My dear Mr. Engle:

A report has been requested from this Department on H. R. 3383, a bill "To authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes." You have also requested that we comment on H. R. 270, H. R. 2836, and H. R. 3384 to the extent to which they differ from H. R. 3383.

In his address to the Congress on the State of the Union, President Eisenhower said (House Document No. 1, 84th Congress, p. 8):

"** the Federal Government must shoulder its ** partnership obligations by undertaking projects of such complexity and size that their success requires Federal development. In keeping with this principle I again urge the Congress to approve the development of the upper Colorado River Basin to conserve and assure better use of precious water essential to the future of the West."

Likewise in his Budget Message (House Document No. 16, 84th Congress, p. M65) the President said:

"I also recommend enactment of legislation authorizing the Bureau of Reclamation to undertake construction of two comprehensive river-basin improvements which are beyond the capacity of local initiative, public or private, but which are needed for irrigation, power, flood control and municipal and industrial water supply. These are the Upper Colorado River Basin development in the States of Colorado, Utah, Wyoming, Arizona, and New Mexico, and the Fryingpan-Arkansas development in Colorado. The Colorado River development will enable the Upper Basin States to conserve flood waters and to assure the availability of water and power necessary for the economic growth of the region. ** Sale of power generated at these developments will repay the power investment within 50 years and will make a contribution toward repayment of other investments."

In the budget itself it was pointed out (p. 830) that the Administration proposes to initiate construction of the Colorado River Storage Project during the next fiscal year if it is authorized and that the budget includes an item for funds to be requested for this purpose.
The substance of our views on the proper contents of a bill to implement the President’s recommendation and particularly on those projects and units which should be covered in the initial legislation is contained in the draft of bill which was developed by the Bureau of the Budget in collaboration with this Department and submitted to your Committee on April 1, 1954, in connection with H. R. 4449, 83d Congress, a predecessor of the present H. R. 3383.

We recommend that H. R. 3383 be examined in the light of the proposal there made and in the light of the two letters dated March 18, 1954, from the Director of the Bureau of the Budget to the Senate Committee on Interior and Insular Affairs and to this Department which are reprinted in Senate Report No. 1983, 83d Congress, and that, with suitable amendments, H. R. 3383 be enacted.

The Bureau of the Budget has advised that there would be no objection to the submission of the above report to your Committee. That office, however, has not yet had an opportunity to consider the attached comparative analysis of H. R. 3383, H. R. 270, H. R. 2836, and H. R. 3384. The comments made therein must not, for this reason, be regarded as representing any commitment with respect to their conformity to the program of the President.

Sincerely yours,

[Signature]

Assistant Secretary of the Interior

Hon. Clair Eagle, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D. C.

Enclosure
COMPARATIVE ANALYSIS OF
H. R. 3383, H. R. 270, H. R. 2836, and H. R. 3384,
84th Congress

Storage Project Units Named

H. R. 3383 - Curecanti, Echo Park, Flaming Gorge, Glen Canyon.
H. R. 270 - Adds Cross Mountain and Navajo to above.
H. R. 2836 - Same as H. R. 270.
H. R. 3384 - Adds Juniper and Navajo to those covered in H. R. 3383.

Comment: The Department of the Interior recommends that only Glen Canyon and Echo Park be authorized as storage units at this time.

Participating Projects Named

H. R. 3383 - Central Utah (initial phase), Emory County, Florida, Hammond, La Barge, Lyman, Paonia (new works), Pine River Extension, Seedskadee, Silt, Smith Fork, San Juan-Chama, Navajo.
H. R. 270 - Adds Gooseberry to above.
H. R. 2836 - Same as H. R. 270.
H. R. 3384 - Adds Gooseberry, Parshall, Troublesome, Rabbit Ear, Eagle Divide, Woody Creek, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savory-Pot Hook, Dolores, Fruit Growers Extension, Elkhorn, Kendall to those named in H. R. 3383.

Comment: Department of the Interior recommends that the projects covered be limited to the eleven listed in the Administration bill submitted to the Committee on April 1, 1954, viz., Central Utah (initial phase), Emory County, Florida, Hammond, La Barge, Lyman, Paonia (new works), Pine River Extension, Seedskadee, Silt, and Smith Fork.

Extent of Authorization

H. R. 3383 - Echo Park, Glen Canyon, and Flaming Gorge fully authorized; Curecanti subject to certification, on basis of further engineering and economic investigations, that its benefits will exceed its costs. All participating projects except San Juan-Chama and Navajo fully authorized; San Juan-Chama and Navajo subject to submission of coordinated reports to States under Flood Control Act of 1944 and to approval of and authorization by the Congress.
H. R. 270 - Same as H. R. 3383 for storage units. All participating projects subject to reexamination by Secretary of the Interior with respect to their economic justification and to certification by him that their benefits will exceed their costs and that they meet reimbursement requirements of bill. Estimates of direct agricultural benefits to be made after consultation with Secretary of Agriculture. Provisions with respect to San Juan-Chama and Navajo substantially same as in H. R. 3383.

