate the United States to deliver any water to Arizona which is not available to Arizona under the terms of the compact and act. Secondly, Article 10 was purposely designed to prevent Arizona, or any other

etic, from contending that the proposed contract, or any provision of the proposed contract, resolves any issue on the amounts of waters which are apportioned or unapportioned by the compact and the amounts of apportioned or unapportioned water available to the respective states under the compact and the act. It expressly reserves for future judicial determination any issue involving the intent, effect, meaning and interpretation of the compact and act. The language of Article 10 is plain and unequivocal and adequately reserves all questions of interpretation of the compact and the act.

It is my opinion that I have authority under Section 5 of the act to execute such a contract as is proposed to be made with Arizona. The Department has made contracts with California and Nevada for the delivery of waters from Lake Mead subject to its availability under the compact and act. Now that Arizona has agreed to ratify the compact, it is my opinion that Arizona is entitled to be accorded the same consideration that the Department has accorded to California and Nevada. Accordingly, I have decided to approve and execute the proposed contract with Arizona.

Harold L. Pehon
Secretary of the Interior.

February 9, 1944.

CALIFORNIA DEFENDANTS

Exhibit No. 7608

Identification:

Admitted:

LETTER FROM SECRETARY OF THE INTERIOR
HAROLD L. ICKES TO GOVERNOR EARL WARREN,
SACRAMENTO, CALIFORNIA, DATED
FEBRUARY 21, 1944

1-480
November 1949

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

MAY 20 1960

19.....

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
that each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Letter from Secretary Ickes to Governor Earl Warren,
Sacramento, California, dated February 21, 1944, regarding
California's objections to the proposed contract between
the United States and the State of Arizona for the delivery
of water from Lake Mead.

In Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.



THE SECRETARY OF THE INTERIOR
WASHINGTON

RECL. COPY
223.02-
COLORADO RIVER
25, D. C.

FEB 21 1944

My dear Governor Warren:

This will supplement my letter of December 29, 1943, and telegram of January 6, regarding California's objections to the proposed contract between the United States and the State of Arizona for the delivery of water from Lake Mead for use in Arizona.

I am enclosing for your information a copy of the contract as approved and executed by me on February 9. I did not approve the proposed contract until after I had considered carefully the objections made by California in its brief and at the hearing before me on February 2 and until I was convinced that it was not prejudicial to any of California's contentions as to the amounts of water available to Arizona and California under the Colorado River Compact and the Boulder Canyon Project Act. The delivery of water under this contract for use in Arizona is expressly "subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act." The contract does not attempt to obligate the United States to deliver any water to Arizona which is not available to Arizona under the terms of the Compact and Act. Also, Arizona, or any other state, by express provision in the contract, is precluded from contending that the contract, or any provision of the contract, resolves any issue on the amounts of water which are apportioned or unapportioned by the Compact and the amounts of apportioned or unapportioned water available to the respective states under the Compact and the Act. It expressly reserves for future judicial determination any issue involving the intent, effect, meaning, and interpretation of the Compact and Act. I am enclosing also for your information a copy of my memorandum of February 9 on the February 2 hearing.

I appreciate your concern in this matter, and I assure you that California's position was most carefully considered.

Sincerely yours,

(Sgd.)

Secretary of the Interior.

The Honorable
Earl Warren,
Governor of California,
Sacramento, California.

Copy sent to:
Hon. Robert W. Kenny,
Attorney General of California,
Sacramento, California.

Mr. Evan T. Newes, Chairman,
Colorado River Board of California
811 Washington Building,
Los Angeles, California.



2400977

CALIFORNIA DEFENDANTS

Exhibit No. 7609

Identification:

Admitted:

LETTER FROM SECRETARY OF THE INTERIOR
HAROLD L. ICKES TO JUDGE CLIFFORD H. STONE,
DENVER, COLORADO, DATED FEBRUARY 21, 1944

I-480
November 1949

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

MAY 20 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Letter from Secretary Ickes to Judge Clifford R. Stone, Denver, Colorado, dated February 21, 1944, regarding the proposed contract between the United States and the State of Arizona for the delivery of water from Lake Mead for use in Arizona.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.

Elizabeth D. Lober
Chief Clerk.

8151944
RECEIVED

223.02
COLORADO RIVER

RECL. COPY
RECEIVED
SECRET

THE SECRETARY OF THE INTERIOR

WASHINGTON

25, D. C.

FEB 21 1944

My dear Judge Stone:

This will supplement my telegram of January 6 regarding the proposed contract between the United States and the State of Arizona for the delivery of water from Lake Mead for use in Arizona.

There are enclosed fifteen mimeographed copies of the contract as approved and executed by me on February 9. I did not approve the proposed contract until I had considered carefully the objections made by California in its brief and at the hearing before me on February 2. In this connection, for your information and for the information of the Committee, I also am enclosing a copy of my memorandum of February 9 on the February 2 hearing.

I wish to call your attention to two changes in the contract, as executed, from the draft as it appears in the transcript of the October 30, 1943 meeting of the Committee of Fourteen which you transmitted with your letter of December 31, 1943. In Article 7(b) the opening clause reading "In addition to the delivery of a maximum of 2,800,000 acre-feet provided for in subdivision (a) of this Article, subject to its availability for use in Arizona the provisions of the Colorado River Compact and the Boulder Canyon Project Act" has been deleted since it is surplusage. Also, to reassure California that Article 10 controls specific provisions of the contract in reserving all questions as to the amounts of water available to Arizona, or any other state, under the Compact and Act, the words "This contract shall not impair," appearing in the first line of Article 10, have been deleted and the words "Neither Article 7, nor any other provision of this contract, shall impair" have been substituted therefor.

The Department appreciates the consideration which you and the members of the Committee of Fourteen have given this matter, and the cooperation which the Committee has extended to Arizona and to this Department.

Sincerely yours,

(Sgd.) HAROLD L. ICHESON
Secretary of the Interior.

Hon. Clifford H. Stone,
Chairman, Committee of Fourteen,
Colorado Water Conservation Board,
Denver, Colorado.



Enclosure 2400973

UNIVERSITY OF COLORADO LIBRARY

CALIFORNIA DEFENDANTS

Exhibit No. 7610

Identification: Admitted:

LETTER FROM ACTING SECRETARY OF THE INTERIOR
ABE FORTAS TO REPRESENTATIVE JOHN R. MURDOCK,
DATED DECEMBER 13, 1945, WITH SUPPORTING
DOCUMENTS:

(1) LETTER FROM REPRESENTATIVE
JOHN R. MURDOCK TO SECRETARY OF THE INTERIOR
HAROLD L. ICKES, DATED MARCH 17, 1945; AND

(2) LETTER FROM SECRETARY OF THE
INTERIOR HAROLD L. ICKES TO REPRESENTATIVE
JOHN R. MURDOCK, DATED MAY 3, 1945

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

JUL 28 1960, 19

pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
ed paper is a true copy of a document comprising part of the official records
Department of the Interior:

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.



Chief Clerk.

THE SECRETARY OF THE INTERIOR
WASHINGTON

E. D. G.

DEC 13 1945

FILE COPY
Surname:

RECLAMATION

Mr. Tolson	X
Mr. E. A. Tamm	
Mr. Clegg	
Mr. Glavin	
Mr. Ladd	
Mr. Nichols	
Mr. Rosen	
Mr. Tracy	
Mr. Carson	
Mr. Egan	
Mr. Gurnea	
Mr. Harbo	
Mr. Hendon	
Mr. Jones	
Mr. Mumford	
Mr. Quinn	
Mr. Nease	
Miss Gandy	

My dear Mr. Harbo:

On October 4, preliminary reply was made to your letter of September 2, 1944, which you requested certain information regarding the contract of February 2, 1944 between the State of Arizona and the United States for the delivery of Colorado River water to Arizona. Commissioner Harbo has received the information requested from Regional Director Smith, and I am relaying that information to you.

The following is an excerpt from the contract:

Article 7(a). Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, as much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,300,000 acre-feet.

The Colorado River Compact, to which the Arizona and similar contracts are subject, uses throughout, but does not define, the term "beneficial consumptive use." Section 4(a) of the Boulder Canyon Project Act contains this language:

... the State of California ... shall agree irrevocably and unconditionally ... that the aggregate annual consumptive use (diversions less returns to the river) ... shall not exceed, etc. ...

If the apparent sense of the above-quoted language should be applied to the Arizona contract, which by law its terms is subject to the compact and to such ultimate and authentic interpretation as may be given to the compact terms, it would contemplate the consumptive use within Arizona of a maximum of 2,300,000 acre-feet annually, with that use measured by the difference between diversions and return flow, subject, however, to Article 7(d) of the contract providing as follows:

The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

8.3
Cal River
Stn.
Lake Mead
water
Arizona

IN MEMORANDUM
FOR THE SECRETARY
MAIL CENTERRECEIVED
DEC 12 1945
ASST. SECYRECEIVED
DEC 12 1945
ASST. SECY

Your question as to the amount of return flow which would result from irrigation cannot be answered categorically. Ordinarily, it would represent the difference between the amount of water applied to the land and the consumptive use. Diversion requirements vary widely. On the light soils of the Little Colorado River Basin a diversion rate of 4.5 acre-feet per acre would probably suffice, and consumptive use would be in the order of 2.5 acre-feet per acre. For the light soils of the Tuma Basin, a diversion duty of 11 acre-feet per acre is estimated, and consumptive use would be about 4 acre-feet per acre.

I trust this information will meet your requirements.

Sincerely yours,

((SGD.) ABE FORTAS

Acting Secretary of the Interior.

Sen. John L. Hardeck,

House of Representatives.

BJSB:RMP:AS

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

JUL 28 1960

19.....

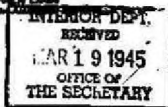
Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each
ed paper is a true copy of a document comprising part of the official records
e Department of the Interior:

ESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.

Howard S. Dotson
Chief Clerk.

Congress of the United States
House of Representatives
Washington, D. C.

COMMITTEES
CONSERVATION AND FOREST
EDUCATION
INDIAN AFFAIRS
MINES AND MINING
PUBLIC LANDS
RIVER AND HARBOUR



March 17, 1945

INTERIOR DEPT.
MAIL CENTER
MAR 19 1945
TO SOLICITOR

INTERIOR DEPT.
MAR 20 1945
SOLICITOR

Honorable Harold L. Ickes
Secretary of the Interior
Washington, D. C.

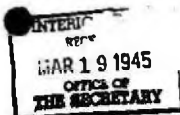
Dear Mr. Secretary:

There are some legal questions which have been bothering me for some time, and not being a lawyer, I have sought advice from several attorneys. I am not quite satisfied yet with conflicting answers I have received and am now coming to you to ask the same questions, which are as follows:

Under the terms of existing law pertaining to the waters of the Colorado River, and under the terms of the contract entered into between the Governor of Arizona and the Secretary of the Interior, whereby Arizona may take 2,800,000 acre feet of water out of the Colorado River, my questions are:

First, may that water be taken out either above or below Boulder Dam? and, second, is any water diverted by the Headgate Rock Dam onto the Colorado Indian Reservation at Parker considered as a part of that 2,800,000 acres of the contract?

I recall that that Indian Reservation was set aside early in the history of Arizona territory and that Charles D. Poston, as Indian Agent, began taking water out of the Colorado River for those Indians on that reservation three decades before the end of the last century. Of course, I am very anxious to see all of that very fine body of land along the Colorado River below Parker on that oldest of Arizona Indian Reservations, fully and sufficiently supplied with water for irrigation.



Honorable Harold L. Ickes - 2

March 17, 1945

Naturally, I hope that the law will be found to permit the adequate irrigation of such land for Indians outside any terms of allocation of water to the states by the Santa Fe Compact or the Boulder Canyon Dam Project Act, or contracts entered into under the legislation.

Therefore, Mr. Secretary, I am asking your attorneys to answer these questions because of the fact that under your Department falls the Bureau of Reclamation and also the Office of Indian Affairs.

Thanking you for this consideration, I remain

Sincerely yours,

A handwritten signature in cursive script that reads "John R. Muddock".

JRM:dgm

JOHN R. MURDOCK, M. C.

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

19

According to Title 28, Section 1733, United States Code, I hereby Certify that each
paper is a true copy of a document comprising part of the official records
Department of the Interior:

TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the
seal of the Department of the Interior to be affixed on the day
and year first above written.



Chief Clerk

FILE COPY
Surname: 1THE SECRETARY OF THE INTERIOR
WASHINGTON

Office of the Solicitor

MAY - 3 1945

INTERIOR DEPT.
APR 28 1945
SOLICITOR
GENERAL

Dear Mr. Harlock:

This will acknowledge your letter of March 17, requesting the answer to two legal questions growing out of the contract between the United States and the State of Arizona with respect to the water of the Colorado River.

RECEIVED
APR 28 1945
SOLICITOR
GENERAL

Your questions, (1) whether water may be taken from the River either above or below the Boulder Dam, and (2) whether water diverted by the Headgate Rock Dam to the Colorado Indian Reservation at Fort Huachuca may be considered as part of the 2,800,000 acre feet of water provided for in the contract with the State of Arizona, have been referred to the Solicitor's Office for study.

As soon as I have received a reply from the Solicitor, I will write you further.

Sincerely yours,

HAROLD L. POTTER

Secretary of the Interior.

Hon. John E. Harlock,

House of Representatives.

RECEIVED
MAY 1 - 1945
U.S. DEPT. OF THE INTERIORMailed by
Potter

CALIFORNIA DEFENDANTS

Exhibit No...**7610 - A**

Identification:

Admitted:

LETTER FROM CONGRESSMAN JOHN R. MURDOCK
TO SECRETARY HAROLD L. ICKES, DATED
SEPTEMBER 24, 1945, REQUESTING INFORMATION
REGARDING THE CONTRACT ENTERED INTO WITH
THE STATE OF ARIZONA

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

AUG 15 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Letter from Congressman John P. Murdock to Secretary Harold L. Ickes, dated September 24, 1945, requesting information regarding the contract entered into with the State of Arizona.

TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.

Harold L. Ickes
Chief Clerk

Congress of the United States

House of Representatives

Washington, D. C.

September 24, 1945

RECEIVED
SEP 26 1945
OFFICE
AND SECRETARY

Honorable Harold L. Ickes
Secretary of the Interior
Washington, D. C.

SEP 25 1945
Dear Mr. Secretary:

Some months ago you entered into a contract with the State of Arizona, whereby Arizona was to receive as her quota 2,800,000 acre feet of water out of the Colorado River. I am very anxious to get some in the office here. I am very anxious to get some in the office here. I am very anxious to get some in the office here.

Naturally, I assume that my part or all of the 2,800,000 acre feet of water, which is Arizona's quota under that contract, might be taken out of the river above Boulder Dam, if it was to Arizona's advantage to do so. As I right in assuming that the contract covers 2,800,000 acre feet of water annually for Arizona in "consumptive use" if so, that leads up to my main question, which is:

If any part of this 2,800,000 acre feet should be pumped out of the river or Lake Mead and used on land for irrigation where the return flow would come back into the river, would there be any "credit" computed to Arizona under the contract? To illustrate — supposing water were pumped out of Lake Mead to irrigate land in the District Valley or the Imperial Valley, where the return flow would go right back into Lake Mead, could the amount charged against Arizona's quota of 2,800,000 acre feet be reduced by the amount of such return flow? That would be the return flow in that case? These two areas are adjacent to Lake Mead. The water which might be applied there would be put on land within a few miles of the Lake's shore line, and naturally, a large percentage of the water so used for irrigation would be return flow. Of course, I am not an engineer, but I can see that the percentage of "return flow" would vary in each case, and I presume it would depend upon evaporation in the locality and maybe some other factors.

Mr. Secretary, I am giving a lot of thought to the life and death matter of irrigation in my state. It is a hard and cruel fact that there is not only more land needing water than we have water for, but that we have overdeveloped some of the existing projects to the extent that they could use all of the water we have contracted for without any being put on new lands. If I were asking to Senator McFarland's report in which he summed up the findings in four words — these four words being: "Arizona needs more water and needs it now". Now, I am told that water cannot be consumed.

ACTION REQUIRED BY 4-78-TS

SEP 27 1945 91781

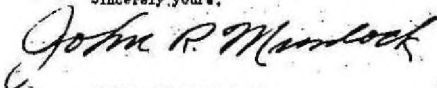
Honorable Harold L. Lake

September 24, 1945

pressed, but I would like to stretch it, and if under the terms of the contract between the Secretary of the Interior and the State of Arizona 200,000 acre feet of water could be pumped on land adjoining Lake Mead on the south and only 100,000 acre feet more or less charged to Arizona's quota, that would be an inducement to promote irrigation in Mohave County.

On September 19th the House passed H. R. 230, as you probably know, but not entirely to my liking. However, I think if the Senate will do the right thing, we will be in good position to go into Conference where I expect a satisfactory measure to be reported and enacted.

Sincerely yours,



JOHN R. MURDOCK, H. C.

JRM:vm

CALIFORNIA DEFENDANTS

Exhibit No. 7611

Identification:

Admitted:

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, BOULDER CANYON PROJECT,
CONTRACT WITH CITY OF YUMA FOR DELIVERY OF
WATER, DATED NOVEMBER 12, 1959; CONTRACT,
CITY OF YUMA AND ARIZONA WATER COMPANY,
DATED NOVEMBER 12, 1959, APPROVED BY
SECRETARY OF THE INTERIOR FRED A. SEATON,
MARCH 25, 1960

COPY

Contract No. 14-06-W-107

C O N T R A C T

CITY OF YUMA
and
ARIZONA WATER COMPANY

THIS CONTRACT, made the 12th day of November, 1959, between the City of Yuma, a municipal corporation of the State of Arizona, hereinafter referred to as "the City", and Arizona Water Company, an Arizona corporation, hereinafter referred to as "the Company",

RECITALS:

Simultaneously with the execution of this agreement the City will enter into a contract with the United States of America for the storage and delivery of water for domestic use by the City, a copy of which contract is hereto annexed marked "Exhibit A" and which is hereinafter referred to as "water delivery contract".

The water delivery contract referred to herein contemplates a contract between the City and a water company duly certificated under the laws of the State of Arizona to distribute water for domestic use by the City.

The Company is a duly qualified and acting public service company, licensed and certificated under the laws of the State of Arizona to distribute water for domestic use by the City, and as such complies with definition 5 (f) of the water delivery contract and Article 7 thereof.

The City and the Company desire to enter into an agreement by the terms of which the rights of the City under the water delivery contract will be exercised by the Company, and by which the obligations of the City, under the terms of the water delivery contract, will be fulfilled by the Company.

WHEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

AGREEMENT:

1 - Definitions

(a) The Colorado River Compact, herein referred to, is the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to an act of Congress approved August 19, 1921, entitled, "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which Compact was approved in Section 13 (a) of the Boulder Canyon Project Act.

(b) The term "domestic", as used in this contract, shall include water uses defined as "domestic" in the Colorado River Compact.

(c) The term "use by the City", as used in this contract, shall include municipal and other domestic uses of water within the City and domestic uses by such users outside the City as lawfully may be served with water by extensions from the same distribution system which furnishes service within the City.

2 - Company to Exercise City's Rights under Water Delivery Contract and to Provide Facilities

The City grants to the Company the right to exercise the City's rights according to the terms of the water delivery contract, including without limitation the right to order, receive, divert and transport all water to which the City may be entitled pursuant to said water delivery contract.

The Company at its sole cost and expense shall provide all facilities necessary to the diversion, receiving, treatment and distribution of water provided in the water delivery contract for domestic use by the City.

The rights herein granted by the City and the obligations herein assumed by the Company shall continue as long as the Company is certificated under the laws of the State of Arizona to distribute and is distributing water for domestic use by the City. The rights herein granted to the Company shall terminate automatically at such time as the Company ceased to be so certificated or ceases to distribute water for use by the City.

3 - Valuation of Rights and Termination

It is mutually agreed between the parties hereto that the water and the rights to its delivery under the terms of the water delivery contract are for use by the City, as defined in the water delivery contract, and that no value shall be placed upon such water or such rights by either party hereto for rate making purposes, sale, purchase, or in any condemnation proceeding instituted to acquire the Company's facilities by the City. Any attempt to place a value upon such water, or the rights to its delivery by the Company shall constitute a breach of this contract and the City may at its option terminate this contract forthwith. In the event the City should acquire by purchase or condemnation the facilities of the Company used or useful in the diversion, treatment or distribution of domestic water within the City and environs, the rights of the Company under this contract shall terminate contemporaneously with the effective date of such purchase or condemnation.

Except as herein otherwise provided, it is further mutually agreed that the City shall not abridge, cancel, terminate or amend this contract by

ordinance or other action by the City, except upon mutual agreement of the parties hereto.

Except as provided in Article 12 of the water delivery contract, this contract shall not affect in any manner the existing rights, if any, of the Company in the supply, delivery or distribution of water within the City and environs.

4 - Duties of the Company

The Company agrees at its sole cost and expense to perform the obligations of the City before delinquency under the terms and in the manner required in the water delivery contract. In the event the United States should terminate the water delivery contract because of failure of the Company to perform the obligations of the City under the terms and in the manner required in the water delivery contract, the Company shall be liable to the City for any damage caused by such termination.

5 - Termination of Contract Because of Breach by Company

Upon the failure of the Company to perform the obligations of the City under the terms and in the manner required by the water delivery contract, and upon such continued failure for a period of thirty (30) days to correct such breach, the City may at its option terminate this contract upon notice in writing to the Company of its intent so to do; provided, however, that nothing herein contained shall affect the right of the United States to terminate the water delivery contract at any time for any breach thereof. If the Company shall, within said period, remedy such breach and the United States does not terminate the water delivery contract, then this contract shall not terminate.

6 - Protection against Claims and Release by Company

The Company shall hold the City and the United States, and their respective officers, agents and employees, harmless from every claim for injuries to persons or damage to property which may arise out of this contract or the water delivery contract, or the receiving, diverting, treating and distribution of domestic water. The Company hereby expressly relieves and releases the United States, its officers, agents and employees, from any liability or responsibility whatsoever for the quality, composition or contents of the water delivered hereunder, or for any lack of fitness of such water for any use thereof intended by the City or other users thereof, either as such water may arrive at the point of delivery or as such water may thereafter arrive downstream at the point of diversion for use by the City. The Company also hereby expressly relieves and releases the United States, its officers, agents and employees, from any liability or responsibility whatsoever for any loss of water delivered hereunder which may occur between the point of delivery and the point of diversion for use by the City.

7 - Interest in Contract Not Transferable

It is mutually understood and agreed between the parties hereto that the respective rights of the parties under the terms of this contract, or the water delivery contract, shall not be transferable by either of the parties hereto, provided the Company may, with the written approval of the Secretary of the Interior, assign its rights hereunder to a duly constituted public utility holding a Certificate of Convenience and Necessity authorizing it to distribute domestic water in Yuma and vicinity under the laws of the State of Arizona. As a condition precedent to any such assignment, the assignee public utility must agree to assume, be bound by, and perform all

provisions required of the Company in this contract. Any transfer attempted in violation of the terms of this article shall be null and void.

8 - Relationship to Water Delivery Contract

The respective rights and obligations of the United States and the City under the provisions of the water delivery contract are not and shall not be affected by any provision of this contract or by any action taken hereunder or by any agreement between the parties to this contract relating hereto or to the water delivery contract. In the event of any conflict or inconsistency between any provision of the water delivery contract and any provision of this contract or any other agreement between the parties to this contract, the provisions of the water delivery contract shall be controlling. This contract shall automatically terminate upon termination of the water delivery contract. Company accepts and agrees to be bound by each and all of the terms, provisions, conditions and limitations in the water delivery contract, including, but not limited to, all the obligations to be performed by the City thereunder.

9 - Notification to the United States

The City and/or Company shall promptly furnish the United States with written notice of termination of this contract or of termination of the rights of the Company under this contract.

10 - Notices

A - Any notice, demand or request required or authorized by this contract to be given or made to or upon the City shall be delivered or mailed, postage prepaid, to the Mayor, City of Yuma, Arizona.

B - Any notice, demand or request required or authorized by this contract to be given or made to or upon the Company shall be delivered or

mailed, postage prepaid, to Arizona Water Company, P. O. Box 5347, Phoenix, Arizona.

C - Any notice required or authorized by this contract to be given or made to or upon the United States shall be delivered or mailed, postage prepaid, to the Regional Director, Region 3, Bureau of Reclamation, Boulder City, Nevada.

D - The designation of any person specified in this article or the address of any such person may be changed at any time by a notice given in the same manner as provided in this article for other notices.

11 - Discrimination Against Employees or Applicants for Employment Prohibited

It is mutually understood and agreed between the parties hereto that each of the parties hereto shall in the performance of this contract abide by the provisions of Article 25 of the water delivery contract.

12 - Contract and Amendments Thereof Contingent upon Approval by Secretary of the Interior

This contract must be approved by the Secretary of the Interior as a condition precedent to becoming effective. Upon execution by both parties, this contract shall be submitted to the Secretary for his approval. Both parties understand and agree that his approval shall not relieve the City of any obligation or duty assumed by it under the water delivery contract, nor will such approval be deemed to constitute or imply any opinion of the Secretary as to the merits of this contractual arrangement, or any part thereof, nor constitute the Company a party to the water delivery contract or the holder of any right of any kind thereunder against the United States, for any purpose whatsoever. Each of the foregoing provisions of this article shall be applicable to any proposed amendment to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

ATTEST:

/s/ A. D. Cox, Jr.
Secretary

ARIZONA WATER COMPANY

By /s/ F. A. O'Neill
President

ATTEST

/s/ Linwood Perkins
City Recorder

CITY OF YUMA

By /s/ Geo. E. Shackelford
Mayor

APPROVED this 25th day
of March, 1960

THE UNITED STATES OF AMERICA,

By /s/ Fred A. Seaton
Secretary of the Interior

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Contract With City of Yuma for Delivery of Water

<u>Article</u>	<u>Title</u>	<u>Page</u>
1.	Preamble	1
2-4.	Explanatory Recitals	1
5.	Definitions	2
6.	Delivery of Water by United States	3
7.	Contract With Water Company	7
8.	Use by Others Prohibited	7
9.	Receipt of Water by City	7
10.	Measurement of Water	8
11.	Record of Water Diverted	8
12.	Charge for Delivery of Water	8
13.	Monthly Payments and Penalties	9
14.	Refusal of Water in Case of Default	9
15.	Release by City	9
16.	Inspection by the United States	10
17.	Disputes or Disagreements	10
18.	Rules and Regulations	11
19.	Priority of Claims of the United States	11
20.	Contingent Upon Appropriations or Allotments of Funds	11
21.	Rights Reserved Under Section 3737, Revised Statutes	12
22.	Remedies Under Contract Not Exclusive	12
23.	Interest in Contract Not Transferable	12
24.	Notices	12
25.	Discrimination Against Employees or Applicants for Employment Prohibited	13
26.	Officials Not to Benefit	13
27.	Disclaimer	14

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Contract With City of Yuma For Delivery of Water

THIS CONTRACT, made this 12th day of November, 1959, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States", acting for this purpose by Fred A. Scaton, Secretary of the Interior, hereinafter referred to as the "Secretary", and the CITY OF YUMA, a municipal corporation of the State of Arizona, hereinafter referred to as the "City";

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage, and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and in pursuance of the provisions of the Colorado River Compact and the Boulder Canyon Project Act, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Hoover Dam

and incidental works, creating thereby a reservoir designated Lake Mead of a capacity of about thirty-two million (32,000,000) acre-feet; and

3. WHEREAS, said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in the reservoir created by Hoover Dam, and for the delivery of such water at such points on the river as may be agreed upon, for irrigation and domestic uses, and provides further that no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as stated in said Act; and

4. WHEREAS, it is the desire of the parties to this contract to contract for the storage of water and the delivery thereof for domestic use by the City;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Definitions

5. (a) The Colorado River Compact, herein referred to, is the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to an act of Congress approved August 19, 1921, entitled, "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

(b) The term "domestic", as used in this contract, shall include water uses defined as "domestic" in the Colorado River Compact.

