"The State of Colorado holds that the Colorado River Compact requires no interpretation for the utilization of the waters of the Colorado River as provided in the compact. . . We desire to make it clear that we will not depart—even momentarily—from the terms of the Colorado River Compact upon which our resolution is based."

(From Colorado's statement to the Upper Colorado River Commission, Salt Lake City, Utah, December 11, 1958.)

Take time, in Colorado's centennial year, to understand her water problems. Consider her stake in the interstate struggle over water.

Why? Because water is the limit of Colorado's future. And because the outcome of this struggle may have a direct effect upon your own prosperity . . . particularly if you are a water user.

A direct effect? It could be. Suppose you irrigate under the Big Thompson Project . . . or reside in the Denver metropolitan area. Could Southern California's efforts to undo the Colorado River Compact result in eventual curtailment of your diversions?

Suppose you live on the Western Slope and look to the Upper Colorado River Storage Project as the key which will unlock the vast resources of Colorado's potential Ruhr. Will this project be stymied by lack of power revenues . . . due to lower basin water grabs in excess of compact allotments?

Suppose you're in debt as an irrigator in the San Luis Valley under the Rio Grande Compact. The compact isn't working as it should. Colorado has fallen behind on compact deliveries during lean water years. If Colorado isn't able to eliminate this water debt . . . If she can't find the answers to defend against possible litigation with Texas or New Mexico: Then where will you get your water when the next drought hits?

Suppose you're planning a water project. The only supply left is high in the Colorado mountains . . . in a wilderness area. If Congress passes the proposed wilderness legislation, you may as well forget your water project. You won't even be able to put a buried pipeline through there.
Suppose you have early rights on the South Platte River. Years ago the federal government withdrew some land from public sale and settlement. The land is adjacent to the South Platte. Now the government decides to build a water-using installation on this land. How will it get its water? Will it take its place as a junior water right on the river, after your senior rights filed under state law?

Or will it contend, all the way to the U. S. Supreme Court if necessary, that the federal government does not have to comply with state water laws?

Lawyer talk? No! Straight from the shoulder water user talk aimed right at the man who uses the shovel and wears the boots. Your Water Congress will try to bring the interstate water scene into focus for Colorado water users. But remember: This is a tough row to hoe. More erroneous information, more misunderstandings and more confused, prejudicial thinking are expended on water problems than on any other field of human activity except religion and politics.

Is the focus right for you? Send in your questions, criticisms, and comments.

This Newsletter takes dead aim at the historic Colorado River controversy. Why? To give you background that you will need in order to understand complex developments coming up soon on Glen Canyon filling. Subsequent Newsletters will emphasize other phases of Colorado's water problems.

Back-up to the period 1905-22: Recurring, disastrous floods on the lower Colorado were hurting Southern California. Imperial Valley development was hamstrung by a water concession to Mexico necessitated by passage of the valley's irrigation canal through Mexican territory.

Desperately needed: Major storage on the Colorado River for flood control and irrigation. Plus: A canal leading from the Colorado River to the Imperial Valley and located entirely on American soil. Cost: Hundreds of millions of dollars. Federal financing was the answer. But Congress would not approve a lower river project without first providing adequate protection for future development in the upper basin.
Why not? Because rights to store water would relate to date of construction. By building downstream storage, lower states could monopolize the entire Colorado River flow for all time . . . not only for domestic and agricultural purposes but for power generation as well. The slower developing upper states could not allow this.

The only solution: Compact. In August 1921, Congress called for compact negotiations between the seven basin states and the U. S. Objective: Equitable apportionment of Colorado River water supply for all time . . . necessary basis for complete development of the river as a great natural resource.

A compact commission was appointed . . . one commissioner for each of the seven states plus one for the U. S. Herbert Hoover, then Secretary of Commerce, was chairman. The concept of a division of water between upper and lower basins, instead of apportionment among individual states, crystallized slowly. After 27 sessions of the commission, the compact was signed in Santa Fe, New Mexico, on November 24, 1922. Ratification of the compact was delayed by Arizona until 1929.

Good, bad or indifferent, the compact is probably here to stay. Colorado's position is that the compact cannot be broken except by unanimous agreement of the signatory states.

What does the compact do? It divides the river at Lee Ferry into an upper basin (Colorado, Utah, New Mexico, Wyoming) and a lower basin (California, Arizona, Nevada). It apportions the right to appropriate water to a beneficial consumptive use.