H. R. 2836 - Virtually identical with H. R. 270.

H. R. 3384 - Same as H. R. 3383 for storage units. Virtually the same as H. R. 270 for participating projects named in that bill but with respect to the other participating projects not named therein requires submission of planning reports to States under Flood Control Act of 1944 and authorization by Congress.

Comment: The Administration bill submitted to the Committee on April 1, 1954, provided that authority to construct the participating projects named in it should not become effective until the Secretary of the Interior had reexamined their economic justification (his appraisal of the direct agricultural benefits to be made in cooperation with the Secretary of Agriculture) and had certified to the Congress that their benefits exceeded their costs. We adhere to the principles of the bill and, as has been said before, to the list of projects named therein. As among the four bills now before the Committee, we prefer the provisions of H. R. 270, H. R. 2836 and H. R. 3384 with respect to actions to be taken prior to construction of participating projects to those of H. R. 3383 on this point.

Repayment

H. R. 3383 - Irrigation allocations to be returned to Treasury in equal annual installments over a period of not more than fifty years (exclusive of development period) from completion of each unit, participating project, or separable feature thereof. Municipal water allocation to be returned to Treasury with interest over a period of not more than fifty years from completion of each unit, participating project, or separable feature thereof. Commercial power allocation to be returned to Treasury with interest over expected economic life of unit, participating project, or separable feature or within 100 years, whichever is shorter.

H. R. 270 - Irrigation, municipal water, and commercial power allocations - the latter two with interest -- to be returned
to the Treasury within not more than fifty years plus, in the case of irrigation, a development period.

H. R. 2836 - Same as H. R. 270.
H. R. 3384 - Same as H. R. 270.

Comment: The provisions of H. R. 270, H. R. 2836, and H. R. 3384 are, in this respect, like those of the Administration bill of April 1, 1954. We adhere to these provisions and recommend that they be substituted for those of H. R. 3383.

Operation of Power Plants

H. R. 3383 - After providing for operation of the power plants covered by the bill in conjunction with other Federal power facilities, the bill provides that no exercise of that authority "shall affect or interfere with the operation of any provision of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, or any contract lawfully entered into under said Acts without the consent of the other contracting parties."

H. R. 270 - Same as H. R. 3383 but omits express reference to contracts.
H. R. 2836 - Same as H. R. 270.
H. R. 3384 - Same as H. R. 270.

Comment: The language of H. R. 3383 with respect to contracts appears to be superfluous but is otherwise unobjectionable.

Appropriability of Water Used for Power Purposes

H. R. 3383 - Provides that "Neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation for domestic or agricultural purposes, pursuant to applicable State law, of waters apportioned to the States of the Upper Colorado River Basin."

H. R. 270 - Omits the above.
H. R. 2836 - Has provision similar to that of H. R. 270, but extends to all power plants authorized by bill.
H. R. 3384 - Same as H. R. 2836.

Comment: The provisions of H. R. 3383 are in this respect identical with those of the Administration bill and are recommended for inclusion in the legislation. Unless
a great deal of excess storage capacity beyond that provided by Glen Canyon and Echo Park is authorized and constructed, the waters impounded in these reservoirs will, within a comparatively few years, be devoted almost entirely to fulfilling the obligations of the Upper Division States with respect to deliveries at Lee Ferry for Lower Basin and Mexican Treaty purposes. The generation of power will be a by-product of release for these purposes. Pay-out studies have been based upon the assumption that the Upper Basin depletion of the stream contemplated by this provision will occur in any event.

Soil Survey and Land Classification Exemption

H. R. 3383 - Exemption applicable to four Storage Project units covered in bill.

H. R. 270 - Exemption applicable to five Storage Projects units covered in bill; not applicable to Curecanti.

H. R. 2836 - Same as H. R. 270.

H. R. 3384 - Exemption applicable to four Storage Project units covered in bill; not applicable to Curecanti, Juniper, and Navajo.

Comment: It is believed that the exemption should be commensurate with whatever Storage Project units are ultimately covered by the bill.

Authorized Appropriations

H. R. 3383 - Limits authorized appropriations to $1,055,000,000.
H. R. 270 - Omits limitation.
H. R. 2836 - Omits limitation.
H. R. 3384 - Omits limitation.

Comment: The Department of the Interior would have no objection in this case to specifying the amount authorized to be appropriated. If such a limitation is spelled out in the bill, as it is in H. R. 3383, the text should make clear, as that of H. R. 3383 does not, that the sum specified is for construction costs only and is not inclusive of initial operation and maintenance costs.

Future Planning

H. R. 3383 - Section 12 of this bill provides that "In planning the additional development necessary to the full consumptive use in the Upper Basin of the waters of the Colorado River system allocated to the Upper Basin and in planning the
use of and in using credits from net power revenues available for the purpose of assisting in the pay-out of costs of participating projects herein and hereafter authorized in the States of Colorado, New Mexico, Utah, and Wyoming, the Secretary shall have regard for the achievement within each of such States of the fullest practicable consumptive use of the waters of the Upper Colorado River system consistent with the apportionment thereof among such States."

