Colorado River Compact.

Report of Delph E. Carpenter
Personal Representative
June Twenty-one
1921.

Hon. Oliver H. Shoup,
Governor of Colorado,
Denver, Colo.

Sir:—

I herewith hand you memorandum of my recent appearance before the President of the United States as your personal representative, in company with the Governors or personal representatives of the Governors of the other States of the Colorado River drainage in re

Interstate Compact Colorado River

and also of my appearance before various committees of Congress and other activities respecting the drafting and explanation of appropriate legislation by Congress authorizing the appointment of the representative for the United States to sit with the Commissioners of the seven Colorado River states in the formulation of a compact respecting future use and disposition of the waters in said river.

I also hand you a printed copy (manuscript uncorrected) of my statement for the Committee on the Judiciary of the House of Representatives.

Respectfully yours,

Commissioner for Colorado

DEC:BB
June
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1921.

To His Excellency Oliver H. Shoup,
Governor of Colorado,
Denver, Colo.

Sir:—

In Re: Appearance Before President
Harding - Colorado River Compact.

At a meeting of the Governors of the States of
Arizona, California, Colorado, Nevada, New Mexico, Utah and
Wyoming, held at Denver, Colorado, May 9-11 inclusive, I
was directed by your Excellency to act in your behalf and as
your personal representative in the matter of the presenta-
tion by the Governors of said States of certain resolutions
adopted at said meeting in Denver to the President of the
United States, and in the performance of said duties I beg
leave to report as follows:

I left Greeley on May 13, 1921, and joined Hon.
Stephen B. Davis, of Las Vegas, New Mexico, personal repre-
sentative of the Governor of New Mexico, at the Union Depot,
Denver. We proceeded thence to Washington, D.C., arriving
on Sunday, May 15th, where we joined the Governors of
Arizona, Utah and Nevada and the personal representative of
the Governor of Wyoming.

The Governors of Idaho and Washington had proceed-
ed to Washington, D.C. following the Denver meeting for the
purpose of appearing before members of Congress in support
of the Smith-McNary bill providing for a large annual appro-
priation to be expended by the United States Reclamation
Service in annual sums of twenty-five million dollars per
year for a period of ten consecutive years. Their appear-
ance was primarily on behalf of the Western States Reclama-
tion Association, of which Governor Davis of Idaho is the
President.

The primary mission of the Governor of Arizona and
the Governors and personal representatives of the states of
the Colorado river drainage was that of obtaining consent of
Congress permitting the seven Colorado river states to enter
into a compact or agreement respecting the future use and
disposition of the waters of the Colorado river, pursuant to
legislation in each of the seven states involved and in harmony
with the resolutions of the League of the Southwest, Governor Campbell of Arizona, President, and subsequent resolutions by the governors of said states adopted at said meeting at Denver on May 9-11 inclusive; and also for the purpose of securing National legislation providing for the appointment of a representative on behalf of the United States to settle with the commissioners of the seven states in the matter of the formulation of said joint compact.

The Western States Reclamation Association includes the seven Colorado river states and the ambitious program of that association looks to the securing of large appropriations for expenditure within the thirteen western states. The Colorado river states, upon the other hand, were primarily united on a program of settling the title to the use and disposition of the waters of the Colorado river prior to any further construction upon that stream through either Government or private funds.

It would thus appear that the objects of the Western States Reclamation Association, headed by Governor Davis of Idaho, were primarily those of promotion of rapid construction, while the objects of the League of the Southwest are to settle the title and agree in advance as to future disposition of the waters of the Colorado river prior to encouraging further construction.

The objects of the two organizations naturally conflict if urged simultaneously.

I have gone at length into the above matters in order that the reason for certain conditions at Washington at the time of my visit may be self-evident.

On Sunday evening, May 15th, Governor Davis of Idaho promptly called a conference of all western Governors and their personal representatives for the purpose of going over the objects of the visit of the Governors with Senator McNary of Oregon, Chairman of the Senate Committee on Irrigation. It was evident from the outset that the disposition was to submerge the prime object of the visit of Governor Campbell and the executives of the Colorado river states and to make the support of the Smith-McNary bill appear to be the principal object of the visit of the Governors at Washington. The discussion finally resulted in the suggestion that the Colorado river states abandon for this session of Congress any thought of pressing their desire for an interstate compact in order that an impression of contention of western streams might be avoided in the mind of the President and among the various representatives in Congress. The fear was
expressed that if the resolution adopted by the Colorado river states at Denver should be presented to the President he would thereby become impressed with the view that it was unwise to encourage reclamation appropriations in the face of possible interstate conflicts.

Had this program been followed, the visit of Governor Campbell and the Colorado river states Governors and representatives would have been futile. The legislatures of the seven Colorado river states providing for an interstate-national compact would have been of no avail and the whole program of the League of the Southwest would have become submerged in favor of the construction of enormous works on the lower Colorado river. In view of the experience of Wyoming, Colorado and New Mexico upon the North Platte and Rio Grande rivers subsequent to the building of the Fath Finder and Elephant Butte reservoirs which was followed by a policy of preventing any further development in the three states mentioned at points above the reservoirs, it is apparent that the upper states of the Colorado river drainage would have been placed in a similar position after the construction of enormous works upon the lower river.

At this juncture it fell to my lot to take sharp issue with any program looking toward an abandonment of the Interstate-National compact provided for by the legislative acts of the seven Colorado river states and I spoke frankly but positively to the effect that Colorado would look with disfavor upon any program which would retard the progress of a settlement in advance of construction of the use and disposal of the waters of the Colorado river along the lines covered by the legislation of the seven states and the resolutions of the Governors at Denver.

Senator McNary in turn took sharp issue with my attitude and the attitude of New Mexico and Wyoming, but I felt it my duty to remain firm in my position and felt obliged to further state that Wyoming, Colorado and New Mexico would much prefer that no further construction proceed for the time being if, as the result of such construction the history of the Rio Grande and North Platte rivers was to be repeated upon the Colorado.

While my attitude for the time being provoked display of considerable temper with Senator McNary, Governor Davis, of Idaho and Governor Hart of Washington, nevertheless Governor Campbell of Arizona, coincided with the views by me expressed and the final conclusion of the meeting was to the effect that we should cause our measure to be introduced and that Senator McNary would facilitate its early and favorable consideration by Congress. While I felt that this attitude was taken by him more with a view of getting rid of an unfavorable situation than
of being in the most hearty accord with the Colorado river pro-
gram, nevertheless the ultimate object of obtaining first con-
sideration of Congress to the Colorado river compact was obtained,
at least for the time being and during my stay in Washington
Senator McNary remained faithful to the understanding had on the
evening of May 15.

I assure you that had not conditions required the ut-
most frankness upon our part I would have remained silent at
this conference. But to have remained silent would have been
to deceive and I was moved to take the action I did purely by
reason of the fact that deception in such matters never brings
other than ruin and defeat in its wake.

On May 16th I laid our whole program before Senators
Phipps and Nicholson and at the same time Governor Campbell
of Arizona, Governor Matsey of Utah and Mr. Davis of New Mexico,
were all engaged in like interviews with their senators and
congressmen.

On the 17th Governor Davis of Idaho arranged an inter-
view with the Secretary of the Interior Fall. We all attended
and were fortunate in likewise having the support of Mr.
Brimmer of Cheyenne as the personal representative of Governor
Carey of Wyoming. While at this interview the matter of secur-
ing immense appropriations from Congress for the benefit of the
U.S. Reclamation Service was given first and prior consideration,
nevertheless Governor Campbell of Arizona, at an appropriate
moment brought forward the wishes of the League of the Southwest
and presented Secretary Fall with a copy of the resolutions
adopted at Denver and Governor Campbell and I remained for
further conference with Secretary Fall after the other Governors
and representatives had withdrawn. The program of the Colorado
river states met with the prompt approval of Secretary Fall, but
he warned us that the Republic of New Mexico had made a request
upon the former administration that no further construction take
place on the Colorado river until the rights to the use of the
waters of the stream had been settled by the Republic of Mexico
and the United States of America through international treaty
and that Secretary of State Bryan had requested of the Depart-
ment of the Interior the request of the Republic of Mexico be
respected. He further stated that he was not in favor of the
continuation of any such a policy but that the former action of
Secretary Bryan might result in some delay in carrying out the
program of the Colorado river states. He suggested, however,
that we proceed with all convenient dispatch and that he would
lend his aid wherever possible.
Prior to our departure from Denver Governor Davis of Idaho, through his private secretary, Mr. Brown, had made arrangements with the United States Reclamation Service and the owners of certain theatres in New York to the effect that all the visiting governors and their representatives would appear at New York on May 18th for the purpose of encouraging a favorable attitude toward the making of immense appropriations by Congress for the reclamation of western arid lands and for the purpose of encouraging the enactment of the Smith-McNary bill.

Neither Governor Campbell of Arizona, Mr. Davis, of New Mexico, nor Governor Mabey, of Utah, or myself felt disposed to join in this undertaking but in view of the fact that a sharp issue had been required in the first instance in order that the Colorado river program might receive speedy consideration of Congress it was thought advisable that Governor Mabey and myself should accompany Governor Davis and Governor Hart to the end that it might not appear to them that we were in Washington for the purpose of opposing their rather ambitious program.

Governor Campbell remained in Washington while I proceeded to New York and there participated, as your representative, in the call upon Mayor Hylan and various appearances at theatres and the Brooklyn Chamber of Commerce. I remained silent except at the time of the call upon the mayor, at which time I spoke briefly conveying to Mayor Hylan your cordial good wishes and expressed to him your appreciation of the opportunity of permitting your representative to call, etc. The party returned to Washington on the night of the 18th.

May 19th the western Governors and representatives waited upon President Harding. While at this interview Senator McNary and Governor Davis first presented their desire of favorable action along the lines of the Smith-McNary bill, nevertheless Governor Campbell, of Arizona, very adroitly seized an opportune moment and presented to the President the original resolution of the Governors of the Colorado river states adopted at Denver and urged speedy consideration of the Colorado river program by appropriate action of Congress and the President of the United States. Secretary Fall promptly joined Governor Campbell in the request and the President gave the matter his thoughtful consideration and discussion, saying in substance, "As I understand the idea is for the seven interested states to make an allocation of the waters of the river in advance of further construction or possible future contention". To this expression Governor Campbell and Secretary Fall made affir-
ative response. The President then said to the Secretary of the Interior that appropriate action should be taken at once to call the matter to the attention of Congress. Following this he turned to Secretary McNary and said that, while he was in favor of liberal appropriations for national reclamation of arid lands, he would have to request that such appropriations be avoided at the present session of Congress.

My impression of the interview with the President was that he looked with favor upon the Colorado river program and would give it his approval following proper legislation by Congress.

May 20th was consumed in conferences with our respective Congressmen explaining to them the objects of the legislation by the seven Colorado river states and fully informing them of the value of speedy action by Congress at this season.

May 21st was occupied principally in a hearing before the Senate Committee on Irrigation. This hearing again was called primarily for the consideration of the Smith-McNary bill but here again Governor Campbell adroitly brought forward the Colorado river program which was looked upon with favor by the Committee but very appropriately referred to the Secretary of the Interior for report.

During my absence in New York on the 13th Governor Campbell of Arizona arranged with Senator Burson of New Mexico for the introduction of the Colorado river compact bill before the Senate. While it would have been more to the liking of some of us had some older senator championed the measure, nevertheless the action of Governor Campbell was approved.

Senator Burson requested Stephen B. Davis of Las Vegas to prevail upon me to prepare a brief for his use in connection with the measure introduced by him and later Senator Burson made the request of me in person. I accordingly prepared and dictated on the 23rd and 24th a memorandum briefly covering the law respecting interstate compacts, citing precedence etc. Later I prepared other supplemental briefs but this was the principal brief I prepared.

On the 25th inst. I called upon Dr. James Brown Scott, Secretary of the Carnegie Endowment for International Peace. I explained to Dr. Scott the Colorado river program
and it met with his instant and hearty approval. He stated that it was the most constructive program ever presented in the history of the Union and made many verbal suggestions respecting the measure and the procedure to be had thereunder. Dr. Scott is a man of international repute as a technical advisor on matters of international law and has been the technical advisor at The Hague with Senator Root and others. He gave the whole program his hearty approval and wished to be called upon whenever his services might be of benefit. During the afternoon of that day Mr. Davis of New Mexico and myself called upon the Secretary of the Interior and the Commissioner of the General Land Office.

May 26th Governor Campbell, Mr. Davis of New Mexico, and myself called at the office of the Secretary of State for the purpose of acquainting the State Department with the Colorado river program. We were referred to a Mr. Baker, the legal advisor of that Department on Colorado river matters. After an extended interview, Mr. Baker assured us that he saw no objection to carrying out the program of the Colorado river states so long as the compact contained a stipulation that the international statute between the United States and Republic of New Mexico was not interfered with.

On the evening of this date, pursuant to invitation, and as your representative, I attended the reception given Congressman Timberlake and his prospective bride at the Wardman hotel, where it was my pleasure to extend your greetings to Congressman Timberlake and to the bride to be, wishing them the fullest measure of happiness and extending your good wishes.

