Appendix C.

The Colorado River Compact

History and Inducing Causes

The Colorado River and the flood conditions which necessitate its control, are discussed in Appendices A and B supra. From these and references herein, it appears:

The entire river system drains an arid region where otherwise fertile valleys and mesas require the artificial application of water to sustain life and agriculture. Use of the waters of the river system is necessary to the life, health, prosperity and general welfare of the people of the states where such waters originate and to the development of the region, the growth of the cities and institutions and to the support of government.

The drainage basin naturally is divided into two regions or basins, termed the "Upper Basin" and the "Lower Basin". The point of convenient demarcation between the two basins is Lee Ferry in northern Arizona, located at the head of the Grand Canyon and below those streams contributing to the river within the upper region. These two regions differ in soil, climate and other characteristics. The Upper Basin is traversed by many valleys of varying magnitude and characterized by progressive development conforming to the overcoming of natural obstacles and to improvement in transportation. In the Lower Basin streams of erratic flow traverse desert areas but
the lands are more accessible and natural conditions favor a more rapid development.

The results of investigations by the Reclamation Service, subsequent to the break of the river into the Salton Sea in 1905, were brought to the attention of the people of the seven Colorado River States. It was evident that complete control of the flow of the waters of the river by reservoirs, was essential to satisfactory solution of Lower Colorado River problems. The investigations revealed that substantially all the flow of the Colorado River above the mouth of the Gila, could be controlled by an immense reservoir at or near Boulder Canyon, to be later supplemented by other reservoirs upon the main stream and tributaries above that point. But to render feasible the construction of a gigantic control reservoir at Boulder Canyon, it would be necessary to beneficially use all the waters there impounded, for power, irrigation, municipal and other purposes, and beneficial use of all the waters of the river at that point might give rise to monopolistic adverse claims as against the entire Upper Basin and might interfere with and prevent future expansion of development through uses of waters, both within and without the Upper Basin.

The Compact was concluded to solve this problem:

The history of the origin of the Compact and the inducing causes are states in:— Report of Hearings, Senate Comm. Irr. and Recl. 69 Cong. 1st Sess. Re Colorado River Basin, pp. 312-313, 663-670; and in Report of Colorado River

From these sources it appears:

In necessary self defense, the states of the Upper Basin opposed any and all further major developments, by reservoirs or otherwise, along the river in the Lower Basin, until protection was afforded future development within the Upper Basin. There were assurances that the water supply of the river is ample to supply all present and future needs, if controlled by storage, and that no injury need result from construction of Boulder Canyon Reservoir and from uses of waters thereby. But former assertions of adverse claims resulting from uses of water by means of reservoirs upon interstate streams caused a demand for adequate protection to the states of origin from adverse claims on behalf of the beneficiary states of the lower river. [Rep. of Hearings, supra, pp. 664-665, 695-700; 312-31.]

A series of conferences followed between representatives of the interested states and federal officials. The first was at Salt Lake City, January 18-21, 1919. The governor of Utah presided and resolutions were adopted favoring first development at the head waters of the Colorado River System, stating:

"The history of irrigation throughout the world has shown that the greatest duty of water is had by first using it upon the upper reaches of the stream and continuing the use progressively downward. In other words, 'The water should first be captured and used, while it is young', for it can then be recaptured as it returns from the performance of its duties and thus be used over and over again".

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Similar conferences subsequently were held at Los Angeles where similar resolutions were adopted.

August 25-27, 1920, representatives of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and federal officials met at Denver. The Governors of several of the States participated and the Governor of Arizona presided. The resolutions adopted reaffirmed the principles announced in the resolutions adopted at the Salt Lake and Los Angeles conferences. But, after reciting that, from information presented by the Director of the Bureau of Reclamation of The United States "the water supply of the Colorado River drainage is sufficient to supply the present necessities of all the States whose territory is involved and that all present and future interference with development upon or from the upper reaches of the stream should be avoided", the following resolution was adopted:

