WHAT IS THE MOST EFFECTIVE WATER POLICY FOR THE UNITED STATES?

RESOLVED: That the Federal Government should establish a comprehensive national policy to protect the quality of water in the United States.

One of the first things I want to say to this audience is that I am highly honored to be here with you and to try to be of a little aid in kicking off your high school debates for 1985-86. If there is any segment of American society that should be really loved by my generation, it is high school students. They, as future leaders, hold the destiny of our great nation in their hands. As for you teachers, you are to be greatly respected for your parts in molding the characters of your students and teaching the facts on both sides of controversial questions. Debate should involve the art of persuasion based upon facts, and should lead to well-documented constructive public decisions. Debate is highly essential because decisions are made at the political level where honest argument should prevail. In other words, in the final analysis, decisions are not made on behalf of society by engineers and lawyers, but by politicians.

You are all to be commended for having the courage to tackle such an important and complex question as national water policy that has baffled the leaders of the United States since 1789. Out of young, fresh minds should come innovative ideas with respect to one of our most precious natural resources, water, that will make this nation a better place in which to live.
DEFINITIONS OF KEY WORDS IN THE RESOLUTION

I cannot refrain from suggesting that the proposition to be debated, namely, "that the Federal Government should establish a comprehensive national policy to protect the quality of water in the United States" needs careful analysis. There are some tricky words in it, the interpretations or implied interpretations of which could determine the course of arguments. It is a safe assumption that the "Federal Government" really means the U.S. Congress which might pass a law defining a policy. It is also assumed that the word "national" when coupled with the last two words "United States" means all 50 States would come under the Congressional policy Act.

The tricky words appear to be "comprehensive", "policy", and "quality". Two different versions of Webster's dictionary say that comprehensive means "including much" or "inclusive". The question to be answered is, how much is to be included in a policy. To exaggerate, is the policy for the nation to cover in detail everything that adversely affects water quality from contaminants in the atmosphere or soils to how much salt each household is permitted to discharge in its sewage; or, is it to consist of a broad statement covering 50 States without recognition of regional differences in populations, water supplies, water uses, geology, etc? Or is the policy somewhere between these two extremes?

The same dictionaries define "policy" as meaning "any governing principle, plan or course of action". Here, again, the question is what and how much is to be included in the plan or course of action, and what are its goals?

If I were a debater, I would be very careful about how "comprehensive" and "policy" are defined, depending on whether I was arguing affirmatively or negatively on the proposition.

Mr. Webster defines the word "quality" as "the degree of excellence which a thing possesses." For the purposes of debate, it seems that some kind of parameters or limits will have to be assigned to the word quality.
For instance, some people will say that distilled water is about the highest quality of water attainable; but if human beings drank nothing except distilled water they would not survive. All water in its natural state is contaminated, meaning that it contains foreign substances in addition to hydrogen and oxygen. Therefore, perhaps "quality" should be referenced as that "degree of excellence" necessary for the primary use the water is to serve; i.e., swimming and fishing, a certain quality; human consumption, another quality; irrigation of farm crops, another quality, etc.
As you know from the Agenda, the topic assigned to me is titled, "Interstate Compacts and the Law of the River." I can assure you that a thorough discussion of either half of that topic would require several hours. Entire books have been written on each of them. In our short time I hope that you will be stimulated by this brief overview to research interstate compacts and other components of the "law of the river" with the objective of using them either as alternatives to a comprehensive national policy or as integral parts of such a policy, depending upon how you desire to develop your arguments.

**NATURE OF A COMPACT**

What is a compact? Basically, a compact executed by two or more States is an agreement. Often the words "agreement" and "compact" are used interchangeably in the same document. The U.S. Supreme Court in one case said, "compacts or agreements - and we do not see any difference in the meaning, except that the word 'compact' is generally used with reference to more formal and serious engagements than is usually implied in the term 'agreement'..." It has sometimes been said that an interstate compact is a treaty between States. In a number of ways, this classification is applicable. Interstate compacts originated prior to the U.S. Constitution to settle disputes between States and to provide a permanent means for cooperation in solving mutual problems.