On the 27th I had interviews respecting the Colorado river program with Senator Warren of Wyoming, Senator Shortridge of California and others, all expressing themselves as favorable to the general program. Throughout these interviews I spoke more to the general program than to any specific bill, to the end that the objects might not be attained through any other measure as well as through the Burson bill.

On the 28th I placed copies of the brief which I had prepared for Senator Burson in the hands of Senators Phipps, Shortridge and others senators and also in the hands of Mr. Mondel, Majority House Leader. I had arranged for my departure on the 29th but Mr. Mondel seemed badly confused respecting the proper procedure to be taken. Governor Campbell had left for Arizona on the morning of the 27th, stating that he had arranged with Mr. Mondel to take care of the
matter before the House of Representatives, but requesting that I not only see Mr. Mondel, but remain in Washington until the matter was clearly understood by the interested Senators and Congressmen. Mr. Davis of New Mexico had departed on the same morning and all other governors and representatives had left Washington. Under these conditions it was apparent that I was confronted with the duty of clarifying the whole matter if possible in the mind of Mr. Mondel. He requested that I prepare and present further brief and citation of authorities, particularly upon the subject of whether or not the United States of America might properly sit as a party to a compact between seven states upon the one hand and between the United States and the seven states upon the other.

I accordingly labored during the 29th and 30th along the lines requested by Mr. Mondel and on the morning of the 31st presented Mr. Mondel with a brief and memorandum upon the subjects desired.

Mr. Mondel thereupon introduced me to Mr. Volstead of Minnesota, chairman of the House Judiciary Committee, and requested that I confer with him regarding the preparation of another bill, more in conformity with certain views Mr. Mondel possessed and particularly with a view to avoiding a requirement that the representative for the United States should become a party signatory to any compact which might be agreed upon, as both he and Mr. Volstead expressed the view that a bill specifically requiring the representative of the United States to sign a compact would meet with such stubborn opposition in the House of Representatives, because of its novelty, that they feared its defeat and earnestly believed that we would be defeated in our program by adopting such a method and urged that a new measure be prepared providing that the representative of the United States should participate and then report, leaving Congress to care for the approval of the document through appropriate legislation.

While the Burson measure was more to my liking than any measure such as requested by Mr. Mondel, I was nevertheless convinced that he was in earnest and that it might be advisable to comply with his request rather than to suffer ultimate defeat under the terms of the Burson bill. I was particularly moved in this regard by reason of Mr. Mondel's commanding position, realizing that unless he would undertake the support of such a measure with full confidence it might be defeated.

During the remainder of May 31st and June 1 I drew a new bill and changed the same somewhat from time to time during conferences with Mr. Mondel or Mr. Volstead.

On the 2nd the form of the draft was finally agreed upon at a conference between myself and Mr. Mondel and he then advised me that he felt inclined to introduce the measure himself, in which view I encouraged him. He accordingly introduced the bill on the 3rd and during that day I had several conferences with both him and Senator Burson as well as other senators and representatives.

On June 4 Mr. Volstead called a hearing before the House Judiciary Committee upon the bill introduced by Mr. Mondel on the 3rd and the Committee extended me the courtesy of a two hour appearance and examination at which time I submitted and incorporated in the record a brief and memoranda which I had theretofore prepared. I forward herewith a printed copy of the hearing including the brief and memoranda. In this regard I call your attention to the fact that many errors appear in the stenographer's report of the hearing. This was occasioned by my inability to remain and correct the report before printing. I would have been required to remain over until Tuesday, the 7th and as my stay had already been much prolonged I did not feel justified in remaining and requested that Mr. Volstead's Secretary make whatever corrections he could. The errors, however, are not vital and simply render the report ambiguous in some features.

On June 5th I started upon my return to Denver, stopping at Lincoln, Nebraska on Tuesday, the 7th, where I conferred with the Governor's private Secretary and the State Engineer respecting action by Nebraska looking toward an adjustment by compact of the Nebraska-Colorado relations upon the South Platte river.

June 8th, pursuant to orders of the Attorney General of Colorado, I called upon the Governor, Attorney General and State Engineer of Kansas at Topeka and there spent the day in preliminary discussion of the outline of the work to be undertaken by the joint commission for formulation of a compact upon the Arkansas river between the States of Kansas and Colorado. The interviews of the day were both pleasant and profitable and I feel assured that there is a favorable opportunity for a candid consideration of the Arkansas river problem and a possibility of an interstate compact upon that stream, largely by reason of the personnel of the present state officials.

Arrived in Denver Thursday, June 9, and reported at your office during your absence.

Much to my regret I was forced to prolong my trip beyond the time anticipated. It was thought that I would
Hon. Oliver H. Shoup — — 10.

not be compelled to remain away from my business for more than two weeks but the events which transpired and particularly the situation with Mr. Mondel and the necessity of calling at Topeka greatly prolonged my stay. I nevertheless feel that the results justified the extra time given the undertaking and trust that my action will meet with your approval. Permit me at this time to express my sincere appreciation of the honor conferred in permitting me to act as your personal representative upon this mission.

Respectfully submitted,

DEC:BB
June Twenty-one 1921

Hon. Oliver H. Shoup,
Governor of Colorado,
Denver, Colo.

Sir:-

I herewith hand you memorandum of my recent appearance before the President of the United States as your personal representative, in company with the Governors or personal representatives of the Governors of the other States of the Colorado River drainage in re

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and also of my appearance before various committees of Congress and other activities respecting the drafting and explanation of appropriate legislation by Congress authorizing the appointment of the representative for the United States to sit with the Commissioners of the seven Colorado River states in the formulation of a compact respecting future use and disposition of the waters in said river.

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Commissioner for Colorado
To His Excellency Oliver E. Shoup,
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Denver, Colo.

Sir:—

In Re: Appearance Before President Harding - Colorado River Compact.

At a meeting of the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, held at Denver, Colorado, May 9-11 inclusive, I was directed by your Excellency to act in your behalf and as your personal representative in the matter of the presentation by the Governors of said States of certain resolutions adopted at said meeting in Denver to the President of the United States, and in the performance of said duties I beg leave to report as follows:

I left Greeley on May 13, 1921, and joined Hon. Stephen B. Davis, of Las Vegas, New Mexico, personal representative of the Governor of New Mexico, at the Union Depot, Denver. We proceeded thence to Washington, D.C., arriving on Sunday, May 15th, where we joined the Governors of Arizona, Utah and Nevada and the personal representative of the Governor of Wyoming.

The Governors of Idaho and Washington had proceeded to Washington, D.C. following the Denver meeting for the purpose of appearing before members of Congress in support of the Smith-McNary bill providing for a large annual appropriation to be expended by the United States Reclamation Service in annual sums of twenty-five million dollars per year for a period of ten consecutive years. Their appearance was primarily on behalf of the Western States Reclamation Association, of which Governor Davis of Idaho is the President.

The primary mission of the Governor of Arizona and the Governors and personal representatives of the states of the Colorado river drainage was that of obtaining consent of Congress permitting the seven Colorado river states to enter into a compact or agreement respecting the future use and disposition of the waters of the Colorado river, pursuant to legislation in each of the seven states involved and in harmony
with the resolutions of the League of the Southwest, Governor Campbell of Arizona, President, and subsequent resolutions by the governors of said states adopted at said meeting at Denver on May 9-11 inclusive; and also for the purpose of securing National legislation providing for the appointment of a representative on behalf of the United States to settle with the commissioners of the seven states in the matter of the formulation of said joint compact.

The Western States Reclamation Association includes the seven Colorado river states and the ambitious program of that association looks to the securing of large appropriations for expenditure within the thirteen western states. The Colorado river states, upon the other hand, were primarily united on a program of settling the title to the use and disposition of the waters of the Colorado river prior to any further construction upon that stream through either Government or private funds.

It would thus appear that the objects of the Western States Reclamation Association, headed by Governor Davis of Idaho, were primarily those of promotion of rapid construction, while the objects of the League of the Southwest are to settle the title and agree in advance as to future disposition of the waters of the Colorado river prior to encouraging further construction.

The objects of the two organizations naturally conflict if urged simultaneously.

I have gone at length into the above matters in order that the reason for certain conditions at Washington at the time of my visit may be self-evident.

On Sunday evening, May 15th, Governor Davis of Idaho promptly called a conference of all western Governors and their personal representatives for the purpose of going over the objects of the visit of the Governors with Senator McNary of Oregon, Chairman of the Senate Committee on Irrigation. It was evident from the outset that the disposition was to submerge the prime object of the visit of Governor Campbell and the executives of the Colorado river states and to make the support of the Smith-McNary Bill appear to be the principal object of the visit of the Governors at Washington. The discussion finally resulted in the suggestion that the Colorado river states abandon for this session of Congress any thought of pressing their desire for an interstate compact in order that an impression of contention of western streams might be avoided in the mind of the President and among the various representatives in Congress. The fear was
expressed that if the resolution adopted by the Colorado river states at Denver should be presented to the President he would thereby become impressed with the view that it was unwise to encourage reclamation appropriations in the face of possible interstate conflicts.

Had this program been followed, the visit of Governor Campbell and the Colorado river states Governors and representatives would have been futile. The legislation of the seven Colorado river states providing for an interstate-national compact would have been of no avail and the whole program of the League of the Southwest would have become submerged in favor of the construction of enormous works on the lower Colorado river. In view of the experience of Wyoming, Colorado and New Mexico upon the North Platte and Rio Grande rivers subsequent to the building of the Fath Finder and Elephant Butte reservoirs which was followed by a policy of preventing any further development in the three states mentioned at points above the reservoirs, it is apparent that the upper states of the Colorado river drainage would have been placed in a similar position after the construction of enormous works upon the lower river.

At this juncture it fell to my lot to take sharp issue with any program looking toward an abandonment of the Interstate-National compact provided for by the legislative acts of the seven Colorado river states and I spoke frankly but positively to the effect that Colorado would look with disfavor upon any program which would retard the progress of a settlement in advance of construction of the use and disposition of the waters of the Colorado river along the lines covered by the legislation of the seven states and the resolutions of the Governors at Denver.

Senator McNary in turn took sharp issue with my attitude and the attitude of New Mexico and Wyoming, but I felt it my duty to remain firm in my position and felt obliged to further state that Wyoming, Colorado and New Mexico would much prefer that no further construction proceed for the time being if, as the result of such construction the history of the Rio Grande and North Platte rivers was to be repeated upon the Colorado.

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continuation of any such a policy but that the former action of
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program of the Colorado river states. He suggested, however,
that we proceed with all convenient dispatch and that he would
lend his aid wherever possible.
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May 19th the western Governors and representatives waited upon President Harding. While at this interview Senator McNary and Governor Davis first presented their desire of favorable action along the lines of the Smith-McNary bill, nevertheless Governor Campbell, of Arizona, very adroitly seized an opportune moment and presented to the President the original resolution of the Governors of the Colorado river states adopted at Denver and urged speedy consideration of the Colorado river program by appropriate action of Congress and the President of the United States. Secretary Fall promptly joined Governor Campbell in the request and the President gave the matter his thoughtful consideration and discussion, saying in substance, "As I understand the idea is for the seven interested states to make an allocation of the waters of the river in advance of further construction or possible future contention". To this expression Governor Campbell and Secretary Fall made affirm-
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and it met with his instant and hearty approval. He stated that it was the most constructive program ever presented in the history of the Union and made many verbal suggestions respecting the measure and the procedure to be had thereunder. Dr. Scott is a man of international repute as a technical advisor on matters of international law and has been the technical advisor at The Hague with Senator Root and others. He gave the whole program his hearty approval and wished to be called upon whenever his services might be of benefit. During the afternoon of that day Mr. Davis of New Mexico and myself called upon the Secretary of the Interior and the Commissioner of the General Land Office.

May 26th Governor Campbell, Mr. Davis of New Mexico, and myself called at the office of the Secretary of State for the purpose of acquainting the State Department with the Colorado river program. We were referred to Mr. Baker, the legal advisor of that Department on Colorado river matters. After an extended interview, Mr. Baker assured us that he saw no objection to carrying out the program of the Colorado river states so long as the compact contained a stipulation that the international statute between the United States and Republic of New Mexico was not interfered with.

On the evening of this date, pursuant to invitation, and as your representative, I attended the reception given Congressman Timberlake and his prospective bride at the Wardman hotel, where it was my pleasure to extend your greetings to Congressman Timberlake and to the bride to be, wishing them the fullest measure of happiness and extending your good wishes.

On the 27th I had interviews respecting the Colorado river program with Senator Warren of Wyoming, Senator Shortridge of California and others, all expressing themselves as favorable to the general program. Throughout these interviews I spoke more to the general program than to any specific bill, to the end that the objects might be attained through any other measure as well as through the Burton bill.