(c) The term "use by the City", as used in this contract, shall include municipal and other domestic uses of water within the City and domestic uses by such users outside the City as lawfully may be served with water by extensions from the same distribution system which furnishes service within the City.

(d) "Regional Director", as used in this contract, shall mean the Regional Director, Region 3, Bureau of Reclamation.

(e) "Secretary" and "Regional Director", as used in this contract, shall include their respective duly appointed successors and authorized representatives.

(f) The term "water company", as used in this contract, shall mean a person, firm or corporation with whom the City has contracted pursuant to Article 7 hereof and who also is certificated to distribute water, for domestic use by the City, and is regulated for such purpose under the laws of the State of Arizona.

Delivery of Water by United States

6. (a) To provide water exclusively for domestic use by the City, the United States will, from storage available in Lake Mead, deliver to the City at a point in the Colorado River immediately below the downstream edge of the California Sluiceway at Imperial Dam and within the limitations as to rate of delivery hereinafter specified, such quantities of water as may be ordered by the City and as may be necessary to supply the City with a total quantity, including all other waters diverted from the Colorado River System by the City or by any water company or other person, firm or corporation for use by the City, not in excess of Fifty Thousand (50,000) acre-feet per calendar year; subject to the availability of such water for

use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and subject further to:

(1) The prior fulfillment of all contracts now or hereafter made by the United States for the diversion of Colorado River water at Imperial Dam and for the delivery of such water through the Gila Gravity Main Canal or the All-American Canal for the irrigation of lands in the State of Arizona;

(2) Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington on November 14, 1944, supplementary to the treaty, hereinafter referred to as the Mexican Water Treaty;

(3) The express understanding and agreement by the City that this contract is subject to the condition that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act; and

third, for power; and furthermore, that this contract is made upon the express condition and with the express covenant that all rights hereunder shall be subject to and controlled by the Colorado River Compact and that the United States and the City shall observe and be subject to and controlled by said Colorado River Compact and Boulder Canyon Project Act in the construction, management and operation of Hoover Dam, Lake Mead, canals and other works, and the storage, diversion, delivery and use of water to be delivered to the City hereunder; and

(4) The other terms, conditions and provisions set forth in this contract.

(b) The daily requirements for water to be delivered hereunder during each period of seven (7) consecutive days beginning Monday of each week shall be stated in a water order which shall be placed by the City with the Bureau of Reclamation not later than Wednesday preceding such Monday, in order to permit the timely coordination of such water orders with the Master Schedule of Flows and Diversions at Imperial Dam required to be prepared and issued by the Bureau of Reclamation weekly in advance of and for such seven-day period, provided, that water orders so placed by the City may be increased or decreased for any such seven-day period with the approval of the Bureau of Reclamation. As far as reasonable diligence will permit, water shall be delivered as ordered hereunder, except that at no time shall the United States be obligated to deliver water hereunder at a rate of delivery exceeding by more than five percentum (5%) the maximum rate at which such water can, with due regard for

conservation and avoidance of waste, be diverted, processed, distributed and/or stored for use by the City with the facilities then being utilized for such purposes, all as determined by the Regional Director.

(c) The United States reserves the right temporarily to discontinue or reduce the amount of water to be delivered hereunder, whenever such discontinuance or reduction is made necessary for purposes of investigations, inspections, replacements, maintenance or repairs to any works whatsoever affecting, utilized or, in the opinion of the Secretary, necessary for delivery of water hereunder, it being understood that as far as feasible the United States will give reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents, and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur.

(d) Subject to the terms conditions and provisions set forth herein, this contract is for permanent water service.

(e) This contract is without prejudice to any existing and additional claim of right in or to the waters of the Colorado River System for use by the City, but nothing in this contract shall be deemed to constitute or imply any recognition by the United States of the validity of any such claim of right, whenever, however or by whomsoever asserted. The City shall not divert or cause or permit the diversion of any water from the Colorado River for use by the City under any claim of right or otherwise, except upon order therefor and delivery by the United States in conformity with this contract.

(f) The diversion from the Colorado River of any water for use by the City, not previously ordered from and delivered by the United States

in accordance with the provisions of this contract, or the diversion of any water from the Colorado River for use by the City in excess of Fifty Thousand (50,000) acre-feet of water in any calendar year, shall be deemed to constitute a material breach of this contract as well as interference with the performance by the Secretary of his functions and responsibilities under the Colorado River Compact, the Boulder Canyon Project Act and the Act of June 28, 1946 (60 Stat. 338), as amended, as well as the functions and obligations of the United States arising from the Mexican Water Treaty.

Contract With Water Company

7. The City, with the prior approval of the Secretary, may enter into such contractual arrangements as, in the opinion of the Secretary, are not inconsistent with this contract, whereby the City's rights under this contract may be exercised through a water company, as herein defined; Provided, That the approval by the Secretary of such contractual arrangements shall not relieve the City of any obligation or duty assumed by it hereunder, nor be deemed to constitute or imply any opinion as to the merits of such contractual arrangements or any part thereof, nor constitute such water company a party to this contract, or the holder of any right of any kind hereunder against the United States, for any purpose whatsoever.

Use by Others Prohibited

8. No water delivered hereunder for use by the City shall be sold, given to or used for any purpose by or in any other city, town or community exercising powers of local self-government, whether incorporated or unincorporated.

Receipt of Water by City

9. The City shall receive the water to be delivered to it by the United States under the terms hereof at the point of delivery specified in

Article 6(a) hereof and shall perform all acts required by law or custom in order to maintain its control over such water and to secure and maintain its lawful and proper diversion from the Colorado River.

Measurement of Water

10. Water released through Imperial Dam for delivery hereunder to the City shall be measured by the United States at and by means of the gate structure in the California Sluiceway in said dam and the quantities of water so released and so measured for such purpose shall be deemed, for all purposes of this contract, to be the quantities thereafter received by the City at the point of delivery specified in Article 6 hereof.

Record of Water Diverted

11. The City shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all water diverted from the Colorado River by the City or by any water company or other person, firm or corporation, for use by the City. Such reports shall be made by the tenth day of the month immediately succeeding the month in which the water is diverted, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

Charge for Delivery of Water

12. During the Hoover Dam cost repayment period, a charge of twenty-five cents (\$.25) per acre-foot shall be made by the United States and paid by the City for water ordered and delivered under this contract except that the first Ten Thousand (10,000) acre-feet of water ordered in any calendar year will be delivered without payment of said charge pending adjudication of the claim of right now made to the waters of the Colorado

River for use by the City; Provided, That if such claim of right, whenever, however or by whomsoever asserted or contested, shall hereafter be adjudged by a court of competent jurisdiction to be valid or invalid, in whole or in part, the exception from the charge hereinabove provided shall, for the purposes of this contract, be deemed to be increased, eliminated or reduced to whatever extent necessary to accord with such adjudication.

Monthly Payments and Penalties

13. The City shall pay monthly for water delivered hereunder, in accordance with the provisions of Article 12 hereof. Payments shall be due on the first day of the second month immediately succeeding the month in which water is delivered. If such charges are not paid when due, an interest charge of one-half of one percentum (1/2%) of the amount unpaid shall be added thereto, and thereafter an additional interest charge of one-half of one percentum (1/2%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest, is paid in full.

Refusal of Water in Case of Default

14. The United States reserves the right to refuse to deliver water hereunder in the event of default for a period of more than twelve (12) months in any payment due or to become due the United States under this contract.

Release by City

15. The City hereby expressly relieves and releases the United States, its officers, agents and employees, from any liability or responsibility whatsoever for the quality, composition or contents of the water delivered hereunder, or for any lack of fitness of such water for any use thereof intended by the City or other users thereof, either as such water

may arrive at the point of delivery or as such water may thereafter arrive downstream at the point of diversion for use by the City. The City also hereby expressly relieves and releases the United States, its officers, agents and employees, from any liability or responsibility whatsoever for any loss of water delivered hereunder which may occur between the point of delivery and the point of diversion for use by the City.

Inspection by the United States

16. The Secretary or his representative shall at all times have the right of ingress to and egress from all works utilized by the City or by any water company or other person, firm or corporation for the diversion, processing, storage and distribution of water delivered hereunder for use by the City for the purpose of inspection of such works and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records relating to the diversion, processing, storage and distribution of water delivered hereunder with the same right at any time during office hours to make copies of or from the same. Except in an emergency, written notice shall be given in advance of such inspection.

Disputes or Disagreements

17. Disputes or disagreements as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the parties hereto agree to

submit the matter to arbitration, the City shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of the failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators, not so elected, shall be named by the senior judge of the United States Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

Rules and Regulations

18. There is reserved to the Secretary the right to prescribe and enforce rules and regulations, not inconsistent with this contract, governing the delivery and diversion of water hereunder. Such rules and regulations shall be promulgated, modified, revised or extended from time to time after notice to the City and an opportunity for it to be heard, as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract and amendments hereof or to protect the interests of the United States. The City hereby agrees that in the operation and maintenance of the works for the diversion of water for use by the City and all works appurtenant thereto or otherwise associated therewith, all such rules and regulations will be fully adhered to.

Priority of Claims of the United States

19. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contingent Upon Appropriations or Allotments of Funds

20. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon

such appropriations or allotments being made. The failure of Congress so to appropriate funds or the failure to make an allotment of funds shall not relieve the City from any obligation under this contract and no liability shall accrue against the United States, its officers, agents, or employees in case such funds are not appropriated or allotted.

Rights Reserved Under Section 3737, Revised Statutes

21. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies Under Contract Not Exclusive

22. Nothing in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the City of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other or subsequent breach of any provision hereof.

Interest in Contract Not Transferable

23. No interest in this contract is transferable by the City to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States. A contract approved by the Secretary pursuant to Article 7 shall not be deemed to constitute such a transfer.

Notices

24. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be

delivered, or mailed postage prepaid, to the Regional Director, Bureau of Reclamation, Boulder City, Nevada.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the City shall be delivered, or mailed postage prepaid, to the Mayor, City of Yuma, Arizona.

(c) The designation of any person specified in this article, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

Discrimination Against Employees or
Applicants for Employment Prohibited

25. In connection with the performance of work under this contract, City agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. City agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Regional Director setting forth the provisions of the nondiscrimination clause. City further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

Officials Not to Benefit

26. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom; but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Disclaimer

27. Recognizing that this contract is executed during the pendency of the Colorado River litigation generally styled Arizona v. California, et al., No. 9 Original in the United States Supreme Court, it is in the interest of all parties to that litigation to assert (1) that this contract shall not be the basis for any right, claim or entitlement to Lake Mead storage in any amount or quantity greater or lesser than the amount or quantity of Colorado River water to which the State of Arizona would be entitled in the absence of this contract, (2) that this contract is not intended, nor shall it be construed as affecting adversely any claim or contention in the Colorado River litigation of any contractor for Lake Mead storage outside of the State of Arizona, and (3) that nothing in this contract is intended to add to, change, or modify the Arizona water delivery contract of 1944.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By /s/ Fred A. Seaton
Secretary of the Interior

CITY OF YUMA,

By /s/ Geo. E. Shackelford
Mayor

Attest:

/s/ Linwood Perkins
City Recorder

CALIFORNIA DEFENDANTS

Exhibit No. 765.1.

Identification:

Admitted:

LETTER FROM ACTING SECRETARY OF THE INTERIOR
ABE FORTAS TO ALFRED MERRITT SMITH, SECRETARY,
COLORADO RIVER COMMISSION OF NEVADA, DATED
AUGUST 24, 1943; WITH SUPPORTING DOCUMENT, LETTER
FROM ALFRED MERRITT SMITH TO ACTING SECRETARY
ABE FORTAS, DATED MAY 28, 1943

1-480
November 1940

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

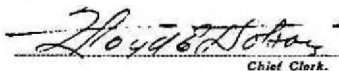
NOV 19 1940

19

uant to Title 28, Section 1733, United States Code, I hereby certify
the annexed paper is a true copy of a document comprising part of the
of records of the Department of the Interior:

Letter dated August 24, 1943, to Mr. Alfred Merritt Smith,
Secretary, Colorado River Commission of Nevada, from
Abe Fortas, Under Secretary, Department of the Interior,
regarding the program under which water is diverted to
Boulder City.

In testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.

TRANSMITTED
1-16-21
FURNISHATURE

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

WASHINGTON 25, D. C.

AUG 24 1943

Mr. Alfred Merritt Smith,
Secretary, Colorado River Commission of Nevada,
Carson City, Nevada.

My dear Mr. Smith:

Further reference is made to your letter of May 24 ~~and~~ in which you inquire regarding the program under which water is diverted to Boulder City and whether the water from Lake Mead used at Boulder City would be chargeable against Nevada's tentative allotment of 300,000 acre feet. I assume your inquiry has been prompted by reason of pending negotiations with the Bureau of Reclamation for a supplemental contract providing for the delivery of an additional 200,000 acre feet annually of Lake Mead water for use in Nevada.

The Bureau has informed me that no application for a permit for the use of water for Boulder City has been made with the State; it being the Bureau's position that the Boulder Canyon Project Act does not require, or contemplate, the filing of such an application.

Whether the limited amount of water used at Boulder City is chargeable against Nevada's tentative allotment of 300,000 acre feet, of course, depends upon an interpretation of the Colorado River Compact as supplemented by the Boulder Canyon Project Act. We assume, in the absence of any provision to the contrary, that all water from the Colorado River system used in Nevada would be chargeable to Nevada's allotment and this, necessarily, would include the amount of water used at Boulder City in Nevada.

The Commissioner of the Bureau of Reclamation has informed me that you will hear from him in the very near future on the proposed supplemental contract for the delivery of an additional 200,000 acre feet of water from Lake Mead.

Sincerely yours,

(SGD.) ABE FORTAS

Under Secretary.

CC - CS Denver, Colo.
DC Los Angeles, Calif.
Constr. Engr., Yuma, Ariz.
Dir. of Power, Boulder City, Nev.
(SEP 9/23/43)

223-02

Mr. Tolson
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Jones
Mr. Quinn
Mr. Nease
Miss Gandy

1-480
November 1946

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

NOV 17 1946

19

Whereas, pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the records of the Department of the Interior:

Letter dated May 28, 1943, to Abe Fortas, Acting Secretary of the Interior, from Alfred Merritt Smith, Secretary of the Colorado River Commission of Nevada, regarding the program under which water is pumped from Lake Mead to Boulder City, Nevada.

Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.

Alfred Merritt Smith
Chief Clerk.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

BUREAU OF RECLAMATION



RETURN OF STATUS OF
BUREAU OF RECLAMATION
COLORADO RIVER COMMISSION
OF NEVADA, State of

May 28th, 1943

85-93
6
MR. W. CLARK, MEMBER
AND VICE PRESIDENT
A. J. CATON, MEMBER
AND VICE PRESIDENT
C. F. DARRINGTON, MEMBER
AND VICE PRESIDENT

COLORADO RIVER

44
RECEIVED
MAY 31 1943
BUREAU OF RECLAMATION

Honorable Ats Fortas,
Acting Secretary of the Interior,
Interior Building,
Washington, D. C.

Dear Mr. Fortas:

Will you please inform me under what program water
is pumped from Lake Lead to Boulder City, Nevada? There is no
record of appropriation under state law. Is the water diverted
to be charged against the Colorado River system or against
Nevada's tentative allotment of 300,000 acre-feet?

In view of the phenomenal development in the Boulder
Dam area we wish to conserve our small allotment.

We will greatly appreciate an early reply.

Very truly yours,

Alfred Merritt Smith
Alfred Merritt Smith, Secretary
Colorado River Commission of Nevada

4461
MAY 31 1943 18203

CALIFORNIA DEFENDANTS

Exhibit No. 7652

Identification: Admitted:

LETTER FROM COMMISSIONER H. W. BASHORE
TO ALFRED MERRITT SMITH, SECRETARY,
COLORADO RIVER COMMISSION OF NEVADA,
DATED AUGUST 28, 1943, WITH SUPPORTING
DOCUMENTS:

(1) LETTER FROM ALFRED MERRITT SMITH,
SECRETARY, COLORADO RIVER COMMISSION OF
NEVADA, TO SECRETARY OF THE INTERIOR
HAROLD L. ICKES, DATED APRIL 29, 1943; AND

(2) EXTRACT FROM A DRAFT OF THE NEVADA
WATER DELIVERY CONTRACT ENCLOSED WITH SAID
LETTER DATED APRIL 29, 1943

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

19

suant to Title 28, Section 1733, United States Code, I hereby certify
that the annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Letter dated August 28, 1943, with enclosure, to Alfred
Merritt Smith, Secretary of the Colorado River Commission
of Nevada, from H. W. Bashore, Commissioner of the Bureau
of Reclamation, submitting proposed supplemental contract
providing for the delivery of an additional 200,000 acre
feet annually of stored water in Lake Mead to the State
of Nevada.

Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.

H. W. Bashore
Chief Clerk.

2,23.02
COLORADO RIVER

CZF:pk

16 25 1935

Mr. Alfred Merritt Smith,
Secretary, Colorado River Commission of Nevada,
Carson City, Nevada.

Dear Mr. Smith:

Further reference is made to your letter of April 27, in which the Colorado River Commission of Nevada makes formal application for a supplemental contract providing for the delivery of an additional 200,000 acre feet annually of stored water in Lake Mead to the State of Nevada, and to my reply of May 12.

The Bureau has no objection to the execution of the proposed supplemental contract. I believe this may be accomplished by amending Article 5(a) of the contract of March 30, 1942. The draft of contract submitted with your letter is satisfactory, except that I believe Article 4, on page 2, should be deleted since it is superfluous. A draft of contract which the Bureau believes adequate is enclosed for your consideration. You will note that certain formal changes have been made in Article 1. You also will note that the proposed Article 5(a) differs from your draft in that the words "including all other waters diverted for use within the State of Nevada from the Colorado River system" has been added in the fifth line after the words "so much water".

Before submitting any proposed supplemental contract to the Secretary for approval as to form, it is my view that the proposed supplemental contract should be submitted for the approval of the Committee of Fourteen. Such action would appear to be consistent with Chairman Stone's remarks at the Phoenix conference (Tr. 54). Approval by that Committee doubtless would be largely a formal matter since Nevada's right to the delivery of 300,000 acre feet of water annually under the Colorado River Compact appears to have been accepted by the Compact States and by Arizona at the recent meetings of that Committee in Phoenix and Denver, and, in fact, it is expressly recognized by Arizona in the proposed contract between the United States and Arizona. The Bureau will leave to your discretion the manner in which this matter should be handled with the Committee. It probably could be presented at the time the Committee takes further action on the proposed contract with Arizona.

Very truly yours,

H. E. Bashore
H. E. Bashore,
Commissioner.

Enclosure 747

CC - CE Denver, Colo.
IC Los Angeles, Calif.
Const. Eng'g., Tempe, Ariz. (w/c of proposed contract to each)
Dir. of Pwr., Boulder City, Nev.

462

1-480
November 1909

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

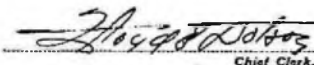
JUN 2 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
each annexed paper is a true copy of a document comprising part of the
records of the Department of the Interior:

Letter dated April 29, 1943, to Secretary Ickes from
Alfred Merritt Smith, Secretary, Colorado River
Commission of Nevada, with enclosure, and reply dated
May 12, 1943, from H. W. Bashore, Acting Commissioner
of Reclamation, regarding application for a supplemental
contract providing for the delivery of an additional
200,000 acre-feet annually of stored waters to the State
of Nevada.

In testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.

ALFRED MERRITT SMITH, SECRETARY,
COLORADO RIVER COMMISSION,
BOULDER, COLORADO

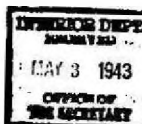


223.02
COLORADO RIVER
G. F. DRABMOND, SECRETARY,
LAS VEGAS, NEVADA

**COLORADO RIVER COMMISSION
OF NEVADA**

April 29th, 1943.

INTERIOR DEPT.
WASHINGTON
MAY - 3 1943
TO BUREAU OF
RECLAMATION



Honorable Harold L. Ickes,
Secretary of the Interior,
Washington, D. C.

Dear Mr. Secretary:

The Colorado River Commission of Nevada, acting for the State of Nevada, hereby makes formal application for an additional 200,000 acre-feet annually of the stored waters of Lake Mead, to be delivered in accordance with all of the terms of the water contract between the United States and Nevada of date March 30, 1942. Resolution authorizing the Chairman and Secretary of the Colorado River Commission to execute such a supplemental contract was passed at a meeting of the Commission held on April 27, 1943, at Carson City, Nevada.

This supplemental contract will enable the withdrawal by Nevada of all of the water from the Colorado River which it is deemed entitled to under the terms of the Boulder Canyon Project Act, the Colorado River Compact and the Boulder Canyon Project Adjustment Act. As yet very little progress has been made between California and Arizona toward agreement on a Colorado River tri-state compact, but both of these states are on record as offering no objection to the right of Nevada to 300,000 acre-feet annually. I enclose herewith a tentative draft of our proposed supplemental contract for your reading and suggested changes. It is our desire to have this additional withdrawal of water governed by all of the terms of the existing contract for 100,000 acre feet.

I am sending direct to Mr. Richard J. Coffey, District Counsel, U. S. Bureau of Reclamation, at Los Angeles, a carbon copy of this application and draft of suggested form of contract.

Very truly yours,

Alfred Merritt Smith
Alfred Merritt Smith, Secretary
Colorado River Commission of Nevada

Delivery of Water by the United States

4. Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and subject to all of the conditions set forth in the contract of March 30, 1942 (Government's symbol and number to be supplied) the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water as may be necessary to supply the State a total quantity of not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year.

5. Article 5 (e) of the aforesaid contract of date March 30, 1942, is hereby amended to read as follows:

Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet for each calendar year. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power.

CALIFORNIA DEFENDANTS

Exhibit No. 7701

Identification: Admitted:

EXTRACTS FROM MEMORANDUM TO THE SECRETARY--
THE COLORADO CONFERENCE--FROM COMMISSIONER
ELWOOD MEAD, DATED JANUARY 10, 1930

Reproduced in Hoover Dam Contracts 543,
Sp. M. Ex. 2. Other extracts from the same
document comprise Calif. Ex. 2031 for iden.

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

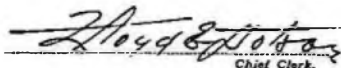
MAY 31 1960

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
each annexed paper is a true copy of a document comprising part of the
official records of the Department of the Interior:

Memorandum dated January 10, 1930, to the Secretary of
the Interior, regarding the Colorado Conference, from
Commissioner of Reclamation, Elwood Mead.

Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.

032.-

COLO. RIVER COMPT. CT.
COLORADO RIVER.

TRANSFER CASE

January 10, 1930.

FRI:13

Memorandum to the Secretary - The Colorado Conference.

In conformity with the understanding of the conference yesterday I submit the following statement of the views of this Bureau on three of the controverted questions which will come before the conference of the representatives of the lower states of the Colorado Basin, to be held at Phoenix on January 30.

While it is hoped that this conference may remove some of the objections of Arizona to the Colorado Compact and subsequent legislation, and thus make the administration of the act easier, there is danger that action might be taken which would have a broader application than to the Colorado River and create precedents which would seriously interfere with the orderly irrigation development of the arid region.

The second important matter to be dealt with concerns the division of the water allocated by the Colorado River Compact to the lower basin states. The Compact allocates to the upper basin states 7,500,000 acre-feet and to the lower basin states an equal amount, with the right of the lower basin states to increase this amount by an additional million acre-feet. Congress, in Section 4(a) of the Boulder Canyon Project Act authorizes the execution of a subsidiary compact among the lower basin states, allocating the 7,500,000 acre-feet apportioned by paragraph (a) of Article III of the Compact, to the state of Nevada, 300,000 acre-feet, and to the state of Arizona 2,800,000 acre-feet, thereby leaving 4,400,000 acre-feet of this water for the use of California. This is consonant with the other provisions of this section, absolutely limiting California to the use of this amount of water. In each case reference is specifically made to paragraph (a) of Article III of the Compact, which covers only the 7,500,000 acre-feet, thereby evidencing the intention apparently of leaving the additional million acre-feet allowed by the Compact to the lower basin states to be divided in some other manner. The proposed subsidiary compact authorized by Congress further provides for the use by Arizona of all the

waters of the Gila and its tributaries within the boundaries of that state. This is manifestly the proper use to be made of this water.

It is not believed that there is at present sufficient information available to justify this conference attempting disposal of this million acre-feet or for the Government to agree to such disposal. The plan of dividing the water between states makes possible long time planning, but its value is measured largely by how closely such division conforms to the economic needs of the country. The Boulder Canyon Act specifically provides for an investigation of the Parker-Gila project. It seems advisable to await completion of the economic and engineering studies provided for in that act. After such study has been made, then it can be determined how much of the water should go to Nevada, how much to Arizona, and how much to California. Before that, action is likely to be mistaken and it is wholly unnecessary.

The third important question which will likely come before the conference relates to the storage charge to be paid for water diverted by the Metropolitan Water District. That has been fixed in the tentative allocation at 25 cents an acre-foot. Those who object to this as being too low do not understand all the circumstances. They do not realize that this will involve a yearly payment by the Metropolitan Water District of \$250,000. They do not realize that practically no service is rendered. All the surveys of the aqueduct thus far made provide for a diversion from the river below Boulder Dam. If there were no reservoir, the natural flow of the river would provide all the water which the counties need for ten months in the year. All that storage would do in any event would be to supplement the low water flow of the river during a period of two months. All the water which will be diverted will have passed through the power wheels in the dam, and for this the Government will have collected a power charge of about 75 cents an acre-foot.

The largest revenue from power requires that the water be delivered uniformly and that meet the requirements of the city, so that no change in power operations will be required. If the city does not divert the water it will go down to irrigation works below which will take it without paying any storage charge, or will go, unused, into Mexico, of course without any payment for storage. Through filings, the district is entitled to take the natural flow of the river and the builders of the dam can not object to its diversion, even if no storage charge whatever is

paid. The willingness to pay a reasonable storage charge grows out of the urgent desire of the coast cities to have an early construction of the dam. They need the water and they need the power which the dam will provide, but their needs should not be taken advantage of to extort an unreasonable price, because the cost of the aqueduct and the heavy yearly pumping charges will make the price of this water, when finally delivered to the households and industries of the coast, a serious economic burden upon them. More money is not needed to get the revenue which the act requires, and the imposition of a higher storage charge such as has been proposed, would add to the economic and financial problems of the coast to an unwarranted degree.

If the Metropolitan Water District changes its plan and diverts water above the dam, or takes it directly from the reservoir in order to get the benefit of increased elevation, a charge to compensate for the reduction in power revenue through such change in diversion will be made.

Edward M. Hines
Commissioner.

Enc. 311217

CALIFORNIA DEFENDANTS

Exhibit No. 7702

Identification:

Admitted:

MEMORANDUM FROM DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR, MAY 14, 1930, RE
"RIGHT TO DIVERT WATER FROM THE COLORADO
RIVER WATERSHED TO ANOTHER WATERSHED IN
CALIFORNIA"

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

JUN 20 1969

19.....

Pursuant to Title 28, Section 1733, United States Code, I hereby Certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior: _____

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed on the day and year first above written.


.....
Chief Clerk.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

May 14, 1930.

MEMORANDUM

Right to divert water from the
Colorado River watershed to
another watershed in California.