Article I, section 10, clause 3 of the U.S. Constitution provides that "No State shall, without the consent of Congress...enter into any agreement or compact with another State or with a foreign power." This clause had its origin in the American colonies when boundary disputes among the colonies were often settled by agreement reached after negotiations by a joint commission or representatives of the disputing colonies. Any resulting agreement was subject to the approval of the English Crown. This general practice was carried over to the new United States in the
Articles of Confederation which required that a compact had to have the consent of the Congress and thence, to our U.S. Constitution.

In the two centuries since the Pennsylvania and Virginia Boundary Agreement of 1780, over 200 interstate compacts have been executed covering a wide variety of subjects with which the States felt compelled to deal on a cooperative interstate basis because the regional problems do not recognize State lines, and they are common problems for several States.

An interstate compact appears to possess the following characteristics. A compact (1) is formal and contractual; (2) is an agreement between the States similar in content, form, and working to an international treaty; (3) is enacted in substantially identical words by the legislature of each compacting State; (4) takes precedence over ordinary State laws; (5) can be enforced by suit in the U.S. Supreme Court, if necessary; and (6) in most cases the consent of Congress is required.

There are interstate compacts on Regional Education, Atlantic Marine Fisheries, Crime Control, Forest Fire Protection, and many other subjects. The Ohio River Valley Sanitation Compact is a good example of a water quality control agreement. There are at least 20 major interstate river compacts in the United States that allocated water between or among States. These are very important because they are used to divide the limited amount of water in a river basin among several States in order that a State or group of States that is slow to develop will not be prevented from using water from a stream because an earlier and more rapidly developing State has used it all. Two compacts in this category that are very important to this part of the West, including Utah, are the Colorado River Compact of 1922 and the Upper Colorado River Basin Compact of 1948.

There are seven States that use water from the Colorado River. We call the States of Colorado, New Mexico, Utah, and Wyoming the Upper Basin States, and Arizona, California, and Nevada the Lower Basin States. Prior to 1922 it became apparent to the Upper Basin States that
California was developing so rapidly, and the Upper Basin States so slowly that if the waters of the Colorado River System were not formally apportioned to the various States by a compact, California and her sister Lower Basin States would soon have most of it put to use and there would be little left for use by Colorado, Utah, New Mexico and Wyoming. At the same time California wanted a large flood control dam and hydropower generating station constructed on the river by the Federal government. The Upper Basin States opposed construction of this dam because they believed it would permit California to develop and use even more water and place them in further jeopardy. To resolve these issues, commissioners representing the seven States and the United States negotiated the Colorado River Compact of 1922, which divided the use of Colorado River System water between the Upper and Lower Basins. This compact did not allocate the use of water to each State. It only apportioned the use of the water between the two basins. The Colorado River Compact did permit the construction of Hoover Dam because it removed a large part of the controversy between the two basins.

During the 1940's, and particularly after World War II, the population of the Upper Basin States, Colorado, New Mexico, Utah, and Wyoming was rapidly increasing. Strong sentiment developed in support of construction by the Federal government of a series of large water storage and hydropower generating units and irrigation projects in the Upper Basin. The Federal government refused to construct such facilities until the amount of water supply from the Colorado River available to each State was determined. Commissioners representing the United States and the Upper Basin States negotiated the Upper Colorado River Basin Compact of 1948. After deducting 50,000 acre-ft of water to be used in Arizona, the Upper Basin Compact apportions the water use allocated to the Upper Basin by the Colorado Compact among Colorado, New Mexico, Utah and Wyoming on a percentage basis. This compact goes one step further. It created a permanent interstate administrative agency known as the Upper Colorado River Commission to coordinate the efforts of the four member States. The Commission has an
engineering and legal staff in an office here in Salt Lake City. Since the execution of the Upper Basin Compact such water storage and hydro-power developments as those at Glen Canyon on the Colorado River, Flaming Gorge on the Green River, Wayne N. Aspinall Unit on the Gunnison River, and Navajo on the San Juan River and several irrigation and municipal and industrial water projects, such as the Central Utah Project are either under construction or have been constructed.

