THE COLORADO RIVER COMPACT

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Sketch of

Events and Causes Leading to

Creation of

The Colorado River Commission
The principal purposes of the Colorado River Compact are to preserve the autonomy of the seven Colorado River States by equitably apportioning the waters of the Colorado River among those States and, thereby, to permit the orderly development of the water resources of the river without encroachment by any State upon the territory and the sovereignty of the other State or States; and to define what waters, if any, shall be used to supply international burdens and the manner of making orderly contribution of such waters.

A brief review of some of the events and causes leading to the solution of Colorado River problems by resort to the inherent treaty making powers of the States of the Union, is conducive to a better understanding of the Colorado River Compact and of state and federal legislation respecting the Compact and the Colorado River.

The flooding of the Imperial Valley by the Colorado River inaugurated an extensive survey by federal agencies to determine ways and means of preventing a repetition of the disaster by adequate control of the floods of the Colorado River along its lower reaches, including the floods of the Gila River which contributes its supplies to the main stream at Yuma, Arizona, located several miles above the intake gates of the Imperial Valley Canal and above the intake gates of the Imperial Valley Canal and above the system of levees built for the protection of
the Imperial Valley. The findings and reports in respect of such surveys are public knowledge and require no special mention here.\(^{(1)}\)

Concurrently with investigations of storage potentialities along the lower Colorado River, by the United States Reclamation Service, for control of the flood situation, various corporate interests prosecuted separate investigations respecting power and irrigation potentialities. The possible use of Colorado River water for domestic and municipal purposes in the coastal regions of California was first considered after negotiation and conclusion of the Colorado River Compact and did not enter into the negotiations.

Investigations revealed in part the enormous potentialities of the great river system and aroused great interest and appealed to the ambitions of those engaged in the studies. The enormity of the proposed projects revealed the necessity of use of great aggregations of wealth in their construction and, preferably, of public funds. The water supply of the Colorado River and of its many tributaries had been studied and recorded by the several interested States and by the United States (Geological Survey etc.) over a long period of years and the information at hand was sufficient for purposes of consideration of general development of the water resources of the river system. Uses of water while still limited, the whole flow
considered, had progressed sufficiently to exhaust the unregulated late summer flow in some years and to indicate future interstate conflict from further development.

These facts and the ever present flood menace called for early and concerted water storage and river development by some agency.

The all controlling human factor became paramount. Whether constructed with public or private funds, cooperation of the people of the interested States would be necessary.

The Colorado River drainage includes territory of seven arid States. These States are not mere counties created by a controlling government for convenience of local administration but are States or Nations in the full sense except as voluntarily self-limited by the specific grants of powers by the Constitution. Each State, however recently admitted to the Union, had entered the Union endowed with all the inherent powers and attributes of sovereignty possessed and reserved by the original thirteen States at the adoption of the Constitution and, in legal effect, had been a member of the Union since its formation.\(^{(2)}\)

Each of these States had entered the Union endowed with the same powers respecting jurisdiction of its streams as possessed by the original States over the waters of their streams\(^{(3)}\) and while federal officials
were inclined to belittle those powers and to assume an 
overriding attitude, nevertheless, it was recognized that 
the support and cooperation of all seven States and of 
their Senators and Representatives in Congress was nec-
essary. The preservation of the autonomy of these States 
is the first duty of the United States.\(^{(a)}\)

The varied climatic and other conditions obtain-
ing within the drainage basin with corresponding vari-
ance with human thought and attitude, made cooperation 
difficult. Natural conditions in the high sub-arctic 
mountain regions produce modes of thought quite differ-
ent from those entertained by inhabitants of the semi-
tropical region drained by the lower tributaries of the 
Colorado River. Each variation in climate, agriculture 
and surrounding conditions develops characteristic 
thought and action. Cooperation by all these human 
factors was imperative.

The people of each of the seven States had been 
awakened in degrees varying with local experiences, to 
a knowledge of the inherent rights of their respective 
States in respect of jurisdiction of local and inter-
state waters. This knowledge generally was of a defen-
sive character varying in intensity and in patriotic 
fervor with the degree to which each State had been sub-
jected to attacks by other States or by federal agencies. 
This defensive knowledge, probably, was the most acutely
developed in Colorado, which had been forced to defend her sovereignty during more than a quarter of a century, in respect of her streams which constitute the sources of several western river systems including the Colorado River of which Colorado furnishes sixty percent of the total water supply.

Officials and employees of the United States Reclamation Service were ambitious to construct immense projects upon the Lower Colorado River for flood control, irrigation and power purposes, through appropriations from the national treasury and were supported by the people of Arizona, California, and Nevada, particularly the people of Imperial Valley, California and of Yuma, Arizona. But the unfortunate attitude of Reclamation officials and employees in seeking to belittle the rights of the States and to supersede state control with national control and administration of waters of interstate rivers, made difficult the creation of a sentiment of cooperation for further Colorado River development under supervision of federal agencies.