It has been suggested that the diversion of water from the Colorado River into another watershed in California for domestic use is not permissible. Reference has been made to decisions of the Supreme Court of the United States involving the so-called drainage canal from Lake Michigan in the City of Chicago and across the State of Illinois to the Mississippi River. (264 U. S. 408; 278 U. S. 267, and decision of April 14, 1930.) The first mentioned decision dealt with certain permits issued by the Secretary of War authorizing diversions of limited amounts of water from the Great Lakes. The second decision was based upon the report of a master appointed by the Supreme Court and sustained his conclusions which would reduce the navigable capacity of Lake Michigan below its proper level. In so holding, the master's report adopted or confirmed by the Court in this respect, stated:

"There is nothing in any of the acts of Congress upon which the defendants rely specifying any particular quantity of water which could be diverted and it could hardly be considered a reasonable contention that the acts of Congress justified any diversion of water from Lake Michigan that the State of Illinois and the Sanitary District might see fit to make This understanding that Congress has not yet acted directly so as to authorize the diversion in question has continued."

These cases, therefore, presented a situation where the diversion affected or threatened to affect the navigability of Lake Michigan and the Sanitary District, and the State did not have Congressional authority to remove and divert the water from the Great Lakes watershed.

The diversion of waters from the Colorado River watershed for domestic use by cities and districts in the State of California was authorized by Congress in the Boulder Canyon Project Act, approved December 21, 1928. In section 1 the project was authorized for control of floods, improvement of navigation, etc., and "for the delivery of stored water thereof for reclamation of public lands and other beneficial uses exclusively within the United States. . . ."

In section 4 of the act they refer to domestic and agricultural uses of the water. In section 5 of the act, the Secretary of the Interior is authorized to contract for the storage of water "and for the delivery thereof at such points on the river and on said canal as may be agreed upon for irrigation and domestic uses. . . ."

In section 6 of the act the uses to which the dam and reservoir may be put are stated as follows:

First, for river regulation, improvement and navigation and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of article 8 of said Colorado River compact and third for power."

That this diversion and use was contemplated and authorized by Congress is shown by the above quotations from the act and by the reports of the House and Senate Committees on Irrigation.

In the Senate Committee Report on page 8, under the title *Purposes of the Project*, it is stated by the committee:

"It will conserve flood waters of the river which in addition to providing for irrigation development will make it possible for cities of southern California to contract for and secure a domestic water supply from the water thus saved."

On pages 24 and 25 under the heading *Domestic Water*, the committee discusses at length the fact that the law will enable a large number of cities in southern California to secure "a much needed water supply" and it is stated that:

"Plans for obtaining water from the Colorado River for southern California cities contemplate an aqueduct about 240 miles in length Water will have to be lifted by jumping about 1400 feet in order to surmount an intervening mountain range. A public district is now in process of formation embracing Los Angeles, Pasadena, Glendale, and about 20 other interested cities to carry through this domestic water project. . . . The unquestionable needs of southern California cities for domestic water will assure heavy contributions, an amount of water stored and delivered and power for pumping purposes, to Government revenues from the project."

Similar language is found in the report of the House Committee on Irrigation, pages 20 and 21, the committee stating:

"Large storage at Boulder Canyon is ideally fitted to make it possible for these cities to procure a domestic water supply Full conservation thus effected will permit of the utilization of water for a domestic supply without impinging upon irrigation requirements."

It must be remembered that a different rule is applicable in countries where the so-called riparian rights doctrine is applied by the law to waters of streams. There the riparian proprietor is entitled to use water upon or for his lands, but has imposed upon him the duty of returning any surplus to the river for the use of riparian owners below. That doctrine is not the law of the United States nor is it the law of Arizona, Nevada, Utah, Colorado, or Wyoming. The United States and the States named have and follow the law or doctrine of prior appropriation and to a large extent that same law is applied in the State of California although there are a number of early decisions in that State which follow and apply the other doctrine as to local California streams. Under the doctrine of prior appropriation the first beneficial user is entitled to the water whether he returns it to the stream or not, or whether he takes the water and applies it to beneficial use on lands in another watershed. There is no legal obligation that it be returned by such user to the river channel if and when he is first in time and right. Congress followed this doctrine of appropriation in the reclamation act of June 17, 1902, and it followed the doctrine in the Boulder Canyon Project Act. It clearly contemplated and authorized the diversion of water from the Colorado River over the divide into the State of California for domestic use by the cities of southern California. Having authorized such diversion and use, it is my opinion that no one can prevent same or annul the permission so given except the Congress itself. In this respect it differs from the cases of Sanitary District et al., for there the right to divert had not been granted by Congress. In other words, the power resides in Congress and in the case of the Boulder Canyon Project Act, Congress has exercised that power and authorized the diversion.

Solicitor.

CALIFORNIA DEFENDANTS

Exhibit No. 7708

Identification: Admitted:

LETTER FROM COMMISSIONER ELWOOD MEAD TO
W. P. WHITSETT, DIRECTOR, METROPOLITAN
WATER DISTRICT, DATED AUGUST 25, 1931,
WITH SUPPORTING DOCUMENT: EXTRACTS FROM
LETTER FROM COMMISSIONER ELWOOD MEAD TO
S. C. EVANS, EXECUTIVE DIRECTOR, BOULDER
DAM ASSOCIATION, DATED FEBRUARY 28, 1931

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON

OFFICE OF THE COMMISSIONER

AUG 25 1931

Mr. W. P. Whiteett,
Director, Metropolitan Water District,
Los Angeles, California.

My dear Mr. Whitsett:

My attention has been called to the use of certain extracts from my letter of February 28 to Mr. S. C. Evans, Executive Director, Boulder Dam Association, in reply to his letter of February 3, which, taken separate from their context, are being construed by opponents of the Metropolitan District as casting doubt on the water right conferred by your contract with the United States. The interpretation which apparently is being attributed to these extracts was not intended. The letter of February 3 from Mr. Evans and my reply of February 28 relate chiefly to the design and construction of Hoover Dam. The matter of storage and distribution of water is involved only incidentally.

The extracts to which reference is made read as follows:

"You will, however, realize that authoritative answers to the various phases of the matter can only be given by the courts. It might not be amiss also to bear in mind that the Secretary of the Interior has no authority to designate the ownership of waters released from the Hoover Dam."

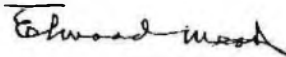
The last sentence above quoted was intended to apply to vested and inchoate rights in the unregulated flow of the Colorado River, with which it had been suggested storage in the Hoover Dam might interfere. My letter intended to convey the view that determination of such vested and inchoate rights in the unregulated flow of the river is a matter for the administrative officers of the State and the courts. The disposition of water stored in Hoover Dam, however, stands upon an entirely different basis. Section 5 of the Boulder Canyon Project Act expressly authorizes the Secretary of the Interior to contract for the storage of water in the reservoir and for the delivery thereof at such points as may be agreed upon. Accordingly there can be no doubt of the right of the Government to dispose of waters stored in the reservoir.



Secretary Wilbur has heretofore requested the State to recommend an allocation of water designed to cover the natural flow as well as the floods stored in the reservoir in order that the whole subject-matter may be covered.

This letter is written in order that you and others interested may be more fully informed regarding what was intended by the quoted portion of my letter of February 28.

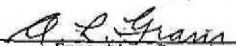
Sincerely yours,

A handwritten signature in cursive script, appearing to read "Edward Wood".

Commissioner.

The foregoing is a full, true and correct copy of a letter on file in the office of the Board of Directors of the Metropolitan Water District of Southern California, signed:

Elwood Mead, Commissioner (United States Department of the Interior, Bureau of Reclamation), addressed to W. P. Whitsett, Director, The Metropolitan Water District of Southern California, dated August 25, 1931.


Executive Secretary
The Metropolitan Water District
of Southern California

July 27, 1960

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

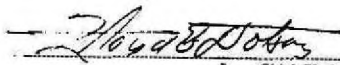
United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

AUG 22 1956, 19

Pursuant to Title 5, Section 1733, United States Code, I hereby certify
that each annexed page is a true copy of a document comprising part of the
official records of the Department of the Interior:

Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.


Chief Clerk.

FEB 28 1931

Mr. S. C. Evans,
Executive Director,
Boulder Dam Association,
829 Byrnes Building,
Los Angeles, Calif.

Dear Sir:

* * * * *

The matter of water rights and of the division of Colorado River waters among present and future users thereof is an extremely complicated one. It involves at least four major subjects: (1) the Colorado River compact, (2) the Boulder Canyon Project Act, (3) appropriation, riparian, and prescriptive rights, and (4) contracts with the United States for release of stored waters from the Hoover dam. Diametrically opposite views have been presented and supported by arguments. It would not be possible for me to outline, within the scope of a letter, the gist of these views and arguments. I suggest that you discuss the matter with Mr. W. B. Matthews, attorney for the Metropolitan Water District, and with Mr. R. J. Coffey, District Counsel of the Bureau of Reclamation, 608 Grant Building, Los Angeles. You will, however, realize that authoritative answers to the various phases of the matter can only be given by the courts. It might not be amiss also to bear in mind that the Secretary of the Interior has no authority to designate the ownership of waters released from the Hoover Dam. The rights thereto must be determined by agreement of all interested parties or in the event of disagreement by decrees of competent courts.

Very truly yours,

W. M. ...
~~CONFIDENTIAL~~

Copy to C.E. Denver
D.C. Los Angeles

CALIFORNIA DEFENDANTS

Exhibit No. 7751

Identification: Admitted:

EXTRACTS FROM A PROTEST OF THE STATES OF
COLORADO, NEW MEXICO, UTAH, AND WYOMING
AGAINST THE GILA VALLEY IRRIGATION PROJECT
IN ARIZONA, DATED FEBRUARY 5, 1936*

* These extracts were inserted in the
Congressional Record on June 15, 1936, by
Representative Lewis of Colorado during the
debates on appropriations for the fiscal
year 1937 for the Gila Project, Arizona.
80 Cong. Rec. 9389-91.

PROTEST OF THE STATES OF COLORADO, NEW MEXICO, UTAH, AND WYOMING AGAINST THE PROPOSED GILA VALLEY IRRIGATION PROJECT IN ARIZONA

The representatives of the States of Colorado, New Mexico, Utah, and Wyoming in conference assembled to consider various problems connected with their interests under the Colorado River compact as upper-basin States in the waters of the Colorado River system, hereby and upon the grounds hereinafter stated, express their opposition to any Federal aid for the proposed Gila Valley project in Arizona until that State shall have accepted the Colorado River compact.

In supporting this protest against the Gila Valley project . . . the first thing to do is to define the interests of the protesting States under the Colorado River compact that the proposed project . . . if constructed, would invade.

WATER INTERESTS OF STATES OF UPPER BASIN

The water interests of the upper basin under the Colorado River compact, which was ratified by the Boulder Canyon Project Act, are:

(1) The protection of its own apportionment of the 7,500,000 acre-feet of water per annum out of the Colorado River system, and

(2) The procural of the further apportionment, in an amount to be determined in 1963, of the residue of the "surplus" waters of the system over and above the combined apportionments of 16,000,000 acre-feet of water per annum made by the compact to the upper and lower basins, after first deducting from that "surplus" whatever amount of water may be set aside hereafter for Mexico by treaty between the two nations, or failing that, then by some international tribunal. Should the allowance to Mexico exceed the "surplus", then the deficit is to be taken equally from the 7,500,000 acre-feet and the 8,500,000 acre-feet already allotted to the upper and lower basins respectively.

THE COLORADO RIVER COMPACT

The Colorado River compact does several things. It—

1. Apportions to the upper basin, comprised of the States of Colorado, New Mexico, Utah, Wyoming, and a small part of the State of Arizona, 7,500,000 acre-feet of water per annum out of the entire Colorado River system, inclusive of all tributaries, and 8,500,000 acre-feet of water per annum to the lower basin, comprised of the States of Arizona, California, Nevada, a small part of New Mexico, and a small part of Utah.

2. Reserves for future apportionment in 1963 between the same basins on the principle of "equitable division", as distinguished from priority regardless of State lines, all the remaining water of the entire system, less whatever amount the United States may recognize Mexico as entitled to—not as a matter of law, but as one of international comity.

CONGRESSIONAL RECORD—HOUSE

3. Subordinates, as between the States, the use of water for the generation of power to uses for other purposes.

4. Imposes upon the States of Colorado, New Mexico, Utah, and Wyoming the obligation not to cause the flow of the river to be depleted below 75,000,000 acre-feet for any 10-year period at Lee Ferry, which is a point on the river in Arizona just below the Arizona-Utah boundary line, and which is above the dam on the Colorado built under the authority of the Boulder Canyon Project Act.

If the States never should be able to agree upon a division of the unapportioned surplus above referred to, then undoubtedly the determination of the division would go to the Supreme Court of the United States, where, under the compact, the principle which would be applied by the Court would be that of "equitable division", which might or might not yield the same results that would follow from an application of the competing principle of priority, more or less regardless of State lines. The compact makes no division of water between States, but only between basins, as above referred to, with Lee Ferry in Arizona as the dividing line on the river, and with all States or parts of States draining into the river above Lee Ferry as constituting the upper basin, and all States or parts of States draining into the river below Lee Ferry as constituting the lower basin. While, according to the interbasinal division, Arizona, New Mexico, and Utah lie in both basins, yet the location of their respective areas is such that, for all practical purposes, Arizona is to be considered as identified with the lower basin, while New Mexico and Utah are to be identified with the upper basin.

The compact does not forbid either basin, pending the future apportionment, to put to use the unapportioned waters—in other words, the water in excess of the 7,500,000 acre-feet and the 8,500,000 acre-feet already apportioned to the upper and lower basins, respectively—after first deducting the water that by treaty the United States may choose to give to Mexico.

Neither basin is to be censured for going ahead with all of the development possible, if it wants to chance the uncertainty of its title to waters thus taken from the unapportioned "surplus", in advance of any agreement among the States, or, failing that, in advance of any judicial decision as to what an "equitable division" would be. It is, however, manifestly unfair for either basin to invoke, as against the other, the outside financial aid of the Government, or for the Government to give financial aid in respect to this unapportioned "surplus" where the degree of aid thus given to one basin exceeds disproportionately the aid given to the other. Government money is the money of all the States. As far as concerns the two basins of the Colorado River area, it is the money of both basins, and neither of them should be allowed to call upon it in disproportionate degree. Either each basin should be left to finance itself in respect to its water projects or else the Government in extending aid should keep both basins in mind by equitable allotments of money to each. • • •

CONGRESSIONAL RECORD—HOUSE

THE GILA VALLEY PROJECT

The proposed Gila Valley project calls for water from the main stream of the Colorado River, to be taken from the east end of the Imperial Dam of the All-American Canal now being constructed, for the ultimate irrigation of approximately 585,000 acres of land situated in the valley of the Gila River, which is a tributary of the Colorado. The prosecution of this project would be by units, both in point of location and of time. The water required would be in excess of 2,000,000 acre-feet per year, and the total cost approximately \$80,000,000. The first unit will comprise about 150,000 acres and the cost will be about \$20,000,000. The project has not been expressly authorized by any act of the Congress. A proposed contract has been drafted between the United States and the Yuma-Gila irrigation district of Arizona, the Secretary of the Interior to sign for the United States. The contract relates to the first unit and is drawn under the Reclamation Act of 1902, the amendments thereto, and the Emergency Appropriation Act of 1935. The W. P. A., which is the administering agency of the Emergency Appropriation Act, has allocated to the Reclamation Bureau \$2,000,000 with which to begin work. Bids will be in shortly.

The representatives of the protesting States oppose Federal aid to this project for the following reasons:

1. Arizona should receive no Federal aid for this or any other water project sourcing in the Colorado River system until she first accepts the Colorado River compact.

Arizona never has ratified the compact which has been ratified by every other State in the Colorado River Basin and which divides the waters of the river system between the upper basin to which the protesting States of Colorado, New Mexico, Utah, and Wyoming belong, and the lower basin, to which California, Nevada, and Arizona belong. The compact contemplates that the States of the upper basin shall divide among themselves their common present allocation of 7,500,000 acre-feet a year, and that the States of the lower basin should do likewise with their common present allocation of 8,500,000 acre-feet a year, and similarly such parts of the "surplus" water (all waters in excess of the combined 16,000,000 acre-feet already apportioned) as in 1963 may be apportioned to their particular basin.

One of the principal purposes of the compact is to protect the protesting States in respect to their present and future allocations against the acquisition of priorities that might be asserted against their basinal allocation by the States of the lower basin. It contemplates that Arizona, like California and Nevada, shall take her water, not out of the allocations made and to be made under the compact to the upper basin but out of those to the lower basin in which she belongs. Arizona, by not ratifying the compact, denies and repudiates the interbasinal division of the water made by the compact and thereby questions the legal effect of water appropria-

CONGRESSIONAL RECORD—HOUSE

tions made and to be made in the protesting States of the upper basin, as against water appropriations made and to be made within her own limits.

The water that would be used for the project under consideration, and which would be applied by the process of gravity and pumping, would come from the flow in the main river as equated by the great dam built under the Boulder Canyon Project Act—in other words, from water stored by the dam. Arizona has tried hitherto to obtain from the Secretary of the Interior a contract for water from that dam for use in Arizona but failed, upon the opposition of these protesting States, because she would not incorporate in the contract language that would expressly subject herself and all claiming under her at no matter what point on the Colorado River system, unequivocally and without reservation, to the Boulder Canyon Project Act and to the Colorado River compact which the act ratifies and upon which the act is predicated.

The Gila Valley project with its proposed contract, already drafted but still unsigned, between the Yuma-Gila irrigation district and the United States, under the Reclamation Act of 1902, instead of a contract of Arizona herself with the United States under the Boulder Canyon Project Act, would prove, if it could be consummated legally, only a circumvention of these protesting States and of the Government itself—an attempt on Arizona's part to get Boulder Canyon project water indirectly through one of its minor agencies instead of directly in its own name and binding all of its water users who at any point within her boundaries take water from the Colorado River system.

2. Paragraph 34 of the proposed contract with the Yuma-Gila irrigation district purports to subject Gila Valley project to the Colorado River compact. Passing by the inadequacy of the language of this paragraph to protect these protesting States in respect even to this particular project it may be said that the mere insertion of this paragraph would not give to the protesting States, with sufficient certainty, adequate protection as against the total appropriations of water made and to be made at all points upon that part of the Colorado River system (main stream and tributaries) lying within the State of Arizona.

The Yuma-Gila irrigation district is not the State of Arizona, but only a minor agency thereof, that at most, even with a paragraph adequately worded, could bind only itself and the particular project. What is wanted is the acceptance of the Colorado River compact by Arizona herself in behalf of herself and of all water users claiming under her, to the end that all water rights and projects anywhere and everywhere in Arizona drawing their supply from the Colorado River system would be bound thereby, as are the water rights and projects within the six other Colorado River States.

3. These protesting States do not question the right of Arizona or of those claiming under her to initiate water rights or finance water rights within the State of Arizona if they can finance the same out of their own resources, but the protestants do say that Federal

CONGRESSIONAL RECORD—HOUSE

money expended comes from the people, comes in part from these protesting States, and that it is unfair to them that what in effect is in part their money should be taken and expended to build up or uphold water priorities that in conjunction with other priorities would be asserted against them in and at the hands of a State that has not yet through the acceptance of the compact been willing to accord to the protesting States the reciprocal protection of the interbasinal division of water that they by the compact offered and still offer to her. The other States have subjected all of their priorities to the compact. Why should not Arizona do the same?

4. Six States have accepted the compact with its interbasin division of water as fair and equitable; and the Congress of the United States, by the Boulder Canyon Project Act, likewise has ratified it as fair and equitable, and has subjected the water interests of the United States in the general Colorado River Basin wherever they may be to its terms and is spending hundreds of millions of dollars on dams and canals built under the act, which in turn is predicated upon the compact.

Any other solution of the water problems of the Colorado River system than that of the compact interbasinal division of water is now because of complications practically impossible. No one, unless Arizona, wants any different solution. The Government should finance no water projects in Arizona until that State puts herself in line with other States and with the Government itself by accepting the compact.

5. The proposed contract between the United States and the Gila Valley Irrigation district would be illegal if signed. The contract does not purport to be made in pursuance of authority of the Boulder Canyon Project Act, which is the only act of Congress under which the Secretary of the Interior is authorized to dispose of water stored by the dam which has been built under the act. Instead, the contract is made under the Reclamation Act of 1902, with no mention of the Boulder Canyon Project Act, and financed by an Executive money allotment that has been made under the Emergency Appropriation Act of 1935.

The water supplying the project would come from the equated flow of the waters stored by the dam. The contract says so. The project would be futile if it could not depend upon this artificially equated flow rather than upon the natural, variable, seasonable flow of the river. The Boulder Canyon Project Act provides that all stored waters shall be contracted for only in accordance with its terms and under the general regulations promulgated by the Secretary of the Interior pursuant thereto, just as in the case of the contracts already made by the Secretary with the various California agencies and entities. Indeed, under the act the Secretary must charge something for the water deliveries to be made under the contracts which he issues. This charge is in addition to any assessment that the Government might make under the reclamation act against the lands benefited by the construction of dams and canals whereby the water contracted for is to be made usable. Section

CONGRESSIONAL RECORD—HOUSE

4 (b) of the act provides that before the Secretary can commence construction of the dam "he shall make provision for revenues by contract in accordance with the provisions of this act" wherewith to pay expenses of operation and repay to the Government the costs of construction. While these provisions relate to contracts made before the commencement of construction of the great dam they indicate, nevertheless, the general policy of the act to require "charges" in contracts made under the act. This policy is carried forward in section 5 and is there expressly extended to contracts, no matter when made. The language of the section is to the effect that "no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as herein stated" and upon "charges that will provide revenue", to be applied to maintenance expenses and to retirement of capital costs connected with the Boulder Canyon Project Dam. This section, inclusive of the exaction of "charges" and prohibiting any use of the stored water except by contract made under the act, contains the following:

"That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof to such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

THE CONDITION CONTAINED IN THIS PROTEST

The condition attached to this protest is that, subject to the Colorado River compact protecting them in respect to their present and future allocations of water to their upper basin, these protesting States would have no objection to Federal aid to water projects in Arizona if, as a condition precedent to the operative effect of such aid, that State, with the consent of the Congress, which is now in session, would enter into an interstate agreement with the other six States whereby she would become a signatory to the compact, or if, with the consent of the Congress, she were to enact a self-limitation act whereby she would contract with the United States for the benefit of the other Colorado River States, and each thereof, that her interests and rights in the Colorado River system should be bound by the compact.

CONGRESSIONAL RECORD—HOUSE

The language to be employed in following either method would have to be chosen with care, but the choice would not be difficult and these protesting States stand ready at any time to cooperate in achieving the end by either method.

RECOMMENDATIONS TO THE GOVERNORS

In conclusion, the representatives of the States of Colorado, New Mexico, Utah, and Wyoming in conference assembled, having in mind the protection of their water interests under the Colorado River compact, hereby recommend to their respective Governors and Members of the Congress:

That vigorous protest be made by them to the President and to the appropriate departments or agencies of the Government, including the Secretaries of the Interior and Agriculture, against the proposed Gila Valley project in Arizona except upon the condition that Arizona shall first accept the Colorado River compact either by supplemental interstate compact with the other Colorado River States or else by act of self-limitation. * * *

The chairman of this conference is requested to transmit to the several Governors copies of this protest, to the end that the copies may be forwarded, should the Governors so desire, in support of such official protests as the Governors themselves may choose to make in the premises.

Dated at Denver, Colo., February 5, 1936.

PAUL P. PROSSER,

Attorney General for Colorado.

FRANK H. PATTON,

Attorney General for New Mexico.

WILLIAM W. RAY,

Special Counsel for Utah.

RAY E. LEE,

Attorney General for Wyoming.

CALIFORNIA DEFENDANTS

Exhibit No. 7752

Identification: Admitted:

LETTER FROM ACTING COMMISSIONER

JOHN C. PAGE TO SENATOR CARL HAYDEN,

DATED JUNE 16, 1936

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

Selected Pages from File #223.02

In testimony whereof, I, **WAYNE C. GROVER**, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 19 60.

Wayne C. Grover
Archivist of the United States
By James M. Holloman

223.02

COLORADO RIVER-
GILA VALLEY

EMP-os

JUN 16 1936

Hon. Carl Hayden,

United States Senate.

My dear Senator Hayden:

I have received your telephone inquiry as to the terms upon which water will be sold to the water users of the Gila project, the water supply for which will be derived from the water stored in the Boulder Canyon Dam.

On account of the unsettled condition of the land that will be watered by the Gila project, no contract has yet been executed with the water users of the project. However, the water supply will be derived from the Boulder Canyon project, authorized under the act of November 21, 1908, 15 Stat. 1057, and under the Colorado River Compact of November 24, 1922.

In selling water for the Gila project the Secretary must follow the requirements of the Boulder Canyon Project Act, which provides in Sec. 8 (a) as follows:

"The United States, its permittees, licensees, and contractors, and all users and appropriators of water stored, diverted, carried and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide."

also the first three sentences of Sec. 5 of the Boulder Canyon Project Act provide as follows:

"That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe to contract for the storage of water in said

reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the catchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

Under the directions of this statute, the water users of the Gila project will be required expressly to contract, in order to obtain water for the irrigation of their land, that their rights are subject to the provisions of the Colorado River Compact, one main purpose of which is to protect, to the extent stated in the Compact, the irrigation potentialities of the upper basin from impairment by reason of the earlier use of water downstream.

Very truly yours,

John Edgar
Acting Commissioner.

CC - C. E., Denver
D. C., Los Angeles

My Special Messenger - receipt.
LDW.

Harwick

CALIFORNIA DEFENDANTS

Exhibit No. 7753.

Identification:

Admitted:

MEMORANDUM FOR COMMISSIONER

JOHN C. PAGE FROM "R.M.P.,"

DATED APRIL 9, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

Selected Pages from File #223.02

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 1960.

Wayne C. Grover
Archivist of the United States

By John W. [Signature]

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTONAPPROVE ALL COMMUNICATIONS TO
THE COMMISSIONER

OFFICE OF THE COMMISSIONER

April 9, 1937

Memorandum for Mr. Page:
(Patrick)

Subject: Sale of water to the Gila project, Arizona.

While no contract has yet been made for the sale of water rights to the lands of the Gila project, it is clear that the right to use and continue to use water on land in the Gila project will be subject to (1) the compact rights of California, Colorado, Nevada, New Mexico, Utah and Wyoming, under the Colorado River Compact, and (2) the rights of Mexico as fixed under a treaty yet to be negotiated with that nation. Contracts have heretofore been made for the sale of water in California in accordance with the compact rights of California, and the sale of water for use on the Gila project in Arizona must be subject to the rights of such California contractors, as well as to the rights of any other contractors in the six States for a water supply from the Colorado River under the compact.

The foregoing conclusion seems to be self-evident. The Secretary is a Federal officer and bound by the Colorado River Compact which was approved by the United States. He cannot therefore make any sales of water for use in a non-compacting state, where the sales would defeat or interfere with Mexican treaty rights, the compact rights of the six states or with the rights given or to be given their citizens or corporations in contracts with the United States. Section 8 of the Boulder Canyon project Act expressly requires the sale of water by the Secretary to be subject to the Colorado River Compact.

The matter is of prime importance and the subject is likely to be controversial. For this reason I believe it would be well to have this memo reviewed by the Solicitor before an official position is taken on the subject.

RMB.

CALIFORNIA DEFENDANTS

Exhibit No. 7754

Identification: Admitted:

MEMORANDUM FOR THE COMMISSIONER
OF THE BUREAU OF RECLAMATION FROM
ACTING SOLICITOR FREDERIC L. KIRGIS,
DATED APRIL 14, 1937

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of
annexed copies, of each document listed below is a true copy of a document
in the official custody of the Archivist of the United States.