"Resolved, That it is the sense of this conference that the present and future rights of the several States, whose territory is in whole or in part included within the drainage area of the Colorado River, and the rights of the United States, to the use and benefit of the waters of said stream and its tributaries, should be settled and determined by compact or agreement between said States and the United States, with consent of Congress, and that the legislatures of said States be requested to authorize the appointment of a commissioner for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislature of each of said States and the Congress of the United States." (Rep. of Comm. supra, Cong. Rec. 601-605).
At the 1921 sessions of their legislatures, the seven Colorado River states authorized the appointment of commissioners for the purpose of negotiating a compact respecting the waters of the Colorado River and its tributaries. Commissioners having been named for each of the states, the governors and commissioners met at Denver, May 10, 1921, and adopted resolutions requesting Congress to authorize and the President to appoint a representative for the United States to participate in the negotiations, and directing that the resolutions be laid before the President and the Congress by the governors of the seven states. The resolutions were presented to the President, May 19, 1921, at Washington, D. C.

The resolutions are set forth in full in the Report of the Colorado River Commissioner for Colorado (Cong. Rec. December 14, 1921, 70 Cong., pp. 601-606.) The statement accompanying the resolutions reads, in part:

"The object of the pending legislation is to permit a settlement respecting the future utilization and disposition of the waters of the Colorado River, and of the streams tributary thereto, by compact between the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming."

"The object is to determine the respective rights of the states to the use and disposition of the waters of this great river prior to any further large construction or extensive utilization of these waters, in order that the rights of the states and the Government may be settled and determined in advance of construction and before interstate or other controversies may arise."
Congress promptly consented to the proposed compact to provide for "an equitable division and apportionment among said states of the water supply of the Colorado River and of the streams tributary thereto, upon condition that a suitable person, who shall be appointed by the president of the United States shall participate in said negotiations, as the representative of and for the protection of the interests of the United States" and thereafter make report to Congress.

The Act of Congress was approved August 19, 1921, and the president later named Herbert Hoover as the representative of the United States upon the Commission.

The Colorado River Compact was concluded at Santa Fe, New Mexico, November 24, 1922, after protracted negotiations and a number of public hearings in the region involved. The seven Colorado River States (including Arizona) were signatories.

The Compact was submitted to the Legislatures of the seven states at the 1923 sessions and was approved and ratified by all except the Legislature of Arizona, which neither approved nor rejected the Compact. (Report, Hearings Senate Comm. Irr. & Recl. supra, pp. 312-313.

Failure of Arizona to ratify the Compact delayed proceedings for the ultimate construction of works for flood protection to lands, property and cities in both Arizona and
California. The eminence of the flood peril prompted the introduction of bills before Congress to authorize the construction of Boulder Canyon Dam without awaiting approval of the Compact by Arizona and caused great pressure to be brought to bear upon the Upper Colorado River States and upon their Senators and Representatives in Congress, to authorize the construction of the reservoir without the protection which the compact would afford.

The reservation of the Colorado River Canyon in Arizona, for power purposes, by the United States, pursuant to the compact between the United States and the State of Arizona in the Act admitting the State to the Union, (Enabling Act; Act of June 29, 1910, c. 310, sec. 28; 36 Stat. 557, 575) gave the United States control of the canyon in Arizona. This reservation, if made subject to the Colorado River Compact, would become a source of protection to the Upper States as regards future claims from users of water below Lee Ferry. This was a factor in the proceedings subsequent to 1923. \( ^* \) Rep. of Hearings, Senate Comm. Irr. & Recl. supra., pp. 639, 601, 708.\( ^{1} \)

Article XI of the Compact requires approval by the Legislatures of the seven signatory States. A special agreement among the six approving States was necessary to make the Compact effective among those States, without prejudice to the right of the State of Arizona to accept or
reject the Compact at such time as that state might elect. Such a special agreement was made among California, Colorado, Nevada, New Mexico, Utah and Wyoming, by concurrent legislation at the 1925 and subsequent sessions of their Legislatures (Rep. of Hearings, Senate Comm. Irr. & Recl. supra pp. 312-313, 679-680, 683-687.) and Congress enacted similar legislation by Sec. 13, Boulder Canyon Project Act. (Bill, p. 74.) The Act of Congress also imposed the Compact upon the reservations and property of the United States in the Colorado River Basin, including the Colorado River Canyon in Arizona. Bill sec. 13b, 13c, 13d, p. 75.