The territory of all seven States is arid. Use of waters of their streams by each of the States is imperative to the very existence of life and statehood. The agency which controls the waters controls the State. In necessary self defense, each State is forced to defend against any interference with necessary local control of uses by external agencies whether the same be
state or national in character. Unfortunately, from its organization in 1902 under the original National Reclamation Act, officials and employees of the Reclamation Service had proceeded in utter disregard of these controlling factors. The Bureau promptly intervened in the then pending litigation between Kansas and Colorado and sought a decision in support of a policy of national control and administration of the waters of the streams of the western States regardless of the will of those States. It sought a decision for national control as overriding state control and administration. The Supreme Court firmly and conclusively decided against such claims and upheld the inherent sovereignty of the States. (5)

The decision in Kansas vs Colorado did not deter the Reclamation Service in the ambition of its controlling officials. They seized upon every opportunity to promote an overriding national control of western waters. Their attorneys appeared repeatedly in litigation, asserting the doctrine of national control upon various grounds. It was asserted in the state courts of Colorado that Congress by enactment of the National Reclamation Act had thence forward reserved and dedicated the waters of western rivers to a preferred use by national projects, regardless of state jurisdiction and regardless of the times of such national uses with respect to prior
uses by the States. It was unsuccessfully sought in litigation in the Northwest to secure immunity of federal reclamation projects from operation of the laws of the States where located, by federal court decrees.\(^{(6)}\)

The United States then unsuccessfully claimed its projects to be immune from the operation of state law and that the Director of the Reclamation Service was immune from process issued by state courts.\(^{(7)}\)

Counsel for the Bureau, with approval of the Attorney General, next urged that all unappropriated waters in western rivers always were and still are the exclusive property of the United States and that the States wherein such waters occur have no interest therein. This theory was urged by counsel wherever possible including the federal court of Nevada\(^{(8)}\) and was finally presented as the doctrine relied upon by the Attorney General, before the Supreme Court in Wyoming vs Colorado.\(^{(9)}\)

Had any of these attempts been permitted to go without challenge or had federal counsel been successful the States would have been robbed of their most valuable resource and of their inherent right of control of that element most essential to their very existence.

Finally, in the official report respecting control of the waters of the Colorado River, there was included and article on the legal aspects prepared by a District Counsel of the U. S. Reclamation Service\(^{(10)}\) which pre-
sumably had the approval of the Attorney General, and which set forth a general plan whereby all seven of the interested States would be superseded by the United States under a plan for both general and detailed perpetual control and administration of all uses of the waters of the Colorado River and of all its tributaries, by the United States acting through the U. S. Reclamation Service.

Through the instrumentality of the Reclamation Service, all development by the States and their inhabitants upon the Rio Grande and North Platte River systems had been completely embargoed through an executive suspension of the operation of the several Acts for obtaining rights of way for canals and reservoirs over the public domain. While such executive action was illegal,\(^{(11)}\) the States effected were unable to secure relief through courts and those portions of their territory within the drainage basins of those streams remained under the blight of the embargo for a long period of years, during which the Reclamation Service was adding to existing works for the complete appropriation of all the waters of those streams to the permanent exclusion and the deprivation of those States wherein the waters have their sources.

To add insult to injury, officials of the Reclamation Service, allegedly acting under instructions from Washington, neglected to comply with the provisions
of Section 8 of the Reclamation Act requiring compliance with the laws of the States in which projects are initiated and constructed, such officials stating that they were authorized to comply with state laws "only as a matter of courtesy and not of necessity".

The corporate interests contemplating Colorado River development also brought to bear varied influences some of which favored the States and others of which were detrimental to the States. All interests public and private and corporate became very active.

The foregoing but illustrate the many influences which had been brought to bear upon the people of the Colorado River States and which had produced among them various mental attitudes which, in turn, must be frankly recognized and openly dealt with in the promotion of any considerable project upon the Colorado River. A defensive attitude and a feeling of distrust prevailed and predominated. In Colorado, the generation just coming into control of affairs, had been born, reared and educated amidst one constant defense of external attacks upon her sovereignty in respect of use, control and administration of the precious waters of the streams constituting a part of her otherwise arid territory. Six of such suits had been instituted during the past quarter of a century and others were threatened. Federal officials had encouraged the plaintiffs and opposed necessary defensive measures by
the State, and some federal officials openly ridiculed the repeated efforts of the people to protect their inherent rights to the first use of that natural element originating and first flowing within the State and necessary for self preservation of the State and of its inhabitants.

