IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 9 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

ARIZONA'S LEGISLATIVE HISTORY OF SECTIONS 4(a), 5 (1ST PARAGRAPH), and 8 OF THE BOULDER CANYON PROJECT ACT

CHAS. H. REED,
Chief Counsel,
Colorado River Litigation,

MARK WILMER
WILLIAM R. MEAGHER
BURR SUTTER
JOHN E. MADDEN
CALVIN H. UDALL
JOHN GEOFFREY WILL
W. H. ROBERTS

THEODORE KIENDL,
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 9 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

ARIZONA'S LEGISLATIVE HISTORY OF SECTIONS 4(a), 5 (1ST PARAGRAPH), and 8 OF THE BOULDER CANYON PROJECT ACT

Introduction

This document is designed to present as far as possible the complete legislative history of Section 4(a), the first paragraph of Section 5* and Section 8 of the Boulder Canyon Project Act, commencing with the third Swing Johnson bill.**

In general, the evolution of these sections is treated chronologically. For convenience, Section 4(a) and the first paragraph of Section 5 are treated together as they were in the main considered together.

Since repeated reference is made during the course of congressional debate to the California-Nevada proposal of 1925, the Arizona counter proposal of 1925 and the recommendations of the Governors' Conference of 1927, these documents are attached as appendices.

This Legislative History is cited in Arizona's brief as "Ariz. Legis. Hist." followed by a page reference. In order that the Court, in reading the Master's Report, may be able to refer to the Master's references to Arizona's Legislative History, we have preserved by bold face bracketed page numbers the pagination of the Legislative History as it was submitted to the Master.

---

* The balance of this section deals with electric power and therefore is not considered pertinent.

** The evolution of Section 8 commenced with H. R. 6251 and that of Section 4(a) and the first paragraph of Section 5 with H. R. 9826 and S. 3331, all introduced in the 69th Congress.

[1]

Sections 4(a) and 5 (1st paragraph)

H.R. 9826 (69th Congress, 2nd Session), introduced by Representative Phil D. Swing on February 27, 1926 as a substitute for H.R. 6251 (his earlier bill), contained the following language for Sec. 4(a):

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

In the Hearings before the House Committee on H.R. 9826 certain amendments were proposed (mainly by the Upper Basin States) and set forth in part in the committee print of April 10, 1926 (p. 91 of Hearings) and in full in the committee print of April 14, 1926 (p. 115 of Hearings). The Upper Basin amendment follows and consists of all after "provided" (Hearings p. 115):

> "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 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 States of California, 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 six-State approval, and until the President by public proclamation shall have so declared."

This section was reported out of the House Committee in this form. (At p. 145 *et seq.* of the Hearings, Delph Carpenter states this was designed to force compliance with the Colorado River Compact.)

[2]

Also in the 69th Congress, Senator Johnson introduced S. 3331 in which Sec. 4(a) was identical with that in H.R. 9826 and it underwent the same changes in Committee.

As was true with Sec. 4(a), the evolution of the first paragraph of Sec. 5 began with H.R. 9826 (69th Congress), the third Swing-Johnson bill introduced by Hon. Phil Swing on February 27, 1926. Sec. 5, as introduced, read:

"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."

The same language appeared in the companion bill introduced in the Senate by Senator Johnson on February 27, 1926.

The House Committee on Irrigation and Reclamation made certain changes in Sec. 5 at the suggestion of the Upper Basin group and others. (Stricken words deleted from original and italicized words added. (U.B.) means Upper Basin amendment. (Pro.) means proponent's amendment. (Conf.) means to conform to Treasury amendments.)

"SEC. 5. That the (U.B.) ~~said~~ Secretary (U.B.) *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, 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 (Conf.) ~~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~~

[3]

~~completion of the works, and provide for the amortization of said bonds within fifty years~~ *accruing under the reclamation law and under this act, will 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 (Pro.) *irrigation and* domestic uses (Pro.) ~~may~~ *shall* be for permanent service (U.B.), ~~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."*

This language appears in the committee prints of April 10 and April 14, 1926. (It should be noted that the original bill provided that only contracts for domestic use *may* be for permanent service but *subject to the rights of prior appropriators,* whereas the committee amendment struck the last clause and provided that contracts for *irrigation* and domestic use *shall* be for permanent service. The committee amendment also added the last sentence prohibiting use of stored water without a contract.)

