Preliminary Remarks

Delphi E. Carpenter
Interstate River Commissioners of Colorado

Before Conference of Attorney General and
Interstate River Commissioners at
 Greeley, Colorado
November 6, 1938.

In Re:
Arizona vs California et al.
Bill of Complaint

The complaint is vigorously drawn and, important missions and statement of past truth, it is unpriised and dangerous to proceed by motion to dismiss. The State cannot admit, even for the purpose of argument, that the allegations of the complaint are true. For illustration, the complaint repeatedly alleges that only 7,500,000 acre feet beneficial consumptive use of water is allocated to the Lower Basin by the Colorado River Compact, which in truth, an aggregate allocation of 8,500,000 acre feet is authorized. Around this erroneous omission Arizona builds her case. There are many other omissions or distortions which it would be unsafe to admit.

Under these circumstances, the States must answer and, owing to differences in local laws, probably it may be advisable
to proceed by groups, conforming to local water law. California follows a modified system of Congressional law while Colorado, New Mexico, Utah and Wyoming follow the pure appropriation doctrine. These two doctrines cannot be reconciled, hence the defendant States are divided with California in one position and the other five States are grouped to defend from a different standpoint.

While it is not impossible a common defense by the Secretary and all defendant States, it is not feasible. Probably it is better policy to present the case from two or three angles. The United States might present their case in their own way but in a manner not clearly repugnant to the position taken by the States. California might then make her separate defense, and the other five States might join in a common defense.
but from a somewhat different angle. This procedure would permit a much broader presentation of the case but great care must be exercised to avoid unnecessary conflict. We do not wish to leave the impression that any of the States recognize local intrastate navigation or appropriation rules of distribution but applying to intrastate relations. The local laws vary with each State according to local conditions and necessities and are mere rules by which the sovereign States permits and regulates the use of the natural resource, which belongs to the State among its water users. Interstate relations deal not with local conditions but with the titles of the States as anglers to the waters of their streams have far deeper roots than mere local distribution. These titles are those of dominion and...
inherent with statehood

sovereignty, free from external claims or interference, care for national regulation and control of interstate commerce and adjustments and determinations of interstate relations by compacts between the interested States or, failing to agree, by decisions of the United States Supreme Court in original cases. The States, old and new alike, stand upon equality under the Constitution as regards ownership and right of regulation and control of waters, both navigable and non-navigable and a definition of the title of any one of the original thirteen States to the waters of its streams in the definition of the title of any Western State to the waters within its jurisdiction. While in the adjustment of interstate relations the principles of justice, which underlie laws of local distribution may be availed of for purposes of adjustment in particular cases, these rules of local administration...
have no universal application. The rights of the States must be determined according to the facts in each particular case and upon broad principles of interstate justice. Principles which might greatly govern one case would be:

Nevertheless, as in the instant case, the position taken by any particular State, naturally  will conform more or less to local policies and the States may consistently decline to advocate any doctrine which its officials believe to be detrimental to local conditions or rules of local administration.
At the outset it may be observed that in Wyoming vs Colorado, and other cases, the Attorney General of the United States had contended that the United States, and not the States, own and may control and dispose of any part or all of the water resources of the Western States according to the will of Congress and without regard to the will or consent of the States whose interests are involved, and that such a theory may be advanced by the United States in the Colorado River case, in support of the Boulder Canyon Project Act.

It is self-evident that such a theory is destructive of state autonomy and is inimical to the welfare and interests of the States and that not only might these States decline to join in advancing such a theory but that it is necessary self-defense.
They must oppose such a 

The theory, if sound 

would offer a strong, if not 

controllable, justification for the United States to advance it 

and to seek to persuade the state authorities to join or to acquiesce 

upon grounds of expediency. 

The States cannot afford to 

sacrifice a great and beneficial 

underlying principle of government 

according to the very existence 

of statehood in the West, 

for the limited benefits it would 

in a single case, after which would 

we must succeed or fail upon 

grounds consonant with 

preservation of the autonomy 

and integrity of our States.}
(1) International Situation

(2) Navigation and Flood Control

(3) Control of Public Lands, including Power Reservations, made by The United States in Arizona pursuant to stipulations in Act of Admission

(4) Reclamation Public Lands

(5) Fulfillment of Terms of Colorado River Compact.

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The United States has plenary jurisdiction in all international relations and Congress has power to take any necessary action in that regard.