The people of Wyoming were awakening to a realization of the fact that Wyoming and Colorado are similarly situated and the inhabitants were voicing a general defensive attitude and a growing suspicion of federal interference. The people of Utah were awake to the situation. Nevada was undergoing the experience of federal domination over the very limited water supply. The inhabitants of New Mexico were aroused to a danger of irreparable loss and the people of Arizona felt insecure but took solace in the fact that the Gila River is largely an Arizona stream, although it discharges its waters into the Colorado River at Yuma, several miles above the head gates of the Imperial Valley Canal.

California produced no part of the water supply of the river system, but her people were apprehensive of future development along the upper river. All-in-all, uncertainty, legitimate suspicion, resentment and a sentiment of complete defense, at any cost, prevailed and constituted the controlling human element
which must be dealt with in respect of any major development along the Colorado River.

Those making the surveys for further development of uses of water along the lower Colorado River, and those interested in such development, came to realize that any such construction would require national aid. While they realized sentiment favoring such aid must be encouraged among the interested States, none of them fully comprehended the actual sentiment then prevailing. But organization was required and those interested set about the task. A general propaganda was instituted, particularly through the press. Articles pointing out the wisdom or the necessity of such works appeared in various publications of wide circulation. The Irrigation Age, the official publication of the National Irrigation Congress and then published in Chicago, had been a caustic, severe and unrelenting critic of the policies of the United States Reclamation Service. Suddenly this publication moved to Salt Lake City, Utah and became a champion of Colorado River development preferably by the Reclamation Service, and urged the necessity of early and effective organization for such purposes. Everywhere, the publicity work became effective. No useful purpose would be served by recounting in detail this general propaganda. It is sufficient to state that when its promoters believed the opportune moment had arrived, a meeting of representative
delegations from the seven Colorado River States was called to convene at Salt Lake City, January 18, 1919.

The meeting was called by Governor W. J. Spry of Utah, for discussion of problems relating to the utilization of the water supplies of the Colorado River and its tributaries, including their relation to a proposed law relating to soldiers and sailors settlement. Governor Spry presided and was made permanent chairman of a continuing organization to be known as "The League of the Southwest". Representatives of lower Colorado River development including officials of the United States Reclamation Service, attended and addressed the meeting along lines favoring such development and verbally assured that any such uses would not injure the upper States or interfere with their development. The resolutions committee was named by States. Resolutions favoring early lower river development were offered and were urged before the resolutions committee but were completely rejected and a resolution of opposite tenor was adopted. The illegal federal policy of refusing to grant rights of way for irrigation works over the public domain under existing Acts of Congress, became a topic of discussion and a source of bitter opposition toward further federal development which might encroach upon rights of the States. The following resolutions, among others, were favorably reported by the Committee and were adopted by the meeting:

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

"Attention is further directed to the fact that many of these irrigation projects, of a magnitude to be developed only by the Federal Government, can be properly carried on without interfering with smaller developments which should be undertaken by individual and corporate initiative, and we therefore urge upon the Interior and Agricultural Departments the adoption of a liberal and sympathetic policy in the granting of rights of way for reservoirs and ditches upon the public domain, where the same are essential to the development of such private projects.

"We further urge the liberal administration of all land laws of the United States looking to the end of placing the lands of the United States in the actual possession and occupation of its
citizens in order that the citizens may have a
home and that the lands may go upon the tax rolls
of the various States in which they may be located
in order that they may bear their just portion 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 attained at the
earliest possible moment consistent 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 inter-
ested, its activities should ever be in conformity
with the laws of the State in which the project
under development is located. In the arid 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 con-
cerned."

The permanent League of the Southwest was in-
geniously organized in respect of membership and of voting.
Although seven States were involved and were entitled to equal representation and voting power, the bylaws wholly disregarded this fundamental feature and provided for qualifications of a nature convenient for "packing" a meeting whenever desired by its promoters. This error subsequently destroyed the effectiveness of the organization at the meeting at Riverside, California, in 1921.

Two meetings of the League of the Southwest were held at Los Angeles during the years 1919 and 1920. These meetings were largely a repetition of the Salt Lake meeting and little was accomplished except the benefits which always accrue from exchange of ideas and by a general mental ventilation. At each meeting the proponents of lower river development advanced their most persuasive arguments and offered resolutions calling for immediate construction. These resolutions were rejected by the resolutions committee which reported adversely.

A meeting of the League was held at Denver, August 25-27, 1920, at which meeting 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, and at which meeting the Director of the Reclamation Service assured the representatives of the seven States that
the construction of such reservoirs need in no manner interfere with the future development of the upper reaches of the streams within the States of origin of the waters to be impounded by reservoirs in the lower States. As we hereafter shall observe, the meeting took the Director at his word.

