
IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 8 Original

STATE OF ARIZONA,

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

UNITED STATES OF AMERICA,

Intervener

STATE OF NEVADA,

Intervener

STATE OF NEW MEXICO,

Impleaded Defendant

STATE OF UTAH,

Impleaded Defendant

EVOLUTION OF SECTIONS 4(a) AND 5 (1st PARAGRAPH) OF THE BOULDER CANYON PROJECT ACT (FOR USE BY ARIZONA ON ORAL ARGUMENT)

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**Section 5 of S. 3331, as introduced in the 69th Congress,
1st Session, provided:**

SEC. 5. That the said Secretary is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and delivery at the switchboard to municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenues accruing to the said subfund under the reclamation law or hereunder, will cover operation and maintenance expense of works constructed hereunder, interest on bonds after completion of the works, and provide for the amortization of said bonds within fifty years. Contracts respecting water for domestic uses may be for permanent service but subject to rights of prior appropriators.

As reported out in the 69th Congress by the Senate Committee on Irrigation and Reclamation, section 5 of S. 3331 read as follows:

SEC. 5. That the said Secretary is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and delivery at the switchboard to municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing [to the said subfund] under the reclamation law [or hereunder] *and under this Act*, will in his judgment cover *all expenses of* operation and maintenance [expense of] *incurred by the United States on account*

*of works constructed [hereunder, interest on bonds after completion of the works, and provide for the amortization of said bonds within fifty years] under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses [may] shall be for permanent service [but subject to rights of prior appropriators]. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.*¹

During the floor debate of S. 3331 in the 69th Congress Senator Ashurst proposed the following amendment to section 5:

*Provided, That the Secretary of the Interior in the delivery of water shall limit the amounts used in Arizona and California so that neither of said States shall use in excess of one-half of the water available in the lower basin out of the main Colorado River after 300,000 acre-feet has been deducted for use within the State of Nevada.*²

Section 5 of S. 728, introduced in the 70th Congress in the form shown above, as reported out by the Committee on Irrigation and Reclamation, provided as follows:

SEC. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon,

¹ Bracketed words omitted and italicized words added by the Committee to S. 3331 as introduced into the Senate. Section 5 appeared in this amended form when S. 728 was introduced in the 70th Congress, 1st Session.

² 68 Cong. Rec. 4763 (February 25, 1927).

for irrigation and domestic uses, *and generation of electrical energy* and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service: *Provided, however, That said contracts shall not provide for an aggregate annual consumptive use in California of more than 4,600,000 acre-feet of the water allocated to the Lower Basin by the Colorado River compact mentioned in section 12 and one-half of the unallocated, excess and/or surplus water: Provided, further, That no such contracts shall be made until California, by act of its legislature, shall have ratified and approved the foregoing provision for use of water in said State.* No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.³

Discussing section 5, as amended in Committee in the 70th Congress, Senator Johnson of California stated:

Section 5 provides that the contract must be general for storage and delivery of water and the Secretary shall fix charges to meet the revenue requirements, and that contracts for irrigation and domestic uses must be for permanent service. An amendment has been inserted there at the request of the upper basin

³ Italicized words added in Committee. See S. REP. No. 592, 70th Cong., 1st Sess. (1928).

States, offered, I think, in the committee, by the Senator from Wyoming which provides that—

Provided, however, That said contracts shall not provide for an aggregate annual consumptive use in California of more than 4,600,000 acre-feet of the water allocated to the lower basin by the Colorado River compact mentioned in section 12 and one-half of the unallocated, excess, and/or surplus water: *Provided further,* That no such contracts shall be made until California, by act of its legislature, shall have ratified and approved the foregoing provision for use of water in said State.