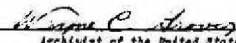
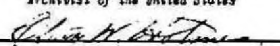
Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

Selected Pages from File #223.02

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States,
have hereunto caused the Seal of the National
Archives to be affixed and my name subscribed
by the Chief Archivist, Social and Economic
Records Division of the National Archives,
in the District of Columbia, this 30th day
of June 1960.


Archivist of the United States
By 

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

223.12
COLORADO RIVER—
GILA

APR 14 1937

MEMORANDUM to the Commissioner

of the Bureau of Reclamation:

I have received your informal request for a memorandum on the authority of the Secretary of the Interior to sell water from the Colorado River or storage thereon for the Gila project, Arizona.

Section 5 of the Boulder Canyon project act authorizes the Secretary of the Interior, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir (Boulder Canyon Reservoir) and for the delivery thereof at such points on the river and on said canal as may be agreed upon. Contracts respecting water for irrigation and domestic use shall be for permanent service and shall conform to paragraph (a) of section 4 of the act. The right to dispose of stored water must be limited by other provisions of the act which compels the Secretary to make contracts in conformity with the Colorado River compact. In other words, the authority of the Secretary to sell water in Arizona is limited by the provisions of the compact. It would also be limited by existing or subsequent treaties with foreign nations.

In the case of Arizona v. California (283 U.S. 433, 462), the Supreme Court in its opinion involving the right of the United States to construct Boulder Dam and thus control the waters of the Colorado River made this statement in answer to the contention of Arizona that it would not be permitted to take any water from the reservoir except upon agreeing that the use shall be subject to the compact:

"As Arizona has made no such agreement, the act leaves its legal rights unimpaired." Further that
"As we hold that the grant of authority * * *
does not purport to abridge the right of Arizona to make or permit additional appropriations of water flowing within the State or on its boundaries * * * we have no occasion to consider other questions which have been argued."

Copies 012.-Colo. River Compact
106.6 Colo. River
283.02 " "
106.6 C.R.-Gila
106.6 General

Card - stored

The decision of the Supreme Court seems to leave Arizona in a position to appropriate any unappropriated water of the Colorado River if it could put such water to beneficial use, and this without reference to authority given by Congress in the Boulder Canyon project act.

It is my opinion that the Secretary of the Interior, in making a contract for repayment of construction costs with landowners on the Gila project, or with an irrigation district comprising a similar area may agree to sell water from Boulder Canyon Reservoir, but such sale must be subject to prior rights and to the Colorado River compact.

Sanford D. Harris
Acting Solicitor.

CALIFORNIA DEFENDANTS

Exhibit No. 7755

Identification:

Admitted:

LETTER FROM COMMISSIONER JOHN C. PAGE TO
L. WARD BANNISTER, DATED APRIL 16, 1937,
WITH SUPPORTING DOCUMENT, LETTER FROM
L. WARD BANNISTER TO COMMISSIONER JOHN C. PAGE,
DATED MARCH 26, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

Selected Pages from File #223.02

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 1st day of July, 1960.

Wayne C. Grover
Archivist of the United States

By Richard L. [Signature]

88
50
NA 423

GSA-WASH GC 51-7073

278 (6-12-37) EMP:14

Mr. L. V. Garrison,
Chairman,
Denver Chamber of Commerce Committee on
Interstate Streams,
501-7 Aquitabile Building,
Denver, Colorado.

My dear Mr. Garrison:

I have received your letter of March 20 relative to the furnishing of Colorado River water to the Gila project in Arizona. No contract has yet been made for the sale of a water right to the lands of the Gila project. The land is generally unsupplied Government land and for that reason it has not been practicable to complete repayment contracts with the landowners or their representatives.

The Secretary of the Interior is a federal officer and bound by the Colorado River compact which was approved by the United States. It is clear, therefore, that in any sales of Boulder Canyon Project water to landowners in Arizona, it must be stated that the use or continued use of water under the sale contract is subject to (1) the compact rights of the six states and (2) the rights of Mexico, as fixed under a treaty yet to be negotiated with that nation. See Section C of the Boulder Canyon Project Act. Contracts have been made for the sale of water in California in accordance with the compact rights of California, and the sale of water for use on the Gila project in Arizona must be subject to the rights of such California contractors as well as to the rights of any other contractors in the six states for a water supply from the Colorado River under the compact.

It may be some years before the six states make the maximum use permissible under the compact of their Colorado River water supply. It also may be some time before a treaty is made with Mexico fixing her rights in the river. It would be unfortunate if in the interim Arizona could not utilize the water which may ultimately be needed to fill compact and treaty rights. It would be unfortunate, also, if there is water in the river which will not be needed to supply ultimate compact and treaty rights, to debar Arizona from the use of it.

To permit such use in Arizona and at the same time to protect the corporate rights of the six states and their citizens is important, and it is believed that this result will be effected by prescribing under right contracts for Arizona land with substantially the provisions above outlined.

Very truly yours,

John C. Page
Commissioner.

CC - C. E. Denver
C. C. Los Angeles
(With copy to each of Mr. Dennister's letter)

Copy 032.-Colo. River Compact

W. Ward Bannister
COUNSELOR AT LAW
807 EQUITABLE BUILDING
Denver, Colo.

WARD BANNISTER
CARRIE D. COY
WAYNE BANNISTER
STANLEY L. DREFFLER

March 26,
1937

Commissioner

Engineering

Honorable John C. Page, Commissioner,
Bureau of Reclamation, New P.O. Bldg.,
Washington, D.C.

My dear Commissioner Page:

Re: Colo-Interstate Streams

Mr. Bedding writes our Denver Chamber of Commerce that he thinks we do not fully realize the true situation in respect to the Gila Valley Project in Arizona and that in some way or other you believe that the Gila Valley Project would have water subject only to the terms of the Colorado River Compact.

On that question I have some very decided views with what I consider good reasons therefor, but I may be overlooking something somewhere and I should be glad indeed if you would let me know in what way and by what means the Upper States are protected against this Project if Arizona is not required to adhere to the Colorado River Compact either by act of self-limitation by her legislature or by supplemental agreement to the Colorado River Compact. Don't forget that the Congress and the administrative officers have no authority to divide water between states and that that is a function either of the states themselves through agreement or else by the Supreme Court of the United States in a suit between states. If Arizona does not have designs against the Upper States in the way of claiming priorities against them she should be willing to adhere to the Compact by one or the other of the two devices I mention.

What the Upper States want is to bind Arizona as to the particular Project and also to bind her as to all her other Projects past and future just as the Upper States have bound themselves by the Colorado River Compact. It all seems so easy to accomplish that I wonder that anyone raises the slightest objection. We all know that if adherence by Arizona is required it will be forthcoming and in a very short time. She has to have water. She ought to have it out of the Colorado River. If she can't get it without adhering to the Compact she will adhere. Nothing could be simpler. Why should not the Reclamation Bureau throw its influence on the side of adherence? The Government itself approved the Compact and ought to help see that it becomes the law of the entire river by the assent of every State upon it. Do let us know what

033.02
COLORADO RIVER
GILA

113

Page 2

your scheme is and why you think it will protect the Upper States. If by chance there is some method other than what I have pointed out the Upper States ought to be willing to adopt it. These States are on the move, however, and are bound to see that they are protected against Arizona's priorities.

Very truly yours,

Lehard Barnhart
Chairman of Denver Chamber of
Commerce Committee on Interstate
Streams.

LVB:F

CALIFORNIA DEFENDANTS

Exhibit No. **7756**

Identification: Admitted:

LETTER FROM COMMISSIONER JOHN C. PAGE
TO WILLIAM A. DUVALL, CLERK, HOUSE
COMMITTEE ON APPROPRIATIONS, DATED
APRIL 16, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

A Selected Page from File #223.02

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 1960.


Archivist of the United States

By 

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

Copies 241.88 Colo. River
241.88 C.R.-Gila

HARRIS

Enclosure 105124-100

Geo. C. La. Hunter,
D. C. Los Angeles
(With copy to each of the Solicitor's Memoranda)

Very truly yours,

John Edgar
Commissioner.

Mr. William A. Howell,
Chief, Issues Committee on Appropriations,
Washington, D. C.

EXP. 14
APR 16 1931

723.02
COLORADO RIVER-
GILA

My dear Mr. Howell:

Reference is made to your communication with me regarding the possible subperformance of the water rights for the "Gila Project, Arizona, with the water rights of the six states signing the Colorado River Compact.

I am enclosing a copy of a Memorandum by the Acting Solicitor holding in effect that Boulder Canyon water may be sold for lands in Arizona, subject to the provisions of the Colorado River Compact. I am also enclosing a copy of my letter to Mr. La. Ward Smith, which has been approved by the Acting Solicitor, and which goes into the subject in somewhat more detail.

CALIFORNIA DEFENDANTS

Exhibit No. 7757

Identification:

Admitted:

EXTRACTS FROM HEARINGS BEFORE A SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON APPROPRIATIONS ON
THE INTERIOR DEPARTMENT APPROPRIATION BILL
FOR 1938, 75TH CONG., 1ST SESS., PT. 2 (1937)

A. Statement of Byron G. Rogers, Attorney
General for the State of Colorado:

"Mr. Chairman and gentlemen of the committee, so far as the Gila project is concerned, representing the interests of the upper basin States of the Colorado River, namely, Wyoming, Utah, Colorado, and New Mexico, we desire to protest the allocation of moneys to the Gila project. We wish to protest it for the reason that until Arizona either ratifies the Colorado River compact, that has been ratified by six other States, known as the six compact States, or has her rights determined, we will not know definitely what her water rights are.

"Based upon the proposition of the compact itself, there is an allocation of 7,500,000 acre-feet to the upper basin States and about 8,500,000 acre-feet allocated to the lower basin States." (P. 1807.)

". . . .

"Mr. Leavy. What water is allocated to Arizona, or what is your contention as to what they would be entitled to, as a credit in Colorado River waters now? What are you offering to them?

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

"Mr. Rogers. Under the compact, 8,500,000 acre-feet were allocated to the lower basin, of which California stated at one time they would not take more than 4,000,000 acre-feet, and then said they would take 4,200,000 acre-feet, and then at another time 4,400,000 acre-feet. The assumption is that the rest of it would go to Arizona." (P. 1809.)

B. Statement of L. Ward Bannister, Special Counsel for Colorado:

". . . .

"Now, the State of California passed an act of selflimitation [sic] by which she cannot take all of this 8,500,000 feet that go to the three States below her, and that act says that she agrees not to take more than 4,200,000 acre-feet of water.

"Mr. Mashburn. 4,400,000 acre-feet.

"Mr. Bannister. This book says 4,400,000 acre-feet plus one-half of the excess water in the river system over and above 16,000,000 acre-feet. She could not possibly get a total of over 5,200,000 or 5,300,000 acre-feet out of the 8,500,000 acre-feet. She cannot possibly touch the Gilo [sic] River proper, because that is below any possible use in California. Those allocations of water are saved to the State of Arizona. It is the coming appropriation of water that we in the north fear." (P. 1821.)

". . . .

"Another point is that Arizona attempted, something like a year and a half ago, to obtain a contract from the Secretary of the Interior whereby the State in its entirety, as a political entity, would have 2,800,000 acre-feet of water to distribute among Arizona projects.

"The upper basin States opposed that application.

"After a hearing here in Washington, a representative of ours submitted oral arguments and the Secretary of the Interior rejected that application.

"Why?

"Because all that Arizona offered to do was to subject that particular 2,800,000 acre-feet of water to the Colorado River Compact instead of subjecting not only that water but all of their other water priorities, past, present, or future, no matter where in the State situated.

"Now, this attempt here is simply an effort of Arizona to enter the same enclosure through another door. She now seeks to get an appropriation from Congress without submitting all of her other priorities to the terms of the compact." (P. 1831.)

C. Statement of Ray E. Lee, Attorney
General of the State of Wyoming:

"Mr. Chairman and gentlemen of the committee, I will make my statement very short, because Mr. Bannister has fully covered our position." (P. 1824.)

"

" [T]he point is, if, by priority of use--and this is the whole theory--if we step aside and permit the development of great irrigation projects in Arizona without protest and permit the Gila Valley project to be developed, and \$80,000,000 expended in it, then is a court or the Congress going to listen to us if we come in at a later date to attempt to take away some of the water that they have appropriated or are using, although it is far in excess of what would be their share under the interstate division which Congress has approved?

"That is the point; and that is why, when Congress passed the Boulder Canyon Project Act, it included this in section 4 of the act [reading]:

"This chapter shall not take effect * * * and further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming as an express covenant and in consideration of the passage of this chapter, that the aggregate annual

consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this chapter and all water necessary for the supply of any rights which may now exist, shall not exceed 4,400,000 acre-feet of the waters apportioned to the lower-basin States by paragraph (a) of article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.' (Emphasis added.)

"That is part of your act appropriating \$165,000,000 for the Boulder Dam project. That is the type of legislation that we are now asking that you include in this bill, if you include the Gila Valley project, limiting Arizona, or requiring Arizona to pass a similar self-limitation act so that she thereby becomes bound by this Colorado River compact." (P. 1825.)

CALIFORNIA DEFENDANTS

Exhibit No. **7758**

Identification: Admitted:

PROTEST OF THE STATES OF COLORADO,
NEW MEXICO, UTAH, AND WYOMING AGAINST
THE GILA VALLEY IRRIGATION PROJECT IN
ARIZONA, 1937*

* This protest was inserted in the
Congressional Record on May 13, 1937, by
Representative Lewis of Colorado during
the debates on appropriations for the
fiscal year 1938 for the Gila Project,
Arizona. 81 Cong. Rec. 4531.

PROTEST OF THE STATES OF COLORADO, NEW MEXICO, UTAH, AND
WYOMING AGAINST THE GILA VALLEY IRRIGATION PROJECT IN
ARIZONA

INTRODUCTION

The representatives of the States of Colorado, New Mexico, Utah, and Wyoming in conference assembled at Denver to consider various problems connected with their interests in the waters of the Colorado River system join in protest against:

1. Federal aid for the Gila Valley irrigation project in Arizona unless so conditioned as to protect the protesting States.

THE GILA VALLEY IRRIGATION PROJECT IN ARIZONA

The representatives of the States of Colorado, New Mexico, Utah, and Wyoming join in protest against the granting of any Federal aid to the Gila Valley project, except upon the condition that the State of Arizona adhere to the Colorado River compact prior to the availability of any such aid.

They base their protest upon the following grounds:

1. Arizona should be granted no Federal aid until she subjects all of her water priorities, no matter where located or with whatever project connected, to the Colorado River compact.

The Gila River project contemplates, when carried out in its various proposed units, the irrigation of approximately 585,000 acres of land at a cost of approximately \$80,000,000 and with a draft on the Colorado River and from the Boulder Canyon Reservoir situated therein of approximately 2,000,000 acre-feet per annum. Construction has been commenced but is still in its infancy.

Each State upon an interstate stream is entitled to an equitable apportionment of the waters of that stream. The Colorado River compact, purporting to award 8,500,000 acre-feet a year to the lower basin, composed mainly of the States of Arizona, California, and Nevada, and 7,500,000 acre-feet a year to the upper basin, composed mainly of the States of Colorado, New Mexico, Utah, and Wyoming, is based upon this theory of an equitable apportionment. The allocations of water thus made, and the compact making them, received the approval and consent of the Congress of the United States through the passage of the Boulder Canyon Project Act, notwithstanding the fact that Arizona, unlike the other six States, failed to ratify the compact by act of her legislature.

The protesting States can conceive of no reason for Arizona's failure, unless it be that she is unwilling to abide by the compact—division of the waters of the river system which all the other States and the Congress of the United States believe to be just—and that she intends to attempt to assert water priorities against the other States contrary to the terms of said compact and contrary to interstate justice.

CONGRESSIONAL RECORD—HOUSE

The assertion of such priorities is a menace against which these States here assembled earnestly protest.

It is a gross injustice to take Federal money which, in part, is money of these protesting States and use it to build up or add to water priorities which Arizona may attempt to assert against them.

2. There is no way of sufficient legal certainty to subject Arizona's water priorities, including that which would be connected with the Gila Valley project, to the Colorado River compact, except by requiring Arizona's adherence thereto as a condition precedent to the availability of any Federal aid. The adherence could be—

(a) By supplemental compact between Arizona and preferably all of the Colorado River States, or at least with the upper States of Colorado, New Mexico, Utah, and Wyoming, whereby she subjects herself and her water users to the compact just as fully and completely as the other States have done; or

(b) By act of self-limitation passed by her legislature and approved by her Governor, whereby she agrees irrevocably with the United States, for the benefit of preferably each of the remaining Colorado River States or at least of each of the States of Colorado, New Mexico, Utah, and Wyoming, with the right of each to sue or defend thereon, that each thereof shall have the same rights and interests in the Colorado River system as if Arizona had signed and ratified the Colorado River compact when the other States did.

3. If Arizona is not willing to adhere to the Colorado River compact in one way or the other, her unwillingness can be evidence of only one thing—an attempt to assert against these protesting States water priorities inconsistent with the Colorado River compact. Can it be that Arizona wants all the benefits of the Colorado River development without assuming any of the burdens or limitations incident thereto?

4. Construction on the Gila Valley project being still in its infancy and the need of Arizona for water from the Colorado River system being so great, there is not the slightest question but that Arizona would adhere to the Colorado River compact in order to obtain water, if the Government would prescribe adherence as a condition precedent to availability of Federal aid.

The protesting States are not protesting against water for Arizona's use from the Colorado River system. Indeed, they want her to have it. Their protest is directed solely against her procural of water without submitting herself as to all of her priorities, as the other States have done to the Colorado River compact as a condition precedent to availability of Federal aid. She should not be allowed to subject the Gila Valley project to the compact while at the same time exempting her other projects, even if this could be done legally.

5. Arizona could call a special session of her legislature and within a few days could adhere to the compact by act of self-limitation as suggested.

CONGRESSIONAL RECORD—HOUSE

6. The Government contemplates delivering water to this project free of charge, as far as the water itself is concerned, although subjecting the lands benefited to the burden of construction cost. This exemption of water from charge is in plain violation of the Boulder Canyon Project Act. (See sec. IV (b) of the act; also sec. V.)

Important as this may be, the greater issue is whether Arizona is to be permitted to receive water out of the Colorado River system with Government aid without first adhering, as all the other States have done, to the compact.

7. The proposed Federal aid for the Gila Valley project represents a substitute method for an earlier unsuccessful attempt to obtain water from the Boulder Canyon Dam.

The first attempt was by a contract which Arizona requested from the Secretary of the Interior for 2,800,000 acre-feet of water per annum. These protesting States opposed that attempt at a hearing before the Secretary, and the Secretary ruled in their favor. The present attempt is simply another effort to enter by a different door.

8. The Congress of the United States, by passing the Boulder Canyon Project Act, put its stamp of approval expressly upon the Colorado River compact, thereby giving it validity and pronouncing its water division between the two groups of States to be just.

The Government cannot now, without a breach of faith, lend its aid to Arizona in building up water priorities that she might attempt to assert against the upper States.

It is not enough to try to protect the States by language applying to the Gila River project alone, first, because of the legal uncertainty of the attempt and, second, what is wanted is a complete adherence to the compact that would subject all her water priorities wheresoever situated to the compact. This is what all the other Colorado River States have done as to their own priorities. The Congress should expect and exact from Arizona nothing less.

The protesting States suggest the incorporation of a proviso following the appropriation item for the Gila Project in the Interior Department bill as follows:

"This appropriation shall not become available until and unless the State of Arizona and the States of Colorado, New Mexico, Utah, and Wyoming shall have entered into a supplemental interstate compact approved by the Congress of the United States whereby the State of Arizona on the one hand and the States of Colorado, New Mexico, Utah, and Wyoming on the other shall have and be given the same uses, rights, and interests in and in respect to the waters of the Colorado River system, that they and each of them would have had if the State of Arizona had ratified the Colorado River compact when the other States ratified it, and if said State thereby likewise had become a party thereto; said

CONGRESSIONAL RECORD—HOUSE

compact being the one signed at Santa Fe, N. Mex., on November 24, 1922, and having been consented to by the Congress of the United States by the Boulder Canyon Project Act, approved December 21, 1928."

Or the proviso might be worded in the following or similar language:

"This appropriation shall not become effective unless and until the State of Arizona by act of its legislature approved by its governor, shall have agreed irrevocably and unconditionally with the United States and for the benefit of each and all of the States of Colorado, New Mexico, Utah, and Wyoming as an express covenant with the right of the United States, or any of said States, to sue or defend thereon and in consideration of said item of appropriation, that said States and each thereof shall have the same rights, uses, and interests in and in respect to the waters of the Colorado River system that said States and each thereof would have had if the State of Arizona had ratified the Colorado River compact when the other States ratified it, and if said State thereby likewise had become a party thereto; said compact being the one signed at Santa Fe, N. Mex., November 24, 1922, and consented to by the Congress of the United States by the Boulder Canyon Project Act, approved December 21, 1928."

The idea of an act of self-limitation mentioned in section 2 (b) hereof is taken from the California law found in the Acts of California, 1929, at page 38, chapter 16. That is the act by which California limited herself as to the total amount of water she would take from the Colorado River, and does so, for the benefit of the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming. The title of the California act is as follows:

"An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the Boulder Canyon Project Act, approved December 21, 1928, in the event the Colorado River compact is not approved by all of the States signatory thereto."

Respectfully submitted.

BYRON G. ROGERS,
Attorney General for Colorado.

A. T. HANNETT,
Special Assistant Attorney General for New Mexico.

WILLIAM W. RAY,
Special Counsel for Utah.

RAY E. LEE,
Attorney General for Wyoming.

LETTER FROM ACTING SECRETARY OF
THE INTERIOR CHARLES WEST TO THE
PRESIDENT, DATED JUNE 8, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of
fixed copies, of each document listed below is a true copy of a document
in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

Selected Pages from File #101.02

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States,
have hereunto caused the Seal of the National
Archives to be affixed and my name subscribed
by the Chief Archivist, Social and Economic
Records Division of the National Archives,
in the District of Columbia, this 30th day
of June 1960.

Wayne C. Grover
Archivist of the United States

By Oliver A. [Signature]

TO SECRETARY

MAY 26 1937

For Signature,

File 301.

121.08
COLORADO RIVER-
GILA

EXP. NO.

JUN 9 1937

The President

The White House,

by dear Mr. President:

File date of action

June 21, 1937

[The following report is made to you on the first Division of the Gila Reclamation Project, Arizona, under Section 1 of the Act of Congress of June 25, 1910, 36 Stat., 185 and under Subsection 2 of Section 1 of the Act of December 5, 1921, 42 Stat., 701.

Section 1 of the Act of June 25, 1910 provides in effect that after the date of this act no irrigation project to be constructed under the act of June 25, 1910 (36 Stat., 185) and any subsidiary thereof or supplementary thereto shall be undertaken unless and until the project shall have been recommended by the Secretary of the Interior and approved by the direct order of the President.

Subsection 2, Section 1, of the Act of December 5, 1921, provides as follows:

"That no new project or new division of a project shall be approved for construction or otherwise authorized hereafter by the Secretary until information in detail shall be secured by him concerning the water supply, the engineering features, the cost of construction, land prices, and the probable cost of development, and he shall have made a finding in writing that it is feasible, that it is adaptable for actual settlement and farm homes, and that it is practically within the cost thereof to the United States. (43 Stat., 702.)

By the Act of Congress of June 25, 1906, 34 Stat., 1571, 1576, 1579, 1580 was appropriated for the construction of construction of the Gila project, under the reclamation law, the project having been indicated (1) by an allotment of \$75,000 under Title 31 of the National Industrial Recovery Act of June 16, 1933, 48 Stat., 195 and (2) by allotment of \$2,000,000 under the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, 49 Stat., 115.

The Gila project comprises the irrigable lands on both sides of Gila River, in southeast Arizona, susceptible of irrigation from the Colorado River, within feasible pumping limits, with cheap power which can be made available for this purpose from developments on the Lower Colorado River. In other areas of water rights, lands agriculturally suitable for irrigation total 965,000 acres below elevation 400, and this total may in the future be modified either way in the light of operating experience with the initial water. The project is unusually well adapted to development by division in this manner.

[The project for which authorization is now desired, comprises an initial division of 150,000 acres in the immediate vicinity of Yuma, Arizona, including 10,000 acres already irrigated from Colorado River, but requiring better facilities.]

The various features requiring investigation and report under subsection E, Section 4, Act of December 5, 1924, above, will be discussed in the order in which presented in that subsection, as follows:

Water Supply

The Flow of Colorado River, regulated by the Boulder Dam, will be ample for the project as well as all other contemplated developments thereon.

Section 4 of the Boulder Canyon Project Act (45 Stat. 1,50) reads:

"The states of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the Lower Basin by paragraph (a) of article III of the Colorado River Compact, there shall be apportioned a share to the state of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity."

While an agreement has not been concluded by the states, there is no doubt that such an agreement when reached will insure a full water supply for at least the initial division of the project. In all making of water rights it will be necessary to preserve that the water supply of the project is subject to the Colorado River compact, and to the Boulder Canyon Project Act and to the rules of water under the compact and made out and by the treaty which it is anticipated will be made with Mexico fixing that country's rights in the flow of the Colorado River.

Engineering Features

Project water will be diverted at the upstream end of the Imperial Dam being constructed to supply primarily the All-American Canal. A small of 1900 second-foot capacity, if taken time, will lead to a main pumping

plant located 12 miles east of Yuma, creating the Gila River canals. Here waters will be lifted to canals at two levels. Two pumping plants further on will uplift to still higher levels. The series of parallel canals leading from the pumping plants will serve a constant area lying between the present Yuma project, and the Fortuna Irrigation, from Gila River to the Mexican boundary, a small part by gravity, and the balance with varying lifts up to 150 feet. Power for the operation of the pumps will eventually be secured from Farmer Dam, now under construction for the Metropolitan Water District of Southern California where the United States reserved one-half the power possibility, but initially it is expected to utilize surplus power at Boulder Dam. No unusual engineering problems exist.

Cost of Construction

The cost of the first division of the project is estimated as follows:

Can, backwash and desilting works	\$1,377,910
Canal system	4,217,612
Pumping plants	4,793,530
Distribution system (19,000 acres)	6,475,858
Transmission line	500,000
Total	\$17,364,910

This cost would be distributed at the rate of \$19. per acre for the 19,000 acres of main lands and at \$10. per acre for the 11,000 acres of north and south Gila lands. The difference in price is due to the fact that no distribution system must be constructed for the north and south Gila lands.

Land Prices and Probable Cost of Development

The following quotation is taken from the "Report of the Feasibility of Gila Valley Project, Arizona", by a special non-bureau committee composed of W. H. Cobb, William Peterson, and W. L. Peters:

"The land ownership is largely Federal with a moderate amount of state and some private holdings.

"The type of farm with main crop is a general 80 acres seed alfalfa, seed flax, cotton, sorghum, and forage crop with livestock and winter vegetables, or 100 acres with semi-tropical horticultural enterprises included.

"The investment required to bring such farms into full production is estimated from \$6000 to \$12,000.

"The crops which can be most successfully grown on Gila Project soils - Irrigated alfalfa for feed and hay, Rice seed, cotton, including the long staple type, winter barley - sorghum, lettuce - heavy dew melons, watermelons and various winter vegetables. Irrigational crops which succeed are peaches, apples, grapes, citrus fruits, winter oranges, lemons, luscious grapes, and strawberries."

Priority croed lands not already under irrigation will be appraised and holdings in excess of the needs for individual farms would be provided to be sold at desert land prices.