The Denver meeting was attended by representative delegations from all seven States. While the delegations were not large, they were well balanced and, for the most part, were headed by the respective governors. Governor Thomas E. Campbell of Arizona, then president of the League of the Southwest, presided with his usual skill and dignity. The Colorado delegation was headed by Governor Oliver H. Shoup and was assisted, in an advisory capacity, by Delph E. Carpenter, an irrigation and interstate river lawyer who had not attended any of the previous meetings but was conversant with the proceedings and with Colorado River affairs. Mr. Carpenter was then acting as an attorney for the defendants in the case of Wyoming vs. Colorado, et al, with which litigation he had been associated from its inception, and was "managing and directing counsel" for the Colorado defendants in litigation then pending in the federal court between Nebraska and Colorado appropriators of waters of the South Platte River. For some years Mr. Carpenter had been considering the practical application of the inherent powers of the States
to enter into interstate treaties or compacts in settlement of actual or potential interstate controversies respecting the waters of interstate streams and, at that time, was engaged in the application of those powers in the South Platte River litigation, although this fact was known to but a few intimates. Although not a state official, he maintained an office in the State Capitol Building and collaborated with the Attorney General and State Engineer in interstate river matters.

The Denver meeting was held in the senate chamber in the Capitol Building. The attendance was not large but the frank and serious undertone indicated that all realized the seriousness of the situation. Affairs had nearly reached a stalemate. At the Salt Lake City and Los Angeles meetings, representatives of the lower States and particularly of California, had urged lower river development in a most persuasive manner and had brought to bear every influence which might result in cooperative effort among the seven States, to no avail. At each meeting, the upper States had denied pleas of the lower States and had been victorious in the resolutions. The flood menace along the lower Colorado river was increasing but measures for its solution were being talked to death. No one offered any practical method of protecting the interests of each and all of the States
concurrently with aggressive measures for lower river development of a magnitude such as otherwise would result in future monopolistic claims of appropriation of all the remaining waters of the river to the exclusion of all future development in the territory in which the river has its sources. All were agreed upon the desirability of immediate lower river control but no one proposed a practical method of opening the way for such development without violating the rights of the States. Each proposal carried with it the ultimate destruction of state autonomy. There were those ever present and vociferous persons who blandly urged that the whole river system be placed in the perpetual control and administration of the federal government, but few took those suggestions seriously.

None more acutely recognized the seriousness of the situation than did Arthur P. Davis, Director of the United States Reclamation Service. Mr. Davis well knew the objections to perpetual administration of detail diversions by thousands of ditches and reservoirs throughout a great river system occurring in ever changing daily climatic conditions all of which would require human supervision, with its inevitable conflicts, yet he knew the necessity for immediate action. His address was earnest in the extreme and he stated frankly that studies by his department had revealed that the waters of the Colorado
River System always would be sufficient to supply all demands of both the upper and the lower States, if used within the drainage area of the Colorado River System, and that all present and future interference with development upon or from the upper reaches of the stream should be avoided. Mr. Davis was generally regarded as an ultra-conservative in reclamation matters and his statement carried great weight.

Here was a great river system whose potentialities were largely undeveloped and where the seven interested States of the drainage area were not yet in conflict but where the construction of works necessary to its control was so certain to produce monopolistic claims of prior appropriation that the upper States of necessity were compelled to resist such construction. But flood control was inevitable. The upper States, where the waters originate, for the time being occupied the stronger position but the situation might change in a day with the breaking of the levees and flooding of the Imperial Valley, California. The situation literally cried out for immediate solution by some effective method and the address by Mr. Davis emphasized the need for such a solution.

Interstate river compacts were unknown among the people of the western States at that time. The equitable apportionment of the waters of interstate streams among the interested States by the simple expedient of resort
to the treaty making power inherent with statehood, had not yet evolved. Controversies respecting such waters had been litigated or were in process of litigation, by original suits in the Supreme Court after prolonged and laborious effort and with unsatisfactory results. Under our form of government, such suits are a substitute for war and the western States had ignored diplomacy and plunged into unfruitful litigation. Furthermore, negotiation of interstate treaties would be an innovation in the existing order of irrigation matters, to suggest which would provoke immediate opposition because of its newness. Mr. Carpenter already had experienced this attitude. Commencing with the year 1912, he had repeatedly suggested the treaty method of settlement of interstate water rights only to meet skepticism, indifference, failure of comprehension or open ridicule. As a result, he only discussed the subject with a few intimates including the directors of the ditch associations and the irrigation districts which were his clients. The State of Wyoming has entered upon cooperative studies with the Department of the Interior respecting uses and potentialities of the waters of the North Platte River, but such studies embraced no idea of treaty, had no binding effect and, at best, promoted a spirit of cooperation.