To the upper basin: Exclusive beneficial consumptive use of 7.5 million acre feet per year (Article III A). To the lower basin: The same, plus the right to increase its beneficial consumptive use by one million acre feet per year (Article III B). Water unapportioned under these provisions may be further apportioned after 1963, if and when either basin shall have reached its total beneficial consumptive use under compact apportionments.

It recognizes water obligations to Mexico, which shall be satisfied first from water surplus to compact apportionments. If no surplus, each basin makes up half the Mexican deficiency (Article III C).
It prohibits upper basin states from depleting Lee Ferry flow below an aggregate of 75 million acre feet during any period of ten consecutive years (Article III D).

And it provides that the upper basin shall not withhold and the lower basin shall not require water not reasonably needed for domestic and agricultural purposes (Article III E).

On power: Water may be impounded and used for power, but such impounding and use shall be subservient to domestic and agricultural uses.

Most misunderstood point among Coloradans: Reapportionment of the river after 1963. Remember this: There is no surplus Colorado River water left to apportion. The Colorado River is broke, waterwise.

To understand the compact, keep in mind that compact framers believed the average annual undepleted flow at Lee Ferry to be 16.8 million acre feet. But the long-time average is only 15.3 million acre feet. This difference is enough water to supply six Colorado-Big Thompson Projects. And it means that there is no surplus water. Without surplus water, the compact's reapportionment provision is meaningless.

Were the authors of the Colorado River Compact far-seeing, practical statesmen who developed a workable concept of basin-wide river development? Or were they short-sighted visionaries who developed an instrument of vices and thorny methods under the illusion that they could look one hundred years into the future? Each viewpoint has vigorous and able proponents.

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The next problem: Where should storage be built . . . Above Lee Ferry, or in the vicinity of Boulder Canyon? Upper basin storage in the vicinity of Glen Canyon drew support. It could do everything that the Boulder Canyon site could do. But not quite as well. Boulder Canyon advantages: Better operational control over irrigation releases for Imperial Valley diversions, plus proximity to metropolitan power load centers.

California's Swing-Johnson Bill led to passage of the Boulder Canyon Project Act by Congress in December 1928. It authorized construction of Hoover (Boulder) Dam and the All-American Canal.
But prior to construction, the Secretary of Interior had to contract for incoming revenues sufficient to pay project operation and maintenance expenses and to repay construction costs at 4 percent interest in 50 years. To Arizona and Nevada went 18.75% each of project revenues in excess of scheduled amortization payments.

The Project Act solved a knotty compact problem. Arizona had refused to ratify the compact because she feared it did not adequately protect her interests. For seven years ratification had been stymied by the compact's unanimous approval provision. Solution: Amend the compact through the Project Act so as to by-pass Arizona by providing for ratification by California and five other basin states.

The Project Act of 1928 gave California what she had been seeking since 1905 . . . Hoover Dam and the All-American Canal. But she had to pay a price for it. The Act did not take effect until California agreed irrevocably and unconditionally with the U. S., for the benefit of the six other basin states, that her aggregate annual consumptive use of Colorado River water would not exceed 4.4 million acre feet of the compact's III A water, plus not more than half of any surplus waters unapportioned by the compact.

California promptly accepted the Project Act limitation through legislation known as the California Self-Limitation Act. In March 1929, both compact and the Project Act were declared fully effective and the way was cleared for Boulder Canyon Project construction.

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California moved quickly to exploit her position. Various California interests divided up the Colorado River in the Seven Party Water Agreement of 1931. It provided priorities of use and fixed the quantity of water apportioned to each party.

Did the apportioned quantities total 4.4 million acre feet? Guess again. They totaled 5,362,000 acre feet!

California interests then negotiated water contracts with the U. S. totaling 5,362,000 acre feet per year. Other basin states were given no opportunity to object to these contracts prior to their signing by the Secretary of Interior. This was Southern California's way of trying to secure an extra allotment of 962,000 acre feet of Colorado River water in advance of the date and conditions under which the compact permits apportionment of surplus water.
The U. S. - Metropolitan Water District contract provided permanent service for 25 cents an acre foot, payable during the Hoover Dam repayment period. How much water? 1,212,000 acre feet. Half of this water has a low priority which places it in excess of the 4.4 million acre foot California limitation. M.W.D.--serving the Los Angeles-San Diego metropolitan area--has no intention of giving up its excess contract water, even though this use violates the Project Act and California's own Self-Limitation Act.