Finding Regarding Feasibility of Project

The data hereto presented justify the conclusion that the first division of the project is feasible from an engineering and an economic standpoint and accordingly no find and describe.

Availability of Land to Settlement and Farm Loans

The undeveloped lands of this project are of average fertility for desert lands, but are lacking in humus. They will need special attention over several years to reach full productivity for the type of crops to which this semi-arid region is adapted. With proper preparation the lands should produce crops of unusually large value.

With care in the selection of settlers, physically and financially equipped to carry on a proper development program, success in farming may be anticipated.

The demand for irrigated agricultural lands in the southwestern section of this country has always exceeded availability of such lands at reasonable prices.

Possible Return to Reclamation Fund of Construction Costs

A finding is required that the cost of construction will probably be returned to the United States. This is interpreted to mean that it will be returned within the maximum period fixed by Reclamation Law, which is 40 years from the time the public notice that the works are completed is issued by the Secretary.

The average annual cost to cover operation and maintenance of the irrigation system and the repayment of the construction cost is estimated at \$14.00 per acre for the undeveloped lands. It is believed that with small initial annual construction charges land-lenders, in order to enable settlers to utilize their resources in bringing their lands to a stage of full production, a repayment ability will be developed that will justify the belief that the cost of the project will be returned. As early beginning of the construction of this project is imperative to the end that the waters of the Colorado River, made such more usable by the Boulder Dam

will be placed in use within the United States before an extension of their use in the Republic of Mexico results in a condition which may make it practically difficult in the future to limit the delivery of water to Mexico to the amounts that may be agreed upon by treaty and to retain for use in the United States an amount suitable for proper agricultural development.

Based upon the foregoing I find that the project is feasible, that the lands watered thereby are adaptable for actual settlement and farm homes, that the lands are in need of a water supply and that the project will probably return the cost thereof to the United States.

I recommend that the project, now in process of construction, be approved, and that authority be given to this Department to proceed with the work and to make contracts and take any necessary action to construct and complete the project.

Sincerely yours,

CHARLES WEST

Acting Secretary of the Interior.

Approved JUN 21 1937

Franklin D. Roosevelt
President.

Copy to Denver
D.C. Los Angeles
Const. Engr. Yuma

CALIFORNIA DEFENDANTS

Exhibit No. 7759

Identification:

Admitted:

LETTER FROM ACTING SECRETARY OF THE INTERIOR
CHARLES WEST TO SENATOR CARL HAYDEN, DATED
JUNE 10, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records, 1902-45

Gila Valley - Colorado River Project

A Selected Page from File #140

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June, 19 60.

Wayne C. Grover
Archivist of the United States

By [Signature]

THE SECRETARY OF THE INTERIOR
WASHINGTON148.
COLORADO RIVER
GILA

June 10, 1937

Hon. Carl Hayden,
Chairman, Subcommittee on Interior
Department Appropriations,
United States Senate.

My dear Senator Hayden:

I thank you for the opportunity given by your letter of May 13 for recommending essential changes in the Interior Department appropriation bill now before your Committee.***

* * * *

BUREAU OF RECLAMATION

Gila Project, Arizona.-

On page 76, after line 19, insert the following: "Gila Project, Arizona, \$1,250,000: Provided, That any right to the use of water from the Colorado River acquired for this project and the use of the lands and structures for the diversion and storage of the same shall be subject to and controlled by the Colorado River Compact, as provided in Section 8 of the Boulder Canyon Project Act, approved December 21, 1920 (45 Stat. 1062) and section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1040)."

This item was eliminated from the bill in the House by a point of order. Since the project has been under construction for nearly a year and available funds are entirely encumbered, it is imperative that it be reinstated in the bill, in order that suspension of the construction program may be avoided.

(Sgd) Charles West
Acting Secretary of the Interior

File 241.38
General

CALIFORNIA DEFENDANTS

Exhibit No. 7760

Identification: Admitted:

EXTRACTS FROM STATEMENTS OF CHARLES A. CARSON,
SPECIAL ATTORNEY FOR THE STATE OF ARIZONA IN
CONNECTION WITH COLORADO RIVER MATTERS, AND
R. GAIL BAKER, RECLAMATION ENGINEER FOR THE
STATE OF ARIZONA, PRESENTED IN HEARINGS BEFORE
THE HOUSE COMMITTEE ON IRRIGATION AND
RECLAMATION ON H.R. 5434, REAUTHORIZING
THE GILA PROJECT, 79TH CONG., 2D SESS. (1946)

REAUTHORIZING GILA PROJECT

HEARINGS

BEFORE THE

COMMITTEE ON IRRIGATION AND RECLAMATION

HOUSE OF REPRESENTATIVES

SEVENTY-NINTH CONGRESS

SECOND SESSION

ON

H. R. 5434

A BILL REAUTHORIZING THE GILA FEDERAL
RECLAMATION PROJECT, AND FOR
OTHER PURPOSES

PART 2

JULY 8-22, 1946

Printed for the use of the Committee on Irrigation and Reclamation



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1946

59805

STATEMENT OF CHARLES A. CARSON, SPECIAL ATTORNEY, STATE
OF ARIZONA, ON COLORADO RIVER MATTERS, PHOENIX, ARIZ.

Mr. CARSON. Yes, Mr. Chairman. My name is Charles A. Carson, of Phoenix, Ariz., appearing here on behalf of the State of Arizona as special attorney for the State of Arizona in connection with Colorado River matters, under an act of the Arizona Legislature, which authorized the Governor to appoint attorneys and engineers.

* * * * *

This Act shall not take effect * * * until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

I want to call your attention specifically to the fact that under this limitation with California enacted by an act of its legislature in 1929, in exact compliance with this requirement, III (b) water is not mentioned. California cannot lawfully use any water of the Colorado River system except 4,400,000 acre-feet of III (a) water, plus not more than one-half of any excess or surplus waters unapportioned by said compact.

* * * * *

Now, I would like to correct myself in one particular. We have discussed this basin so many times and have always talked about the upper basin States being composed of Wyoming, Colorado, Utah, and New Mexico. Part of Arizona is also in the upper basin—this dotted line being the dividing point [indicating at map]. We have talked about the lower basin being California, Arizona, and Nevada, but a part of Utah, the southwest corner of Utah, is also a part of the lower basin, as is the western part and southwestern part of New Mexico, this [indicating at map] being the dividing line in New Mexico.

We have been talking also of the 2,800,000 acre-feet of water to be delivered to Arizona by this contract. That is not the exact amount; it is subject to reductions by virtue of the use in those portions of Utah and New Mexico which are in the lower basin, and by some other matters that will be discussed by Mr. Baker, our engineer, when he gives the figures on the water supply.

Chairman MURDOCK. Mr. Carson, I want to ask you a few questions. We are approaching the hour for closing. You can be here tomorrow morning at 10 o'clock?

Mr. CARSON. Yes.

Chairman MURDOCK. It has been suggested by witnesses, and it is a suggestion within the recent report of the Bureau of Reclamation on the Colorado River development, that there ought to be an apportionment of water to each State which the Santa Fe compact did not make.

Mr. CARSON. Yes.

Chairman MURDOCK. Especially is that desirable among the lower basin States, I believe.

Mr. CARSON. Yes.

Chairman MURDOCK. It has been suggested here that there ought to be steps immediately taken to authorize a tri-State compact. How do you feel about that?

Mr. CARSON. There is plenty of authority in the Boulder Canyon project act for a tri-State compact. We have tried to make it. Failing to get an agreement with California, we have now arrived at the point where we have agreed with California, according to the terms of the Colorado River compact, and California has agreed with the United States expressly for the benefit of the State of Arizona, as to its limit of use, and we, for Arizona, have agreed for the benefit of California with the United States that we concede California's right to use water up to the extent of her limitation, so the division has been made in the lower basin States just as effectively as though we had been able to make a compact straight across the table between us. It is now made in the lower basin. If California will live up to the Colorado River compact and the California Limitation Act, and we live up too, as we will, in Arizona, to our commitments, then an interstate agreement between California and Arizona is not necessary to a division of the water in the lower basin because we in Arizona recognize that the right of Utah and New Mexico, who are in the lower basin, to come out of our share, and we both recognize the right of Nevada.

Mr. WHITE. What is Nevada's tentative share?

Mr. CARSON. 300,000 acre-feet. She has a contract for that with the Secretary of the Interior to which we have all agreed, and we expressly in our contract agree to that for Nevada.

Chairman MURDOCK. We might as well dispose of this one idea, that it is not necessary for the Congress now to pass a law to permit the lower basin States to enter into compacts. It is constitutionally necessary for Congress to pass such a law for State compacts, but in this case that was authorized by the act of 1928; was it not?

Mr. CARSON. Under the act of 1928. Under that act the upper basin States are going to have a meeting on the 22d to work out another compact.

Mr. WHITE. What is the amount covered by the California limitation?

Mr. CARSON. 4,400,000 acre-feet of III (a) water, plus a part of the surplus or water unapportioned by the compact.

Mr. WHITE. Then under the terms of the contract how much for Arizona?

Mr. CARSON. 2,800,000.

Mr. WHITE. Did you say 300,000 for Nevada?

Mr. CARSON. Yes; the total would be 7,500,000.

Mr. WHITE. Where is this 1,000,000 extra?

Mr. CARSON. It was apportioned to the lower basin. We figure that we are using it in Arizona on the Gila River.

Mr. WHITE. I understand that half of the water that is coming into the lower basin is 7,500,000 acre-feet.

Chairman MURDOCK. Half of the apportioned water at Lee Ferry by article IIIa of the compact.

Mr. WHITE. I am talking now about the original compact.

Mr. CARSON. That is right.

Mr. WHITE. That is divided, in turn, into 4,400,000 feet. That is the limitation California sets for itself.

Mr. CARSON. Yes.

Mr. WHITE. Then by contract between Arizona and the Secretary of the Interior, 2,800,000 feet go to Arizona?

Mr. CARSON. Yes.

Mr. WHITE. And 300,000 feet to Nevada?

Mr. CARSON. Yes; or a total of 7,500,000 feet.

Mr. PHILLIPS. I am not so sure but what I could not clear up this argument by continuing your question right there, Mr. Chairman. May I ask the witness something?

Now, Mr. Carson, do you consider the Gila and the tributaries to the Gila as part of the Colorado River system?

Mr. CARSON. Yes; they are in the definition of the compact.

Mr. PHILLIPS. I would like for you to classify these things for me. Perhaps it will help me. Do you classify, under the Colorado River compact, the perfected rights on the Gila River system—the Salt River that I asked about and the San Carlos and other projects—do you classify those as part of the 7,500,000 acre-feet of III (a) water?

Mr. CARSON. No, sir; because you are overlooking entirely III (b) water, an additional 1,000,000 acre-feet. The apportionment to the lower basin made by the compact is not 7,500,000 acre-feet; it is 8,500,000 acre-feet. III (a) water is 7,500,000 acre-feet, and III (b) water is 1,000,000 acre-feet, so we have a total apportionment of 8,500,000 acre-feet.

California has limited itself to 4,400,000 acre-feet of III (a) water and one-half the surplus, and has excluded herself from III (b) water.

Mr. PHILLIPS. Then, if you do not classify that as III (a) water, you are classifying it as III (b) water. If it is not III (a) water, how do you classify it? You said that you did not classify it III (a).

Mr. CARSON. III (b).

Mr. PHILLIPS. All right, now. Arizona claims 2,800,000 acre-feet. How much of that do you claim from the main stream?

Mr. CARSON. 2,800,000 acre-feet.

Chairman MURDOCK. Some of that goes to Utah and some to New Mexico.

Mr. CARSON. With the deductions that we will show by the engineers.

Mr. PHILLIPS. How much do you claim? You spoke of a court case that you had. How much of the use of the water from the Gila River did Arizona claim in the litigation against California?

Mr. CARSON. I do not know which case you are talking about, Mr. Phillips.

Mr. PHILLIPS. The only one I know about is the first case, the one you spoke about.

Mr. CARSON. That is not the first case. I am glad that you brought that up. Let me explain that to you.

According to my view of the flow of the Gila River under natural virgin conditions, it is reported by all the engineers to be 1,270,000 acre-feet. Part of that water is used over here in New Mexico, part in Arizona.

At the time that the compact was written the consumptive uses on the Gila River in Arizona were figured to be 1,000,000 acre-feet. Now then we have increased our use in Arizona, the last reports indicate, to where we have a use of 1,135,000 acre-feet.

Mr. PHILLIPS. How do you classify the uses on the Gila in excess of 1,000,000?

Mr. CARSON. We deduct them from the 2,800,000 of the main stream, as the engineer will show you. We are dealing now with firm water. We are excluding surplus.

Chairman MURDOCK. Mr. Carson, you as an attorney have done the proper thing by reading from those basic laws. I am not an attorney, so I just wanted to get the thing down in plain, simple language so that I can be sure to understand it.

Mr. CARSON. Yes.

Chairman MURDOCK. You have read appropriately almost the entire Santa Fe compact, at least the pertinent parts, and you have read most of the Boulder Dam Project Act and quoted from it quite liberally.

Mr. CARSON. Yes.

Chairman MURDOCK. Do you regard the Santa Fe compact as a binding treaty between the basin States?

Mr. CARSON. Yes, sir.

Chairman MURDOCK. You regard the Boulder Canyon Project Act, an act of Congress, as the law of the river?

Mr. CARSON. As one of the instruments which together make the law of the river; yes.

Chairman MURDOCK. You regard the California statute of limitation passed in 1929 as a condition leading up to the enactment of the Boulder Canyon Project Act as more than a statute; that it is a solemn pledge of a sovereign State in regard to this whole transaction?

Mr. CARSON. Yes, sir.

Mr. FERNANDEZ. Mr. Chairman, nobody contends otherwise.

Chairman MURDOCK. But they might contend otherwise, and I see a possibility of such contention looming on the horizon. Is it not true that an act of the legislature can be superseded and repealed by a subsequent act?

Mr. CARSON. Not in this particular instance; I think not in this instance, because by its terms it was made irrevocable and unconditional with the United States, for the benefit of the State of Arizona and the other basin States in consideration of the passage of the Boulder Canyon Project Act, which was passed. California has already received the consideration and I think can never avoid its limitation act.

Chairman MURDOCK. Now, to go a little further, you spoke of apportioned water under the Santa Fe compact and surplus water.

Mr. CARSON. Yes, sir.

Chairman MURDOCK. What sections of the compact apportion water?

Mr. CARSON. Articles III (a), III (b), and III (c).

Chairman MURDOCK. III (a) making an apportionment between the upper and lower basins?

Mr. CARSON. Yes.

Chairman MURDOCK. III (b) adding an extra million to the lower basin?

Mr. CARSON. Yes.

Chairman MURDOCK. And III (c) having reference to Mexico?

Mr. CARSON. Making apportionment to Mexico in an amount to be determined by treaty.

Chairman MURDOCK. You maintain, then, that III (b) water is apportioned water to the lower basin?

Mr. CARSON. Yes, sir.

Chairman MURDOCK. And can never be regarded as surplus; therefore, it cannot be divided under the terms of the compact and the California Limitation Act?

Mr. CARSON. Yes, sir. You have stated it as I see it.

Chairman MURDOCK. Your contention is, then, that there are 8,500,000 acre-feet of water annually apportioned to the lower basin?

Mr. CARSON. Yes, sir.

Chairman MURDOCK. And California has limited her use of that apportioned water by a statute which cannot be revoked?

Mr. CARSON. Yes.

Chairman MURDOCK. To 4,400,000 acre-feet annually?

Mr. CARSON. Yes, sir.

Chairman MURDOCK. And that that precludes California from asking for or having any part of the apportioned water apportioned to the lower basin other than within her limitation?

Mr. CARSON. Other than that that is within her limitation.

Chairman MURDOCK. Of course, she has one-half of any surplus water.

Mr. CARSON. Yes. And that surplus water is by the compact defined and by the California Limitation Act defined as water which was unapportioned by the Colorado River compact.

Mr. PHILLIPS. Now, coming back to this question I asked Mr. Carson last night: As I get it, Mr. Carson, you say that the users of Gila water in New Mexico are using III (a) water, and the users of Gila water in Arizona are using III (b) water. Is that right?

Mr. CARSON. They are using apportioned water in Arizona, New Mexico, Utah, and I think Nevada—they use very little water—and California, out of the 8,500,000 acre-feet. In Arizona we are using a little in excess of the 1,000,000 acre-feet apportioned to the lower basin by article III (b) of the Colorado River compact. That means, then, as I see it—and this is the only place this has any application, as I say again—of the over-all basin use in the entire lower basin, we are limited by the compact to 8,500,000 acre-feet. We having used 1,000,000 acre-feet of III (b) water, or any other water of this apportioned water out of the Gila in Arizona, then it must follow, it seems to me, that the uses in the other States are part of the apportioned water; whether you call it III (a) water or III (b) water, it limits the use in the lower basin of the apportioned water. Therefore, as Mr. Baker will show you, when we are figuring our water supply in Arizona, we deduct from that which is deliverable to us as a firm right at Boulder or Lake Mead any excess over 1,000,000 acre-feet that we ourselves use of the Gila, that which is used in Utah and New Mexico, and our 2,800,000 acre-feet is reduced to that extent.

Mr. CARSON. No. The point here, Mr. Fernandez, if you take the over-all apportionment of the basin, there is 8½ million feet of water to the lower basin. California is limited to 4,400,000 acre-feet. That leaves Arizona 3,800,000 acre-feet of apportioned water, which California has agreed she can never use.

Mr. FERNANDEZ. But they say it is not 8½ million acre-feet of water, but 7½ million acre-feet. Therefore, they would be entitled to one-half a million of the surplus.

Mr. WHITE. I think that the gentleman from New Mexico is confusing the water in the main Colorado River and the tributary, the Gila River.

Mr. FERNANDEZ. I am not confusing it for this reason, that if the Gila water of 1,000,000 acre-feet that they claim from that stream is credited against what they are supposed to get from the main stream, that leaves them with a claim for much less water than they say they are entitled to, and with that much more surplus to be divided.

Mr. WHITE. The legislative limitation imposed on itself by the State of California, does that conform exactly to the limitation set up in the authorization bill?

Mr. CARSON. Yes, sir.

Mr. WHITE. It conforms exactly?

Mr. CARSON. Yes; it conforms exactly, irrevocably, and unconditionally.

Now, Mr. Fernandez, on that question of what is apportioned to the lower basin, I think that California would agree that 8½ million feet are apportioned to the lower basin. Whether they would agree or not, it is clear from this Colorado compact.

Mr. FERNANDEZ. As Congress interpreted the transactions leading up to the compact and as you interpret the interpretation made by Congress.

Mr. CARSON. No; as the compact shows in its express terms.

Mr. FERNANDEZ. Will you read those express terms?

Mr. CARSON (reading):

(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

Now, I jump down to (f). These others do not affect this particular question.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River system unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October 1, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

So there is no question that it is apportioned water, and the Supreme Court of the United States has, it seems to me, in clear and unmistakable language, held that it was apportioned water. So then, if it is apportioned water—and I am clear that it is—then California has precluded herself from ever claiming any part of it because she has limited herself to 4,400,000 acre-feet plus half of the surplus. And, therefore, whether or not you figure it as an over-all apportionment of 8½ million feet to the lower basin, which it clearly is by this language, it leaves 3,800,000 acre-feet for use in Arizona.

The difficulty and the confusion, it seems to me, comes in this fact, that the Secretary of the Interior by this act was authorized to make contracts for the delivery of water from Lake Mead and everybody was precluded from claiming water except by contract with the Secretary. Well, now, of the 8½ million feet apportioned to the lower basin, 7½ million feet of that comes down from the upper basin and is called III (a) water, but, actually, when you get down to figure the ultimate right to water here, it does not make any difference whether you specify that that is III (a) to the exclusion of III (b); the result is the same. The water coming down from Lake Mead is the only place where the Secretary has authority to deliver water, except by act of Congress. All of these contracts relate to water in Lake Mead, where the supply is limited by the Colorado compact to 7½ million feet. Therefore, in the Arizona contract, that is why we say the Secretary agrees to deliver and we to take 2,800,000 feet. The Secretary has not any jurisdiction over the Gila River.

Mr. FERNANDEZ. Then I am wrong in my assumption and interpretation of the compact that it would result in more water?

Mr. CARSON. I think you are right in your assumption, if there should be any more than 1,000,000 acre-feet of the Gila River depletion; that might reduce our right from the main stream and the difference would be a surplus from which they could take a part.

Mr. CARSON. I am going back to this proposal, if I may, for a moment, with Mr. Rockwell's statement in mind.

Mr. Rockwell, no matter whether you consider this III (b) water, to be Gila water, or part of this $8\frac{1}{2}$ million acre-feet in the lower basin, it is very clear in my mind that the III (b) water is apportioned to the lower basin, and was water bearing that identical relationship to the Gila River water that I mentioned before, and to which you have addressed your question. I think that is clear, now. It is apportioned to the lower basin, as is likewise the $7\frac{1}{2}$ million acre-feet of III (a) water, so it makes the apportionment to the lower basin $8\frac{1}{2}$ million acre-feet.

Now, California, by her limitation act, has agreed that her use can never exceed 4,400,000 acre-feet of this $8\frac{1}{2}$ million acre-feet, plus one-half of whatever surplus or excess is in the river over and above the $8\frac{1}{2}$ million feet apportionment to the lower basin. So, taking that view of the thing, then, Arizona is entitled to 3,800,000 acre-feet without in any way infringing upon the California limitation. That still leaves 300,000 feet for Nevada.

Of this 3,800,000 acre-feet, we take—and this is the source of the supply likewise—apply that to the Gila River 1,000,000 acre-feet which leaves us out of the main stream 2,800,000 acre-feet. But by those two quantities, 2,800,000 acre-feet, and the million acre-feet, Arizona has reached her limit of consumptive use of apportioned water under the compact, and under the California Limitation Act, California cannot be heard to complain because she agreed with the United States by a solemn, statutory agreement made, as I say, in the most solemn way an agreement could be made involving assurances of one State to the United States, and to her sister States. That agreement was made in terms irrevocably and unconditionally for the benefit of the State of Arizona, as well as other basin States. And it is on that limitation or solemn agreement that California can never use more than 4,400,000 acre-feet of the water apportioned to the lower basin, plus not more than one-half of the surplus, that we rely, I believe.

Moreover, I think we should apprehend that it is a pure question of mathematics; $8\frac{1}{2}$ million acre-feet as your total; 4,400,000 acre-feet to California; less 300,000 acre-feet for Nevada; leaves 3,800,000 acre-feet for Arizona. If you take those three figures away from $8\frac{1}{2}$ million feet, you should come down to zero.

Then, Mr. Baker has told you that under any of these figures of flow there is ample storage in Boulder Dam to regulate the river and provide a steady flow of water to the projects that are described in this bill; that is the Gila-Wellton project, and the Yuma Mesa Wellton-Mohawk.

I can illustrate this very clearly. Even if Mr. Dowd should prevail and say we are using 2,000,000 acre-feet on Gila—which we do not admit for a moment—why, we would have to deduct a million acre-feet out of our otherwise main stream apportionment, which would still leave 1,600,000 acre-feet for us in the main stream. This project takes 600,000 acre-feet, which still leaves us with a million acre-feet, with the use on the Indian reservations, and the water required for this project, if we utilized all of that, we would not even then have reached our limitation even under that construction on this project.

Of course, we have gone into a lot of argument about ultimate conditions that may happen in the upper basin and the lower basin, as may now or in the future take effect, but even with those ultimate conditions as projected they would not be jeopardized as to these water rights.

Again, if Mr. Dowd's theory should prevail on the consumptive use on the Gila River—which to my mind it cannot, and is not capable of being done—but even if it should prevail, if they could show that the salvage water on the Gila River—that is, if they can, by salvaging the water, and the salvage I am satisfied would be less than 500,000 acre-feet, and might be as low as 400,000 acre-feet, but even if they should prevail on that, what would happen? That would merely add up on their consumptive use in the basin, and reduce our firm supply and leave a surplus in the main stream to which they would be entitled to one-half. The water would be in the main stream because we are only figuring on the water at Lee Ferry. So if we deduct that from our firm water it is still bound to be in the main stream of the river at Lake Mead, and they could use half of that, so the most we could ever lose is 200,000 acre-feet, or 300,000 acre-feet, or thereabouts.

**STATEMENT OF R. GAIL BAKER, RECLAMATION ENGINEER, STATE
OF ARIZONA**

Mr. BAKER. R. Gail Baker, reclamation engineer for the State of Arizona—civil engineer.

* * * * *

REAUTHORIZING GILA PROJECT

463

	<i>Acre-feet</i>
Virgin flow at Lee Ferry-----	16,271,000
Less upper basin allocation-----	7,500,000
	<hr/>
Natural gain, Lee Ferry at Boulder Dam-----	8,771,000
	<hr/>
	1,060,000
	<hr/>
Tributary flow, Boulder Dam to Imperial Dam-----	9,831,000
Less natural loss, Boulder Dam to Imperial Dam-----	105,000
	<hr/>
	1,075,000
	<hr/>
Virgin flow at Imperial Dam less 7,500,000 acre-feet to upper basin--	8,951,000
	<hr/>
Virgin flow Gila at Colorado River-----	1,271,000
Less Arizona's estimated use of Gila at time of compact (III (b) water)-----	1,000,000
	<hr/>
	271,000
	<hr/>
	9,222,000
Allocated to Mexico by treaty-----	1,500,000
	<hr/>
	7,722,000
Allocated to lower basin, art. III (a)-----	7,500,000
	<hr/>
Unallocated water-----	222,000
	<hr/>
Colorado River firm water available to Arizona:	
Article III (a) allocated to Arizona, subject to uses in New Mexico and Utah-----	2,800,000
New Mexico and Utah uses (estimated ultimate)-----	131,000
	<hr/>
Net firm water available-----	2,669,000
	<hr/>
	<hr/>
Present Arizona uses:	<i>Acre-feet depletion</i>
Gila River Basin-----	135,000
Little Colorado River-----	50,000
Virgin and Kanab Creek-----	5,000
Williams River-----	3,000
Colorado River below Parker Dam-----	205,000
	<hr/>
	407,000
Reservoir losses, present and future-----	317,000
	<hr/>
	724,000
	<hr/>
Colorado River water remaining available to Arizona by compact and contracts-----	1,945,000

CALIFORNIA DEFENDANTS

Exhibit No. 7761

Identification: Admitted:

STATEMENT BY REPRESENTATIVE JOHN R. MURDOCK
OF ARIZONA, JULY 30, 1946, RE "ANALYSIS AND
BRIEF SUMMATION OF TESTIMONY ON H.R. 5434
[REAUTHORIZING THE GILA PROJECT, ARIZONA]"^{1/}

^{1/} This statement was inserted in the
Congressional Record by Representative Murdock
of Arizona, author of H.R. 5434 and chairman
of the House Committee on Irrigation and
Reclamation which conducted the hearings on
the bill. 92 Cong. Rec. A4829-31.

**Analysis and Brief Summation of
Testimony on H. R. 5434**

**EXTENSION OF REMARKS
OF**

HON. JOHN R. MURDOCK

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 30, 1946

Mr. MURDOCK. Mr. Speaker, a subcommittee of the Committee on Irrigation and Reclamation held voluminous hearings on my bill, H. R. 5434, without chance of completing action. With a view of facilitating study of this testimony I am presenting the following analysis under leave to print.

PURPOSE OF THIS BILL, H. R. 5434

The purpose of H. R. 5434 is to authorize a change of boundaries and area of the Gila project in Yuma County, Ariz. This is a presently authorized and partly constructed irrigation project by the United States Bureau of Reclamation during the past 10 years, having had an expenditure of nearly ten million dollars made on it since authorization. The original authorized project included 150,000 acres of land, 139,000 acres of which lay on the mesa south and east of Yuma adjacent to that city. The remaining small portion of the original project consists of bottom lands along the Gila River very near its mouth.