By contrast, in the Lower Basin, Arizona and California were constantly at odds over how much water each should have. Only after four lawsuits filed by Arizona against California, et al, occupying the period 1930-1963 was the use of the waters of the Colorado River in the Lower Basin apportioned by the Supreme Court among Arizona, California, and Nevada.

These water allocation compacts also have a role to play in preserving the quality of water in a State or river basin. It must be remembered that water quantity and water quality are closely related. Had one or two States in the Colorado River Basin been able to put most of the water supply to use the States deprived of an adequate water supply would have had a poorer quality of water to go along with their lesser quantity. Although representatives of the Environmental Protection Agency at the beginning of negotiations relative to salinity control complained that the two Colorado river compacts impaired their ability to accomplish the purposes of water pollution control laws, the two compacts aided in reaching an acceptable compromise solution to the salinity problems that would have far less adverse social and economic impacts on the Upper Basin States than would some other type of solution.

Using the Colorado River Basin as an example, the compacts constitute only a part of the so-called "law of the river." Other important components of the "law of the river" include decisions in court cases such as Arizona v. California and at her cases, laws passed by the U.S. Congress, such as the Boulder Canyon Project Act, that authorized the construction of
Hoover Dam, the Colorado River Storage Project Act that authorized the construction of Glen Canyon Dam and other facilities in the Upper Basin, the Colorado River Basin Project Act that authorized the Central Arizona Project, a number of environmental laws, such as National Environmental Protection Act and the Endangered Species Act, and a host of other Federal laws that affect interstate streams. I am treating the "law of the river" very lightly because I noticed that Mr. Clyde will be talking about significant court cases that establish a separation of State and Federal rights, and Mr. Hansen will be telling you about water rights.

You will probably have noticed by now that interstate compacts are peculiarly adaptable to the solution of regional problems through cooperation of two or more States. Compacts have the capacity to establish, operate, stabilize, and enforce regional policy that fits the needs that are characteristic of regions of two or more States. It does not take much imagination to see that all regions or river basins in the nation are not alike. For instance, although the Colorado River and Columbia River basins are roughly comparable in size, they certainly are not much alike. The Colorado River serves seven States and one foreign country. So does the Columbia River. The water supply of the Colorado River is totally consumed in average years with no water reaching the ocean. The Columbia River, after its water is used by its seven basin States and Canada, dumps into the Pacific Ocean 12 times as much water as the total production of the Colorado River. Our arid States of the southwest have problems related to not enough water available at the right place at the right time. In the southeast region, the problems are floods and pollution, or too much water and poor water quality water at the wrong times and places.

Each river basin or region of the United States has a character of its own, problems of its own including the kind and degree of water quality, and is subject to solutions of unique problems by methods unique to it. It is doubtful that an effective and acceptable "comprehensive national policy"
can be established by the Federal government unless it is written in broad almost meaningless statements under which thousands of rules and regulations are written to accommodate the differences in regions. The Reagan Administration has already rid itself of 25-50,000 pages of rules and regulations that were impeding progress under broad comprehensive policies of the Federal government. That fact should tell us something. Compacts provide for local control of local problems, which has been the typical American way of accomplishment with the least amount of red tape. They also provide for flexibility in intergovernmental cooperation in meeting the requirements of different types of regions.

Undoubtedly, due to the Federal interest in public lands in the West and in the general health and welfare of all parts of the nation, there should be Federal participation in the Compact process; but that does not necessarily mean that there should be established a comprehensive national policy to protect the quality of water. There are already in existence successful compacts that incorporate water quality.

As debaters you have to be either for or against the proposition that the Federal government should establish a comprehensive national policy to protect the quality of water in the United States. Regardless of whether you are for or against this proposition, the regional compact process should be carefully examined to ascertain if interstate compacts can be substituted for a comprehensive national policy or become part of one.

Compacts are worthy of serious consideration if for no other reason than there is no instance where Congress has voided an already effective compact. In fact, two of our higher national governmental entities, the U.S. Supreme Court and the U.S. Congress, have encouraged the States to use the interstate compact to enhance cooperation and resolve mutual problems.