California's present use of Colorado River water is around 4.7 million acre feet per year, exclusive of evaporation losses at Lake Mead. It's increasing every year.

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Power contractees in Southern California weren't satisfied with the price they had to pay for energy from Hoover Powerplant under the Project Act. In 1940, they persuaded Congress to pass the Boulder Canyon Project Adjustment Act.

The Adjustment Act changed the basis for determining the cost of falling water from a competitive power rate at tidewater to an amortization basis sufficient to: Repay project construction costs by 1987 at 3% interest (reduced from 4%) . . . Pay project operation and maintenance costs . . . Pay $300,000 a year each to Arizona and Nevada in lieu of taxes (in place of the previous 18.75% revenue allocation) . . . And to pay $500,000 a year into a Colorado River development fund.

Under the Adjustment Act, the Los Angeles Department of Water and Power became the government's generating agency. New power contracts were made with power allottees. What is the present charge for firm energy from Hoover Powerplant? It's 2.3 mills ... less than half the competitive rate in Southern California. Secondary energy: 1 mill.

In 1942, Nevada contracted with the U. S. for the annual delivery of 100,000 acre feet from Lake Mead (Hoover Dam storage) at a maximum charge of 50 cents per acre foot.

In February 1944, Arizona contracted with the U. S. for the annual delivery of up to 2.8 million acre feet. Cost: 50¢ per acre foot (maximum) out of Lake Mead and up to 25¢ per acre foot out of the river below Hoover Dam. The U. S. also agreed to deliver to Arizona half of any surplus unapportioned by the compact, providing it's physically available to Arizona. At the same time, Arizona finally ratified the compact.
Note: These water and power contracts are all subject to the availability of water under the Colorado River Compact.

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The year is 1944. The problem: Resolution of major differences over three border streams . . . the Colorado, the Tijuana and the Rio Grande. The solution: Mexican Treaty.

The Mexican Treaty guarantees Mexico 1.5 million acre feet of Colorado River water each year. Shortages due to drouth are shared on the basis that water allotted to Mexico is reduced in the same proportion that consumptive uses in the U. S. are reduced. The treaty also authorized construction of Davis Dam on the lower Colorado, with storage space provided for firming-up water deliveries under the Mexican Treaty.

Ratification of the Mexican Treaty was vigorously opposed by California and Nevada. Other basin states and Texas actively supported ratification. Since ratification in 1945, Southern California has repeatedly tried to have Congress pass a bill which would nullify the treaty.

California says this: The effect of the Project Act and her Self-Limitation Act was to create a "compact" between the U. S. and California. If subsequent operations under the Mexican Treaty make water unavailable to satisfy California's water contracts, then this "compact" will have been breached by the U. S., and California will no longer be bound by her Self-Limitation Act.

If California's position is sustained, doubt may be thrown upon the validity of her ratification of the Colorado River Compact. . . grounds for contesting the compact itself.

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Now it's 1948: After great effort, upper basin states negotiated the Upper Colorado River Compact. It apportioned upper basin water between Colorado, Utah, Wyoming and New Mexico on a percentage basis. And it created the Upper Colorado River Commission. It also provided for crediting excess upper basin power revenues to each state on a percentage basis. Excess revenues? Power income after payment of project costs. Revenue crediting? Making power revenues available to pay irrigation costs of participating projects which are beyond the capability of irrigators to repay within 50 years.
In 1950, the Bureau of Reclamation and the Upper Colorado River Commission completed a plan for upper basin development. This plan, minus controversial Echo Park Dam, was approved by Congress in April 1956, as Public Law 485. Authorized: Four large mainstream dams and 11 units known as participating projects. The biggest of the big dams is Glen Canyon.

In 1952, the long-smouldering water feud between Arizona and California broke out into open legal warfare. Arizona filed a quiet title action against California in a gigantic lawsuit over Colorado River water. Hearings before a special master appointed by the U. S. Supreme Court concluded last August. After more than six million words of testimony, it's known as the Long Suit. Best estimate: Another two years before the high court hands down its decision.

California interests spent several million dollars on this trial. Remember: Most of this water originates in Colorado. How much do Coloradans spend to protect their interests in this river? ... A fraction of the $350,000 annual budget of the Colorado Water Conservation Board.