At the conclusion of the address by Director Davis, the need of immediate action by interstate treaty was so apparent to Mr. Carpenter, and the facts, as stated by Mr. Davis, so laid the basis for amicable negotiations
that Mr. Carpenter was prompted to suggest immediate inauguration of proceedings for interstate compact among the Colorado River States, and the United States, even though in so doing he might subject the plan to open rejection and thereby be placed in a position of betrayal of the concerted plans of the directorate of his client, the South Platte Ditch Association. However, he realized that if the Colorado River broke its levees, a hue and cry would arise for federal control of the Colorado River regardless of the rights of the States, and that a weakening of state autonomy on the Colorado River would result in weakening of state autonomy on all rivers including the South Platte. The Colorado River situation seemed to be the key to the preservation of the autonomy of all the States. Solution of the Colorado River problem was imperative to the protection of the South Platte River. He withdrew to his office in the Capitol Building and prepared the first draft of resolutions for settlement of Colorado River problems by interstate treaty.

Experience prompted Mr. Carpenter to avoid precipitating open discussion of the treaty method with resultant division of sentiment at the outset by offering the resolutions from the floor, and caused him to adopt the method of having such resolutions first appear in the report of the Resolutions Committee and with the full sup-
port of that committee. Hon. L. A. Gillett, State Engineer of New Mexico, a natural advocate, represented his State on the resolutions committee and Mr. Carpenter confided his plans to Mr. Gillett who readily approved them and agreed to offer and to support the proposed resolutions before the committee. During the evening of August 26, 1920, Mr. Carpenter prepared revised resolutions and submitted them to Governor Oliver H. Shoup and to Mr. Gillett in the morning of August 27th, shortly previous to the meeting of the resolutions committee. Although a matter of first impression with him, the plan met with immediate approval by the Governor and it was agreed that Mr. Gillett should father the resolutions before the committee. The proposal provoked friendly discussion among the committee but was so ably supported by Mr. Gillett and by Governor Shoup and others were so receptive that the resolutions were unanimously adopted by the committee and included in its favorable report. Fortunately, the matter was so clarified in the minds of the members of the committee that it provoked no further discussion among them and the first public information of such resolutions was the reading of the report of the committee before the assembly. None comprehended the full import of the resolutions which were adopted as a matter of course, and the meet-
Mr. Davis was somewhat puzzled by the resolutions which proposed a complete change in policy respecting reclamation matters and during the evening of the 27th he and Mr. Carpenter discussed the resolutions. The satisfactory interview resulted in Mr. Davis' unqualified support thenceforward. Mr. Davis frequently and publicly approved the plans embodied in the resolutions and credited them with having pointed the way out of the complicated Colorado River problems.

The resolutions were as follows:

"Be it resolved, That the resolution, adopted at the conference of the league, held at Salt Lake City, January 18-21, 1919, and the proceedings of the third convention of the League of the Southwest, held at Los Angeles, April 2-3, 1920, be, and the same are, hereby ratified, approved; and re-affirmed.

"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 water supply of the Colorado River drainage is sufficient to supply the present and future necessities of all of the States whose territory is involved and that all present and future interference with development upon or
from the upper reaches of the stream should be avoided; now, therefore, be it

"Resolved, That the league favors the early development of all possible beneficial uses of waters of the stream upon the upper reaches of the stream and its tributaries along the lines set forth in the resolutions adopted at the Salt Lake conference of January 28-31, 1919, and that the present and future restrictions upon such development by withholding or conditional granting of applications for rights of way across public lands for irrigation works should be discontinued and that such applications should be granted with that degree of dispatch which will permit the construction of all such projects while financial and other means are at hand and opportunity for construction exists; be it further

"Resolved, That it is the sense of this conference that the present and future rights of the several States whose territory is in whole or in part included within the drainage area of the Colorado River, and the rights of the United States, to the use and benefit of the waters of said stream and its tributaries, should be settled and determined by compact or agreement between said States and the United States, with consent of Congress, and that the legislatures of said States be requested to
authorize the appointment of a commissioner for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislature of each of said States and the Congress of the United States."

A reporter for a Denver paper was the only representative of the press to realize the importance of the resolutions and, after adjournment of the meeting, interviewed Mr. Carpenter who briefly explained their purpose. His report in the issue of the morning of the 28th was substantially all the local publicity the resolutions received. This was fortunate, as much publicity at that time would have caused a division of sentiment respecting the application of the treaty power of the States in the solution of interstate river problems.

Colorado River matters were quiescent during the remainder of 1920, except for a request of Governor Shoup by Governor Campbell of Arizona, that Mr. Carpenter be induced to prepare a draft of bill to make effective the resolutions adopted at the Denver meeting, for introduction before the legislatures of the Colorado River States all of which would convene in January, 1921. Mr. Carpenter's time was occupied with business incident to the litigation between Colorado-Wyoming and the South Platte River suit
and preparation of draft of bill was delayed. The matter was without precedent but the bill was finally prepared though in language more verbose than he would have employed had more time been at his disposal.