The Compact is effective among the six approving states and the United States has approved it and made it effective upon either a six state or a seven state basis.
The major purposes of the Colorado River Compact are thus stated in Article I:

"The major purposes of this contract are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies, and to secure the expeditions agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionment may be made."

Article II defines the Colorado River System to mean "that portion of the Colorado River and its tributaries within the United States of America."

The Colorado River Basin is divided into an "Upper Basin" and a "Lower Basin." The Upper Basin to include those parts of Arizona, Colorado, New Mexico, Utah and Wyoming "within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially
served by waters diverted from the system above Lee Ferry. The Lower Basin to include all similar portions of the territory of Arizona, California, Nevada, New Mexico, and Utah below Lee Ferry. The Gila River drainage is a principal part of the Lower Basin.

"Beneficial consumptive use" of the waters consumed or lost to the river system during beneficial uses of waters diverted, is made the basis of apportionment. A considerable part of the waters diverted and used within the drainage basin of the river system returns for further use and reuse, while waters diverted and used upon territory outside the drainage basin are wholly "consumed" as regards further benefit to the river system. (Cong. Rec., Dec. 14, 1928, pp. 606-610.) The latter class includes such diversions as those made for use in the Imperial Valley region, which drains into the Salton Sea, or those made by tunnels, aqueducts and canals through or over the divide such as the tunnel diversions in Colorado and Utah of the proposed aqueduct to southern California cities. Apportionment of the waters of the Colorado River System was made by the compact upon the basis of waters to be consumed by each Basin.

Article III allocates and apportions in perpetuity to the Upper Basin 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". The same apportionment is made to the Lower Basin
and, in addition thereto "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". In other words, the total apportionment to the Lower Basin is 8,600,000 acre feet per annum.

Respecting the international burden, the Compact provides that "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 apportioned to the Upper Basin and the Lower Basin 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 the flow at Lee Ferry guaranteed to the Lower Basin by the next provision of the compact.

The balance of water supply between the two basins is preserved by a guaranty by the Upper Basin States that they 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. This guaranty has no direct relation to the aggregate allocation of 3,500,000 acre feet per annum to the Lower Basin which is to be supplied out of that part of the whole Colorado River System within the Lower Basin.

Calls for and deliveries of water are to be confined to needs for agricultural and domestic purposes.

Further equitable apportionment of the remaining unallocated waters of the entire Colorado River System among the seven Colorado River States after forty years, is provided and the last paragraph of Article III.

Article IV. makes use of waters for navigation subservient to uses for domestic and agricultural purposes, as regards interstate relations.

Provision is made for administration of the Compact and for settlement of interstate controversies by compacts and for immunity of the Indian Tribes, by Articles V, VI and VII and Article VIIIIX protects then present perfected rights to the beneficial use of waters of the Colorado River System, which by Article III are to be supplied by apportioned waters, and defines relations between the two basins pending construction of a control reservoir.

Article XI provides that the Compact shall become binding and obligatory upon approval by the Legislatures of the seven signatory States and by the Congress. As already observed, this provision was modified by six States and by Congress to make the compact effective upon all the signatory
states except Arizona, by special concurrent legislation.

In brief, all waters of the Colorado River and all its tributaries in the United States are included. The right in perpetuity to consume a definite portion of the total water supply was allocated to each of the two natural divisions of the river drainage and the Lower Basin was allocated one million acre feet per annum more than was allocated to the Upper Basin where the river has its principal sources. Provision was made for any international burden and for a further allocation of any remaining waters among the seven States after forty years. Uses were classified and the more important given dominance over the lesser. Provision was made for intrastatal division of waters allocated and for settlement of interstate controversies by compacts. The requirement of seven-state ratification was subsequently changed by legislative agreement to permit the compact to become effective upon a six-state basis without prejudice to Arizona.
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