On the 28th I placed copies of the brief which I had prepared for Senator Burton in the hands of Senators Phipps, Shortridge and others senators and also in the hands of Mr. Mondel, Majority House Leader. I had arranged for my departure on the 29th but Mr. Mondel seemed badly confused respecting the proper procedure to be taken. Governor Campbell had left for Arizona on the morning of the 27th, stating that he had arranged with Mr. Mondel to take care of the
matter before the House of Representatives, but requesting that I not only see Mr. Mondel, but remain in Washington until the matter was clearly understood by the interested Senators and Congressmen. Mr. Davis of New Mexico had departed on the same morning and all other governors and representatives had left Washington. Under these conditions it was apparent that I was confronted with the duty of clarifying the whole matter if possible in the mind of Mr. Mondel. He requested that I prepare and present further brief and citation of authorities, particularly upon the subject of whether or not the United States of America might properly sit as a party to a compact between seven states upon the one hand between the United States and the seven states upon the other.

I accordingly labored during the 29th and 30th along the lines requested by Mr. Mondel and on the morning of the 31st presented Mr. Mondel with a brief and memorandum upon the subjects desired.

Mr. Mondel thereupon introduced me to Mr. Volstead of Minnesota, chairman of the House Judiciary Committee, and requested that I confer with him regarding the preparation of another bill, more in conformity with certain views Mr. Mondel possessed and particularly with a view to avoiding a requirement that the representative for the United States should become a party signatory to any compact which might be agreed upon, as both he and Mr. Volstead expressed the view that a bill specifically requiring the representative of the United States to sign a compact would meet with such stubborn opposition in the House of Representatives, because of its novelty, that they feared its defeat and earnestly believed that we would be defeated in our program by adopting such a method and urged that a new measure be prepared providing that the representative of the United States should participate and then report, leaving Congress to care for the approval of the document through appropriate legislation.

While the Mondel measure was more to my liking than any measure such as requested by Mr. Mondel, I was nevertheless convinced that he was in earnest and that it might be advisable to comply with his request rather than to suffer ultimate defeat under the terms of the Burson bill. I was particularly moved in this regard by reason of Mr. Mondel's commanding position, realizing that unless he would undertake the support of such a measure with full confidence it might be defeated.

During the remainder of May 31st and June 1 I drew a new bill and changed the same somewhat from time to time during conferences with Mr. Mondel or Mr. Volstead.
On the 2nd the form of the draft was finally agreed upon at a conference between myself and Mr. Mondel and he then advised me that he felt inclined to introduce the measure himself, in which view I encouraged him. He accordingly introduced the bill on the 3rd and during that day I had several conferences with both him and Senator Burson as well as other senators and representatives.

On June 4 Mr. Volstead called a hearing before the House Judiciary Committee upon the bill introduced by Mr. Mondel on the 3rd and the Committee extended me the courtesy of a two hour appearance and examination at which time I submitted and incorporated in the record a brief and memoranda which I had theretofore prepared. I forward herewith a printed copy of the hearing including the brief and memoranda. In this regard I call your attention to the fact that many errors appear in the stenographer's report of the hearing. This was occasioned by my inability to remain and correct the report before printing. I would have been required to remain over until Tuesday, the 7th and as my stay had already been much prolonged I did not feel justified in remaining and requested that Mr. Volstead's Secretary make whatever corrections he could. The errors, however, are not vital and simply render the report ambiguous in some features.

On June 5th I started upon my return to Denver, stopping at Lincoln, Nebraska on Tuesday, the 7th, where I conferred with the Governor's private Secretary and the State Engineer respecting action by Nebraska looking toward an adjustment by compact of the Nebraska-Colorado relations upon the South Platte river.

June 8th, pursuant to orders of the Attorney General of Colorado, I called upon the Governor, Attorney General and State Engineer of Kansas at Topeka and there spent the day in preliminary discussion of the outline of the work to be undertaken by the joint commission for formulation of a compact upon the Arkansas river between the States of Kansas and Colorado. The interviews of the day were both pleasant and profitable and I feel assured that there is a favorable opportunity for a candid consideration of the Arkansas river problem and a possibility of an interstate compact upon that stream, largely by reason of the personnel of the present state officials.

Arrived in Denver Thursday, June 9, and reported at your office during your absence.

Much to my regret I was forced to prolong my trip beyond the time anticipated. It was thought that I would
not be compelled to remain away from my business for more than two weeks but the events which transpired and particularly the situation with Mr. Mondel and the necessity of calling at Topeka greatly prolonged my stay. I nevertheless feel that the results justified the extra time given the undertaking and trust that my action will meet with your approval. Permit me at this time to express my sincere appreciation of the honor conferred in permitting me to act as your personal representative upon this mission.

Respectfully submitted,
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GRANTING THE CONSENT OF CONGRESS TO CERTAIN COMPACTS
AND AGREEMENTS BETWEEN THE STATES OF ARIZONA, CALIFORNIA,
COLORADO, NEVADA, NEW MEXICO, UTAH, AND WYOMING

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
SIXTY-SEVENTH CONGRESS
FIRST SESSION
ON
H. R. 6821

STATEMENT OF
Mr. DELPH E. CARPENTER, of Greeley, Colo.

Serial 6

JUNE 4, 1921

WASHINGTON
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GRANTING THE CONSENT OF CONGRESS TO CERTAIN COMPACTS AND AGREEMENTS BETWEEN THE STATES OF ARIZONA, CALIFORNIA, COLORADO, NEVADA, NEW MEXICO, UTAH, AND WYOMING.

SERIAL 6.

Committee on the Judiciary,
House of Representatives,
Washington, D. C., June 4, 1921.

The committee met at 11:15 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. We have under consideration this morning H. R. 6521, 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.

The bill referred to is as follows:

[H. R. 6521, Sixty-seventh Congress, first session.]

A BILL 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.

Whereas the Colorado River and its several tributaries rise within and flow through or form the boundaries between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming; and

Whereas the territory included within the drainage area of the said stream and its tributaries is largely arid and in small part irrigated, and the present and future development necessities and general welfare of each of said States and of the United States require the further use of the waters of said streams for irrigation and other beneficial purposes, and that future litigation and conflict respecting the use and distribution of said waters should be avoided and settled by compact between said States; and

Whereas the said States, by appropriate legislation, have authorized the governors thereof to appoint commissioners to represent said States for the purpose of entering into a compact or agreement between said States respecting the future utilization and disposition of the waters of the Colorado River and of the streams tributary thereto; and

Whereas the governors of said several States have named and appointed their respective commissioners for the purposes aforesaid, and have presented their resolution to the President of the United States requesting the appointment of a representative on behalf of the United States to participate in said negotiations and to represent the interests of the United States; Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into a compact or agreement providing 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 shall make report to Congress of the proceedings and of any compact or agreement entered into; Provided, That any such compact or agreement shall not be binding or obligatory upon any of the parties thereto unless and until the same shall have been approved by the legislature of each of said States and by the Congress of the United States.

The CHAIRMAN. Will you give your name, residence, and business connections?
STATEMENT OF MR. DELPH E. CARPENTER, ATTORNEY AT LAW, GREELEY, COLO.

Mr. Carpenter. My name is Delph E. Carpenter; residence, Greeley, Colo.; lawyer, practice limited largely to irrigation and interstate water laws.

Mr. Michener. Whom do you represent?

Mr. Carpenter. I am the personal representative of the governor of Colorado, for the purpose of this hearing.

This measure (H. R. 6211) was introduced for the purpose of permitting the seven Colorado River States to enter into a compact respecting the future use and disposition of the waters of that river, pursuant to Article I, section 10, paragraph 2, of the Constitution.

The Colorado River is the third largest river in America. From the standpoint of development it is still young, so to speak. It discharges annually, on the average, something over 17,000,000 acre-feet. That would be enough water to over 17,000,000 acres 1 foot deep; that is the average discharge. Of that, about 15,000,000 acre-feet now goes to the Gulf of California. This water has its origin mostly in three of the States; that is to say, Colorado, Wyoming, and Utah. Some of the water rises in New Mexico, and some in Arizona. One-half of 1 per cent of the flow rises in Nevada, and there is substantially none of the water rising in California.

Mr. Goodykoontz. What do you mean when you say it goes to waste in the Gulf of California?

Mr. Carpenter. It goes out into the Gulf of California unused.

Mr. Goodykoontz. Well, it will still flow there under this compact, would it not?

Mr. Carpenter. It would; except in so far as consumed in the uses along the river.

Mr. Goodykoontz. What I mean is, you are not going to divert it to any other outlet?

Mr. Carpenter. No; only in a minor degree. The California people divert a great per cent of this water out of its natural drainage over into the Salton Sea, where the return waters evaporate.

The Chairman. Of course, that is an old problem.

Mr. Goodykoontz. That has been going on for some time?

Mr. Carpenter. Yes; that has been going on for some time. And the State of Utah has a diversion that has been going on for some time. And the State of Utah has a diversion project of the Reclamation Service, where the waters of this stream are diverted into the Salt Lake Basin, through a tunnel. There will be in the course of time some minor diversions along the Continental Divide in Colorado from the Colorado River drainage, through the mountain range to the Atlantic side, by intermountain tunnel, for municipal and similar purposes, but probably not to exceed 2 per cent of the water supply as a maximum.

The rest of these States, Colorado furnishes 60 per cent of the annual runoff. We irrigate at present about 1,000,000 acres of land in Colorado, and furnish about 105,000 acre-feet to the river after irrigating the 1,000,000 acres. I mention these matters merely in passing.

One thing further: In the Grand Canyon district, a large development is now contemplated. The California Edison Co. recently filed in Arizona a claim for the right to build a reservoir at Lees Ferry, commonly known as the Flaming Gorge site, which would amount to more than one year’s flow of the river; this to be impounded primarily for power purposes.

The United States Reclamation Service is anxious to construct what is known as the Boulder Canyon Reservoir in the Colorado River Canyon, or the Grand Canyon, which would have an impounding capacity when completed, according to their plans, of 25,000,000 acre-feet a year, as I am advised; in other words, considerably more than the average year’s flow of the river.

In view of the unfortunate litigation brought by a number of the lower States against the States of origin in water supplies in the West on streams where the water is used for irrigation, the most notable of which is the case of Kansas v. Colorado (206 U. S., 46), it has come to be regarded as a matter of importance that the title to the water—that is, the title to its use—should be determined in advance of further construction—analogous, if you please, to the setting of title to land before the erection of a building.

The States of origin—that is, the States in which the water has its rise—feel and contend that they are entitled to make a reasonable use of the water in the upper State, the State of origin, before it passes down to the lower States. The lower States, on the other hand, have frequently taken the attitude that the water must pass from the upper State unused to the lower States, and have sought to prevent further development upon the head waters. This attitude has been, in some degree, encouraged by various other agencies, leaving naturally a chaotic condition and a feeling of uncertainty.

In view of these conditions, it being a well-known fact that the Colorado River is still young, as it were, in the matter of the utilization of the water supply, either for irrigation, or for domestic, power, or other beneficial uses; and wishing to avoid any future controversy between the States respecting the development upon that river, the Colorado River States, seven in number, which are named in the bill, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

The Chairman (interposing). And Arizona.

Mr. Carpenter. Yes, Arizona; I should have mentioned that first. Those States, by their governors or other representatives, met together at Salt Lake City, Utah, in January, 1919, Gov. Spry, of Utah, now Commissioner of the General Land Office, presiding.

With your permission, I shall later include in the record the resolutions that were adopted at that meeting. But I may briefly state that, after a thorough consideration of the different phases of the general subject of the beneficial use of the waters of the Colorado River and all of its tributary streams, resolutions were prepared and adopted, making certain recommendations, particularly to the effect that the drainage area should be developed primarily at the source, and that the development should proceed from the source downward, in order that the greatest use might be made of the water supply.

I might pause here to remark that the history of irrigation in the West has demonstrated that the application of water to lands does not consume the water, save in part. It is not like a retenary use, for example, or uses where the water is diverted from the stream and passes off to the air, in the form of steam or vapor; but the water, in large part, sinks into the soil in the same manner that water from rainfall sinks into the soil in the humid regions, and passing down through the voids in the soil, gradually forms an underground reser-
Compacts and Agreements Between Certain States.

Voir from which the water returns gradually to the stream in the form of springs, forming, in turn, rivulets, brooks, and creeks that never existed before the irrigation works were constructed.

Mr. McMichael. Well, that statement is largely theoretical. You would not say, as a practical man living out in that arid region that much of the water diverted for the purpose of irrigation reaches these underground lakes and streams, would you?

Mr. Carpenter. Oh, yes.

Mr. McMichael. You would.

Mr. Carpenter. Yes. The percentage of return, so far as our investigations have thus far gone, varies according to the soil and topography of the country and the particular strip of the stream under examination. In other words, the soil is more or less stratified with silt, and the dip of the rock, or the quality of the soil, has a great deal to do with the amount of water that returns back to the stream. Investigations show that the return runs from 20 per cent up to as high as 60 per cent, and sometimes more, of the waters taken a considerable distance from the stream. Where the water was applied immediately adjacent to the stream, along the river bottom lands, where the lands are underlaid with gravel, the return is much in excess of that; the only water that is lost is that which is lost by evaporation in the short time the water is exposed at the surface and through plant exhalation and other like channels.

The Chairman. When you first put the water on the land, it takes a long time for it to soak through that land, doesn't it?

Mr. Carpenter. Yes, indeed, Mr. Chairman. The full effect of the returned supply is not manifest in many districts for as long as 10, 15, or 20 years after the initial application takes place.