That is another rigorous provision, a rigorous provision to which those who represented California were willing to consent in order that legislation might be accorded, but binding California perpetually and forever to a use not to exceed 4,600,000 acre-feet of water.⁴

An amendment to section 5, printed but not offered by Senator Waterman, in the 1st Session of the 70th Congress, after S. 728 had been reported out of Committee, provided:

On page 7, line 9, strike out the words "That no", together with the following lines numbered 10, 11, and ending with the words in line 12, to wit "in said State", and insert in lieu thereof: "That no such contracts nor any contract whatever, of any kind, shall be made under any provision of this Act until and unless the State of California, by a valid and binding act of its legislature, approved by its governor, shall have first ratified and approved all the provisions of this section of this Act, in any way relating to the use of the waters of the main stream of the Colorado River within or by the State of California, or by any person or corporation of said State, and shall also in and by such act of its legislature, solemnly declare and agree, as

⁴ 69 Cong. Rec. 7250 (April 26, 1928).

an express covenant and in express consideration of the passage of this Act, that any and all water demanded and required, or lawfully appropriated and applied to a beneficial use by the State of Arizona or any of its inhabitants, including corporations, municipal or otherwise, or any of them, out of the main stream of the Colorado River at any time in excess of two million nine hundred thousand acre-feet, per annum, plus one-half of the said unallocated excess and/or surplus water, will be furnished and supplied by the said State of California exclusively out of the said four million six hundred thousand acre-feet of water and said one-half of the said unallocated water last aforesaid, so that in no event shall there ever be demanded or required, out of the main stream of the Colorado River, by the States of Arizona, California, and Nevada, or either of them, any water in excess of the amount apportioned to them by Article III of the Colorado River compact, to be delivered to them, or any of them, at Lee Ferry designated in said Colorado River compact or elsewhere.’⁵

Section 4(a) of S. 3331, as introduced into the Senate in the 69th Congress, provided:

SEC. 4. (a) No work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be initiated hereunder, until the respective legislatures of at least six of the signatory States mentioned in section 12 hereof shall have approved the Colorado River Compact mentioned in said section 12, and shall have consented to a waiver of the provision of the first paragraph of article 11 of said compact making the same binding and obligatory when it shall have been approved by the legislatures of each of the seven signatory States, and until the President, by public proclamation,

⁵ 69 Cong. Rec. 5415 (March 27, 1928).

shall have declared that the said compact has been approved by and become binding and obligatory upon at least six of the signatory States.

As reported out by the Committee on Irrigation and Reclamation in the 69th Congress, section 4(a) provided:

SEC. 4. (a) No work shall be begun and no monies expended on or in connection with the works or structures provided for in this Act, and no water rights shall be *claimed or* initiated hereunder, and *no steps* shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works *or structures* until [the respective legislatures of at least six of the signatory states mentioned in section 12 hereof] *the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming* shall have approved the Colorado River compact mentioned in [said] section 12 *hereof* and shall have consented to a waiver of the provisions of the first paragraph of Article XI of said compact, [making] *which makes* the same binding and obligatory *only* when [it shall have been] approved by [the legislatures of] each of the seven [signatory] States *mentioned in said section 12, and shall have approved said compact without condition save that of such six-State approval,* and until the President, by public proclamation shall have *so* declared [that the said compact has been approved by and become binding and obligatory upon at least six of the signatory States].⁶

Section 4(a) of S. 728, as reported onto the floor of the Senate in the 70th Congress, 1st Session, provided:

SEC. 4. (a) No work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights

⁶ Bracketed words omitted and italicized words added by the Committee to section 4(a) of S. 3331 as introduced into the Senate.

shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures until the State of California and at least [three] *five* of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have approved the Colorado River compact mentioned in section 12 hereof and shall have consented to a waiver of the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States mentioned in said section 12, and shall have approved said compact without condition save that of such approval by the State of California and at least [three] *five* of the other States mentioned and until the President by public proclamation shall have so declared.⁷

An amendment to section 4(a), printed but not offered by Senator Bratton as a substitute for section 4(a), as reported onto the floor of the Senate in the 70th Congress, 1st Session, provided:

SEC. 4. (a) This Act shall not take effect, and no authority shall be exercised hereunder unless and until (1) the States of California, Colorado, Nevada, New Mexico, Utah, Arizona, and Wyoming shall have ratified the Colorado River compact mentioned in section 12 hereof and the President, by public proclamation, shall have so declared, or (2) if after one year from the date of the passage of this Act the said States shall fail to ratify the said compact; then if six States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the

⁷ Italicized words substituted by the Senate Committee on Irrigation and Reclamation for the bracketed words, which appeared in S. 728 as introduced in the 70th Congress, 1st Session, by Senator Johnson. See S. REP. No. 592, 70th Cong., 1st Sess. (1928).