The State Engineers of the seven Colorado River States had organized to cooperate in engineering work incident to making the resolutions effective. A meeting of the organization had been called at Salt Lake City. The Legislatures were about to convene and for purposes of expediency Mr. Carpenter forwarded a draft of the bill prepared by him, directly to Governor Campbell of Arizona and to Governor Beecham of New Mexico, but the copies for introduction before the Legislatures of California, Nevada, Utah and Wyoming he entrusted to the State Engineer of Colorado, Mr. McCune, to deliver to the State Engineers of the four named States, who were to be requested to cause the same to be introduced before their respective Legislatures. The bill as prepared by Mr. Carpenter provided for the appointment of a joint commission to consist of one commissioner for each State, and a commissioner for the United States to be appointed by the President, and otherwise substantially as later enacted by the Legislatures of Arizona, Colorado and New Mexico. Mr. Carpenter particularly charged Mr. McCune with the importance of uniformity of the legislation and of the
importance of leaving the election of the representative of the United States to the President, and otherwise of the desirability of avoiding material amendments. Mr. McCune was quite aged and left matters to follow the course of least resistance.

Upon delivery of the draft of bill to the State Engineers of California, Nevada, Utah and Wyoming at Salt Lake City, the engineers there assembled, including engineers for the Reclamation Service (other than Mr. Davis), proceeded to redraft the bill without any knowledge of interstate compacts or of the legal and constitutional principles governing such matters. Their redraft limited representation for the United States upon the Commission to two engineers of the Reclamation Service without provision for presidential selection, and otherwise the draft was so materially changed as to destroy the desired uniformity in the legislation by the seven States.

Upon being informed by Mr. McCune, at the time of his return, of the proceedings of the engineers at Salt Lake, Mr. Carpenter called the matter to the attention of Governor Campbell who immediately telegraphed the Governors of the four States urging the desirability of uniformity, and recommending that all seven states follow the Carpenter draft. All complied except Nevada which passed a somewhat modified bill. In any event, all irregularities were
cured by subsequent ratification of the compact by the State legislatures and Congress and the President had exclusive jurisdiction to name the representative of the United States and any action by the States in that regard was of no effect.

Owing to international aspects of the Colorado River, Mr. Carpenter urged that the representative of the United States should be of caliber capable of reconciling the conflicting interests within the United States while safeguarding the international relations. His address before the Bar Association at Colorado Springs, Colorado, during the summer of 1921 expresses this purpose.

The Legislatures of the seven Colorado River States passed the bills authorizing the Colorado River Commission during the 1921 sessions, and the Governor of each State named a Commissioner.\(^{(14)}\) During this period Mr. Carpenter cooperated with Governor Campbell of Arizona.

The seven Governors of the seven States (excepting the Governor of California who appeared by personal representative) and Commissioners met at Denver, Colorado, May 10, 1921 and there adopted the following resolutions:

"Whereas the States of Arizona,
California, Colorado, Nevada, New Mexico,
Utah and Wyoming have by appropriate legis-
lation authorized the Governors of said States to appoint Commissioners representing said 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 tributary thereto; and

"Whereas the Governors of said several States have named and appointed the Commissioners contemplated by the legislative acts aforesaid:

Now, therefore be it

"Resolved, that the Congress of the United States be, and is hereby, requested to provide for the appointment of a Commissioner on behalf of the United States to act as a member 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 Governor 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 Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, held at the Capitol at Denver, in the State of Colorado, on the 10th day of May, 1921.

Thomas E. Campbell,
Governor of Arizona

William D. Stephens,
Governor of California

By W. F. McClure,
State Engineer

Oliver H. Shoup,
Governor of Colorado

Emmet D. Boyle,
Governor of Nevada

Merritt C. Mecham,
Governor of New Mexico

Charles R. Mabey,
Governor of Utah

Robert D. Carey,
Governor of Wyoming

Promptly thereafter, the Governors or their personal representatives journeyed to Washington, D.C. where on May 17, 1921, they interviewed the Secretary of the Interior, Albert E. Fall, and, on May 19, waited upon the President to whom they presented the foregoing resolutions adopted at Denver on May 10. The President, Warren G. Harding, received the Governors
very cordially, expressed his hearty approval of their purpose and assured them of his unqualified support.