Mr. Widell, the noted authority on soils and application of water at the University of Utah, and now, I believe, the president of that institution, in his valuable work, says that for ordinary calculations it may be said that one-half of the earth's mass is air; in other words, it is made up of voids. So that if you take a tumbler full of soil, for example, it would be much like a tumbler full of marbles, and one-half of the space of that tumbler would be occupied by solid matter and one-half by voids. As the water pours upon the surface of the ground it naturally passes down through those voids, accumulates below, and raises the water plane as it existed in nature, so that if the water plane were raised over a certain area, 10 feet, for example, over what it originally was, the rough figures there would be that you would have an underground reservoir 5 feet in depth of clear water. This water, of course, is added to each year by each year's application, and it passes out below into the subterranean channels, creeks, and brooks that I have mentioned.

Probably the most exhaustive study ever made in the United States on this subject is just being concluded on the South Platte River. The South Platte River is what we know as a disappearing river; that is to say, it increased in flow from its upper sources, the snow banks in the mountains; it increased in flow as it proceeded toward the foothills below. And when it went into the plains of the Atlantic slope, or the Great Plains area, it received no more gradual contributions; it gradually, under natural conditions, lost itself in the sand, so that in the month of August of each year, for example, it disappeared entirely within 75 to 100 miles east of the mountains; it disappeared, as far as visible flow of the surface of the stream is concerned. There is a stretch of 150 miles from the town of La Salle, Colo., to Julesburg, Colo., Julesburg being right at the point where the South Platte River crosses into Nebraska. There has been a very careful and thoroughgoing study made of that river for a two-year period, conducted jointly by the State of Colorado and the Department of Agriculture, and they placed automatic registers on every head gate, on every diversion, and on every river station.

The upshot of that study shows that over 1,200 second-feet of water appear in the bed of that stream and are diverted through that 150-mile stretch that was originally dry; the 1,200 second-feet of water appear in the hottest month of the summer, where no water ran before, none of that water being what we term "original water," or that year's flow from the mountains.

The reason for that is very simple. There are over a million acres now irrigated on that drainage; that has been under irrigation, some of it, over 60 years; a large part of it over 40 years; and gradually the great land sponge has been filled, so that now there is a steady return of the stream; and so great and so constant and reliable is that return that upwards of 300,000 acres of land have been reclaimed, or nearly reclaimed—in the main reclaimed—during the past 10 years as a result of works built diverting water from part of the stream which was originally dry sand.

Mr. Boro. In what State is that?

Mr. Carpenter. In Colorado, between the town of La Salle and the town of Julesburg, on the South Platte River.

I have digressed to mention that, in order to bring out this phase of the matter: That the upper States know those conditions full well, or their executives and those in charge of their State governments do; and they realize that when the water is used at the sources not only is the use beneficial and the crop production great, and not only is arid and almost worthless land converted into highly productive land, supporting families and helping to support the Government by taxation, but in addition there is a constant storage of water taking place in the voids of the earth that costs nothing to the lower river, and it is an incidental storage. And the water so used, in large part, according to the soil conditions, will return for reuse, and going out to the land will again, in part, return for further reuse, etc., down to the mouth of the stream. So much for this brief sketch of the physical facts.

To return again to the conference of the governors in August, 1920, the governors of those seven States, and other accredited representatives, met at the city of Denver, and to this conference came Arthur P. Davis, Director of the United States Reclamation Service, and an accordingly connected with that bureau. The deliberations of that body extended over some three days, the body being known as the League of the Southwest, and being presided over by Gov. Thomas E. Campbell, of Arizona.

At that meeting the Director of the United States Reclamation Service, the matter having been pretty thoroughly discussed, made the statement that there was ample water within the drainage area of the Colorado River to permit development in that quarter, or on any part of that stream, without any interference with future development in any other part of the drainage area, and resolutions were then adopted, unanimously, calling upon the seven States of
The bill provides, as you will note, that any compact or agreement entered into shall not be binding or obligatory upon any of the parties thereto unless and until the same shall have been approved by the legislatures of each of said States and by the Congress of the United States. In other words, if it should turn out that the seven States were fortunate enough to enter into a common understanding respecting the future disposition of the waters of this river, the acts of the commissioners in formulating and entering into that compact would not be in any manner either obligatory upon the States or in any manner embarrassing to the United States, by reason of the fact that the compact so drawn and formulated must be returned to the legislatures of each of the States and to Congress for subsequent approval.

Mr. Chandler. This provides only for the consent of the Government to the making of these contracts; it in no wise obligates the Federal Government in the matter of an expenditure for irrigation purposes, nor does it bind the balance of the country to be put to the expense of carrying out the terms of the contract, does it?

Mr. Carpenter. Not at all.

Mr. Chandler. Excepting subject to the irrigation laws now upon the statute books. It is merely a request for the consent of the Government that these States make this contract?

Mr. Carpenter. Yes, sir.

Mr. Chandler. Concerning the waters of this river?

Mr. Carpenter. Yes, sir.

Mr. Mitchell. The bill provides for the appointment of a United States Commissioner to meet with the governors, does it not?

Mr. Carpenter. Yes, sir.

Mr. Mitchell. Have you in any way contemplated what expenses there would be connected with that?

Mr. Carpenter. It is very hard to forecast just what the expense will be; it would depend largely upon the extent of the deliberations. But the expense would be limited, in comparison with the interests involved. For example, Colorado in her bill sets apart an appropriation for this, among other purposes; and as regards this particular purpose it is provided that Colorado shall not only pay the expenses of her commissioner, but shall likewise pay her equitable portion of the expenses of the joint commission. Some of the other States have not directly so legislated; but doubtless they would pay their equitable proportion of the costs of the joint commission. So that the expense to the United States would be purely that of the compensation of the commissioner or representative of the United States.

Mr. Goodykoontz. The bill is silent as to the compensation of the commissioner, is it not?

Mr. Carpenter. It is.

Mr. Goodykoontz. Do you not think it would be necessary or expedient to undertake to fix his compensation in the measure?

Mr. Carpenter. I am not familiar with your procedure in the matter of national appropriations. It was thought and suggested by several members of Congress that the matter of the compensation could, and probably should, be fixed in a subsequent bill, or in some appropriation bill.

Mr. Mitchell. I can see that. But to me it seems very important to know what expenses legislation of this kind will ultimately bring about. If we simply authorize the appointment of a commissioner.
in this bill, of course that carries with it the implied intention to pay the commissioner is reasonably worth. Now, if we pass this legislation and establish the commission, or authorize the commissioner to act, then the next question is that we must pay him. Of course, I would be much better satisfied if I had some idea what your notion was as to what this expense would be.

Mr. Carpenter. It is very hard for me to say, because I do not know how much Congress might wish to pay such a commissioner.

Mr. Michener. Well, you are an expert in these matters.

Mr. Carpenter. Well, I will state this: That owing in the first place, to the extreme value of the interests involved, and, second, in view of the fact that such a compact or agreement would probably be perpetual in its nature and would affect the third largest river in America, it would be advisable that the commissioner appointed on behalf of the United States should be a man of more than ordinary ability.

Mr. Michener. Yes. Now, you are a man from the West, an attorney specializing in these things, and experienced along these lines, and I am not. What would be your judgment, with your knowledge and with your experience, as to what we would be compelled to pay to get a man from your section familiar with those things?

Mr. Carpenter. I would say $10,000 would cover it all.

Mr. Michener. Do you mean $10,000 a year?

Mr. Carpenter. No, in the aggregate.

Mr. Michener. Well, how long do you contemplate that this work would take?

Mr. Carpenter. The time elapsing between the commencement of the work and the final signing of the compact—or the breaking away of the parties in disagreement—would probably be a year or two at a half.

Mr. Michener. And your view is that the expense of this legislation to the Government would not exceed $10,000?

Mr. Carpenter. I should not think it would exceed that amount. Of course it would be very presumptions upon my part to attempt to fix the compensation or the type of man the Government should have upon this work.

Mr. Hickey. Pardon me, but I have not read the bill. Does it attempt to fix the salary of the Federal commissioner?

Mr. Carpenter. No.

Mr. Michener. No; it simply authorizes the appointment of a commissioner. Now, the next question is, What kind of a commissioner should we get? Here is a witness that has qualified as an expert in irrigation matters, familiar with that country and with the conditions, and he should have some personal knowledge as to the kind and quality of man required and what he would cost the Government.

Mr. Carpenter. I might state, as far as the United States is concerned, that its principal interest is largely in the national and international phases of the matter of local laws or local applications of water supply. For example, if I were selecting the commissioner or representative on behalf of the United States the nearer I could approach getting a man capable of sitting upon the Hague Tribunal the better I would be pleased if I were the President, because he would be in a position not only to protect the United States in its interests, but primarily to assist the States in entering into a compact that would put at rest all future contentions upon that river, and, second, would stabilize the water titles, if I might so term them, within the States, so that the United States Reclamation Service, in building further projects, or private interests in building their projects, would know where they stand.

Now, the compensation to be paid such an individual is a matter concerning which I am not advised. Of my own compensation, I might state that we anticipate that it will take, for expenses and compensation, probably not to exceed $7,500 for my work. I might state that I am the commissioner for Colorado for that river and for other rivers, on similar matters.

Mr. Michener. Well, that is very good information, because that gives some idea as to the amount. You are an expert, and you appear as one of these commissioners; we are asked to appoint another one. Your compensation is to be $7,500?

Mr. Carpenter. I say not to exceed that. I work on a per diem, because my time will be divided between this and four other rivers, and also on some irrigation matters of a private nature that I must look after. So that I work for the State of Colorado on a per diem compensation, with expenses.

Mr. Michener. Well, this Federal commissioner contemplated in this bill; would it require all of his time, or could he work on a per diem, and do other work at the same time?

Mr. Carpenter. He might, depending upon the arrangement that was made. I hope it will not take all of our time. Personally, and also on behalf of the commissioner from New Mexico, Mr. Stephen Davis, of Las Vegas, a very able and eminent lawyer of that section, I can state that neither one of us will be able to give his entire time, and we would wish to make the proceedings as short and expeditious as possible.

I might also state in that regard that a great part of the details necessary to be brought before the commission is largely prepared. The Geological Survey has for years been conducting its water-supply investigations and keeping its records. The United States Reclamation Service has made a most exhaustive study of the water-supply conditions upon that stream, in view of the projects near Yuma and on Salt River, a tributary down in Arizona, and in view of their projects in California and possibly other projects, as well as the vast projects in Colorado known as the Grand Valley and Uncompahgre, and the Reclamation Service has this detailed data in very good shape at present, I am told.

In addition to that, the State engineer's office of Wyoming has a large mass of detailed information prepared and is making a still further investigation, and in Colorado we have one expert and two assistants, whose time is being devoted entirely to the Colorado River drainage, taking in about half of our State. I might state in passing that Representative Taylor's congressional district includes the Colorado River drainage; in other words, they are coincident.

Mr. Yates. His district covers pretty nearly the whole western half of the State, does it not?

Mr. Carpenter. Yes; the Continental Divide, which is the Colorado River drainage.