Arizona is seeking 30% of the Colorado River water that California claims under appropriative rights and contracts. Issues: Arizona says the lower basin's III B compact water (1 million acre feet) is not Gila River water. California says it is. Arizona questions the validity of the Metropolitan Water District's contract. California says both appropriative and contract rights have to be recognized under the doctrine of first in time, first in right.

Other Long Suit issues: Definition of "beneficial consumptive use" ... and whether the government's fantastic Indian claims are to be charged to the states in which they occur or to the basin as a whole.

Indian claims? The federal government is asking 1.7 million acre feet per year for Colorado River diversions to Indian reservations. The government claims the right to initiate Indian uses at any time in the indefinite future to the detriment of present and intervening non-Indian uses and rights.
Who's behind this Indian massacre of Colorado River rights? The U. S. Bureau of Indian Affairs. Opposed: Bureau of Reclamation. If these Indian claims are allowed, there won't be enough water left in the lower basin to satisfy minimum requirements. Lower basin pressure on upper basin water apportionments would increase substantially. New Mexico's water supply might be directly affected, due to her Navajo Reservation.

Scores of other issues hinge upon the outcome of the Long Suit. The legal fire has spread to the point where all the great water issues of the West may be affected by the Supreme Court's findings.

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October 1957 . . . Governors of the seven Colorado River Basin states were called to Washington, D. C. by the Secretary of Interior. Purpose: To consider proposals by the lower basin and the Bureau of Reclamation on criteria for the filling of Glen Canyon Reservoir. Upper basin governors listened and asked for further time. In December 1957, at Las Vegas, Nevada, upper basin governors again asked for more time. Why? Because technical studies were not far enough along to permit them to discuss the problem.

Colorado's unpreparedness was frightful . . . frightful to the degree that Colorado water men decided to take matters into their own hands and do something about it. This was the impetus that gave birth to your Water Congress.

What was so bad about these proposals for filling Glen Canyon? Under the lower basin proposal, Glen Canyon might not ever fill. Lower states planned to operate Glen Canyon to generate both firm and secondary energy at Hoover Powerplant, instead of for the benefit of the upper basin. The Bureau of Reclamation planned to operate Glen Canyon to fulfill Hoover firm energy contracts. Neither made any reference to the Colorado River Compact.

Neither proposal was satisfactory to Colorado. During the past six months the Colorado Water Investigation Commission and the Colorado Water Conservation Board have taken giant strides toward development of acceptable filling criteria.

Colorado's position: Follow the compact! Release downstream consumptive use requirements up to 7.5 million acre feet per year (for lower basin domestic and agricultural demands) . . . and no more. Colorado's position was proposed as upper basin policy in a
resolution presented at a Commission meeting in Santa Fe last September. Utah and Wyoming agreed but New Mexico disagreed. The matter was held over until the December 11th Commission meeting in Salt Lake City.

Between September and December, the Bureau of Reclamation made informal overtures to each upper basin state. The message: Be practical. If upper states insist upon pushing Colorado's resolution, they will be faced with California opposition on project authorization and project appropriations plus a California lawsuit on Glen Canyon.

Project authorization? Project appropriations? The message got across!

Prior to the Commission's Salt Lake City meeting, Colorado's dedicated Commissioner, Edwin C. Johnson, called Colorado water leaders together and asked for advice. Decision: Don't press Colorado's resolution until after an anticipated seven-state governor's meeting in January or February. Go the second mile but don't back down one iota.

The Glen Canyon issue: What does Article III E of the compact mean with respect to the filling of Glen Canyon Reservoir (upper states shall not withhold and lower states shall not require water not reasonably needed for domestic and agricultural purposes)? Southern California has an answer: Glen Canyon is a power dam. Therefore it's a question of lower basin power against upper basin power. Lower basin power has priority because of existing Hoover power contracts.

And Colorado has an answer: Glen Canyon provides the storage necessary to support upper basin agricultural and domestic uses through the recognized doctrine of exchange. Therefore, it's upper basin domestic and agricultural uses versus lower basin power. The compact clearly states that domestic and agricultural uses have priority.

Upper basin stakes are big: Power head must be developed quickly at Glen Canyon to get power revenues to meet the project payout schedule and to finance participating projects. Holdover storage must be built-up quickly in Glen Canyon to support domestic and agricultural diversions.

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There you have it . . . the bare bones of the Colorado River story. Your Water Congress will try to put some meat on these bones in the months ahead. Future Newsletters will attempt to expose other current interstate water problems to the sunlight of your understanding.