The international situation with Mexico is sufficient justification for the Boulder Canyon Project Act. The Colorado River is an international stream recognized as navigable by the treaty of Guadalupe Hidalgo, and its waters not only naturally inundate portions of the territory of both nations, rendering flood control imperative, but both nations are dependent upon its waters for necessary reclamation. Furthermore, land is not only irrigated in both nations by a canal heading in the United States, passing into Mexico and back into the United States, but irrigated acreage in Mexico has been rapidly increasing at
the expense of deprivation of lands in the United States. This increase has been progressive and has been leading to inevitable dispute. In addition, Mexico has been planning enormous additional uses to serve a vast additional seaway, thereby to render the situation acute. All the constant danger of complete inundation and total destruction in both nations of the fertile and populous Imperial Valley. This demanded permanent regulation and control of the flow of waters of the stream of a character consonant with the magnitude of the great river and its character of its flow. The near destruction of the Imperial Valley in 1907 prompted congressional action looking to such river control as protection of both local and international
relations. These have been repeated investigations for this purpose, under authority and appropriation of Congress and the Boulder Canyon Project Act. The conclusion of intensive studies and consideration of the entire subject, the United States by its reclamation projects in Arizona, has controlled, in large measure, the floods of the Gila and has accomplished the international purpose in that quarter, without mention.

The construction of Boulder Canyon Reservoir and the All-American Canal will complete the control measures necessary for international peace and the defense preservation of the use of the river within the United States.

Obviously, it would have been inappropriate and unwise to have the United States stated these purposes in the Act that the record of the
proceedings and hearings leading to investigation of the measure but conclusively that such was the principal and underlying purpose of the Act.

Navigation and Flood Control

The Colorado River has always been considered to be navigable from the Gulf of California to Calville, near the mouth of the Virgin River in Nevada, also in some portions of its course through Nevada statutes declare it navigable. Congress has plenary control and jurisdiction of the navigable portions of the river and the language of the Act declaring that it is the purpose of Congress to improve navigation is not only appropriate
but is conclusive with Arizona and the other States. Congress is authorized to provide flood control in the improvement of navigation. These two grounds should be sufficient for the Court to sustain the Act.

Control Public Lands—Arizona Reservation

Congress has plenary jurisdiction of all matters concerning property and territory of the United States. The Reservation is located upon public lands and, as to Arizona, upon lands specifically reserved for power purposes. In the Act admitting Arizona to the Union, the United States is authorized to select and to withdraw from entry lands suitable for power purposes.
time fixed, the United States designated a strip of land along and parallel to the east bank of the Colorado River throughout Arizona and withdrew the same from entry. The other Colorado River states have relied upon federal control of this strip of land in making the Colorado River Compact effective upon a six state basis. The Boulder Canyon Project Act makes the Colorado River Compact effective as regards this strip of land and all other public lands of the United States in Arizona. Without such protection, the United States would not have approved the Compact upon a six state basis.

The right of the United States to control and dispose of the public lands cannot be seriously questioned. This includes the right to impose conditions and limitations with respect to use or disposal of such public lands and the Boulder Canyon Project Act
impresses the Contract upon all public lands of the United States in the Colorado River Basin including Arizona. Adjustment of interstate relations respecting water of the waters of the Colorado River was a necessary prerequisite to authorization of the giant flood control project and beyond doubt, Congress has additively to make all property of the United States within the Basin, subject to the Contract. The action of Congress in this respect is conclusive.

Reclamation Public Law

The Boulder Canyon Project Act provides for the Reclamation of public lands in the Imperial Valley. It further provides for preliminary investigation of Reclamation Projects in Arizona. It provides for a comprehensive plan of development of the whole river system and provides
The construction of the first unit (Boulder Canyon Reservoir) of that system...

The United States has a number of reclamation projects located in the Colorado River Basin. The construction of reservoirs removes all danger of conflicting claims between these projects and with other users of water.

The Yuma Reclamation Project with its Laguna Dam has been in constant danger of destruction by floods and in certain years, the diversions by reclamation projects have to be seriously curtailed. Upon the Imperial Valley water supply, flood control and reserve storage of water are necessary for the protection of the project, the lands of which are largely in Arizona.

The proposed extensions for California cities are but incidental to the major purpose of the project.
Preservation of the States is the first concern of the United States. Investigations since 1907 by the United States manifested the necessity and good policy of protecting the integrity, welfare, and future development within the Colorado River States by a Compact to be approved by these States and the United States, as the basis of any future development of flood control or other similar works. Without such a Compact, a chaotic condition of titles would follow construction of such gigantic works, and irreparable injury to the States would result.

The Colorado River Compact is the fulfillment of this necessity.
and its approval and fulfillment is a matter of first concern with the nation. The construction of an immense control reservoir is essential to the fulfillment of the Compact and the Boulder Canyon Project Act provides for the construction of such a reservoir and is in the nature of a national contribution to the comprehensive development of the Colorado River Basin.

This Compact in no way infringes upon Arizona jurisdiction and only affects that State to the extent of the lands and property of the United States in Arizona and over which that State has no jurisdiction or control.

Conclusion

It would appear that the United States and the defendant States...
may join in defending upon any of all of the foregoing grounds and others to be developed.