Mr. Yates. I want to ask another question, if it will not interrupt you.
Mr. Carpenter. No; certainly not.
Mr. Yates. I want to know if anything of this kind has ever been done before, or whether this is an experiment—something brand new?
Mr. Carpenter. It is new on rivers; the method has been very frequently applied to boundary matters affecting interstate boundaries.
Mr. Yates. I mean cases of the Government appointing representatives?
Mr. Carpenter. In one case. You see in matters of boundaries between States, the Government has no material interest ordinarily, and those matters are settled between the States themselves.
Mr. Yates. Without any Government representative?
Mr. Carpenter. Yes, sir; but in one case, that of the boundary controversy between Indian Territory and the State of Texas, after Texas became a State of the Union, the United States appointed a commissioner on behalf of the United States of America, and the State of Texas appointed a commissioner on behalf of the State, for the purpose of trying to arrive at an understanding respecting the disputed boundary on the Red River. The first commission having disagreed, it appointed a second commission, and the second commission having disagreed, and diplomacy failing, they finally resorted to the Supreme Court in the case of United States v. Texas. I have noted that in a memorandum that I will put in the record.
Mr. Yates. What I am driving at is this: It has never been found necessary, has it, to make an apportionment of the waters of other rivers, such as the Mississippi, the Missouri, etc., between the States, by agreement?
Mr. Carpenter. No; for the reason that in the case of other rivers the waters have not been devoted to irrigation purposes to a degree sufficient to have any material effect upon them. And, secondly, the unfortunate part of the whole problem has been that the States have felt aggrieved, instead of using the peaceful method of diplomacy which this bill provides, have plunged into court by interstate suits, and there have been several of those affecting western rivers.
Those suits have invariably up to date been very disappointing, as they have been in the case of eastern rivers—for example, the St. Louis controversy as to sewage, resulting in the case of Missouri v. Illinois, and a New York case, recently divided, involving a controversy between New York and New Jersey.
Mr. Boies. We recently reported out a bill confirming an agreement of two New England States as to the settlement of their boundaries.
Mr. Carpenter. Yes, sir.
Mr. Yates. But that was a boundary matter?
Mr. Boies. Yes.
Mr. Carpenter. Yes. I will say, as a matter of history, that international complications respecting rivers have been universally settled by treaty; and this compact between the States is in every degree analogous to a treaty between nations.
Mr. Boies. Goodykoontz. In your absence, Gov. Yates, the witness pointed out the fact that under the Constitution the States are forbidden to enter into a compact, except by consent of the Congress.
Mr. Carpenter. In other words, to put it in a different manner, this bill contemplates the application of the international rule of peacable settlement of river controversies by treaty, in the form here of a compact between the States.
Mr. Michener. As a legal proposition you are satisfied that that can be done?
Mr. Carpenter. Yes; indeed. In fact, I might state further that having been upon three of those interstate water suits, I am convinced that it is wild folly to enter into litigation until this method has been exhausted, and that none of those suits should have been filed without a preliminary requirement by the court of an attempt to force those States to a peacable settlement of their differences. And the disposition of the court in that respect appears in the Sand Island case, in the Columbia River, between Washington and Oregon. The States having quarreled over the island for years, the Supreme Court finally turned the matter back to the States, with the suggestion that they settle it by compact, the same as boundaries are settled.
Mr. Boies. They probably, as a matter of law, could not settle it among themselves without the approval of Congress.
Mr. Carpenter. They could not, to be sure; but where the matter is primarily one between the States, as in a case involving boundaries, as I read the reports, the consent of Congress usually goes as a matter of form.
Mr. Yates. I want to ask whether there is language in this bill, or in any line of decisions affecting the question, that would make a compact approved by the commissioner so binding that they could not get away from it and get into this unfortunate litigation?
Mr. Carpenter. Yes. The general construction of interstate compacts, which are older than the Constitution, is that when a compact has been entered into between States it then becomes a document that the Supreme Court of the United States may enforce between the parties. A discussion of that will be found in the case of Richmond v. Massachusetts, in the early reports. I also have that in the memorandum which I will, with your permission, incorporate in the record.
Mr. Michener. Just one question: As I understand your statement, two courses are open. The States could go on and make this tentative arrangement and then come in and ask for confirmation of it?
Mr. Carpenter. Yes, sir.
Mr. Michener. Or they could adopt this method. And you have adopted this method, principally because you desire that the commissioner be appointed to represent the United States Government and that the Government should be a party to the negotiation and in the consideration of the matter? That is true, is it not?
Mr. Carpenter. Yes, sir.
Mr. Michener. That is the real purpose of this particular measure at this time, is it not?
Mr. Carpenter. Well, it is one of the real purposes. It was thought advisable, inasmuch as seven States were involved, to obtain the consent in the language of the Constitution, in the first instance; the word “consent,” rather than “approval,” being the term used in the Constitution.
Mr. Michener. Yes; I understand that.
Mr. Carpenter. And second, in view of the fact that the United States has certain interests in that river, it was thought advisable that a representative of the United States be present in this negotiation.
I might state further in that connection that it would be to the liking of the Western States if that commissioner could have suffi-
of the commission itself—that is, its stenographers and other machinery.

Mr. Michener. We would be expected to provide for a share of that general expense?

Mr. Carpenter. Yes.

Mr. Michener. When I say “we” I mean the United States Government.

Mr. Carpenter. I think it would be proper that the Government should, but if it did not, the States would doubtless do it anyhow.

Mr. Goodykoontz. It would seem to me that the expense is a mere trifling incident to our object in developing that phase of the matter; but when this committee takes the bill on the floor of the House it will be asked a good many questions about that, and we ought to be prepared to make some intelligent reply.

Mr. Yates. Yes; we will surely be asked.

Mr. Michener. To me the expense is very material.

Mr. Bones. The States ought not to pay the expense of that commissioner, because he would be under suspicion, especially if they gave him a large fee, of being influenced, and that is the same.

Mr. Carpenter. I would not care to be compensated by anybody else, and I would not care to have any part of my expense borne by anybody else. I wish to be free to enter or withdraw as I may be advised.

Mr. Bones. This plan suggested here, to my mind, gives jurisdiction to every possible interest that might come in, and their interests will all be determined and forecast in this proceeding, the Government as well as the States.

Mr. Carpenter. That is the final analysis of the subject, and the interests having been settled, both the States and the Government may proceed with some degree of certainty as to future investments. You know the investments in those enormous reservoirs in the canyon will run into many millions, and the investments in the States already run into many millions; I mean the investments by private individuals.

Without any disposition to in any way detract from the wonderful work that has been done by governmental agencies, I simply want to call your attention to the fact that I am advised that the 1910 census shows that of all the lands irrigated in the United States 21 per cent only were served by Government projects, and that probably the 1920 census will show probably not over 5 per cent of those lands served by United States projects. My reason for mentioning that is to call your attention to the fact that the greater development has been by what is known as private capital and the Lee’s Ferry development now proposed. It is not a Government project at all. It is proposed by the California Edison Co. primarily for the purpose of generating power for the supply of Los Angeles and that whole region.

Mr. Bones. Have you any information about what the comparative expense is on the part of the various individuals and the Nation for the results obtained?

Mr. Carpenter. Having had an unpleasant disagreement with one member of a governmental department here respecting that, I would not care to go into that subject now. I might state that that matter has been more or less in controversy, and I do not know but what, as usual, there is merit on both sides.
Now, are there any questions you would like to ask me respecting this matter? I appreciate very much the opportunity of discussing it this morning, primarily, as I realize, for the purpose of the record, and would like to go into it as exhaustively as possible, because my engagements compel me to leave in the morning.

If I may again urge it, the principal thought is this: This is an attempt, and I think the first in the history of the United States, upon the part of seven States, and the only seven States interested, to settle, by diplomatic and friendly methods, in advance of possible contention, all future controversy which might otherwise arise upon the third largest river in America.

Mr. BOIES. Probably the only one?
Mr. CARPENTER. Yes, sir.

Mr. YATES. Have you any idea how long it would take in the matter of hearings, etc.?
Mr. CARPENTER. I will say, frankly, that the physical conditions lend themselves to expeditions settlement, and it may be that the deliberations of the commission will be quite brief.

Mr. YATES. You do not look for long-sustained contentions?
Mr. CARPENTER. No; I do not. To make myself clear, this is the opposite in physical condition from the ordinary western stream. Take the Rio Grande, for example. It rises in the mountains of New Mexico, and then diminishes as it flows toward the Gulf—toward El Paso—so that for the moment, as it were, if all of the Colorado and New Mexico territory were developed it would temporarily absorb the water in the stream until the return water began to operate, but the way the land is it would lick up the water, consume the stream in the first application.

On the Colorado River the general shape or configuration of the country is such that the rivers cut narrow valleys, in the main. For example, as I said before you came in, the State of Colorado furnishes 60 per cent of the water of that stream. Congressman Taylor's district furnishes 60 per cent of the water that reaches the Gulf of California. Yet, with all that drainage and with all the tunnels that we could possibly put through to take up little dribbles of water that are available, we can not possibly irrigate more than two or three million acres, at the outside, when the water table is 100,000,000 acre-feet, as it is right now; so that a great majority of the water of the Colorado River must necessarily pass below the line unused.

Mr. GOODYKOONTZ. In your statement you referred to the fact that this river forms the boundary line between a part of the State of Arizona and southern California—

Mr. CARPENTER. Lower California.

Mr. GOODYKOONTZ. Between Arizona and Lower California, in Mexico, and that in that respect an international question presents itself, and also that under the treaty that river was regarded as navigable on the frontier. Now, tell us what you know about the navigability of the river within the United States. I want to know what bearing the commerce clause would have on the question.

Mr. CARPENTER. The Colorado River is, in the main, navigable within the United States. Some trilling navigation may take place from Needles south toward the international boundary. Navigation between the Gulf of California and that part within the United States has been cut off by the construction by the Reclamation Service of the Laguna Dam, which goes from rock bluff to rock bluff across the river. In fact, I am told that since the construction of the railroad about 1876, there has been practically no navigation on the Colorado River. Whatever, however, the facts as to that may be, it is the thought of those of us who have had some part in the preparation of this general plan that no compact that we might enter into could in any way interfere with the international relations with the Republic of Mexico, and that whatever the State might do, or whatever the United States and the States might do within the territory of the United States would at all times be subject to the reserved treaty powers of the United States of America in its relation to Mexico. We did not think of disturbing them in the least.

The CHAIRMAN. Nor with regard to the administration of the law in reference to water power.

Mr. CARPENTER. No, sir; not at all.

The CHAIRMAN. What you really want is the use of the water for irrigation and domestic purposes along the stream?

Mr. CARPENTER. For irrigation, domestic, refinery, and for other beneficial uses that future ingenuity may devise.

The CHAIRMAN. If you do not interfere with navigation or water power, the States would have the right to use the water under existing law, so far as the Federal Government is concerned, except what the Government owns land adjoining the stream.

Mr. CARPENTER. There were some debates upon that question. As I recall the debates upon that question, the position was taken by those in charge of the bill, or the contention was made that the Government would not control that situation, but that in truth the States would control the water supply, I think that statement was made by Mr. Walsh at one time on the floor. I might say that there might easily arise yet some very serious conflict of jurisdiction on that very problem. The legislation does not necessarily exclude the possibility of friction in that quarter.

The CHAIRMAN. This, of course, would not have anything to do with the water power, except in those cases where you might have to cross a State boundary.

Mr. CARPENTER. That is true.

The CHAIRMAN. Or where there might be a contest between two States, each adjoining the other on the river.

Mr. CARPENTER. Or possibly some phase of local regulation of the use. However, that probably would be a matter of interstate commerce.

The CHAIRMAN. There are questions of that kind that might become difficult.

Mr. CARPENTER. It is the thought of those who have been thus far pioneering upon the subject to avoid all possible interference with the international phase of this subject and to leave undisturbed the rights of the United States and of the Republic of Mexico, whatever they may be, either within the United States or in Mexico, and we have to avoid the contention or primary contention as between States over future developments. I might state in that connection that it might be thought that this is a little bit early or coming a little too soon, but the experience upon the Rio Grande and North Platte, where two large control reservoirs were constructed fairly well down
to the lower reaches of the streams has brought into view the fact that future development or subsequent development is largely embarrassed by the construction of those enormous reservoirs below. Therefore, we are brought to this proposal at this time largely out of past experience; and, as I have several times stated, to the position of one about to construct a large building and finding it better business to clear the title to the land before the building is constructed.

As time goes on, the probable first development on the Colorado River will be on the lower river or the lower end of the river, because that is the place where the water will be more in detail of segregated tracts and slower, and much of it will depend upon the ingenuity and inventiveness of mankind. To use an illustration, 20 years ago you could not have built tunnels as they do now. I have in mind one tunnel 21 miles long, built by private enterprise through a mountain range, for the transportation of water for irrigation purposes only. That tunnel was made Possible purely by the invention of the air drill, by means in which the cost of tunneling was so much reduced that it became possible, but before the invention of the compressed-air drill it was not possible. Therefore, as time goes on new inventions will make possible the irrigation of high table-lands that can not now be served by water by modern mechanical means; but those tracts are necessarily segregated, isolated, and small areas when compared with the larger lower development. It is to preserve the right to development, unhindered and without handcuffs, in that lower part that is desired. We feel that their future development should be settled and agreed to in advance of construction on the lower river of works of such magnitude that could by any stretch of the imagination be made to interfere with the upper development. We are brought to that view by the experience on the two rivers in my State.

Mr. Boop. This Government commission would not necessarily be vitally interested in the contention between the several States. It would tender suggestions, perhaps, but I think its work would be much less than that of the commissioners for the States.

Mr. Carpenter. Here is a remarkable situation. I venture to say that it is a circumstance without parallel in the history of the United States, where seven States with but very little preliminary thought on the subject quietly and unitively enact legislation leading to one common purpose of this kind. In the next place, it is to the great interest of the United States to preserve the comity between the States to its fullest degree; so that the United States here not only acts, as you suggest, as a commissioner but as a conciliatory influence where human agencies might enter into a conference among commissioners, making some commissioners, possibly, lose sight of their duties. The influence of the strong man would be the able-bodied influence in bringing about the desired end—that is, perpetual peace and quiet upon that river among all of the seven States involved.

Mr. Yates. And also to see the molding of its form so as to bring it in harmony with the Federal laws and Constitution?

Mr. Carpenter. Yes, sir.

The Chairman. The Federal Government has a direct interest in it, in that it has lands that are under irrigation or that they intend to irrigate.

Mr. Carpenter. There is a large acreage, or a greater acreage, of land yet to be served within the entire Colorado River drainage.

The Chairman. In that sense, the United States has some interest and should have some representation.

Mr. Carpenter. It also has the project at Yuma, known as the Laguna Project, where they are now diverting water on both sides of the Colorado River. The Government is substantially the property of that quarter.

Now, since my arrival at Washington I have hastily prepared some rather informal memoranda, and, with your permission, Mr. Chairman, I would like to have a portion of these that I will describe as more pertinent included in the record, in order to aid, if possible, in the further consideration of this bill. This memorandum is largely confined to the history of the case, as it were, or the history of it foregoing or forerunning the introduction of the bill. It contains references to the decisions by the Supreme Court of the United States and by the Attorney General of the United States respecting cases which may be developed during the consideration of this bill. It also includes citations respecting the treaty powers of the States, particularly as applied to boundaries.