Mr. Carpenter had prepared a preliminary draft of a bill for introduction before Congress, to authorize the interested States to equitably apportion among them the waters of the Colorado River and its tributaries; to authorize a compact or agreement among the States and between the States and the United States for such purposes; to direct the President to appoint a Commissioner to represent the United States upon a joint commission; and to authorize an appropriation for the expenses of such Commissioner. He submitted this draft of bill and a short brief of the law and precedents of interstate compacts, to the Governors and the Commissioners at Denver. It was informally agreed that Mr. Carpenter and Judge Stephen B. Davis Jr., Commissioner for New Mexico, should constitute a committee to complete a draft of bill to be presented to Congress. Previous to the meeting with the President, they had revised both the draft of bill and the brief to accompany the draft and, the same having been approved by the Secretary of the Interior, immediately after the conference with the President, the draft of bill, with the accompanying brief, were placed in the hands of Senator Bursum of New Mexico who introduced the bill upon the request of the Governors and Commissioners.
Mr. Carpenter and Mr. Davis were requested by the Governors and the Commissioners to remain in Washington for a limited time to assist Senator Bursum and the Senators and Congressmen from the interested States.

A few days later the task which had been assigned them apparently having been completed, Mr. Davis went to New York and thence to New Mexico, and Mr. Carpenter expected to remain in Washington a day or two longer and then return to Colorado. It had been reported to Mr. Carpenter and Judge Davis that all of the Senators and Congressmen of the interested States had been interviewed by the Governors and the Commissioners, and that all were favorable to the measure and would cooperate with Senator Bursum. As a matter of caution, Mr. Carpenter decided to interview the Senators and Congressmen before leaving Washington. During these interviews he and the Congressmen Edward T. Taylor of Colorado called upon Congressman Frank Mondell of Wyoming, then the House leader. Mr. Mondell informed them that he would not support the Bursum bill; that he would introduce a bill to take the place of the Bursum bill and that he had already prepared and introduced such a bill.

Mr. Carpenter immediately realized the difficulty of securing the enactment of the Bursum bill without the support of the majority leader in the House of Representatives. Also, he realized that the bill already
introduced by Mr. Mondell, would not accomplish the purposes desired. It was evident that Mr. Mondell desired to control the legislation. He declined to introduce the Bursum bill as his bill in the House. This required the preparation of a new bill for Mr. Mondell. Judge Davis could not be reached and Mr. Carpenter was required to proceed alone. Upon request of Mr. Carpenter for the assistance of a constitutional lawyer to represent Mr. Mondell, he persuaded Mr. Volstead, Chairman of the Judiciary Committee, to assist and Mr. Carpenter proceeded to recast the bill with the approval of Mr. Volstead.

The newly prepared Mondell bill differed in substance but little from the Bursum bill except in respect of the powers given the representative of the United States. The Bursum bill provided for appointment by the President of a Commissioner to represent the United States on a joint Commission with the seven States and gave him power to bind the United States (subject to congressional approval) but Mr. Mondell advised against such provision, as a matter of expediency, and the Mondell bill was made to provide that the compact should be among the seven States and the United States was omitted as a party thereto. Also, the Mondell bill provided: "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."

A preamble was inserted before the enacting clause in the Mondell bill and the bill bore little resemblance to the Bursom bill.

Mr. Mondell introduced the bill immediately after its preparation. It was referred to the Judiciary Committee. Mr. Volstead, the chairman, called a meeting of the Committee the following day, Saturday, June 4, 1921, and Mr. Carpenter appeared as the sole witness in support of the bill. The committee made favorable report and Mr. Carpenter left for Colorado without correcting the transcript of his testimony. He spoke rapidly and the reporter made a number of errors which appear in the printed report. (See "Hearings in re. H.R.6821" Jud. Com. H.R. June 4, 1921 Serial 6, 67th Cong. 1st Sess.) A few days later the bill passed the House without debate.

Senator Bursom was disappointed in the preference given the Mondell bill but was too big and too experienced a legislator to permit personalities to defeat a constructive program. He immediately substituted the Mondell bill for the Bursom bill and the Mondell bill passed
the Senate without debate.\footnote{15}

Thus, Congress established the principle of equitable apportionment of the waters of interstate streams among the interested States by compact as the federal policy.

The bill having passed Congress and having been approved by the President, the appointment of a representative of the United States was next in order. So silently had the bill passed Congress that but few knew of its enactment and the President was spared the usual pressure of ambitious politicians. Many suggestions were made, but President Harding delayed. The Colorado River is a navigable international stream and its federal affairs are under the jurisdiction of several federal departments including the Departments of War, State, Interior and Agriculture. Those interested in the legislation agreed that the federal representative should be of the caliber of a cabinet member. Mr. Carpenter hastily prepared and delivered an address upon Interstate Compacts before the Colorado Bar Association, in which he advocated the selection of Elihu Root as the federal representative. A copy of that address was called to the attention of President Harding. Mr. Mondell urged the appointment of a member of the Cabinet. Others made similar recommendations. All realized that the success of the undertaking would depend
upon the attitude and ability of the federal representative.