The reason that a change is sought to be made and authorized by H. R. 5434 in the existing partially completed project is that since 1937 some very excellent farm land lying along the Gila River but upstream from that part included in the present project has been deprived of its good water for irrigation and now need relief. This deprivation came about through developments higher up on the Gila River and its tributaries but apparently in such a way that injured parties cannot base a legal claim for

damages. This has gone on to such an extent that what was highly productive and valuable farm lands, without any change in the quality of the soil, have had to be sold for taxes and some have reverted to the desert, because the water which formerly supplied these lands from wells became too salty for use. Since these distressed lands just described, consisting of about 75,000 acres, could be returned to high productivity by furnishing a supplemental supply of good water from the nearby Colorado River, it is the purpose of H. R. 5434 to eliminate approximately 75,000 acres of the more remote and higher lands on the mesa included in the original project and substitute therefor 75,000 acres of this formerly tilled, rich land along the Gila River. The sponsors of this bill do not regard this proposal as a new project, but merely a modification of a duly authorized existing project.

THE SPONSORS OF THE BILL

H. R. 5434 was introduced in the House by both Arizona Congressmen and in identical form in the Senate by both Arizona Senators. However, it might be called a departmental bill, and had the full backing of the Bureau of Reclamation. The chief witnesses appearing in favor of the bill at the recent hearings were Hugo Farmer, secretary of the Gila Irrigation District, who is also a State Senator in the State Legislature of Arizona, and Mr. R. H. McElhaney, an official of the Gila Valley power district, included in the distressed lands along the Gila River, who is also a farmer owning and operating a farm in the distressed area, which is sought to be incorporated in the present Gila project. Representing the State of Arizona, which was necessitated by the clash with witnesses from Southern California, was Mr. Charles Carson, an attorney for the Arizona Colorado River Board, and Mr. Gail Baker, an engineer, representing the Colorado River Board of Arizona. The Bureau of Reclamation was represented by several witnesses in support of the bill.

APPENDIX TO THE CONGRESSIONAL RECORD

BASIS OF SUPPORT

All of the witnesses from Arizona in support of the bill expressed confidence that the project sought to be reorganized would be an improvement over the old project by reducing it from 150,000 acres to 141,000 acres in area, leaving out some of the higher mesa lands and including in lieu thereof the 75,000 acres of distressed valley lands lying adjacent to the project and along the Gila River. They agreed with the Bureau of Reclamation officials that the proposed reorganized project, when completed, would require diverted out of the Colorado River at least 300,000 acre-feet of water annually less than the present uncompleted project would require when it is completed. There is no other water supply for these lands in Yuma County, and it was the unanimous testimony of the Arizona witnesses that unless the 75,000 acres of bottom land sought to be added by H. R. 5434 could be included in the existing Gila project, that there was no hope of their restoration to productivity, but that eventually they would be lost entirely to the desert.

THE OPPONENTS OF H. R. 5434

Those who appeared as witnesses in opposition to the enactment at this time of H. R. 5434 during the hearings in June and July were chiefly representatives from certain agencies in Southern California, although some of them stated they were representatives of the State of California and spoke as such. Mr. M. J. Dowd gave the most extensive testimony against the bill representing the Imperial Irrigation District of Southern California. Mr. James H. Howard appeared in opposition representing the Metropolitan Water District of Southern California and other municipalities as his clients. Mr. Raymond Matthew appeared on behalf of the Colorado River Board of the State of California, being an engineer of that board. Mr. Arvin B. Shaw, Jr., as an assistant attorney general of California, appeared as a representative of the State, to serve the agen-

cies in expressing opposition. Certain Members of Congress from Southern California and from Nevada appeared as witnesses who offered opposition to the immediate enactment of the bill.

GROUND OF OPPOSITION TO H. R. 5434

In general the opposing witnesses declare that they are opposed to favorable action on H. R. 5434 at this time. By emphasizing "at this time" they imply that later their opposition might be removed or modified. To give point to their opposition to the measure "at this time," they point out that the Bureau of Reclamation recently issued a Colorado River report, tentative in form, which lists numerous projects in a total basin plan, the development of which would require more water than the whole basin furnishes, and their contention is that no new projects should be authorized until further study has screened the included list of 134 suggested projects and eradicated those which could not possibly be developed because of the shortage of water. They further contend that no development should proceed until definite decision has been made as to how much Colorado River water each of the Colorado River basin States, especially the three in the lower basin, should receive. As one of the substantiating arguments, they contend that the recently adopted water treaty with Mexico creates a new, un contemplated, and greatly enlarged draft on the firm supply of the Colorado River, which makes it imperative, in order to carry out that treaty, that we must figure carefully on any future drafts on the river supply.

ARGUMENTS AND COUNTERARGUMENTS ON H. R. 5434

The sponsors and supporters of the bill claim that not more than 600,000 acre-feet of water annually "in consumptive use" would be required for this proposed reorganized Gila project when completed, while the opponents place it at a much larger amount. The 600,000 acre-

APPENDIX TO THE CONGRESSIONAL RECORD

feet is the amount so estimated by the Bureau of Reclamation for the original larger project. The sponsors further state and are convinced that there is rightfully more than that amount of water in firm supply now available in the Colorado River for the completed Gila project without building any further dams or storage, and without depriving any State in the Colorado Basin of any of its rightful share of firm water.

The truth or fallacy of this claim appears to hinge upon, first, physical facts concerning either the historical flow or the virgin flow of the Colorado River, and second, upon the interpretation of certain legal instruments, such as the Santa Fe Compact of 1922, the Boulder Canyon Project Act of 1928, the California Statute of Limitations of 1929, and certain water contracts drawn by the Secretary of the Interior to furnish water out of Lake Mead. This joining of issues is chiefly by men from Arizona and from California, the Arizona witnesses making one interpretation; the California witnesses making another interpretation of these above-mentioned legal documents.

The California witnesses in general agree that the Santa Fe Compact—supplemented by later enactments—is the basic law of the Colorado River Basin, and declare that they are willing to abide by it. The Arizona witnesses take the same stand. The Arizona witnesses point out that in return for the passage of the Boulder Canyon Project Act by Congress in 1928 that California agreed to limit the amount of water she could claim out of the Colorado River to 4,400,000 acre-feet of water annually in firm supply, plus one-half of the surplus. The Arizona witnesses quote that California statute, "the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the States of Arizona," etc., and claim that that statute of limitations is a covenant irrevocable. The California witnesses

say they regarded their statute of limitation as a covenant which they propose to observe, but their interpretation of it differs from the interpretation by Arizona witnesses.

IS ARTICLE III (b) WATER "APPORTIONED WATER" OR "SURPLUS WATER"?

The crux of the matter comes down to the question: "What is the legal character of the million acre-feet of water mentioned in article III (b) of the Santa Fe Compact?" The Arizona witnesses contend that that million acre-feet of water in article III (b), like the $7\frac{1}{2}$ million acre-feet in article III (a), is "apportioned water"—apportioned to the States of the lower basin. The Arizona witnesses contend that, thus considered, article III (a) and article III (b) of the compact apportion $8\frac{1}{2}$ million acre-feet of water to the lower basin in firm supply, and there can be no question about its use in the lower basin if it physically exists in the river. If that be true, and California has limited her own use of apportioned water to 4,400,000 acre-feet—the Arizona witnesses further contend—and Nevada is satisfied with 300,000 acre-feet (which is all she ever claimed), then the remainder, which is 3,800,000 acre-feet, is obviously Arizona's water, since it cannot legally be put any place else in the United States within the lower basin. However, of the 3,800,000 acre-feet for Arizona, only 2,800,000 acre-feet is to come from the main stem of the Colorado River.

OPPOSING WITNESSES DISAGREE ON III (b) WATER

The California witnesses do not agree with this analysis, contending that article III (b) furnishes a million acre-feet to the lower basin, which is not "apportioned water," but should be regarded as "surplus water" within the terms of the compact. If it is "surplus water," under the provisions of the compact, it is to be divided between Arizona and California, each State having half. This dispute is over claim to 500,000 acre-feet

APPENDIX TO THE CONGRESSIONAL RECORD

of water annually. So the real nub of the controversy is, Does half of the million acre-feet of water mentioned in article III (b) of the compact rightfully and legally belong to California, or does all of it rightfully and legally belong by reason of California's Limitation Act to Arizona?

The California witnesses say that only a judicial decision, or a tri-State compact can determine that question and that nothing new must be done until it is determined. Arizona witnesses contend that it has already been determined by what is, in effect, a tri-State compact through the combined effects of three enactments, namely, the Boulder Canyon Project Act of 1928, the California Act of Limitation of 1929, and the Arizona water contract and a statute of 1944, under the terms of which there can be no legal question but that the million acre-feet of III (b) water belongs entirely to Arizona and to no one else. The Arizona witnesses further declare that not only is a tri-State compact of the lower basin States now unnecessary, by virtue of the above-mentioned enactments, but that earnest attempts have been made unsuccessfully through a quarter century to effect such an agreement and there is no prospect of better success now than during the years since 1922. It was further pointed out that the Supreme Court of the United States had previously refused to consider such a case and probably would not do so now; therefore a settlement by court decision seems very doubtful.

AS THE AUTHOR OF THE BILL SEES IT

As one of the authors of this legislation, H. R. 5434, I feel that the opposition expressed to it is unwarranted, that the demand for delay on the part of the opposition witnesses until agreement is formally reached between all States concerned in a new interstate compact, or until judicial process can be had, would merely mean indefinite postponement of all water development on the Colorado

River in both the lower basin and in the upper basin. Such delay would mean a continuation of the status quo, which might be highly desirable by those who are now being supplied water from the Colorado River, but highly detrimental, if not disastrous, to those States and communities starving for the waters of that river and having as good a right, based on human justice, and, in my judgment, as good a right based on human law, as have the present users.

The Congress initiated legislation looking toward the development of the Colorado River Basin by authorizing the States of that Basin to enter into a compact. Such a compact was drawn at Santa Fe, N. Mex., in 1922 and ultimately ratified by all the basin States. In conformity with the Santa Fe Compact the Congress passed the Boulder Canyon Project Act of 1928 as a further step in the proper development of the basin. Numerous other acts of Congress have subsequently been enacted to continue Colorado River Basin development in conformity to the Santa Fe Compact and the Boulder Canyon Project Act. Therefore, I regard some such measure as H. R. 5434 a proper, logical further step by Congress to continue this vital development in Arizona along the lines marked out for it in the beginning.

MAIN OPPOSING ARGUMENTS ARE UNSOUND

In general the contention of the opponents of H. R. 5434 that there was not enough water in the Colorado River system during the recent drought years to meet all of the firm commitments and the legal requirements may seem at first glance to have some basis of fact, it is really fallacious reasoning. It is admittedly true that the records of the last 16 years show a reduced run-off of the Colorado River watershed and thereby a reduced average flow at Lee's Ferry, to which opponents of H. R. 5434 point with a degree of concern. Particularly do they point with alarm to the much-reduced flow during the years of the decade from 1931 to 1940 inclusive, which is the

APPENDIX TO THE CONGRESSIONAL RECORD

lowest flow of any 10-year period in the recorded history of the river. By pointing to the flow of that 10-year period and by clever manipulation of legal language it might be shown to one not carefully observing that there was not enough water in the river to meet all of the legal requirements.

However, considering all existing projects and proposed projects in the lower basin, requiring a firm allotment of water, it is only necessary to ask whether 75,000,000 acre-feet during any 10-year period have passed Lee's Ferry, plus enough to meet any new commitment such as the Mexican Treaty, to find whether there is such a shortage. Now, it will be observed that during the 10-year period from 1931 to 1940 inclusive more than 100,000,000 acre-feet of water actually passed Lee's Ferry, in spite of depletion above, and that was the very lowest 10-year flow in its recorded history. Looked at thus there was no shortage. It is plainly evident that in this lowest 10-year period that there was more than enough to meet the requirement of the Santa Fe Compact for the lower basin and for the Mexican Treaty and all other firm commitments, allowing 2,800,000 acre-feet annually out of the main stem of the Colorado for Arizona. Thus, their scarcity argument falls before a simple mathematical calculation.

OPPOSITION CAUSING LOSS OF WEALTH

The greatest inconsistency of the opposition, resulting in vast national loss, lies in the claim that there is a shortage of water in the Colorado River for American uses in the very face of the physical fact that from 9,000,000 to 10,000,000 acre-feet of that water during the past 5 years has annually gone out of the lower basin across the international line to Mexico. When that fact is called to

the attention of opposition witnesses they say that such is "surplus water" to which the upper basin States have a firm right but which they are not now using beneficially, because less than 3,000,000 of the 7½ million acre-feet of the waters allotted to the upper basin is presently being utilized. Of course, their answer in that respect is partly right but really fallacious, because it would account for less than half of the water now being wasted to Mexico. It is my opinion that not less than 2,000,000 acre-feet of that water now being wasted to Mexico as just described belongs in firm supply and legal apportionment to Arizona lands.

It is a conservative estimate that 1 acre-foot of water in 12 months applied to land in southern Arizona will produce \$20 worth of cash crops. Please note that figure, 1 acre-foot of water applied yearly in that region equals \$20 in cash products. The record of the great irrigation projects in Arizona for many past years will amply verify that such is a conservative estimate. If I am right, as I believe I am, that at least 2,800,000 acre-feet of Arizona's water, over and above any treaty commitment to Mexico, is flowing annually across the international border, that means that \$40,000,000 worth of wealth is annually flowing out of the apex of that funnel to Arizona's loss and the Nation's loss. Yet the opponents of this legislation are very reluctant to permit 600,000 acre-feet of such water in consumptive use in Yuma County, Ariz., as called for in H. R. 5434.

Looking beyond the scope of this bill and considering the 10,000,000 acre-feet of water which flows across the international border often in 1 year, we get some impression of the price we are paying, for what? We are paying it in small part for a good-neighbor policy, but in large part for a policy of blindness which is difficult to understand.

CALIFORNIA DEFENDANTS

Exhibit No. 7762

Identification: Admitted:

STATEMENT OF CHAIRMAN JOHN R. MURDOCK OF
ARIZONA, AUGUST 2, 1946, TO THE HOUSE
COMMITTEE ON IRRIGATION AND RECLAMATION
RE HEARINGS ON H.R. 5434, REAUTHORIZING
THE GILA PROJECT, 79TH CONG., 2D SESS.
(1946)*

* This statement was directed to the full committee following the close of hearings on H.R. 5434 and was included in the printed hearings. See Hearings on H.R. 5434 Before the House Committee on Irrigation and Reclamation, 79th Cong., 2d Sess., pt. 2, at 770-72 (1946).

August 2, 1946.

CONCLUDING STATEMENT OF CHAIRMAN MURDOCK, COMMITTEE ON
IRRIGATION AND RECLAMATION, HOUSE OF REPRESENTATIVES

To the Committee on Irrigation and Reclamation:

When it became apparent in June that the legislative schedule was so crowded that it would probably be difficult to continue hearings before the full committee on H. R. 5434, a subcommittee, consisting of Congressman White, Congressman Fernandez, Congressman Rockwell, and Congressman Phillips, with your chairman as chairman of that subcommittee, was appointed to finish the hearings. This subcommittee continued with the hearings almost until the time of adjournment. The testimony was so voluminous and much of it so intricate that it was difficult for the members of the subcommittee to formulate their ideas from the oral testimony alone, and as there was not time enough to get the printed hearings before the committee, no action was taken on this bill prior to adjournment.

The Bureau of Reclamation, Department of the Interior, sent several witnesses in support of the bill, the Department having previously made a favorable report on it. Also several competent witnesses from the State of Arizona appeared in support of the measure. However, very strong opposition was offered by several witnesses from California who opposed action on the measure "at this time" and indicated possible opposition at a subsequent date. The voluminous hearings will give Congress in detail the arguments for and against the proposal, but as chairman of the whole committee and also chairman of the subcommittee and author of the bill, I should like to give this informal report on our progress and at the same time I feel it may aid our study to outline some of the arguments both for and against the measure.

The sponsors and supporters of H. R. 5434, in the testimony included in the hearings, are asking that the existing authorized Gila project be reauthorized and modified so as to exclude some of the less desirable higher lands in the original authorization and include some better lands along the Gila River, which have formerly been tilled but are now in distress for lack of good water and which lack may only be supplied from the nearby Colorado River. Those favoring the measure are convinced that the completed project, under this new proposal, will require less than 600,000 acre-feet of water annually "in consumptive use," which was the amount formerly estimated for the 150,000 acres in the original authorization. In fact, it is certain that the new proposal will call for much less water to be diverted when completed than the original proposal would require.

The supporters of the bill are mindful that there is another project for Arizona, especially one known as the central Arizona water project, which should be considered in conjunction with the Gila project, whether the old or the new plan is followed through, and that both these projects together must call for no more water from the main stream of the Colorado River than is Arizona's rightful quota from the Colorado River. The supporters of the bill are convinced that both the reauthorized Gila project, calling for a "consumptive use" of less than 600,000 acre-feet, and the proposed central Arizona water project, calling for a "consumptive use" of 1,100,000 acre-feet annually, can both be developed by the Bureau of Reclamation and still keep safely within the total firm supply of Arizona's water out of the main stem of the Colorado River.

This total development in Arizona, they maintain, is possible both from the physical standpoint of water in the Colorado River furnished by nature and made available by the hydraulic engineers and also within the legal provisions of the various statutes, covenants, and legal instruments governing the development of the river.

The recently ratified water treaty with Mexico must be taken into consideration in the development of the Colorado River Basin. The supporters of H. R. 5434 are convinced that the changes sought in the Gila project area will have a material bearing on the fulfillment of the Mexican Water Treaty, enabling the furnishing of approximately 1,000,000 acre-feet of water annually to Mexico as a part of the treaty requirement but not until after such water has been used to irrigate land in the State of Arizona. This is as it should be, rather than to furnish all of the water requirements of the Mexican Treaty out of storage on the river and before it has been used for irrigation in our country. A failure to enact H. R. 5434, or similar legislation, or a thwarting of any legislation to divert water from the main stem of the Colorado River into Arizona for irrigation purposes, will increase up to one and a half million acre-feet annually the supply of water which must be furnished to Mexico under the treaty from stored water on the river. That would greatly increase the cost of carrying out the treaty and result in a great

loss to the United States of America. With the enactment of H. R. 5434, a large part of the Mexican water burden can and will be met by return flow from Arizona land. However, it cannot be met by return flow from water diverted into California through the All-American Canal.

What are the points of opposition? The chief arguments against this or any similar measure to put waters of the Colorado River on land in Arizona come from the users of Colorado River water in other States, more particularly the State of California, who deems such projects as detrimental to her water rights or uses. By virtue of the act passed by Congress in 1928, known as the Boulder Canyon Project Act, the waters of the Colorado River are now being diverted into California for municipal purposes, for irrigation, and for power production. Less than one-tenth of the amount of the present California diversion is now being diverted into Arizona, and H. R. 5434 would greatly increase the amount for Arizona. Witnesses from California are opposed to the contemplated diversion into Arizona on the further alleged grounds that there isn't water enough in the Colorado River to divert what Arizona is asking for without robbing the California diversion, which is now taking place.

In considering the question of amount which might be diverted into Arizona, the amount of water physically existing in the river must be considered and also the amount of water to which Arizona is legally entitled under certain legal instruments, such as the Santa Fe Compact of 1922, the Boulder Canyon Project Act of 1928, and the California Limitation Act of 1929, and several water contracts signed by the Secretary of the Interior, both with contracting parties in California and in Arizona. A study of all these legal instruments must be had to get an idea of the legal quantity of water Arizona may legally ask for out of the Colorado River under existing law.

The opposing witnesses indicate their opposition to the enactment of this bill "at this time" and imply that they would oppose any legislation to divert water onto Arizona land until there has been an authoritative determination of how much water is Arizona's legal quota from the main stream of the Colorado River. These witnesses regard H. R. 5434 as providing for a new project and say that enactment of it now is contrary to the recommendations of the recent report of the Bureau of Reclamation on Colorado River development. They contend that before any more water is diverted from the river there should either be a tri-State agreement among the three States of the lower basin or a judicial determination of each State's quota under existing law.

In arriving at that stand, the opposing witnesses contend that to divert about 600,000 acre-feet of water annually, or whatever would be required for the Gila project, would jeopardize California water uses and rights and would be contrary to the terms of law now existing regarding this matter. In keeping with their contention, the opposition witnesses hold that article III (b) of the Santa Fe compact does not apportion a million acre-feet of water in firm supply to the lower basin but that that quantity of water should be regarded as "surplus" under the terms of the compact and therefore subject to a 50-50 division between Arizona and California. This the witnesses supporting H. R. 5434 emphatically deny, as they read the Boulder Canyon Project Act and the Santa Fe compact.

The sponsors of this bill, H. R. 5434, contend that the spirit and intent of existing law, as embodied in the Santa Fe compact, the Boulder Canyon Project Act of 1928, and the California Limitation Act of 1929, is to the effect that Arizona is entitled to receive approximately 2,800,000 acre-feet of Colorado River water out of the main stem of that river, if it is physically available. They further contend that it is physically available and that the measurement records of the river, even during the driest 10-year period of the river's recorded history show that more than the physical volume necessary, and more than the compact requires to be let down to the lower basin, has actually passed Lee Ferry during the greatest drought period. This circumstance and fact show that the physical quantity of water passing Lee Ferry is greater and always has been greater than the legal requirement set forth in the Santa Fe compact, which the upper basin must not withhold from the lower basin. Therefore, planned diversion in the lower basin, including the two Arizona diversions referred to in the hearings, one being the Gila project, may safely be met up to the quantity of 75,000,000 acre-feet of water passing Lee Ferry in any 10-year period. More than that amount has always actually passed Lee Ferry in the driest 10-year period.

The sponsors of the bill—and this is my own personal opinion as author of the bill—contend that determination of the plain intent of existing law requires no judicial decision as to what Congress meant in 1928, nor is a tri-State compact needed, after the enactment of the California Limitation Act of 1929, to

determine the quota of each lower basin State. If existing law needs clarification, it is the province of Congress to supplement the many acts already passed and thus furnish Arizona projects their diversion from the Colorado River exactly as these other acts of Congress have already authorized and furnished California her diversions. Nothing more than such supplemental acts of Congress is needed, but the sponsors of this bill feel that these supplemental acts of Congress are urgently needed at once to save some of the staggering loss occasioned by the passing of 10,000,000 acre-feet of water annually across the border to Mexico instead of the one and one-half million acre-feet of water annually which the recent treaty called for for our neighboring republic. Therefore, as author of the bill, H. R. 5484, and as chairman of the committee, I urge the earliest possible consideration of this measure by Congress.

JOHN R. MURDOCK.

×

CALIFORNIA DEFENDANTS

Exhibit No. 7801

Identification: Admitted:

EXTRACTS FROM AN OPINION RENDERED TO THE
COLORADO RIVER COMMISSION OF ARIZONA BY
ARTHUR T. LAPRADE, ATTORNEY GENERAL OF
ARIZONA, AND CHARLES A. CARSON, SPECIAL
ASSISTANT, DATED JULY 12, 1933*

* These extracts were inserted in the
Congressional Record on July 2, 1935, by
Senator Hayden of Arizona during the debates
relating to the authorization for Head Gate
Rock Dam, the diversion structure for the
Colorado River Indian Reservation in Arizona.
79 Cong. Rec. 10624.

EXTRACTS FROM THE LAPRADE-CARSON OPINION

Would the State of Arizona have authority to build a dam across the main stream of the Colorado River above Boulder Dam, and divert waters therefrom for irrigation and power through ditches, tunnels, and other works across the public domain, without the consent of the Federal Government?

Congress in the Boulder Canyon Project Act, (c) and (d) of section 13, makes the use of any right-of-way, license or privilege necessary or convenient for the use of the waters of the Colorado River or its tributaries, upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries for which the same are necessary, convenient, or incidental and the use of the same, shall be subject to and controlled by said Colorado River compact. In view of the foregoing cases and decisions it is clear that Arizona could not construct a dam above Boulder Dam without agreeing to the conditions attached. It is provided in article 8 of the Colorado River compact:

"Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this contract. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the lower basin, then claims of such rights, if any, by appropriators or users of water in the lower basin against appropriators or users of water in the upper basin shall attach to and be satisfied from water that may be stored not in conflict with article III.

"All other rights to beneficial use of waters of the Colorado River system shall be satisfied solely from the water apportioned to that basin in which they are situate."

It is thus apparent that the use of water in the lower-basin States is, according to the terms of the Colorado River compact, limited to that apportioned in article III (a) to 7,500,000 acre-feet per annum and article III (b), 1,000,000 acre-feet per annum included for the Gila River. Arizona, of course, is not bound by the terms of the Colorado River compact, not having ratified the same; but according to the condition attached to the rights-of-way, the use of such waters would be subject to the Colorado River compact although not ratified by the State of Arizona, and the total use of water in the lower-basin States, as defined by the Colorado River compact, would be limited as above set forth.

For the foregoing reasons, it is my opinion that your question must be answered in the negative, and that the State of Arizona does not have the legal right to build a dam across the main stream of the Colorado River, above Boulder Dam, and divert waters therefrom for irrigation and power, through ditches, tunnels, and other works across the public domain, without the consent of the Federal Government.

Yours very truly,

ARTHUR T. LAPRADE,
Attorney General.
CHAS. A. CARSON, Jr.,
Special Assistant.

CALIFORNIA DEFENDANTS

Exhibit No. **7802**

Identification: Admitted:

MEMORANDUM BY JAMES R. MOORE, SPECIAL
ASSISTANT ATTORNEY GENERAL FOR ARIZONA,
DATED JULY 1, 1935*

* This memorandum was inserted in the Congressional Record on July 2, 1935, by Senator Hayden of Arizona during the debates relating to the authorization for Head Gate Rock Dam, the diversion structure for the Colorado River Indian Reservation in Arizona. 79 Cong. Rec. 10623-24.

HEAD GATE DAM, ACROSS COLORADO RIVER IN ARIZONA

SENATE AMENDMENT TO H. R. 6732

1. The project and its purposes: Head Gate Rock Dam, the canal and incidental works, are designed to divert and use 500,000 acre-feet of Colorado River water per year for irrigation of 100,000 acres of Colorado River Indian Reservation in Arizona, about 150 miles south of Boulder Dam. Six thousand acres of this land are now under irrigation. None of it is in private ownership nor subject to entry or purchase.

The Indian Service plans to make the reclaimed reservation available for settlement by such members of the Navajo and other tribes as may elect to remove from their present locations, large areas of which have become barren and unproductive on account of erosion due to overgrazing.

2. The United States relation to the Colorado River compact: Article VII of the compact reads:

"Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."

By subsection (b) of section 13 of the Boulder Canyon Project Act, which ratified the compact, it is provided:

"(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact."

By paragraph (a) article III of Colorado River compact, the "exclusive beneficial consumptive use of 7,500,000 acre-feet of water" of the Colorado River per annum, in perpetuity, are apportioned to the upper-basin States, consisting of Colorado, New Mexico, Utah, and Wyoming, and the lower-basin States, consisting of California and Nevada, respectively.

As the United States, by the provisions of subsection (b) of section 13, Boulder Canyon Project Act, above quoted, agreed to be bound by the division of the waters of the Colorado as apportioned between the upper- and lower-basin States by the Colorado River compact it, in effect, became and is a party to that interstate treaty.

Therefore, it cannot draw upon water apportioned to upper-basin States for irrigation of public or Indian lands in Arizona, California, or Nevada, nor acquire any priority of right against the upper-basin States by a priority of use in the lower-basin States or in Arizona.