It is about the only subject that has been treated outside of some Federal cases relative to the rights of the States in that quarter. There is also a more or less extensive memorandum respecting the advisability of the United States, if need be, entering into compacts with the States on matters where there is a conflict of jurisdiction between the National Government and the States, and the precedents in that quarter; proceeding, as it does, largely upon the theory that the sovereignty of the United States begins where the sovereignty of the State ends, or stating it conversely, that the sovereignty of the State begins where the sovereignty of the Nation ends. There are two divided sovereignties, and this relates to the adjustment of conflicts between two separate Government agencies. If this memorandum will be of any service to the committee, I will be glad to have it incorporated in the record.

The Chairman. We would be glad to have it.

Mr. Carpenter. I might state in that connection, that Senator Bursum, of New Mexico, has introduced a bill along much the same lines as the Mondell bill. That bill proceeds primarily upon the idea of having a representative of the United States sit as a commissioner and with power to sign. Mr. Mondell's bill and Senator Bursum's bill differ substantially in that quarter only.

Mr. Boop. There would probably be some controversy in Congress over that question.

Mr. Carpenter. Yes, sir. Those of us who have had to do with the details of attempting to bring into operation those sections of the Constitution bearing upon this subject matter of the Colorado River, had drafted the model which was prepared and introduced by Senator Bursum, and the draft of the bill suggested by the governor to the President, but merely as a suggestion, of course, and the only essential difference between the two bills, the bill of Senator Bursum and House bill No. 6821, introduced by Mr. Mondell, is that Mr. Mondell's bill simply provides that the representative of the United States enter, participate, and report to Congress, while in the Bursum bill the representative of the United States enters with full power of a commissioner to sign and report.

There is another feature that in the Mondell bill the whereass appear; that is, there is a preamble prior to the enacting clause. It
was thought advisable to include this preamble because of the rather
novel problem presented and to assign the reasons for the measure.
It has somewhat of a precedent in the legislation of Congress look-
ing to the settlement of the boundary dispute between the United
States and Texas, in which case the preamble not only was a part of
the bill upon introduction but a part of the bill when finally enacted.
Is there any other phase of the subject that I might be of aid on?
Mr. Goodykoontz. I think, Mr. Carpenter, you have made a very
clear and satisfactory statement, and one of the best I ever heard
before this committee.
Mr. Yates. What sort of distribution would be unfair to the United
States?
Mr. Carpenter. In this case?
Mr. Yates. Yes. It is a kind of hypothetical question, but suppose
the States got together and agreed upon the future utilization and
distribution of the waters of this river, in what way could that be a
danger or harmful to the rights of the United States? What might
they do?
Mr. Carpenter. It is very hard to conjecture.
Mr. Yates. I suppose so. Well, I think that is a sufficient answer
to the question.
Mr. Carpenter. Yes; it would be a conjunctural injury. It might
possibly cause injury in some minor degree, but, in other words, what
in the main is good for the States is good for the Nation.
I might state, gentlemen, in concluding, that I not only appear here
as the personal representative of the governor of Colorado,
but also as the representative of the governors of the six other States,
you one by one having delegated their powers to me as they departed from the city. And I might state that the governors of the States are very serious and in
deed earnest and that the legislatures of the States were serious and in
earnest when this legislation was enacted. I am familiar with the
debates having to do with this legislation before the legislatures of
four of the Western States. The question was thoroughly discussed,
very deliberately considered, both in committee and upon the floor,
and passed substantially without any objection in each of the States
after due deliberation. It is the outcome of the solemn act, as it were.
Mr. Michener. Not of a solemn referendum?
Mr. Carpenter. No, sir. It is the outcome of the solemn act of
each of the seven States, followed by the signature of the governor
and the approval of the bill by the governor, after being thoroughly
advised upon the subject matter at hand, followed in turn by the gov-
ernors meeting, next in turn by their appointing commissioners, pursu-
ant to the terms of the legislation of each of the States; again by
the governors leaving their several capitals and meeting at Denver;
then, in turn, by the governors in the majority, at least, of the
States coming in person to Washington, and those not attending in
person coming by personal representative, and laying the matter in the
form of resolutions and personal interviews before the Secretary of
the Interior, and particularly the President of the United States. So
that its presentation to Congress at this time, although probably in a
sense novel and somewhat unusual, is the result of a serious considera-
tion of the entire subject by the seven States whose territory is to a
greater or less degree involved, and by the seven States upon whose
future development the peace and quietude of the use of the water
supply of that river largely depends.
I might state in that quarter that without the use of the water of
the Colorado River the territory drained by that stream will remain
forever arid, as it is today. It is the most arid, in the main, of any part
of the United States. The use of that water will convert it into a
productive region, comparable with the region already developed.
I thank you.
(The following statements were submitted by Mr. Carpenter:)

MEMORANDUM AND BRIEF CONCERNING LEGISLATION LOOKING TO COMPACT UPON COLORADO RIVER.

Preliminary.
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, Cali-
ifornia, 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 con-
struction or expensive utilization of these waters, in order that the rights of the
States and the Government may be settled and determined in advance of con-
struction and before interstate or other controversies may arise.
A bill was introduced pursuant to resolution adopted and signed by
the governors of the seven States above named at Denver, Colorado, May 10, 1921,
wherein it is recited that each of the seven States, whose territory includes in
part the drainage of the Colorado River, has already provided for adjustment
respecting the utilization of the waters of the stream, and has appointed its commis-
sioner to serve with commissioners from other interested States and with a commis-
sioner to be appointed for the States for this general purpose.
The resolution reads as follows:

"Whereas the States of Arizona, California, Colorado, Nevada, New Mexico,
Utah, and Wyoming have, by appropriate legislation, authorized the governors
of said States to appoint commissioners representing their States for the
purpose of entering into a compact or agreement between said States and
between said States and the United States respecting the future utilization
and disposition of the waters of the Colorado River and the streams tribu-
tary thereto; and

"Whereas the governors of said several States have named and appointed the
commissioners contemplated by the legislative acts aforesaid: Now, there-
fore, be it

"Resolved, That the Congress of the United States be, and it is hereby
requested, to provide for the appointment of commissioners on behalf of the
United States to act as members of said commission; and be it further

"Resolved, That the proposed draft of a bill for presentation to Congress, a
copy of which is hereto attached, be offered as a suggestion for legislation for
the purposes aforesaid; and be it further

"Resolved, That Gov. Thomas E. Campbell, of Arizona, and the governors of
the other States in the Colorado River Basin, or such representatives as they
may severally designate, be, and they hereby are, authorized to present this
resolution to the President and to the Congress of the United States.

We, the undersigned, do hereby certify that the foregoing resolution was
adopted by unanimous vote at a meeting of the governors of the Colorado, Arizona,
Colorado, Nevada, New Mexico, Utah, and Wyoming, held at the capitol at
Denver, in the State of Colorado, on the 30th day of May, 1921.

THOMAS E. CAMPBELL,
Governor of Arizona.

WILLIAM D. STEPHENS,
Governor of California.

By W. F. McCauley,
State Engineer.

OLIVER H. SHOYU,
Governor of Colorado.

EMMERT T. BOYLE,
Governor of Nevada.

MERRITT C. MICHENER,
Governor of New Mexico.

CHARLES E. MARDY,
Governor of Utah.

ROBERT D. CARR
Governor of Wyoming.

COMPACTS AND AGREEMENTS BETWEEN CERTAIN STATES.
HISTORY OF PROCEEDINGS BY COLORADO RIVER STATES LEADING TO INTERSTATE COMPACT LEGISLATION—COLORADO RIVER.

SALT LAKE CONFERENCE.

January 18-21, 1919, a conference between the representatives of the seven Colorado River States, to wit, Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, was called by the governor of Utah for the purpose of discussing questions relating to the utilization of the water supplies of the Colorado River and its tributaries, and especially in connection with a law then proposed by Secretary Lane relating to soldiers' and sailors' settlement.

Hon. W. J. Spry, ex-governor of Utah, present Commissioner of the General Land Office and the meeting was made permanent chairman of a continuing organization.

The other Colorado River Basin States above noted were represented. The meeting of the States resolved itself into a permanent organization to be known as "The League of the Southwest." As a result of the sessions the following resolutions, inter alia, were adopted:

The history of irrigation throughout the world has shown that the greatest duty which the public holds to the public domain, where the same are essential to the development of such private projects.

"We further urge the approval of the laws of the United States for placing the lands of the United States in the possession and occupation of its citizens in order that the citizens may have a home and that the lands may upon the small rolls of the various States in which they may be located in order that they may bear their just proportion of the expense of State administration.

"Along the lines set forth in these resolutions, we pledge ourselves to a hearty cooperation with the representatives of the Federal Government in order that the desired end may be achieved at the earliest possible date and with a wise administration of the affairs of the Nation and of the States.

"In the carrying out of all reclamation projects in which the Federal Government may become interested, its activities should ever be in conformity with the principles of the Act enacted in 1902 which the project under development is located.

"In the aird States of the West the irrigation projects undertaken by or with the aid of the Federal Government should in every instance be based upon a full compliance with the laws of the State wherein the projects are located so far as the appropriation of water and other matters of purely State control are concerned."

Subsequent meetings of the league were held at Los Angeles where resolutions of a similar character were adopted.

DENVER CONFERENCE.

A subsequent meeting of the league was held at Denver August 25-27, 1920, at which the desirability of encouraging the construction of large reservoirs in the Canyon of the Colorado River for purposes of flood control, power, and irrigation was discussed. The action of the Director of the Reclamation Service in discouraging the representatives of the seven States that the construction of such reservoirs need in no manner interfere with the future development of the various States outside of the waters to be impounded by the reservoirs situate in the lower States.

The following resolutions were unanimously adopted:

"Whereas it is the understanding of this league, from information presented by Hon. Arthur P. Davis, director of the United States Reclamation Service that the present and future necessities of all of the States whose territory is involved and that all present and future interests of the water supply of the Colorado River drainage is insufficient to supply the present and future needs of all of the States whose territory is involved, and that all present and future interests of the water supply of the Colorado River drainage is insufficient to supply the present and future needs of all of the States whose territory is involved."

Resolved, That the league favors the early development of all possible beneficial uses of the waters of the Colorado River drainage by the approval of right of way across public lands for irrigation works should be discontinued, and that such applications should be granted with that degree of efficiency which will permit the construction of all such projects while financial means are at both and opportunity for construction exists; be it therefore resolved that the present the interchange 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 be used and enjoyed within the waters of said stream and its tributaries be settled and determined by compact or agreement between said States and the United States, with the consent of Congress, and that the legislatures of said States be requested to authorize the appointment of commissioners for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislatures of each said States and the Congress of the United States.

Passed to the last mentioned resolution, and at the request of the governor of Arizona, president of the League of the Southwest, bills were drawn and submitted to the legislatures of the seven States involved, and were thereafter enacted into law by said States.

Each of said bills provided for the appointment of commissioners for each of said States by the respective governors for the purpose of formulating the compact or agreement provided for by the concurrent legislation.

The laws of each of the States also provided for a representative of the United States to act on behalf of the Federal Government in the formulation of the interstate compact or agreement.

Pursuant to the above legislation, the governors of each of the States have appointed their respective commissioners.

May 10, 1921, the governors of the seven States, or their duly accredited representatives, met at the city of Denver and there formulated resolutions calling upon the President of the United States and upon Congress to provide for the appointment of a representative for the United States to be act as the agent of the United States in the formulation of the above-mentioned legislation by the States, and directed that the resolution so formulated, be laid before the President and Congress by the governors of the States. The resolutions adopted by the governors at Denver were presented by the governors, or their duly accredited representatives, to the Senate Interior at Washington, May 17, and to the President of the United States May 10, 1921.

POWERS OF STATES TO ENTER INTO COMPACTS.

Compacts or agreements between the States are recognized by Article I, section 10, paragraph 3, of the Constitution of the United States, which provides:

"No State shall, without consent of Congress, enter into any agreement or compact with another State.

Interstate controversies and differences respecting boundaries, fisheries, etc., have been frequently settled by interstate compact.

Among the many boundary disputes so settled may be mentioned the following, viz., Iowa and Pennsylvania, 1789 (11 Pet., 1, 29); Virginia and Pennsylvania, 1784 (3 Dall., 125); Kentucky and Virginia and Tennessee, 1852 and 1854 (148 U. S., 503, 511, 516); Virginia and Maryland, 1765 (133 U. S., 153, 162).

It is currently reported that recently the States of New York and New Jersey settled their harbor differences by interstate compact.

While all compacts which will in any way involve the Federal Government or its jurisdiction, property, etc., must be made with consent or approval of
Congress in order to be binding, it has been suggested by the Supreme Court that compacts made between two States respecting matters in which the States alone are interested might be taken as binding without consent of the States, as if it were in Congress. (Virginia v. Tennessee, 148 U.S. 568; Wharton v. Wise, 153 U.S. 155.)