H. R. 270 - Omits above.
H. R. 2836 - Omits above.
H. R. 3384 - Omits above.

Comment: The Interior Department has no objection to the inclusion of the provision of H. R. 3383 quoted above. It would, in any event, seek to achieve the end specified. If this provision is included, however, it suggests that Arizona be added to the other States named in the bill since it is an Upper Basin State and is apportioned a small quantity of Upper Basin water by the Upper Colorado River Basin Compact.

Litigation and Consultation

H. R. 3383 - Provides that the Secretary of the Interior shall, in the storage and release of water from reservoirs under his jurisdiction anywhere in the Colorado River Basin, "comply with the applicable provisions of the Colorado River Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Treaty with the United Mexican States." Provides further that, in the event of his failure so to comply "any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section" and gives the consent of the United States to its joinder as a party in any such suit.

H. R. 270 - Directs compliance with the applicable provisions of the documents referred to above in the operation and maintenance of all Federal facilities in the Colorado River Basin under his jurisdiction. Provides further for consultation with an "integrating committee consisting of one representative from each of the Colorado River Basin States, one representative of the Colorado River Board of California, one representative of the Upper Colorado River Commission, and one representative of the United States Section of the International Boundary Commission, United States and Mexico" on the storage and release of waters from works under his jurisdiction.
H. R. 2836 - Similar to H. R. 270.

H. R. 3384 - Includes provisions similar both to those in H. R. 3383 and to those in H. R. 270.

Comment:

(a) Unless extraordinary circumstances so require, it would seem unwise to single out the Colorado River for special treatment with respect to litigation. Moreover, assuming that the Secretary will be directed (as all of the bills provide in various places) to comply with the Colorado River Compact and related documents, there is no apparent reason for the waiver of the immunity of the United States from suit in the Supreme Court. There is ample in the other parts of the bills, we believe, on which to found an action against the Secretary alone in case he exceeds the authority given him under their terms. But if it is the desire of the Committee to include such a provision as that contained in H. R. 3383 and H. R. 3384 on this subject and if it is restricted (as those bills now provide) to litigation with respect to the storage and release of water, we will not object. We suggest, however, that it be made clear that the waiver runs only in favor of a State adversely affected by the storage and release spoken of in order to forestall the provisions being looked upon as an open invitation to anyone to institute harassing, even though fruitless, litigation at any time it chooses to do so. We suggest also that the Committee bear in mind that this provision, if enacted, will necessarily be read in conjunction with section 200(c) of the Justice Department Appropriation Act, 1953 (66 Stat. 549, 560, 43 U.S.C. sec. 666) and that it is unlikely, therefore, that it will be usable except in quite extraordinary circumstances.

(b) We would have no objection, if the Committee wishes to include such in the bill that it reports out, to a provision for an "integrating committee" along the lines of that set out in H. R. 270 and H. R. 3384. Its creation would not be in derogation of the ultimate responsibility of the Secretary of the Interior in the management of the works covered by it, but it could assist him in securing the advice of representatives of the States concerned and would furnish them with a forum in which to discuss and, it is to be hoped, iron out certain, and perhaps many, of their problems. The creation of such a committee might well assist its members in taking an over-all view of the Colorado River and in treating its problems as of basin-wide importance. It would also be a useful supplement to, and would perhaps supplant, the advisory provisions of section 16 of the
Boulder Canyon Project Act. One of the objects of these provisions was to further "any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system" and to assure treatment of the works authorized by that Act "as a unit in such control, improvement, and utilization ***." We have no suggestions to make on the composition of the "integrating"committee.

Quality of Water Studies

H. R. 3383 - Directs the Secretary "to institute studies and to make a report to the Congress and to the States of the Colorado River Basin of the effect upon the quality of water of the Colorado River, of all transmountain diversion, of water of the Colorado River system and of all other storage and reclamation projects in the Colorado River Basin."

H. R. 270 - Omits the above.
H. R. 2836 - Omits the above.
H. R. 3384 - Omits the above.

Comment: No objection if the Committee sees fit to include a provision along the lines of that included in H. R. 3383.

Denver Diversions

H. R. 3383 - Omits.

H. R. 270 - Authorizes conveyance to the city of Denver of such lands and water rights used or acquired by the United States solely for the generation of power as may be required by Denver in connection with the development and use of its Blue River project, payment for the value of the rights acquired to be made by Denver to the United States.

H. R. 2836 - Same as H. R. 270.
H. R. 3384 - Omits.

Comment: The terms of the provision in H. R. 270 are such as not to require objection from this Department. It should be understood, however, that maintenance of the integrity of the Colorado-Big Thompson project, including fulfillment of its obligations to Western Slope water users in Colorado under Senate Document No. 80, 75th Congress, whatever those obligations may be, will be ultimately involved in the administration of this provision and that, for this reason, among others, no commitment can be made at this time concerning the exercise of the authority which its enactment would confer upon this Department.