first paragraph of Article II of said compact, which makes the same binding and obligatory only when approved by each of the seven States mentioned in said section 12, and shall have approved said compact without conditions, save that of such six States' approval and the President, by public proclamation, shall have so declared: *Provided, however*, That if ratification should be upon a six-State basis, then California shall agree in the ratifying Act that the aggregate annual consumptive use in California of waters of the Colorado River shall never exceed 4,200,000 acre-feet and that the use by California of the excess or surplus waters unallocated by the Colorado River compact shall never exceed annually one-half of such excess or surplus waters, such use always to be subject to the terms of the Colorado River compact.⁸

Another amendment to section 4(a) and to section 5, printed by Senator Phipps as a substitute for section 4(a) and as a modification in section 5, as reported onto the floor of the Senate in the 70th Congress, 1st Session, provided:

SEC. 4 (a). This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River Compact, mentioned in section 12 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within one year from the date of the passage of this Act, then, until six

⁸ 69 Cong. Rec. 7047 (April 24, 1928).

of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven states signatory thereto, and shall have approved said compact without conditions, save that of such six State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by Act of its legislature, shall agree with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual diversions of water of and from the Colorado River for use in the State of California, including all diversions under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million six hundred thousand acre-feet of the waters apportioned to the Lower Basin States by the Colorado River Compact and/or more than one-half of any excess or surplus waters unapportioned by said compact, such diversions always to be subject to the terms of said compact.

On page 7, strike out lines 4 to 12, inclusive, and insert in lieu thereof the following: "permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall."⁹

Another amendment to section 4(a), printed but not offered by Senator Pittman as a substitute for section 4(a), as reported onto the floor of the Senate in the 70th Congress, 1st Session, provided:

SEC. 4(a). This act shall not take effect and no authority shall be exercised hereunder, unless and until the States of Arizona, California, Colorado, Nevada,

⁹ 69 Cong. Rec. 7591 (May 2, 1928).

New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact mentioned in section 12 hereof, and the President, by public proclamation, shall have so declared: *Provided*, That the ratification act of the State of California shall contain a provision agreeing that the aggregate annual consumptive use by that State of waters of the Colorado River shall never exceed 4,200,000 acre-feet of the water apportioned to the lower basin by paragraph (a) of Article III of said compact, and that the aggregate beneficial consumptive use by that State of waters of the Colorado River shall never exceed 500,000 acre-feet of the water apportioned by the compact to the lower basin by paragraph (b) of said Article III; and that the use by California of the excess or surplus waters unapportioned by the Colorado River compact shall never exceed annually one-half of such excess or surplus waters; and that the limitations so accepted by California shall be irrevocable and unconditional, unless modified by the agreement described in the following paragraph, nor shall said limitations apply to water diverted by or for the benefit of the Yuma reclamation project for domestic, agricultural, or power purposes except to the portion thereof consumptively used in California for domestic and agricultural purposes.

The said ratifying act shall further provide that if by tri-State agreement hereafter entered into by the States of California, Nevada, and Arizona the foregoing limitations are accepted and approved as fixing the apportionment of water to California, then California shall and will therein agree (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 3,000,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) of the 1,000,000 acre-feet in addition which the lower basin has the right to use annually by paragraph (b) of said article there shall be

apportioned to the State of Arizona 500,000 acre-feet for beneficial consumptive use, and (3) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (4) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (5) that the waters of the Gila River and its tributaries shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico; but if, as provided in paragraph (c) of Article III of the Colorado River Compact, it shall become necessary to supply water to the United States of Mexico from waters apportioned by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply one-half of any deficiency which must be supplied to Mexico by the lower basin, and (6) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water which can not reasonably be applied to domestic and agricultural uses, and (7) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact.¹⁰

Another amendment to section 4(a), offered by Senator Hayden in the 70th Congress, 2d Session, in lieu of all of section 4(a), as it then read, provided:

SEC. 4(a). This act shall not take effect and no authority shall be exercised hereunder, unless and until the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact mentioned in section 12 hereof, and the President, by public proclamation, shall

¹⁰ 69 Cong. Rec. 10259-60 (May 28, 1928).

have so declared: *Provided*, That the ratification act of the State of California shall contain a provision agreeing that the aggregate annual consumptive use by that State of waters of the Colorado River shall never exceed 4,200,000 acre-feet of the water apportioned to the lower basin by paragraph (a) of Article III of said compact, and that the aggregate beneficial consumptive use by that State of waters of the Colorado River shall never exceed 500,000 acre-feet of the water apportioned by the compact to the lower basin by paragraph (b) of said Article III; and that the use by California of the excess or surplus waters unapportioned by the Colorado River compact shall never exceed annually one-half of such excess or surplus waters; and that the limitations so accepted by California shall be irrevocable and unconditional, unless modified by the agreement described in the following paragraph, nor shall said limitations apply to water diverted by or for the benefit of the Yuma reclamation project for domestic, agricultural, or power purposes except to the portion thereof consumptively used in California for domestic and agricultural purposes.