Upon enactment of the bill, those Californians in control of the executive machinery of the League of the Southwest caused to be called a meeting of the League at Riverside, California, December 8-10, 1921, for the purpose of recommending some person for appointment as the federal representative and of directing the policies and findings of the Commission. The qualifications of membership in The League were such that the meeting was packed with California delegates each of whom was entitled to a vote under the ingeniously devised rules of The League. The forty delegates of the other six Colorado River States were confronted with several times that number of delegates from California. The President of the University of Southern California was elected chairman of the meeting. A committee on resolutions was appointed in the usual manner and was presented with an elaborate draft of resolutions prepared by the California delegation. These resolutions were very objectionable to the delegates from the other six States and upon being informed that any resolutions adopted at that meeting must be satisfactory to the California delegation, the delegates from the six States voiced their protest at the steam roller tactics by refusing to further participate in the proceedings of the meeting unless
all votes should be by States, each State to have only one vote. The case of the delegates from the six States was ably presented by Judge Hollaman of Santa Fe. The Californians promptly refused the request of the six States and the situation became critical. Meanwhile the public meeting proceeded with its scheduled speeches as the resolutions committee argued behind closed doors with no chance of agreement. Secretary of the Interior, Albert E. Fall, arrived during the public meeting and delivered an address. He confidentially advised all leaders that President Harding had requested the Secretary of Commerce, Herbert Hoover, to act as federal representative upon the Colorado River Commission and that Secretary Hoover had accepted. This eliminated that phase of the controversy, then prevailing with the resolutions committee. The members of the committee representing the six States still refused to accept the resolutions insisted upon by the California delegation. It was evident that the meeting would terminate in a walkout of the delegates from the six States and the president of the Real Estate Exchange of Los Angeles hastened to Riverside to attempt mediation. While the committee was thus engaged the public meeting exhausted its program and adjourned without committee report or resolutions.

That was the last meeting of the League of the Southwest. The other six States had no disposition
to further meet with the Californians and in any event, the League had fulfilled its purpose. The demeanor of the Californians provoked an unfavorable impression among those representing the other six States, particularly in view of the fact that California contributes no part of the waters of the Colorado River, the disposition of which California sought to Control.

Immediately upon appointment of the Commissioners of the seven Colorado River States, by mutual understanding, the Commissioners and State Engineers of each State undertook a comprehensive survey of the water uses and potentialities in each State and with the compilation and analysis of all the water supply and stream flow records and data respecting the Colorado River and its tributaries. Some of the States employed special engineers to devote their entire services to such work. This work continued until after the formal organization of the Colorado River Commission. The results of these special studies when combined with similar studies by engineers of the United States Reclamation Service and the United States Geological Survey, constituted a great part of the basic information upon which the Commission proceeded to negotiate and to conclude the Colorado River compact. The work of these engineers was performed with great fidelity and thoroughness.
Each Commissioner undertook the performance of his duties seriously, honestly and free from embarrassing entanglements or alliances. Each served his State with undivided loyalty but with full and frank recognition of the rights and equities of the other States. All looked forward with confidence to the accomplishment of an agreement upon terms which would be fair to each State and equitable with all the seven States.
(1) See reports Newell, Davis, et al.

(2) See Texas vs. White, 7 Wallace, 700,725;
   Kansas vs. Colorado, 206 U. S., 46,87,97;
   Coyle vs. Smith, 221 U. S. 559;
   Escanaba Company vs. Chicago, 107 U.S.678;
   Shively vs. Bowlby, 162 U.S.1;
   Willamette Iron B. Co. vs. Hatch, 125 U.S.1,12;


(4) Texas vs. White, 7 Wall., 700,725.


(6) U.S. vs. Palisades I.D., See Record in office of
    Clerk Supreme Court of Colorado.

(7) Twin Falls Canal Co. vs. Foote, 192 Fed. 583,594;
    Stanfield vs. Umatilla River Water Users' Assn.
    et al. 192 Fed. 596,597.


(11) Secretary Work Decision in Rio Grande Case,

(12) Skeptical even when enjoying the fruits of the
    Colorado River Compact; "Policies with Re-
    spect to Reservoirs", New Reclamation Era,
    Vol. 22, No. 11, pp. 230.
(13) The South Platte River Compact was concluded April 27, 1923.

(14) W. S. Norvield for Arizona; W. F. McClure for California; Delph E. Carpenter for Colorado; J. G. Scrupham, E. W. Clark and C. P. Squires, associates, for Nevada; Stephen B. Davis Jr. for New Mexico; R. E. Caldwell for Utah; and Frank C. Emerson for Wyoming.

(15) 42nd Statutes at Large, p.171.
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