3. Arizona and the compact: While Arizona is named in the compact as a party and is designated as one of the lower-basin States, its legislature declined to ratify the treaty and accordingly it is not a party to it and its name, wherever it appears therein, should be disregarded.

4. Nevada and the compact: Due to topographic conditions, Nevada cannot economically put to use more than 300,000 acre-feet per year of Colorado River water.

CONGRESSIONAL RECORD—SENATE

5. California and the compact: Pursuant to the requirements of subsection (a) of section 4 of the Boulder Canyon Project Act, California, by act of its legislature, agreed "irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, that the (its) aggregate annual consumptive use (diversions less returns to the river) of waters of and from the Colorado River shall not exceed 4,400,000 acre-feet of the waters apportioned to the lower-basin States by paragraph (a) of article III of the Colorado River compact (7,500,000 acre-feet per year) plus not more than one-half of any excess or surplus waters unapportioned by said compact." The unapportioned water is estimated to be 1,500,000 acre-feet annually.

Hence, with California legally and Nevada topographically restricted to aggregate annual uses of 4,700,000 of the 7,500,000 acre-feet per year apportioned to the lower basin by paragraph (a) of article III of the compact, plus one-half of unapportioned waters, the remainder of the water so apportioned, amounting to 2,800,000 acre-feet per year plus one-half of the excess or surplus unappropriated water, estimated at 750,000 acre-feet per year, can be used in the United States only for irrigation of public and Indian lands in Arizona. There are no lands in private ownership in that State to which the water can be economically applied.

Therefore, unless so used, the water apportioned to the lower basin which California may not and Nevada cannot use, aggregating 3,550,000 acre-feet per year, necessarily will flow down the river, after generating power at Boulder Dam, and be available for use on about 1,000,000 acres of irrigable land in Mexico, just below the border.

A conservative, capital value of this water, with the regulated flow provided by Boulder Dam, for irrigation in Mexico is \$25 per acre-foot or a total value of \$88,750,000. Its value for use in the United States is twice as much.

The upper-basin States apparently would prefer to present this water to Mexico, free of charge, rather than to have it used in the United States. Such a gratuity was not intended by the Colorado River compact or by Congress.

JAMES R. MOORE,

Special Assistant Attorney General for Arizona.
WASHINGTON, D. C., July 1, 1935.

CALIFORNIA DEFENDANTS

Exhibit No. 7851

Identification:

Admitted:

LETTER FROM CHIEF ENGINEER R. F. WALTER,
BUREAU OF RECLAMATION, TO COMMISSIONER
[JOHN C. PAGE], DATED JUNE 10, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records 1902-45

Colorado River Project

Selected Pages from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June, 1960.

Wayne C. Grover

Archivist of the United States

By Charles W. Adams

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CUSTOMHOUSE
DENVER, COLORADO

ADDRESS ALL COMMUNICATIONS TO
THE CHIEF ENGINEER

301.5-
COLORADO RIVER

OFFICE OF THE CHIEF ENGINEER

June 10, 1937.

From Chief Engineer
To Commissioner
Subject: Arizona investigations.

6/11
W.E. [unclear]
[unclear]
[unclear]
W.H. Preston.

1. Reference is made to your letter of May 15, 1937, to Mr. Albert Stetson of Phoenix, Arizona, in the second paragraph of which you state;

Legal

"I have felt for some time that an impartial investigation should be made of the high-line proposal in order that its merits could be determined and the people of Arizona fully informed with regard to them."

2. Reference is also made to your letter of May 29, 1937, to Mr. Bert Caudry of Yuma, Arizona; with regard to the various diversion schemes in Arizona. No doubt if the investigations could be based on recognition of the Colorado River Compact and Boulder Canyon Project Act as controlling, the results of the investigations would be likely to "settle forever the feasibility of these plans" as you have stated, even though the existing Boulder Dam be ignored. There are, however, certain features which are apt to prove troublesome.

3. Some Arizona interests, and particularly those who have apparently been able to control the actions of Governor Stanford, will insist that the investigation be based on their conception of Arizona water rights on the Colorado River. Among the conditions likely to be urged as the proper basis of the investigation are the following:

- (a) That the water rights for Arizona diversion date back to about 1920 or earlier, when Arizona interests first urged the high-line plan.
- (b) That the Colorado River Compact and the Boulder Canyon Project Act must be ignored.

Copy 301.-Arizona

JUN 14 '37 48/28

- (c) That Arizona diversions will have a priority as of about 1920 against all projects both upstream and downstream and therefore ahead of the Coachella Valley and the Metropolitan Aqueduct.
- (d) That the prior Imperial Valley and Yuma Project rights be supplied from return flow to come down the Gila River as a result of new developments with Colorado River waters.

4. The plans of the proponents of the project have always contemplated the development of all power possible in the transit of Colorado River waters from the level of Lee's Ferry Reservoir at elevation of about 3900 to the level of the Gila River at Phoenix, with an elevation of 1000. A surprising amount of power would thus be possible of development. While the physical difficulties of the proposed reservoirs and tunnels must be recognized, it would not be at all surprising if the project as a whole might show financial feasibility provided Arizona is granted the lion's share of Colorado River waters, and a favorable viewpoint is taken with respect to use in Arizona of the developed power.

5. The alternative high-line diversions in the vicinity of Bridge Canyon would likely prove less desirable except as they are nearer the southern California power market and provide better opportunities for marketing power.

6. You will no doubt recall the report of 1922-23 by the Arizona Engineering Commission consisting of Messrs. LaRue, Preston, and Turner. That report presents a reconnaissance of some of the diversion schemes, but the difficulties connected with them will no doubt be found to be considerably greater than the report shows.

7. The object of this letter is to bring to your attention the probability that an investigation along the lines you have suggested will be marked by bitter controversies with Arizona interests who have consistently fostered the high-line diversions, and without in the end helping the situation. It is so axiomatic that the proposed high-line project is utterly infeasible unless the rights of the Boulder Canyon Project are ignored, that the expense of an investigation to develop this fact would be a waste of money. On the other hand, to proceed with an investigation on the

assumption that Boulder Dam and Power Plant and the Metropolitan Araduct are to be left "high and dry" would be unthinkable. Under these conditions it is difficult to see how any useful purpose would be served by an engineering investigation, which would have to be predicated on assumptions as to the relative legal rights of Arizona and the other six states which can only be determined in the courts. Furthermore, any participation by the Bureau in such an investigation would carry an implication of recognition of Arizona's right to develop the Colorado River without regard to the rights of the other states under the Six-State Compact, and would no doubt be bitterly resented by the other Basin States. These points should be carefully considered before the Bureau is committed to participation in the proposed investigation.

G. F. Walter

In dupl.

CALIFORNIA DEFENDANTS

Exhibit No. 7852

Identification: Admitted:

LETTER FROM COMMISSIONER JOHN C. PAGE
TO CHIEF ENGINEER R. F. WALTER, BUREAU
OF RECLAMATION, DATED JUNE 17, 1937

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RC 115

General Administrative and Project Records 1902-45

Colorado River Project

Selected Pages from File #301.5 - Arizona Rightline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 1960.

Wayne C. Grover
Archivist of the United States

By *John H. [illegible]*

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

JCP:kt

JUN 17 1937

FROM: Commissioner
TO: Chief Engineer, Denver
SUBJECT: Arizona investigations.

1. Your letter of June 10, 1937, discusses at length the possibility of participation by the Bureau in the study of the high-line plans for the state of Arizona, and you question the advisability of such participation.

2. Perhaps I should have informed you more fully as to what events led to the statements to which you refer. At the time of the Governor's visit, he and Senator Hayden called at this office and under the urging of the Senator the Governor admitted that there should be a final determination as to the possibility of developing Arizona lands with Colorado river water.

3. I recognize that none of these developments can be accomplished without encroaching on the water rights described in the compact, but from the view taken by Arizona that the priorities established in 1916 controlled the water in that state, a refusal to further consider the matter is of no effect. It was stated definitely to the Senator and to the Governor that probably little could be accomplished by a more comprehensive review of the physical and financial data concerning these projects because of the water right situation, but Senator Hayden was insistent that much good would be accomplished if the Bureau was in a position to make a positive statement that the project was infeasible from both the standpoint of water rights and the cost of construction.

4. The Governor stated that \$25,000. had been appropriated by the Legislature for a report on these projects, and under Senator Hayden's urging admitted that an opinion from the Bureau would be of advantage to settle the controversy. Under the urging of the Senator the Governor finally suggested that any work done by the state be reviewed as to cost estimates

and plans by the Bureau. I told them definitely that I was not optimistic but that if the state would ask for such service we would try to state an opinion as to the adequacy of the estimates and as to the engineering features of the plans. I stated definitely, however, that a formal application must be furnished before any commitment is made, and I do not anticipate that this request will ever be made.

5. My letters to Mr. Condy and Mr. Stearns were written with the idea of trying to arouse sentiment in the state for a fair and impartial report from the state itself. Even if the request is made I feel confident that the matter can be so handled that no fuel will be added to the controversy, but some beneficial influence may be exerted within the state. I might say further that no commitment will be made, nor will any plans be made without full consideration of the situation, of which I am quite fully aware.

John C. Page

CALIFORNIA DEFENDANTS

Exhibit No. 7853.

Identification: Admitted:

TELETYPE FROM COMMISSIONER OF RECLAMATION
H. W. BASHORE TO BUREAU OF RECLAMATION,
DENVER, COLORADO, DATED MARCH 31, 1944;
RESPONDING TO THE SUPPORTING DOCUMENT,
TELETYPE NO. D 3007 FROM [E. B.] DEBLER
{BUREAU OF RECLAMATION, DENVER, TO
COMMISSIONER, WASHINGTON, D.C.}, DATED
MARCH 31, 1944

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

1-480
November 1949

United States of America

DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.

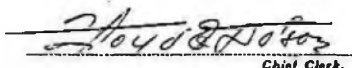
MAY 20 1950

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify that each annexed paper is a true copy of a document comprising part of the official records of the Department of the Interior:

Teletype from Dehler to Bureau of Reclamation, dated March 31, 1944, and reply from Commissioner Bashore, dated March 31, 1944 concerning 3B water in Colorado River.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, on the day and year first above written.


Chief Clerk.

TELETYPE MESSAGE

223.02 -
COLORADO RIVER

DATE 3-31-44

TIME (DO)

OPERATOR

D - 3007

RE W-3109. ARIZONA WILL ULTIMATELY UTILIZE
ALL GILA RIVER WITH NEGLIGIBLE RARE SPILLS.
WILL APPRECIATE YOUR CONCLUSION WHETHER THERE
CAN BE ANY 3B WATER IN COLORADO RIVER AND ITS
PRIORITY IN RELATION TO MEXICAN TREATY WATER,
CONSIDERING ARTICLE III COLORADO RIVER COMPACT
AND SECTION 4 FOULDER CANYON PROJECT ACT.

/s/ DEBLER

File 032-5 (Gen.)

~~MAR 31 1944 47659~~

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON

OFFICE OF THE COMMISSIONER

Washington, D. C.
MARCH 31, 1944.

Reclamation - Denver, Colorado.

Re D 3007. Conclusion whether there can be JB water in main Colorado River Channel involves interpretation of Compact which can only be done authoritatively by courts. Concerning priority of JB waters and Treaty water Section 3C of Compact provides treaty waters shall be supplied first from waters which are surplus over and above JA and JB waters. Your studies should be on bases to show situation under alternative interpretations of compact. Second paragraph of Section 4A Bureau Canyon Act is only authorization for Arizona, California and Nevada to enter into agreement in accordance therewith which has never been carried into effect.

H. R. Ransom
RANSOME



CALIFORNIA DEFENDANTS

Exhibit No. 7854

Identification: Admitted:

MEMORANDUM FROM DIRECTOR, BRANCH OF PROJECT
PLANNING, TO REGIONAL DIRECTOR, BOULDER CITY,
NEVADA, BUREAU OF RECLAMATION, ENTITLED
"WATER AVAILABLE FROM COLORADO RIVER FOR
CENTRAL ARIZONA PROJECT--LOWER COLORADO
BASIN," DATED MARCH 24, 1945; WITH ENCLOSURE
DATED MARCH 23, 1945

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records 1902-45

Colorado River Project

Selected Pages from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 1960...

Wayne C. Grover
Archivist of the United States

By Philip W. Holloman

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

2076 -
COPIES OF RECORDS

From Director

BRANCH OF PROJECT PLANNING

MAR 24 1945

To

Regional Director, Boulder City, Nevada

Customhouse, Arizona Highway Council

Subject: Water available from Colorado River for Central Arizona Project, Lower Colorado Basin.

1. For your use in study of the problem enumerated in the subject of this letter, there is enclosed a copy of a memorandum prepared in this office which discusses some of the complications involved.

2. It is hoped that this memorandum will be useful to you in your consideration of the problem.

Encl.

CC-Commissioner

JOHN R. BERRY

Engr. Vaud E. Larson,
P.O. Box 2071, Phoenix, Ariz.
Cons. Engr. John C. Page,
c/o Reg. Dir., Salt Lake City, Utah
Reg. Counsel, Los Angeles, Calif.
(with copy memo to each)

Denver 2, Colorado, March 23, 1945.

PROJECT PLANNING

MEMORANDUM:

Subject: Water available from Colorado River for Central Arizona Project - Lower Colorado Basin.

1. The preliminary report now being prepared in the regional office is being based on the assumption of an annual diversion from Colorado River of 2 million acre-feet, with the further assumption that a capacity of 3,000 second-feet will be provided in the aqueduct to permit this diversion to be made during a period of 11 months. Ultimately the State of Arizona must decide how much of its Colorado River water it will elect to use in central Arizona and how much on other prospective developments within the state, but as a basis of that decision they desire to have a report and a preliminary estimate of cost for the Central Arizona Project. For a first trial, the tentatively selected capacity appears satisfactory. Prior to preparing construction plans we will wish to review this problem in greater detail and discuss it with Arizona. The purpose of this memorandum is to discuss some of the problems incident to determining the amount of Colorado River water available for diversion to Central Arizona.

Arizona contract

2. Article 7 of the contract between the State of Arizona and the Secretary of the Interior dated February 9, 1922, provides:

"(a) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver to Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, . . . so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet.

"(b) The United States also shall deliver from storage in Lake Mead for use in Arizona, . . . one half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under said compact and said act, less such excess or surplus water unapportioned by said Compact as may be used in Nevada, New Mexico, and Utah in accordance with the rights of said states as stated in subdivisions (f) and (g) of this Article."

"(d) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such

reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said Compact and said Act."

"(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery . . . of 300,000 acre-feet of the water apportioned to the lower Basin by the Colorado River Compact, and in addition thereto to make contract for like use of 1/25 of any excess or surplus waters available in the lower Basin and unapportioned by the Colorado River Compact . . ."

"(g) Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the lower Basin and also water unapportioned by such Compact, and nothing contained in this contract shall prejudice such rights."

Colorado River Compact

3. Article III of the Colorado River Compact reads, in part, as follows:

"(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

"(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre-feet per annum."

"(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); . . ."

"(d) The states of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this Compact."

4. The Compact is written in quite general language and there is no universal agreement on the meaning of some of its terms. One point at issue concerns III(b) water. Arizona contends that the allocation of 1,000,000 acre-feet was made to the Lower Basin in recognition of Arizona's existing use of the waters of the Gila River. On the other hand, California claims a right to part of III(b) water. Various other disinterested parties who

were familiar with the negotiation of the Compact state that III(b) water was definitely allocated for use in Arizona in recognition of the present depletions being made in that state of the Gila River.

5. There is also some controversy in connection with the measure of Arizona's use from the Gila River. Arizona's position is that her charge should be based on depletion of the virgin flow at the mouth of the Gila River. Others suggest that the charge to Arizona should be based on the formula "diversion minus return flow to the Gila River." Calculations made by the Bureau of Reclamation show the following average figures for the period 1895-1943 inclusive:

Virgin inflow to Phoenix Region from all tributaries . . .	2,280,000 A.F.
" flow Gila at Gillespie Dam	1,750,000 A.F.
" " Gila at mouth	1,300,000 A.F.
Estimated future flow Gila at mouth	100,000 A.F.
(exclusive of return flow from Colorado River water diverted to Gila Basin)	

6. Arizona would certainly very strenuously resist an assumption that her charge under the Compact due to use of Gila River water should be 2,180,000 acre-feet annually, but might consent to recognition of a charge of Gila River use of 1,200,000 acre-feet (virgin flow at mouth minus estimated future flow at mouth). With this assumption, the basic amount of firm water available under Article 7(a) of the Arizona contract would be limited by the Colorado River Compact to 2,600,000 acre-feet as follows:

III(a) and (b) to lower basin 8,500,000 A.F.

Less

California limitation	4,400,000 A.F.	
Nevada contract	300,000 A.F.	
Use of Gila River	1,200,000 A.F.	5,900,000 A.F.

Net available for 7(a) of contract 2,600,000 A.F.

7. Despite the calculations shown in paragraph 6, it is Arizona's contention to secure 2,800,000 acre-feet of III(a) water from the Colorado River.

Mexican Use

8. The Treaty dated February 3, 1944, guarantees to Mexico 1,500,000 acre-feet annually of Colorado River water at the Mexican Boundary. In years when there is a surplus of water, Mexico will be permitted to use an additional 200,000 acre-feet. In years of extraordinary drought, her uses will be reduced in proportion to the reduction in uses within the United States. The Treaty

is now pending before the United States Senate for ratification. For the purpose of this study, it is assumed that Mexican uses of Colorado River water will be 1,500,000 acre-feet annually.

Surplus Water

9. Under one interpretation of the Colorado River Compact, the amount of surplus water would be very negligible. There are some people who believe that the Colorado River Compact grants United States users in the basin the right to deplete the virgin flow at the mouth by an average of 16 million acre-feet annually. On this assumption the surplus water would be as follows:

Average virgin flow at International Boundary		17,751,000 acre-feet		
Allocations:				
Upper basin III(a) of compact	7,500,000 a.f.			
Lower basin III(a) of compact	7,500,000 a.f.			
Lower basin III(b) of compact	1,000,000 a.f.			
Mexican delivery, treaty	<u>1,500,000 a.f.</u>	17,500,000	"	"
Surplus water		251,000	"	"

It is not known how the surplus water will be divided. The upper basin intends to make a claim for part of the surplus water. If the upper basin should claim 1/2 of the total surplus and the remainder should be divided 1/2 to California, 1/25 to Nevada, and the remainder to Arizona, the amount of surplus water accruing to Arizona would average 58,000 acre-feet annually.

10. By other interpretations of the compact, namely, that consumptive use represents diversion minus the return flow instead of stream depletion, the amount of surplus might be increased. In Mr. R. J. Tipton's testimony of February 14 before the Senate Foreign Relations Committee, it was indicated that there might be so-called "salvage water" by converting past channel losses to beneficial consumptive uses, possibly as follows:

Upper Basin Streams	400,000 acre-feet		
Lower " Main Stem	380,000	"	"
Gilv River	<u>470,000</u>	"	"
Total	1,250,000	acre-feet	

11. At the November 1944 meeting of the Committee of 14, Arvin B. Shaw, Assistant Attorney General of California, suggested that the surplus might be increased by applying Article III(a) of the Colorado annually instead of on an average basis. Following Mr. Shaw's suggestion I have made an analysis of the yearly virgin flows at Lee Ferry and find that if we use 15,000,000 acre-feet as the annual ceiling instead of the average for the upper and lower

basins the average annual amount of III(a) water available to each basin will be around 6,900,000 acre-feet instead of 7,500,000 acre-feet. Under this interpretation, it seems reasonable to assume that surplus water would be used to meet the upper basin obligation (III(d) of the Compact) to deliver 75,000,000 acre-feet in consecutive 10-year periods at Lee Ferry. On this basis, the average annual surplus water would be as follows:

Virgin flow at Boundary	17,751,000 A.F.
Salvaged channel losses	<u>1,250,000 A.F.</u>

Total water available (say) 19,000,000 A.F.

Allocations:

Upper Basin III(a)	6,900,000	
Lower Basin III(a)	6,900,000	
Lower Basin III(b)	1,000,000	
Lower Basin III(d)	600,000	
Mexico under Treaty	<u>1,200,000</u>	<u>16,900,000 A.F.</u>

Surplus water 2,100,000 A.F.

Equitable distribution of the surplus among various interests will be difficult. Assuming a 50/50 split between the upper basin and the lower basin, and the lower basin portion divided in the manner described in paragraph 9, Arizona's share would be 483,000 acre-feet. Subtracting from Arizona's share the 470,000 acre-feet of salvaged "Gila River-Channel losses," would leave only 13,000 acre-feet of surplus water from the main stem. If we should assume that the salvaged "Gila Channel loss" of 470,000 acre-feet be subtracted from the surplus and given exclusively to Arizona, before the remainder of the surplus (1,630,000 acre-feet) is divided, the amount of the Arizona surplus from the main stem of the Colorado River would average about 375,000 acre-feet per year. In summary, average surplus water divertible to Arizona under the February 9, 1944, contract might be said to range from 13,000 to 375,000 acre-feet annually.

Reservoir losses

12. The present and future reservoir losses on the main stem of the Colorado River are shown on page 243 of the draft of the Colorado River Report to be 870,000 acre-feet annually. Article 7(d) of the Arizona contract provides, "Such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said Compact and said Act." The present thinking among the Colorado River Basin states is that reservoir losses should be considered as part of the beneficial consumptive use. The exact amount to be proportioned to Arizona is not known, but one basis might be to charge her the fraction of the amount of her firm contract in proportion to the

other firm contracts in the lower basin, namely, 28/75. On this basis, the part of the reservoir losses to be charged against Arizona's contract would be about 325,000 acre-feet. Other bases for charging reservoir losses can be suggested; for example, Arizona might be charged with all of the Bridge Canyon loss and all of the Marble Canyon loss (as these are located exclusively within Arizona), and a proportionate amount of loss from Boulder Canyon, Bullhead, and Imperial Reservoirs, as these are common features on the river. She might not be charged with any of the loss from Navasu Lake. On this basis, the reservoir losses chargeable to Arizona would be about 360,000 acre-feet annually.

Uses in lower basin b- upper basin states

13. The present draft of the Upper Colorado Basin Report shows the following present and prospective future depletions in the Little Colorado Basin and the Virgin Basin in the States of New Mexico and Utah:

Present depletions	52,000 acre-feet annually
Estimated future depletion	115,000 " " "

Under one interpretation of Article 7(g) of the Arizona contract, it is conceivable that she would be charged for the full amount of this 115,000 acre-feet. However, Arizona will, no doubt, try to lessen the burden by taking the position that these uses, like reservoir losses, should be prorated among all lower basin states. It is conceivable that the lower basin might make an agreement with the upper basin whereby the entire use of upper basin states would be charged to the upper basin allocation above Lee Ferry. Hence, the amount charged against the Arizona contract by this item may range from zero up to 115,000 acre-feet.

Annual yield of contract

14. The following table shows the probable minimum and the probable maximum yield of water to Arizona under the 1944 contract:

<u>Feature</u>	<u>Minimum Acre-feet</u>	<u>Maximum Acre-Feet</u>
Article 7(a)	2,600,000	2,800,000
Surplus - 7(b)	13,000	375,000
Reservoir loss - 7(d)	- 360,000	- 325,000
Lower basin use in Utah and New Mexico 7(g)	- 115,000	None
Net	2,138,000	2,850,000

Present uses in Arizona

15. The present irrigation uses of Colorado River in Arizona (exclusive of Gila Basin) taken from Colorado River Basin Report are shown in the following table:

<u>Place of Use</u>	<u>Acreage Involved</u>	<u>Depletions of Colorado River Flow Acre-Feet</u>
Little Colorado Basin	39,200	59,000
Virgin Basin	2,800	5,000
Williams River	1,700	3,000
Colorado River Indian Project	5,000	20,000
Yuma Project	52,300	209,000
North Gila Valleys	<u>4,500</u>	<u>18,000</u>
Total	105,500	314,000

* Also includes small area on Yuma Mesa Project, which will be included in the Gila Project.

Possible future additional uses exclusive of Central Arizona

16. Possible future additional uses in Arizona exclusive of the Central Arizona Project are shown in the following table:

<u>Name of Project</u>	<u>(1)</u>		<u>(2)</u>	
	<u>Possible Minimum Development</u>		<u>Possible Maximum Development</u>	
	<u>Acreage New Land</u>	<u>Depletion of Colorado River Flow Acre-Feet</u>	<u>Acreage New Land</u>	<u>Depletion of Colorado River Flow Acre-Feet</u>
Snowflake	6,700	10,000	6,700	10,000
Holbrook	1,800	3,000	1,800	3,000
Black Creek	None	None	4,000	6,000
Winslow	"	"	19,800	29,000
Hurricane	"	"	3,000	13,000
Colorado River Indian	50,000	175,000	95,000	310,000
Mohave Valley	0	0	10,000	35,000
Gila Project*	<u>155,500</u>	<u>542,000</u>	<u>155,500</u>	<u>542,000</u>
Total	<u>214,000</u>	<u>730,000</u>	<u>295,800</u>	<u>948,000</u>

*This includes the north and the south Gila Valleys, the Yuma Mesa, and the Wellton-Mohawk Divisions. Actually, the maximum probable Gila Project would be a project of 585,000 acres, which would use all of the water supply available to Arizona.

- (1) Possible development with other Arizona uses reduced to minimum, with view of securing maximum amount of water for central Arizona.
- (2) Possible development with wide diversification in Arizona's uses - Gila Project restricted to minimum believed acceptable to Arizona interests, to make water available for central Arizona.

Return flow from Central Arizona Diversion

17. In our previous studies we have assumed that 25 percent of the water diverted to Central Arizona would appear as return flow to the Colorado River. The amount of this return flow is a highly controversial subject and was discussed quite at length in connection with the recent hearing on the Mexican Treaty. Some Arizona interests believed that there could be no return flow. In view of the probable future salinity of Colorado River water, there must be return flow, otherwise the Arizona lands will be ruined by heavy concentrations of alkali and will need be abandoned. The exact amount of return flow is a matter that will have to be determined from actual experience. In these studies, a return flow of 25 percent of diversions is assumed.

Water available for diversion to Central Arizona

18. Making due allowance for the probable yield of water under the Arizona contract, present and probable future uses, exclusive of the Central Arizona Project and return flow, the amount of water available for diversion to Central Arizona would be as follows:

Condition	UNITS - ACRE FEET			
	Probable Maximum		Probable Minimum	
	Yield under Contract		Yield under Contract	
	Other Uses	Other Uses	Other Uses	Other Uses
	held to	held to	held to	held to
	Minimum	Extensive	Minimum	Extensive
Net Yield of Contract	2,850,000	2,850,000	2,130,000	2,138,000
Present Uses	314,000	314,000	314,000	314,000
Available for future use in Arizona	2,536,000	2,536,000	1,824,000	1,824,000
Future use, exclusive of Central Arizona	730,000	948,000	730,000	948,000
Available for net use in Central Arizona	1,805,000	1,588,000	1,094,000	876,000
Return flow to Colorado River from Central Arizona	602,000	429,000	261,000	222,000
Diversion to Central Arizona	2,408,000	2,117,000	1,659,000	1,168,000

2,000,000
sums
als.