The said ratifying act shall further provide that if by tri-State agreement hereafter entered into by the States of California, Nevada, and Arizona the foregoing limitations are accepted and approved as fixing the apportionment of water to California, then California shall and will therein agree (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 3,000,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) of the 1,000,000 acre-feet in addition which the lower basin has the right to use annually by paragraph (b) of said article, there shall be apportioned to the State of Arizona 500,000 acre-feet for beneficial consumptive use, and (3) that the

State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (4) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (5) that the waters of the Gila River and its tributaries shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico, but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters apportioned by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply one-half of any deficiency which must be supplied to Mexico by the lower basin, and (6) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water which can not reasonably be applied to domestic and agricultural uses, and (7) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact.¹¹

Another amendment to section 4(a), printed by Senator Bratton in the 70th Congress, 2d Session, as a substitute for section 4(a) as it then read, provided:

SEC. 4. (a) This Act shall not take effect and no authority shall be exercised hereunder, unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact mentioned in section 12 hereof, and the President, by public proc-

¹¹ 70 Cong. Rec. 162 (December 6, 1928).

lamation, shall have so declared, or (2) if said States fail to ratify the said compact within one year from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared: Provided, That in either event the ratification act of the State of California shall contain a provision agreeing that the aggregate annual consumptive use by that State of waters of the Colorado River shall never exceed 4,400,000 acre-feet of the water apportioned to the lower basin by paragraph (a) of article III of said compact, and that the aggregate beneficial consumptive use by that State of waters of the Colorado River shall never exceed 500,000 acre-feet of the water apportioned by the compact to the lower basin by paragraph (b) of said article III; and that the use by California of the excess or surplus waters unapportioned by the Colorado River compact shall never exceed annually one-half of such excess or surplus waters; and that the limitations so accepted by California shall be irrevocable and unconditional, unless modified by mutual agreement subsequently entered into by all of the States affected, to wit: Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, nor shall said limitations apply to water diverted by or for the benefit of the Yuma reclamation project for domestic, agricultural, or power purposes except to the portion thereof consumptively used in California for domestic and agricultural purposes.¹²

¹² 70 Cong. Rec. 277 (December 8, 1928).

An amendment offered by Senator Phipps to the amendment of Senator Hayden to section 4(a) in the 70th Congress, 2d Session, and the colloquy preceding introduction of the amendment, were as follows:

Mr. Phipps. I understand that the pending amendment is the one offered by the junior Senator from Arizona [Mr. Hayden]. I desire to offer an amendment to that amendment, which I believe is permissible under the rule in force.

The Presiding Officer. The Chair will ask the Senator from New Mexico whether he has submitted his amendment? Is it pending?

Mr. Bratton. It has been printed and is lying on the table, but has not been formally proposed.

The Presiding Officer. Then the amendment of the Senator from Colorado to the amendment will be in order.

Mr. Phipps. I ask to have my amendment to the amendment printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD as follows:

On page 5, strike out all of lines 1 to 18, inclusive, and insert in lieu thereof the following:

“SEC. 4(a). This act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 12 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within one year from the date of the passage of this Act then, until six of said States, including the State of Califor-

nia, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such 6-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed 4,600,000 acre-feet of the waters apportioned to the lower-basin States by the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."

On page 6, strike out line 25 and on page 7, lines 1 to 8, inclusive, and insert in lieu thereof the following: "permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall".

On page 12, after line 14, add the following paragraph to section 6:

"The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal water power act upon or affecting the Colorado River or any of its tributaries in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this act shall become effective, as provided in section 4 herein."¹³

¹³ 70 Cong. Rec. 324 (December 10, 1928).