For a full discussion respecting the rights of the States to enter into treaties or compacts, with the consent of Congress, see Rhode Island v. Massachusetts (22 Pet., 567; 725-731).

In the case just cited the Supreme Court observed that when Congress has given its consent to two States entering into a compact or agreement, * then the rights of each State respect reserved to their original governments, such consent being the sole limitation imposed by the Constitution, when given, left the States as they were before, as held by this court in Poole v. Fleeger (11 Pet., 206): v. the compacts became by the enforcement of the boundary between them, operating with the same effect as a treaty between sovereign powers. That is, that the boundaries established and fixed by compact between nations, become conclusive upon all the citizens and subjects of the two States, and are to be treated from that time and for ever, as the true real boundaries. * * * The construction of such a compact is a judicial question," for the United States Supreme Court. (12 Pet., 725.)

See also discussion of the same subject in Virginia v. Tennessee (148 U.S. 568, 578-785; 153 U.S. 155.)

In other words, the States of the Union, by consent of Congress, have the same power to enter into compacts with each other as do independent nations, upon all matters not delegated to the Federal Government.

INTERSTATE COMPACTS.

Controversies respecting international rivers have been settled by treaty. (Heffter Droit Ind., Appendix VIII; Hall, International Law, sec. 30.)

While the right of the United States to use and benefit of the full flow of the Rio Grande, or any other river, irrespective of any agreement with Mexico was upheld by the opinion of the Attorney General in 1895. (21 Ops. Att'y, 274; 292), the rights of the two nations were settled by a "convention providing for the equitable distribution of the waters of the Rio Grande for irrigation purposes" made May 2, 1906. (Malloy, Treaties, Vol. I, p. 122.)

That the United States has a perfect right to divert the waters of the Colorado River at any point above the international boundary with Mexico irrespective of any treaty made in Mexico upon the flow of the river in a right is entirely that part of its course which forms the boundary between the two nations was held by the Attorney General September 28, 1895. (Rept. to Att'y, Gen. of U.S. Colorado River in California, p. 36; Opinion of Att'y, Gen. Aug. 29, 1915.)

The above opinion is in harmony with the decision in the Rio Grande case, wherein it was held (quoting from syllabus):

"The fact that there is not enough water in the Rio Grande for the use of the inhabitants of the United States for irrigation purposes does not give Mexico the right to subject the United States to the burden of arresting its development and of denying to its inhabitants the use of a provision which has supplied entirely its own territory. The recognition of such rights as regards the sovereignty of the United States over its national domain, "the rules, principles, and precedents of international law imposed no duty or obligation upon the United States of denying to its inhabitants the use of the waters of that part of the Rio Grande lying entirely within the States, although such results in reducing the volume of water in the river below the point where it ceases to be entirely within the United States. (21 Ops. Att'y, 274.)

For a full discussion of international rights upon the Colorado River, see Appendix, pages 318-343, part 2, Hearings Before Committee on Irrigation of Arid Lands, House of Representatives, Sixty-Sixth Congress, First Session, July 23, 1919, and succeeding hearings.

While many international law authorities have been entitled to full use of the waters of an international stream rising wholly within the borders of the upper nation, nevertheless such matters are usually settled by treaty in the same manner as the other matters between Mexico respecting the use and benefit of the waters of the Rio Grande (above cited), wherein it is provided for an "equitable apportionment" of the waters of that stream between the two Governments. (Kansan v. Colorado, 206 U.S. 84, 117.)

This equitable apportionment of the waters of an interstate river may be made by one of two methods:

(1) By the interstate "compact or agreement" between the States, by consent of Congress; and

(2) By suit between the States before the United States Supreme Court.

If the parties agree, the substitute, under our form of government, for war between the States. In other words, were it not for the provisions of our Constitution the States might settle their differences over interstate rivers by resort to arms. But by the terms of the Constitution the right to resort to arms is not recognized in the Constitution but it is recognized by the right to submit interstate controversies to the Supreme Court in original proceeding between the States. (Kansas v. Colorado, 206 U.S. 84; Rhode Island v. Massachusetts, 22 Pet., 567.)

If the United States is a substitute for war. It is the last resort, and should not be resorted to until all avenues of settlement by compact have been exhausted. It has been suggested that the Supreme Court should be entertained without a preliminary showing that reasonable efforts had been made by the complaining State to compose the differences between it and the defendant State by mutual compact or interstate compacts. It would not be unreasonable for the States to adopt this method for all international disputes over rivers common to two nations should likewise apply to settlements of controversies, present or possible, between States of the Union.

The object of the present legislation is to follow the International principle of settlement.

INTERSTATE COMPACTS RESPECTING USE OF WATERS OF INTERSTATE RIVERS.

While, as we have already observed, various of the States have settled their controversies respecting boundaries, fisheries, etc., by interstate compact or by concurrent State legislation, having the same effect, this method of settlement of pending or threatened controversies respecting the use and distribution of the waters of interstate streams for irrigation and other beneficial purposes, has not been availed of. The right of adjoining States to use and benefit of the waters of the streams common to both States has been considered by the Supreme Court in Colorado v. Kansas (155 U.S. 125; 206 U.S. 46), in which case it was held that the respective States were each entitled to an equitable portion of the waters of the common river, the extent of the use in each State to be determined upon the facts and circumstances of each particular case.

In the above-mentioned case the right of the United States to use the waters of the western streams was also considered and determined (pp. 155, 136).

An equitable apportionment or allocation of the use and distribution of western interstate streams may be best accomplished through the efforts of the States represented by commissioners fully empowered and acquainted with the facts and circumstances of each particular case, as well as with the future possibilities of water utilization upon the streams.

Principles of international law are applicable to the use and distribution of interstate streams, and are at times the basis of decisions of the Supreme Court, as well as the decisions of the State courts.

The rights of the nation in whose territory an international stream has its rise to the use and benefit of its waters for the development of its territory, irrespective of the effect upon the territory of a lower nation through which the upper nation may be charted by the United States with the consent of the Republic of Mexico to damage by depletion of the waters of the Rio Grande, occupied by the United States. After exhaustive correspondence on the subject, he arrived at the conclusion that, while the United States had the right to utilize the entire flow of the Rio Grande in the necessary reclamation of the lands near the source of the stream, and while the higher and lower portions of the United States "to permit any of the waters of the stream to flow to El Paso, nevertheless, he advised that the matter be treated as one of policy and settled by treaty with Mexico. (21 Ops. Att'y, Gen. 274, 281.)

It is clear that most of the past controversies respecting the waters of western interstate streams could have been avoided had the parties in dispute been first submitted to competent commissioner.
COMPACTS AND AGREEMENTS BETWEEN CERTAIN STATES.

By the act of January 31, 1885, chapter 47 (23 Stat., 266, 267), it was provided that the United States should appoint a representative who should work in conjunction with a representative to be appointed by the State of Texas, for the purpose of ascertaining the boundary. The following references appear as due to the parties or the negotiating compact or agreement in question:

"The two Governments (United States and State of Texas) appointed commissioners," (162 U.S., 1, 76); the joint body so constituted is defined as "the joint commission" (162 U.S., 1, 21); in the act by the Legislature of Texas authorized the appointment of the commissioners to act is described as "the joint commission" (162 U.S., 1, 74); by the: act authorizing the suit between the United States and Texas 120 Stat. 620, chap. 122, sec. 1; under the act of 1885 Texas is designated as "the joint boundary commission under the act of Congress," etc. (143 U.S., 621, 622); and by the act of 1885 a "joint commission was organized" (143 U.S., 621, 630).

Without further multiplication of examples, it would appear that where two representatives of the United States and of a State are duly appointed for the purpose of settling a boundary or some other dispute, and such persons are "commissioners," and are collectively a "joint commission," as the court said (162 U.S., 76), "under the act of Texas of 1882 and the act of Congress of 1885, the two Governments appointed commissioners," and the body so constituted was a "joint commission.

This exercise of the treaty-making powers of the two separate Governments (National and State) necessarily proceeds upon the fundamental fact that there are two separate and distinct Governments, each having its attributes of sovereignty. Of this we shall make mention in a separate memorandum.

COMPACTS BETWEEN STATE AND NATIONAL GOVERNMENTS.

Controversies arising between two States or between the United States and a State or its political divisions may be settled by compact or agreement by the consent of the United States Supreme Court. Diplomacy failing, the suit before the court is the substitute for war. In either event the high contracting parties acting are sovereign states, the bases of sovereign independent and separate powers, and each within its proper sphere. As said by Mr. Justice Harlan in United States v. Texas (143 U.S., 621, 626), "The submission to judicial solution of controversies arising between the two States is in the nature of a submission of the sovereignty and jurisdiction of the one to the sovereignty and jurisdiction of the other."

McCulloch v. State of Maryland (4 Wheat., 316, 400, 410), but both subject to the supreme law of the land, do not deny to this court the inherent nature of sovereignty. The States of the Union have agreed, in the Constitution, that the judicial power of the United States shall extend to all cases arising under the Constitution, laws, and treaties of the United States, without regard to the character of the parties. The court may, therefore, decide a controversy between citizens of Texas and a citizen of another State, or citizens of Texas and citizens of foreign States, or citizens of foreign States, and equally to controversies to which the United States shall be a party, without regard to the subject of such controversy, and that this court may exercise original jurisdiction in such cases 'in which a State shall be a party', without excluding those in which the United States may be the opposite party. The power to enter into compact between a State and the United States is, as to the same principle as the power to conclude treaties between States, to settle controversies between States, as said by Mr. Justice Harlan in the following case (p. 614), "We can not assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between States, intended to exempt a State altogether from suit by the General Government."

The above statement followed an analysis of the position taken by Texas (p. 614), "Commissions are not the same as treaties, and a treaty that has been concurred in by two States does not necessarily preclude a controversy between the States, as a matter of law, on the same subject."

The cases cited are not quite analogous to the one now in hand, the Commission was a compromise, and the decisions were made by the court. Of course, if such agreement can be reached—and it seems that one is not probable—and if neither party will surrender its claim of authority and jurisdiction of the disputed territory, the result, according to the decisions of the Supreme Court, must be that the United States, in order to effect a settlement of this vexed question of boundary, must bring its suit in one of the
courts of Texas that, in the end, there must be a trial of physical strength between the Government of the Union and Texas. The court decided that, inasmuch as the State and the United States did not settle their controversy by compact, the Supreme Court had the power to determine the controversy between the United States and the State.

The right to extinguish by compact the sovereignty of the State and the sovereignty of the Nation. As stated regarding another matter, "It is a matter between two sovereign powers." (U. S. v. La., 127 U. S., 139, 180.)

"It must be recollected that previous to the formation of the new Constitution the States were divided into Independent States, united for some purposes, but in most respects independent. (Chief Justice Marshall in Sturgis v. Crowninshield, 4 Wheat., 122, 192.)"

"Reference has been made to the political situation of these States, anterior to its Constitution formation. It has been said that they were sovereign and independent, and were connected only by a league. This is true." (Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat., 1, 187.)

"The United States are sovereign as to all the powers of Government actually surrendered. Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them. Of course, the parties not surrendered must remain as it did before." (Chisholm v. Georgia, 2 Dall., 419, 433.)

"In America the powers of sovereignty are divided between the Government of the Union and those of the States. They are each sovereign with respect to the subjects committed to it, and neither is subordinate to the other. (Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat., 418, 410.)"

"In the Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, all powers not delegated to the United States are reserved to the States, or to the people, the States individually, or to the people. And we have already had occasion to remark at this term, that the people of each State compose a State, having its own government and independent of the United States in every respect, exist, and that without the States in union there could be no such political body as the United States. Not only therefore can there be no loss of separate and independent authority to the States through their Union under the Constitution, but in all respects and appearances, the present existence of the States and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the Federal Government. The Constitution, and all its provisions, looks to an indestructible Union, composed of indestructible States." (Chief Justice Chase in Texas v. White, 7 Wallace, 700, 725, decided in 1868.)

"The General Government, and the States, although both exist within the limits of the territory, are, and are intended to be, separate and independent of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of the territory, are, and are intended to be, independent of each other, in the language of the Constitution, "reserved," as are independent of the General Government as that Government within its sphere is independent of the States." (Mr. Justice Nelson in Collector v. Day, 11 Wallace, 113, 124, decided in 1870.)

"We have in our republic a dual system of government, national and State, each operating within its territory and upon the same persons, and yet working without collision, because their functions are different. It is because over which the National Government has absolute control and no action of the State can interfere therewith, and therefore others in which the State is supreme, and in respect to them the National Government is powerless. To preserve the balance between these two Governments and hold each in its separate sphere is the peculiar duty of all courts, preeminently of this--a duty oftentimes of great delicacy and difficulty." (Mr. Justice Brewer in South Carolina v. United States, 127 United States, 437, 445, decided is 1895.)

"Each State is subject only to the limitations prescribed by the Constitution and within its own territory, is otherwise supreme. Its internal affairs are matters of its own discretion." (Id. 454.)

"The powers affect the internal affairs of the States not granted to the United States, and not prohibited by the Constitution, are reserved to the States respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States." (Justice Brewer in Kansas v. Colorado, 206 U. S., 46, 90.)