CALIFORNIA DEFENDANTS

Exhibit No. 7855

Identification: Admitted:

LETTER FROM JOHN C. PAGE, CONSULTING ENGINEER,
BUREAU OF RECLAMATION, TO COMMISSIONER OF
RECLAMATION, DATED MAY 24, 1945, WITH TWO
ENCLOSURES:

(1) MEMORANDUM FROM DIRECTOR, BRANCH OF
PROJECT PLANNING, BUREAU OF RECLAMATION, TO
REGIONAL COUNSEL, LOS ANGELES, CALIFORNIA, DATED
MAY 2, 1945; AND

(2) REPLY MEMORANDUM FROM REGIONAL COUNSEL
TO DENVER OFFICE, DATED MAY 5, 1945

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of
annexed copies, of each document listed below is a true copy of a document
in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RD 115

General Administrative and Project Records 1902-45

Colorado River Project

Selected Pages from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States,
have hereunto caused the Seal of the National
Archives to be affixed and my name subscribed
by the Chief Archivist, Social and Economic
Records Division of the National Archives,
in the District of Columbia, this 30th day
of June 1960.

Wayne C. Grover
Archivist of the United States
By W. C. Grover

CSH
Aug
(B)

10

301.57

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLORADO RIVER

Denver 2, Colorado

May 24, 1945.

Mr. H. W. Bashore,
Commissioner,
Bureau of Reclamation,
Washington 25, D. C.

Dear Mr. Bashore:

ARIZONA HIGHWAY CANAL O & M
Administrative

I recently returned from a rather long visit in Phoenix, and Vaud Larson spent last week in this office summarizing the estimates and making financial studies of the proposed Central Arizona Diversion. The estimates seem to be in good order and it was possible to make a preliminary financial study to compare the three routes. Before I left Phoenix Mr. Larson and I called again on the Governor and assured him that figures would probably be available for his consideration in June. It is hoped that this will permit study by Arizona and permit the selection of the most favored route.

10

You realize that three routes have been studied and estimates prepared on the cost of delivering Colorado River water to a point on the Salt River above Granite Reef Dam. These routes are the Marble Canyon-Verde River involving a dam in Marble Canyon, a tunnel 14.3 miles long, some of which is under 5,000 feet of cover, dumping into Verde River where a series of plants will generate power. The second proposes to divert at the Bridge Canyon Dam and flow by gravity through a tunnel 87 miles long and in lined canals for about 150 miles or more. The third proposes pumping 1,040 feet from the reservoir above Parker Dam into a lined canal delivering above Granite Reef.

All of these estimates are based on diverting 2,000,000 acre-feet in 11 months with a design capacity of tunnels and conduit of 3,000 c.f.s. A rather hasty summation of these estimates reveals that all three resulted in a cost-to-benefit ratio almost identical for these routes. For all of them the cost-to-benefit ratio is substantially 1:1. In other words, no one route has any outstanding preference over any other as far as this cost-to-benefit ratio would indicate. In fact none of them looked particularly favorable. Because of this we decided to make up another set of estimates of a capacity of 1,500 c.f.s., or 1,000,000 acre-foot diversion.

After exploring the sentiment in Arizona I feared the use of only one water quantity. This would be interpreted as the Bureau's determination of the amount of water available to Arizona under the compact and the contract.

ACTION REQUIRED BY.....

6-2-45

L MAY 24 1945

2611

The results of these second estimates are not yet available but can be summarized in a few days. This may point toward the selection of a route. This selection is a hot subject because each plan is backed strongly by influential groups. The Senators and the Commissioner will be subject to heavy pressure as a result of this selection. Likewise California will scrutinize the estimates and the plans very closely especially if the diversion is to be made above Boulder Dam, so I foresee trouble when the public receives our recommendation. As a result it is our plan, subject to your approval, to discuss the whole question with the Governor of Arizona and his advisers as soon as the data are available. If the governor is willing to express his support of any one of these routes and it is satisfactory to you, a project report will be prepared covering the selected route. This project report would be as complete as possible and will include the additional work necessary to make the water useable on the areas needing it most. This will involve extra costs which have not yet been estimated. This will include the canal systems to reach the land below Granite Reef Dam and the other data for the areas to be served.

Actually I foresee that other factors will determine the project plan rather than the cost alone. Some of these controlling things which must be considered are the following:

- (1) The amount of water available to Arizona under the compact and contract.
- (2) The requirement to save Boulder power output without diminution as is now considered necessary by Mr. Coffey.
- (3) That Arizona will receive no credit for water returned to the river below Lake Mead, as Mr. Coffey also interprets the Arizona contract. This is expressed in his letter dated May 5, 1945. A copy of Mr. Ritter's letter and of Mr. Coffey's reply are enclosed.
- (4) The policy to be followed in the manner of amortization of power allocations. Power is a big factor in the repayment and the benefit from this project. The estimates so far have been made on the basis of the amortization of these amounts in 50 years with interest at 3 percent. This is in accordance with Mr. McPhail's preference and we all favor this policy. The Solicitor's Grand Coulee opinion causes some doubt as to which policy should be adopted.

These and many other questions will need settlement by your office and by the Department before this project can be ready for presentation to Congress for authorization. If your office has any ideas which would govern the procedures or policies, I will be glad to receive your advice.

Incidentally the Governor of Arizona plans to call the Legislature into session in June. One of the objects of the call is to pass some act which would control the underground water. He asked me to appear before this session to stress the need of legislation for this purpose. I agreed to come if you approved and I am warning you to expect such a request. If you think it wise to appear, I would like to take with me a few prints of the pictures of the destruction wrought by overpumping in the orange groves of Orange Cove and other parts of the San Joaquin Valley. They illustrate so well just what is certain to happen in the Casa Grande and other parts of Arizona.

I am sending this letter in order that you may be informed as to the progress being made and to permit you to think about some of the questions that will shortly come to you for settlement. As soon as the data are more nearly complete, we will submit a rather complete summary and a recommendation as to the selection of a route.

Very truly yours,


John C. Page,
Consulting Engineer.

Encls.

CC-Reg. Dir., Boulder City, Nev.
" " Salt Lake City, Utah.
Engr. Vaud E. Larson,
P.O. Box 2071, Phoenix, Ariz.
Reg. Counsel, Los Angeles, Calif.
Chief Engineer.

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation
Branch of Project Planning
Customhouse
Denver 2, Colorado

JRR:RLC

MAY 2 1945

From Director

To Regional Counsel, Los Angeles, California.

Subject: Water available from Colorado River for Central Arizona Projects -
Lower Colorado Basin.

1. I appreciate very much your letter of April 27, 1945. but am not so sure that I understand the conclusions in view of the peculiar wording of paragraph 3, "Under the terms of Article 7(d) Arizona would not necessarily be charged with total diversion by it above Boulder Dam." Perhaps a simple illustration will assist me in understanding your meaning. You will recall, in the present draft of Colorado Basin Report, it has been assumed that annual diversion of 2,000,000 acre-feet to Central Arizona would be made at Bridge Canyon Dam site, which is located on the Colorado River upstream from Lake Mead. Our report also assumed that of the water diverted from the Colorado River at Bridge Canyon 500,000 acre-feet annually would return to the Colorado River below the Imperial Dam.

2. In view of the conditions described above we have assumed that the charge under the Arizona contract for the diversion to Central Arizona would be determined by the formula "Diversion minus return flow" and hence would be 1,500,000 acre-feet.

3. Article 7(d) contains the phrase "diminish the flow into Lake Mead." It is apparent from the conditions described in paragraph 1 that the project assumed in the basin report would diminish the flow into Lake Mead by 2,000,000 acre-feet. I now raise the question: Is our previous assumption of 1,500,000 acre-foot charge against the Arizona contract a proper one for this diversion? Should the Arizona contract be charged with 2,000,000 acre-feet since that is the amount by which the assumed diversion would diminish the flow into Lake Mead?

4. For my own peace of mind I would appreciate your consideration of these questions and such replies, comments, or observations as you are inclined to make thereon.

J. R. Riter.

CC-J.R.Riter.

(CC-H.W.Bashore, Commissioner,
Bureau of Reclamation, Washington 25, D.C.
By D.C.)

MAY 25 1945 32017

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Reclamation

620 Rowan Building, 458 South Spring Street,
Los Angeles 13, California.
May 5, 1945.

From Regional Counsel

To Denver Office (Attention: Director, Branch of Project Planning)

Subject: Water available from Colorado River for Central Arizona Projects -
Lower Colorado Basin.

1. Receipt is acknowledged of your letter dated May 2, 1945, advising you are not sure that you understand the conclusions stated in office letter of April 27, 1945, particularly because of the statement made in paragraph 3 thereof that "Under the terms of Article 7(d) Arizona would not necessarily be charged with total diversions b; it above Boulder Dam."

2. You state that in the present draft of the Colorado River Basin Report it has been assumed that annual diversion of 2,000,000 acre-feet to Central Arizona would be made at Bridge Canyon Dam site, located on the Colorado River upstream from Lake Mead, and that in the report it is also assumed that of the water diverted from the Colorado River at Bridge Canyon 500,000 acre-feet annually would return to the Colorado River below Imperial Dam. You then ask two questions, namely:

- (a) Is our previous assumption of 1,500,000 acre-feet charge against the Arizona contract a proper one for this diversion?
- (b) Should the Arizona contract be charged with 2,000,000 acre-feet since that is the amount by which the assumed diversion would diminish the flow into Lake Mead?

3. Article 7 (d) of contract between the United States and the State of Arizona dated February 9, 1944, provides:

"The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act."

In view of the provisions of Article 7 (d), answers to the two questions posed by you are:

- (a) No! Because your letter shows that the flow into Lake Mead is diminished to the extent of the entire diversion.
- (b) Yes, because the flow into Lake Mead is diminished to the extent of the entire diversion. There is no credit for water returning to the Colorado River below Boulder Dam.

4. Where, in letter of April 27, last, I stated "Under the terms of Article 7 (d) Arizona would not necessarily be charged with total diversions by it above Boulder Dam", I had in mind the possibility of a portion of the total diversion finding its way back into Lake Mead. As your letter indicates there would be no return flow into Lake Mead, then the total diversion at Bridge Canyon diminishes the obligations of the United States, to that extent, under the provisions of Article 7 (d) of the contract of February 9, 1944.

- - -

(Sgd.) Richard J. Coffey

cc - Regional Director, in triplicate
(with copies of Mr. Riter's letter, 5/2/45.)

(CC-B. J. Bashore, Commissioner,
Bureau of Reclamation, Washington 25, D.C.
by M.O.)

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7856

Identification:

Admitted:

LETTER FROM ACTING COMMISSIONER
KENNETH MARKWELL TO JOHN C. PAGE,
CONSULTING ENGINEER, RE "ARIZONA
HIGHLINE CANAL," DATED JUNE 16, 1945

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records 1902-45

Colorado River Project

Selected Pages from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June 1960.

Wayne C. Grover
Archivist of the United States

By Oliver W. Rothman

11
COLORADO RIVER

FIELD FILE

26, T. C.

Mr. John C. Page, Consulting Engineer,
Bureau of Reclamation,
Denver 2, Colorado.

Dear Mr. Page:

ARIZONA HIGHLINE CANAL

In the absence of Commissioner Bashore, I am replying to your letter of May 24, concerning the Central Arizona Project.

I think the plan to discuss the whole question of routes and relative costs and benefits with the Governor of Arizona is excellent. Such a course of action is in the full spirit of Section 1(a) of the Flood Control Act of 1944. It is my judgment that California should also be supplied information obtained during the investigations, since it is an affected State under the law.

In my opinion an adequate control of ground water in Arizona is quite important to the success of the Central Arizona Project and also to other future irrigation developments. I see no reason why you should not appear before the Arizona Legislature in support of the proposition that a ground water code is needed. Accordingly, if a request for you to appear before the Legislature is made of this office, it will be granted. It should be understood, of course, that your appearance before the Legislature should not be construed as an endorsement of specific provisions of the particular bill before it, which we have not had an opportunity to study. In that connection, you will no doubt wish to confer with Regional Counsel Coffey who made an analysis of the bill which was introduced in the last session of the Legislature in order that you may appropriately frame your testimony. In view of your statement that the Governor of Arizona is going to include the matter of a ground water code in his call for a special session, Regional Counsel Coffey is, by copy hereof, requested to communicate with Mr. J. C. Williams in order to discuss with him the suggestions and proposed changes in the former bill discussed in Mr. Coffey's letter of April 20. For your information, a copy of Mr. Coffey's letter of April 20 and Commissioner Bashore's reply thereto, dated May 10, will be found in the files of the Branch of Project Planning at Denver. If you have not already done so, it is suggested that you study the aforementioned letters, particularly, Mr. Coffey's letter of April 20.

The following comments are directed at the points annotated on page 2 of your letter:

1. Points (1) and (3)—I believe that it must be kept in mind that the exchange of correspondence between Mr. Lister and Mr. Coffey appears to be confined solely to Arizona's rights to Lake Mead storage.

under the contract of February 9, 1944. Article 7(a) of that contract grants to Arizona annually out of Lake Mead storage (subject, of course, to availability under the Project Act and Compact), so much water as is necessary for the beneficial consumptive use of a diversion of 2,000,000 acre-feet. Article 7(d) provides that the obligation of the United States to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses (i.e., diversions less returns to the river) in Arizona above Lake Mead diminish the flow into Lake Mead. Mr. Coffey's construction of Article 7(d), in which I concur, simply means, in my opinion, that under the facts stated in Mr. Ritter's letter of May 2, the United States, under the contract of February 9, 1944, will be credited with 2,000,000 acre-feet against its obligation to deliver water from Lake Mead storage under that contract. However, that contract is, of course, subject to the Compact. Under the Compact, Arizona may well have additional rights to Colorado River water beyond the contract, in that Arizona's Compact rights are not limited to Lake Mead storage. If we assume that the term "beneficial consumptive use" as used in the Compact means diversions less returns to the river, Arizona would not be charged under the Compact with the beneficial consumptive use of water which it diverted above Lake Mead and returned to the river below Lake Mead, even though by virtue of Article 7(d) of the contract, the full amount of such a diversion is chargeable against the obligation of the United States to deliver water under the 1944 contract. Thus, I do not believe that Arizona's Compact rights are threatened or affected adversely by our interpretation of the Arizona contract, even though the entire Arizona diversion takes place above Lake Mead, and return flow enters the river solely below Lake Mead. The comments of Mr. Coffey and Mr. Ritter, as well as your own on this point, are invited.

2. Point (2)—No doubt you have received a copy of Mr. Coffey's recent letter to this office concerning this point. By separate letter to Mr. Coffey, we are requesting him to revise this matter and a copy of that letter is being sent to you.

3. Point (4)—The Solicitor's opinion in the Grand Coulee power revenue matter does not of itself necessitate any departure from the policy inherent in the estimate so far made on the Central Arizona Project. If the policy of amortizing the power investment in 50 years at 3 percent interest is desirable, we are not required to depart from that policy by virtue of the Solicitor's opinion. The Solicitor's opinion was concerned with the minimum requirements of Section 9(e) of the Reclamation Project Act of 1939. It does not purport to prevent the Secretary from following a policy (such as full amortization in 50 years with interest at 3 percent should that be determined to be appropriate) which would return revenues greater than that minimum.

One other comment upon your letter seems to me to be appropriate. I recognize, as did you, in the 4th paragraph of your letter, the danger that the use of only one water quantity might be interpreted as a determination on the part

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

of the Bureau as to the amount of water available to Arizona under the Compact and under the contract. As pointed out above it is my view that the amount of water available to Arizona under the Compact is not necessarily limited by the amount of water available to Arizona under the contract. I think also that in order to obviate any such possible implication in reports and discussions, care should be taken to explain that statements concerning the quantity of water to be made available in Arizona through the Central Arizona diversion project are not to be construed as an expression of opinion on the part of the Bureau as to Arizona's maximum rights under the Compact. As you know, those rights have not as yet been determined and they can be neither increased nor reduced by any action on our part. This same observation applies throughout the Colorado River basin.

Very truly yours,

Samuel H. Hays
Samuel H. Hays,
Acting Commissioner.

Copy to Mr. Hays, Boulder City, Nev.
Mr. Coun., Los Angeles, Calif.

STANDARD FORM NO. 64
Office Memorandum - UNITED STATES GOVERNMENT

TO : Chief Counsel *EW*
FROM : J. W. Dixon, Engineering Assistant
SUBJECT: Reply to Mr. Page's letter upon the Central Arizona Project.

DATE: May 31, 1945

You will find attached Mr. John C. Page's letter of May 24, 1945 to the Commissioner reporting on progress on the Central Arizona Project. There is also attached a start of a reply to Mr. Page. Since many questions and suggestions discussed by Mr. Page have a legal implication and also are quite closely related to work that your Division has been engaged in the past few months, I believe that you can add materially to the reply to Mr. Page.

J. W. Dixon
J. W. Dixon,
Engineering Assistant.

Attach.

*Returned with additinal by Wenberg
on 6/7/45 to be incorporated in the reply.
Letter shall be routed through Legal.
cc Riter + Page + Larson.*

CALIFORNIA DEFENDANTS

Exhibit No. 7857

Identification:

Admitted:

MEMORANDUM FROM DIRECTOR, BRANCH OF
PROJECT PLANNING, TO COMMISSIONER OF
RECLAMATION, ENTITLED "REPORT ON
CENTRAL ARIZONA PROJECT--COLORADO
RIVER BASIN," DATED JUNE 25, 1945

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

Document # A-68

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of
annexed copies, of each document listed below is a true copy of a document
in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records 1902-45

Colorado River Project

A Selected Page from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States,
have hereunto caused the Seal of the National
Archives to be affixed and my name subscribed
by the Chief Archivist, Social and Economic
Records Division of the National Archives,
in the District of Columbia, this 30th day
of June 1960.

Archivist of the United States

By _____



301
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BRANCH OF PROJECT PLANNING
Customhouse
Denver 2, Colorado

Commissioner	
Asst. Comm'r.	
Waine	
Asst. Comm'r.	
Information	
Liaison	
Management	
Legal	
Finance	
Power Div.	
For Asst.	
O & M	
Administrative	
Personnel	

From Director

To Commissioner

ARIZONA RIVERLINE CASE

Subject: Report on Central Arizona Project - Colorado River Basin.

1. Reference is made to Acting Commissioner Markwell's letter of June 16, 1945, to Consulting Engineer John C. Page on this subject.

2. The second paragraph of Mr. Markwell's letter reads, in part, as follows:

"It is my judgment that California should also be supplied information obtained during the investigations, since it is an affected State under the law."

3. I believe that our obligations under the law go further than the State of California in that all seven states within the Colorado River Basin are affected by any development elsewhere on that basin in view of the Colorado River Compact. In recognition of this fact the committees of 14 and 16 were organized to receive and discuss reports from all Federal agencies and others regarding plans for development and utilization of the water resources of the Colorado River Basin. Hence, I believe that we should advise all states of our investigation plans through the medium of the committees of 14 and 16.

4. I agree with Mr. Markwell's observation on points one and three of Mr. Page's letter, and also with the expression in the last paragraph of his letter which reads, in part, as follows:

"... Care should be taken to explain that statements concerning the quantity of water to be made available in Arizona to the Central Arizona diversion project are not to be construed as an expression of opinion on the part of the Bureau as to Arizona's maximum rights under the Compact. As you know, these rights have not as yet been determined, and they can be neither increased nor reduced by any action on our part . . ."

CC-Reg. Dir., Boulder City, Nev.
Reg. Counsel, Los Angeles, Calif.
Reg. Dir., Salt Lake City, Utah.
Reg. Counsel, Salt Lake City, Utah
Dir., P.D., Denver, Colo.
Reg. Vaude E. Larson,
P.O. Box 2071, Phoenix, Ariz.
(with copy of Mr. Markwell's letter)

John R. Peter

CTION REQUIRED BY.....

JUN 25 1945

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7858

Identification: Admitted:

MEMORANDUM FROM JOHN C. PAGE, CONSULTING
ENGINEER, TO COMMISSIONER OF RECLAMATION,
ENTITLED "WATER SUPPLY APPENDIX FOR
SELECTION [OF ROUTES] REPORT--CENTRAL
ARIZONA PROJECT," DATED JUNE 29, 1945

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

THE NATIONAL ARCHIVES



To all to whom these presents shall come, Greeting:

I Certify That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

Records of the Bureau of Reclamation, RG 115

General Administrative and Project Records 1902-45

Colorado River Project

A Selected Page from File #301.5 - Arizona Highline Canal

In testimony whereof, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Social and Economic Records Division of the National Archives, in the District of Columbia, this 30th day of June, 1960.

Archivist of the United States

By



UNITED STATES
DEPARTMENT OF THE COLORADO RIVER
BUREAU OF RECLAMATION

Customhouse
Denver 2, Colorado

JUN 29 1924

Commissioner	
Asst. Comm'r.	
Asst. Comm'r.	
Information	
Liaison	
Management	
Finance	
Power	
O & M	
Administrative	

From Consulting Engineer

To Commissioner

Subject: Water Supply Appendix for Selection Report - Central Arizona Project

ARIZONA H. - Comm.

1. I received Mr. Maxwell's letter dated June 16, 1924, discussing the policy matters raised in my letter of May 24, concerning the Central Arizona Project. As soon as Mr. Larson has completed a draft of the so-called "Selection Report" it is probable that a conference will be held with the Governor with the California interests so they will be well informed as to study procedures.

2. As far as I could learn during my visit in Arizona, the Governor planned to call a session of the legislature in connection with the control of underground water. As I understand it from him, he did not plan to prepare a bill, but would ask for money to make a study and prepare plans for action by the legislature two years hence. The only evidence he requested me to furnish was the need for control of underground water and the affects on some areas I have seen from the lack of control in those areas. Certainly I could not pretend to give advice on the manner in which the law should be established in Arizona, but I feel justified in stressing the need for such a law in Arizona.

3. I think your letter solves the question raised by Mr. Coffey as to the effect of article 7-d of the Arizona contract. It seems difficult to separate in our thinking the effect of the contract and of the compact and your letter does that well. As to point 4, it seems clear to all of us that the plan for computing power revenues on the basis of 50-year amortization with the interest of 3 percent is the wiser plan. We have not yet completed the financial study to the point where a recommendation can be made to the Commissioner. The best selection will be derived with Arizona. I hope this can be accomplished in the near future.

John C. Page
J. C. Page

CC-Reg. Dir., Boulder City, Nev.
Reg. Counsel, Los Angeles, Calif.
Reg. Dir., Salt Lake City, Utah.
Dir. Proj. Planning, Denver, Colo.
Dir. Power Util., Denver, Colo.

JUL 24 1924

ACTION REQUIRED BY _____

UNIVERSITY OF COLORADO LIBRARIES
BOULDER

CALIFORNIA DEFENDANTS

Exhibit No. 7859

Identification: Admitted:

MEMORANDUM FROM COMMISSIONER, BUREAU OF
RECLAMATION, TO REGIONAL DIRECTOR,
BOULDER CITY, NEVADA, DATED JANUARY 2, 1946,
RE "INTERIM REPORT--CENTRAL ARIZONA PROJECT--
LOWER COLORADO RIVER BASIN"

1-480
November 1949

United States of America

DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C.

JUL 21 1950

19

Pursuant to Title 28, Section 1733, United States Code, I hereby certify
each annexed paper is a true copy of a document comprising part of the
records of the Department of the Interior:

Letter from Commissioner, Bureau of Reclamation, to
the Regional Director, Boulder City, Nevada, dated
January 2, 1946, re Interim Report - Central Arizona
Project.

Testimony Whereof, I have hereunto subscribed my name, and caused
the seal of the Department of the Interior to be
affixed, on the day and year first above written.

W. H. H. H. H.
Chief Clerk.

TRANSFER CASE
75.2.1946

JUN - 2 1946

From: Quandance

To: Regional Director, Boulder City, Nevada

Subject: Interior Report - Central Arizona Project - Lower Colorado River Basin.

1. This is in reply to your letter of November 9, 1945.
2. This office appreciates your position in regard to the inclusion of the Central Arizona project from the list of 70 projects recommended in the Colorado River Basin report for early authorization. The language of paragraph 34, page 13 of that report implies that the Central Arizona project will, in effect, become a part of this preferred list, on issuance of an Interior report now in preparation. It is my thought that the Colorado River Basin report should be revised to indicate that a feasibility report on the Central Arizona project will be submitted to the Congress in due course as a supplement to the basin plan. What you will as Interior report should therefore follow for the next part, the plan of a project report but prevent the date in such a way that it will be an integral part of the basin plan.
3. During the discussions which took place at the recent Bureau Conference, it was concluded that the Bureau should not voluntarily attempt to utilize the selection report, that is, your Regional Director's report based on the "Concurrence" report as substantiating material, as a vehicle for authorization, but should plan on the preparation of a feasibility report which would elaborate on the plan which had been determined in essence of the selection report. A more detailed discussion of this is referred to in paragraph 3 of the letter sending you the Washington office memo on the preliminary draft of the selection report. Please consider that portion of my letter, and the enclosure referred to, as a part of this reply. We recognize, of course, that efforts may be made by interested parties to the Bureau to authorize the project upon the basis of the selection report, and in a measure, the selection report should, so far as existing with the present status of the investigations, be sufficiently comprehensive that it could serve that purpose, if the Congress so decides.
4. Briefly, the feasibility report (in lieu of an Interior report) needs to be of a character which would permit the making of authorization, if that is found desirable, and thus invest the heavy burden of detailed investigations to be carried on with construction funds, after the project is authorized. That report should not only consider the execution of the project plan with respect to costs and benefits to the lands to be served but should consider the demands of alternative uses of the limited water supply available to the State of Arizona on other areas, such as dependent on the Delta project.

123.86

5. Because of the large size of the project it will be necessary at some stage prior to commencing construction to determine Arizona's water right in the Colorado River, by interstate compact or Supreme Court decision. The Bureau of Reclamation cannot make a definite finding in this matter; it can only present the project under Arizona interpretations and encourage the beginning of the interstate negotiations required. Because of the abrupt interest of the United States in the matter and because of Federal interests in projects in all of the Colorado River Basin States, the Federal Government should take part in negotiations.

6. As a matter of policy it is believed that the major projects in the Colorado Basin must be considered and operated as units of a whole basin plan. This is especially true of the projects of the lower basin because of their interdependence and the necessity for avoiding economic waste, facilitating service to the several projects, avoiding interstate conflicts, and making the provisions of the Mexican Treaty. There are many individual projects in tributary streams, especially those primarily for the purpose of supplying agricultural water to existing developments, that can be constructed and operated independently, or in minor concentrations, without detriment to other projects and with considerable advantage to themselves. There are many valid reasons why all initial projects should be included in a single authorization. There are many small projects of an extremely desirable nature which still not prove to be really reimbursable. There probably would have been if made a part of a large plan in order to receive support from stream projects. Whether it will be desirable or possible to include the authorization of the Central Arizona project within whatever authorization may result from Congressional action on the Colorado River Basin report, cannot be determined at this time. As a solution, we should provide for the following course of action:

- (1) The sub-study report should be completed in a way that the Congress could consider and authorize it, if the Congress initiates action to do so.
- (2) Anticipating that the Congress will not initiate action, or authorize the project upon the basis of the selection report, a feasibility report should be prepared, and
- (3) provision should be made in the Colorado River Basin report (this can be done in the Commissioner's report, letter, to the Secretary, without revising the National Reclamation report) for the later submission of the Central Arizona project, and the incorporation into the basin plan, as a part of the initial stage of development, and under the basin-wide allocation of water for major units of the basin plan.

7. With respect to the repayment of construction costs allowable to power it has been the policy of this office to specify that they be amortized over 50 years at 3 percent interest. Consideration is being given at present to a general restatement of policy to include the application of the interest component toward the repayment of reimbursable construction charges, other than for power, not covered by other repayments and returns. The effect of this, where the necessary subsidy is larger than returns from the interest component for a 50-year period, would be to apply fully the Solicitor's opinion. You will be advised further on this matter as the study proceeds.

(Sgd.) Michael W. Brown

In triplicate

CC - Hydrology Division,

Denver, Colo.

Reg. Counsel, Los Angeles, Calif.

(w/c of reg. ltr. to each)