The problem of parliamentary procedure raised by the Phipps amendment to the Hayden amendment to section 4(a) was discussed on the floor of the Senate:

Mr. Hayden. Mr. President, I should like to have the attention of the Senate, that I may discuss the parliamentary situation as it exists and what I may do, if possible, to remedy it, in order that the amendment offered by the Senator from Colorado [Mr. Phipps] may be perfected.

As I understand the situation, the amendment offered by the Senator from Colorado [Mr. Phipps] is an amendment in the second degree, an amendment to the amendment which I have offered, and therefore not subject to amendment. The Senator's amendment contains three substantive propositions, upon which there is a difference of opinion between the States of Arizona and California, and we must vote upon all of them as one if his amendment is not subject to amendment. But if the Senator's amendment could be made subject to amendment the Senate could vote upon the various propositions separately. For example, the Senator has taken from another part of the bill a provision that the State of California shall have 4,600,000 acre-feet of water on the Colorado River. Arizona agrees that the State of California shall have 4,200,000 acre-feet of water.

I desire it arranged so that the Senate may vote upon the question of whether it shall be one figure or the other.

I should like to inquire of the President of the Senate, whether, if I should withdraw the amendment which I have offered, would then the amendment offered by the Senator from Colorado be an amendment in the second degree and subject to amendment?

The Vice President. Will the Senator state his question again?

Mr. Hayden. If I should withdraw the amendment which I have offered, to which the amendment of the Senator from Colorado is a substitute, will his amendment then be an amendment in the first degree and subject to amendment?

The Vice President. The amendment of the Senator from Colorado would have to go along with the amendment of the Senator from Arizona if the Senator from Arizona withdraws his amendment.

Mr. Hayden. Would it not then be possible for the Senator from Colorado to immediately reoffer his amendment?

The Vice President. The Senator from Colorado could do that.

Mr. Hayden. I want to state to the Senate that what I am trying to accomplish is to get a vote on the one particular question of whether the quantity of water which the State of California may divert from the Colorado River should be 4,200,000 acre-feet or 4,600,000 acre-feet. I can state in 15 or 20 minutes all the reasons why Arizona favors the lesser figure, and then the Senate may have a vote upon that question.

Mr. Phipps. Mr. President, will the Senator yield?

Mr. Hayden. I yield.

Mr. Phipps. I desire to call attention to the fact that 4,600,000 acre-feet was the figure adopted by the Senate committee and was written in the substitute bill offered by the Senator from California [Mr. Johnson]. Therefore it seems to me that the point comes right down to the question of 4,600,000 acre-feet as recommended by the Senate committee and 4,200,000 acre-feet as written in the amendment of the Senator from Arizona.

Mr. Hayden. And upon that particular issue and upon nothing else I desire to have a vote of the Senate at this time.

Mr. Phipps. The other item that is in the amendment to which the Senator calls attention, as I under-

stand, is the provision regarding the Federal Power Commission. That is the only other matter, is it not?

Mr. Hayden. My amendment as originally offered provides for a 7-State ratification of the Colorado River compact. The Senator from Colorado in his amendment provides for a 6-State ratification. That is another question upon which I should like to have the Senate take a vote. If the Senate will bear with me for a moment, I desire to say that it is only fair to the State of Arizona that the several substantive propositions which are contained in the amendment of the Senator from Colorado and in my amendment be voted upon, each upon its own merits by the Senate, and not grouped together in one particular amendment. If I am privileged to do so, Mr. President, I withdraw, without prejudice, the amendment I have offered.

The Vice President. The Senator has that right. The amendment of the Senator from Arizona to the so-called Johnson amendment is withdrawn.

Mr. Hayden. Now, if the Senator from Colorado [Mr. Phipps] will again offer his amendment just as it is, we can proceed to debate it, to amend it, and to vote upon it.

Mr. Phipps. Mr. President, I understand the Senator from Arizona has withdrawn his amendment. I desire again to offer my amendment as it is now before the Senate.

The Vice President. The question is on agreeing to the amendment offered by the Senator from Colorado [Mr. Phipps].

Mr. Hayden. I offer the following amendment to the amendment offered by the Senator from Colorado.

Mr. Smoot. Let the amendments be now read.

The Vice President. The clerk will state the amendment of the Senator from Colorado and the amendment of the Senator from Arizona to the substitute amendment.¹⁴

¹⁴ 70 Cong. Rec. 382 (December 11, 1928).