In the case of Kansas v. Colorado, last cited above, the United States intervened, in effect claiming national control of the waters of Western streams to be administered under the discretion of Congress. In answer to the primary question of national control, regardless of the rights of the States, inter se, Justice Brewer, after observing that the United States had an interest in the public welfare in the Western States and might legislate for their manipulation, subject to State laws, this disposed of the claim of national control of Western interstream flows:

"Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, we say that no one of them by any implication refers to the reclamation of arid lands. "* * * No independent and unmentioned power passes to the National Government or can properly be exercised by Congress. But it is useless to pursue the inquiry further in this direction. It is enough for the purpose of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters. (Citing cases.) * * * It may determine for itself whether the common law rules in respect to riparian rights or that doctrine which obtains in the arid region of the West of the appropriation of waters for the purposes of irrigation shall control. Congress can not enforce either rule upon any State. * * * One cardinal rule, underlying all the relations of the States one to another, is that of the equality of right. Each State stands on the same level with all the rest. It can impose its own legislation on no one of the others, and is bound to yield its own views to none. (Id. 480, 36, 117.)"

In concluding the above decision, the Supreme Court dismissed the case without prejudice to the right of Kansas to institute new proceedings, whenever it shall appear that a material increase in the depletion of the waters of the Western streams, by reason of the pressure of the overdrafts, would be injurious to the extent of destroying the equitable apportionment of the benefits between the two States resulting from the flow of the river. (206 U. S., 46, 90.)

The United States has large interests in the form of public lands within the Colorado River area, and has already constructed large irrigation works near Yuma, Ariz., and is engaged in irrigation of large areas along the lower course of the river. The Colorado River, which rises in the Rocky Mountains, flows through Colorado, Utah, and New Mexico, then enters Arizona, and finally joins the Colorado River at Yuma, Ariz. There are several large water projects on the Colorado River, and the water supply originates chiefly in the high mountains of Wyoming, Colorado, Utah, and New Mexico. 32 per cent of the annual average flow at Yuma, Ariz., comes from the Green, Grand, and San Juan Rivers. At the present time, the total area irrigated from the Colorado River and its tributaries approximates 2,000,000 acres, of which about 300,000 acres are
in old Mexico. The undeveloped irrigable area that is considered feasible of development according to present standards may approximate 4,000,000 to 5,000,000 acres of which 700,000 acres lie in old Mexico.

To show the approximate extent, distribution, and relation of the present irrigated and undeveloped irrigable areas of the Colorado River Basin, the following data are given for the states which constitute the drainage basin of the Colorado River, and the adjacent states. The data are compiled from the records and reports of the United States Reclamation Service, as given in the Annual Reports of the Service, for the years 1912 and 1913; the United States Geological Survey, and other sources.

**Distribution of irrigation and irrigable areas, Colorado River Basin, 1916.**

<table>
<thead>
<tr>
<th>State</th>
<th>Area irrigated in 1916 Acres</th>
<th>Additional area that could be irrigated Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyoming</td>
<td>384,000</td>
<td>384,000</td>
</tr>
<tr>
<td>Utah</td>
<td>380,000</td>
<td>380,000</td>
</tr>
<tr>
<td>Colorado</td>
<td>670,000</td>
<td>670,000</td>
</tr>
<tr>
<td>Nevada</td>
<td>36,000</td>
<td>36,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>47,000</td>
<td>47,000</td>
</tr>
<tr>
<td>California</td>
<td>560,000</td>
<td>560,000</td>
</tr>
<tr>
<td>United States</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,358,480</td>
<td>2,045,190</td>
</tr>
<tr>
<td>Mexico</td>
<td>719,000</td>
<td>719,000</td>
</tr>
<tr>
<td></td>
<td>2,077,480</td>
<td>2,764,190</td>
</tr>
</tbody>
</table>

Total area that may be ultimately irrigated: Acres

- United States: 4,442,600
- Mexico: 784,000

Total ultimate area irrigable in Colorado River Basin: Acres: 5,226,600

Since 1914 the United States Geological Survey and the United States Reclamation Service have made many studies, investigations, and surveys of water supply, storage, projects, and arable lands of every state in the basin. At the present time the Boulder Canyon reservoir site of 25,000,000 acre-feet capacity is being investigated and studied. This site lies between Nevada and Arizona at the mouth of the Virgin River, and if the proposed reservoir will control the entire lower river and equalize and control the flow for all undistributed irrigable lands in the lower basin. The Boulder Canyon site (feasible) will serve a threefold purpose, viz.: 1. Squeeze the flood problem of the lower river, equalize irrigation requirements, and also provide equalization for hydro-power development.

The following table shows Colorado's interest in any interstate plan for utilization of Colorado River water. Over 10,000,000 acre-feet of the water passing across Colorado State lines flows into tributaries of the Colorado River.

**Approximate average annual discharge in acre-feet of principal Colorado streams at State lines, arranged in order of size.**

<table>
<thead>
<tr>
<th>Stream</th>
<th>Acre-feet</th>
<th>Number of years recorded</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grand</td>
<td>6,000,000</td>
<td>9</td>
<td>Peaks Station.</td>
</tr>
<tr>
<td>Yampa (Beaver)</td>
<td>1,060,000</td>
<td>10</td>
<td>Chalk Station, 300; Little Snake at Dazey. 4,128.000.</td>
</tr>
<tr>
<td>San Juan</td>
<td>917,000</td>
<td>9</td>
<td>Arches Station, 568; Pipra at Arches, 340.000.</td>
</tr>
<tr>
<td>Animas</td>
<td>396,000</td>
<td>10</td>
<td>Damar Station, 500; Lakeview, 679.000.</td>
</tr>
<tr>
<td>Dolores</td>
<td>825,000</td>
<td>2</td>
<td>Bedrock, 620; San Miguel, 117,000.</td>
</tr>
<tr>
<td>White</td>
<td>396,000</td>
<td>13</td>
<td>Medora Station.</td>
</tr>
<tr>
<td>Fiance</td>
<td>26,000</td>
<td>13</td>
<td>Lower Powell.</td>
</tr>
<tr>
<td>La Plata</td>
<td>25,000</td>
<td>13</td>
<td>Powell's ranch and La Plata, New Mex.; approximate only.</td>
</tr>
</tbody>
</table>

Note—San Juan and tributaries, 2,022,000 acre-feet.

**Colorado:**
- Grand: 6,025,000
- San Juan: 2,600,000
- Green: 1,757,000
- Total: 10,482,000

The irrigable lands of western Colorado are not extensive enough to require or demand even a considerable part of the total water supply passing from Colorado. While there are approximately 25,000,000 acres of land in the western third of Colorado in the Colorado River basin, probably not to exceed 2,000,000 to 3,000,000 acres of this land will ever be irrigated. There are vast areas of high plateaus and mountains not suitable for cultivation. There are also considerable areas of land suitable for cultivation which will always remain unirrigated because the soil is too small and there is no adjacent water supply, or the cost of constructing reservoirs and canals to supply them will be excessive.

The menace that Colorado, New Mexico, Utah, and Wyoming desire to avoid is the construction of a large reservoir on the lower Colorado River (the granting of a preferential or priority water right to such a reservoir) which will ultimately be felt when these States attempt to irrigate the undeveloped arable lands within their borders. Just such water problems confront Colorado water users to-day in the San Luis Valley on the Rio Grande, in the North Park on the North Platte, and in Middle Park (transmountain diversion) on the headwaters of the Grand River, where rights of way over Government lands have been denied by the Interior Department without justification.

Of a possible 2,000,000 acres that Colorado may ultimately irrigate from tributaries of the Colorado River, only 450,000 acres are now irrigated. In comparison with this area the annual run-off or stream-flow of western Colorado which passes now unimpaired across the State line is over 10,000,000 acre-feet after serving these lands.

The total net demands of consumptive use of water for 2,000,000 acres will approximate, and probably not exceed, over 2,000,000 acre-feet, since ultimately large volumes of water used for irrigation return to the streams as seepage or return water.

Irrigation investigations show that generally from 20 to 50 per cent of the water applied to land for irrigation ultimately returns to the stream from which it originates. This is well illustrated in the irrigation history of the North and South Platte River Systems. The average return flow of the South Platte River in Colorado between Longmont and Denver, a distance of 235 miles, amounts to 500,000 acre-feet annually. Records of return flow secured in 1900 for the same river section show the gain at that time to have been 350,000 acre-feet. Since then, due to increased irrigation, the return flow in 1918 amounted to approximately 400,000 acre-feet, and the records of the Reclamation Service show that the 90,000 acres then under irrigation from the Interstate Canal were contributing 12.5 acres-feet per annum of return flow water from irrigation to the various formerly dry tributaries of the North Platte River.

The above statements and other well-known engineering facts are the basis for the statement that the irrigation of large areas of land on the headwaters of our streams builds up silently large underground reservoirs which may be drained through seepage or return water the flow of our streams which eddies discharge 70 per cent of their annual flow in the months of April, May, June, and July.

The beneficial effect of return waters from the irrigation of 450,000 acres now irrigated in Western Colorado is partly masked by the building up of underground reservoirs on lands, but recently irrigated and partly through diversion and re-use new land. Ten to 15 years may elapse before the full benefit of such return waters is evident in the lower Yampa, White, Grand, Dolores, and San Juan Rivers. With 2,000,000 acres immediately irrigated in Western Colorado and additional large in Utah, New Mexico, and Wyoming, the benefits to the lower Colorado River from return water will not only be visible, but should be quite marked.

The lower streams of Arizona and California want the peaks knocked off the floods and better equalized winter flow, both for power and irrigation. Irrigation on the headwaters in time, will, therefore, automatically better conditions on the Lower Colorado.
### General data.

#### COLORADO RIVER BASIN.

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
<th>Upper basin</th>
<th>Lower basin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>244,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yearly unused run-off, 22 years (at Yuma, Ariz., below Gila River) acre feet</td>
<td>17,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area irrigated in 1916 (Whistler) acres</td>
<td>1,902,400</td>
<td>1,101,000</td>
<td>801,500</td>
</tr>
<tr>
<td>Undeveloped irrigable area do.</td>
<td>3,315,000</td>
<td>1,257,000</td>
<td>2,058,000</td>
</tr>
<tr>
<td>Total irrigable area do.</td>
<td>5,218,000</td>
<td>2,358,000</td>
<td>2,859,500</td>
</tr>
<tr>
<td>Per cent.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### DRAINAGE BASIN DISTRIBUTION.

<table>
<thead>
<tr>
<th></th>
<th>Per cent.</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>45.1</td>
<td>Nevada</td>
</tr>
<tr>
<td>Utah</td>
<td>16.2</td>
<td>California</td>
</tr>
<tr>
<td>Colorado</td>
<td>15.3</td>
<td>Mexico</td>
</tr>
<tr>
<td>New Mexico</td>
<td>9.0</td>
<td>Total</td>
</tr>
<tr>
<td>Wyoming</td>
<td>7.1</td>
<td></td>
</tr>
</tbody>
</table>

Total, 244,000.

#### ANNUAL WATER SUPPLY DISTRIBUTION.

<table>
<thead>
<tr>
<th></th>
<th>Thousands of acre-feet</th>
<th>Per cent.</th>
<th>Thousands of acre-feet</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>10,200</td>
<td>60.0</td>
<td>New Mexico</td>
<td>350</td>
</tr>
<tr>
<td>Utah</td>
<td>3,150</td>
<td>18.5</td>
<td>Nevada</td>
<td>100</td>
</tr>
<tr>
<td>Wyoming</td>
<td>2,200</td>
<td>13.0</td>
<td>Total</td>
<td>17,000</td>
</tr>
<tr>
<td>Arizona</td>
<td>1,000</td>
<td>6.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### AREA IRRIGATION DISTRIBUTION.

<table>
<thead>
<tr>
<th></th>
<th>Thousands of acres.</th>
<th>Per cent.</th>
<th>Thousands of acres.</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>452.2</td>
<td>24</td>
<td>Mexico</td>
<td>75.0</td>
</tr>
<tr>
<td>Wyoming</td>
<td>383.0</td>
<td>21</td>
<td>New Mexico</td>
<td>47.0</td>
</tr>
<tr>
<td>California</td>
<td>365.0</td>
<td>19</td>
<td>Nevada</td>
<td>6.3</td>
</tr>
<tr>
<td>Arizona</td>
<td>260.7</td>
<td>11</td>
<td>Total</td>
<td>1,903.0</td>
</tr>
</tbody>
</table>

#### UNDEVELOPED IRRIGABLE AREA.

<table>
<thead>
<tr>
<th></th>
<th>Thousands of acres</th>
<th>Per cent.</th>
<th>Thousands of acres</th>
<th>Per cent.</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1,000</td>
<td>30.0</td>
<td>Arizona</td>
<td>327</td>
</tr>
<tr>
<td>Mexico</td>
<td>720</td>
<td>21.5</td>
<td>New Mexico</td>
<td>71</td>
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<tr>
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<td>11</td>
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<tr>
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<tr>
<td>Utah</td>
<td>336</td>
<td>10.0</td>
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</tbody>
</table>

(Whereupon the committee adjourned.)