Delph Carpenter of Colorado, appearing as a witness, discussed the proposed changes in Sec. 5 with particular emphasis on the addition of the last sentence (p. 161 *et seq.,* House Committee Hearings on H.R. 9826):

> "Referring to the amendments in the section just read, the upper States suggested a formal amendment at the beginning, on line 15, page 8, by striking out the word 'said' and after the word 'Secretary,' inserting the words 'of the Interior.'
>
> On page 9 the main amendment at the top is a Treasury Department amendment, submitted by that department.
>
> However, at the bottom of the first paragraph of section 5, beginning on line 10, are the words:
>
> > 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.
>
> That amendment is proposed by the upper States for the fundamental reason I assigned at the outset of

my statement to-day, which is that we insist that no use occur by reason of this structure which may later be said to be independent of the compact and be asserted as adverse to the upper States. If the Secretary of the Interior should contract for the use of water to somebody in a manner that did not

[4]

obligate them to respect the compact, then they would later come in and say, 'we are not bound and we therefore disclaim any obligation under the compact,' and it would provoke litigation.

While the upper States do not fear the outcome of litigation, they do insist that they be protected by interstate compact from any unwarranted assertions or threats by the States of the lower basin against present or future development in the upper basin by reason of further development in the lower basin. Such uncertainties embarrass the upper States in encouraging private capital to develop their resources and the natural, just, and legitimate improvement of their territory.

Mr. Taylor. Colorado has had 25 years of litigation with Kansas and Wyoming over these matters, and other States have had trouble and we want to avoid it in the future if possible.

Mr. Carpenter. Yes; and that litigation has been unsatisfactory to all litigants, has put a cloud on the title of water rights of great river valleys and has worked no good to anyone. Nevertheless, it was effective in destroying development in the upper country until settled. After years of such foolish litigation the people of the lower States finally awakened to the fact that upper State development had resulted in headwater 'land storage' of the river supplies to the benefit of the lower States and without cost to the latter.

Mr. Hayden. Mr. Hopkins stated the other day that a number of the amendments asked for by the upper basin States might or might not be effective.

At least there is some doubt about their legality. It was suggested that if the State of Arizona filed a suit in the Supreme Court of the United States and thereby stopped the construction of the Boulder Canyon dam that would be just as effective protection to the upper basin as though the Congress approved these amendments. In other words, nothing would be done and therefore the upper basin States would lose no rights.

Mr. Carpenter. As I understand, your statement of Mr. Hopkins' ideas is a little broad. Unquestionably, a suit filed by the State of Arizona would tend to delay construction of the project, but you would not deny the fact that there should be a compact at an early date. A suit could not be as effective as the provisions of this bill, because the mere filing of suit would settle nothing.

Mr. Hayden. I am in thorough accord with your idea that the best way to avoid litigation and accomplish desirable results is by compacts or agreements wherein each of the States recognize the rights of the other States in order that all may receive a fair share of the benefits. I am convinced that it is a mistake to expect any profit from interstate lawsuits. The history of such suits in the Supreme Court proves that there is no advantage in them. Neither do I believe that anything is to be gained by seeking to have Congress enact legislation which takes away from a State the rights or benefits that it might otherwise secure from a development of this kind.

[5]

Mr. Carpenter. It is not our thought in insisting upon amendments to this bill to embarrass the State of Arizona or to put her in an unfavorable situation. Arizona has many problems in common with us. She is entitled to full protection. She is our friend and we insist on justice to her. We are not the proponents of this bill. We have always insisted upon a seven-State compact before construction of any further works

anywhere in the basin. But if Congress is to proceed now, then we insist on protective amendments.

Mr. Hayden. Without an understanding with the States of California and Nevada, should this bill pass, the water will be first applied to a beneficial use in California, and when the time comes for development in Arizona, my State may have no water.

Mr. Carpenter. What you have said is true in part, but I must respectfully disagree with any thought that, physically, California could legitimately beneficially use all the water of the river. There is too much. It is also true that, under this bill, the Secretary of the Interior could contract with water users in the State of Arizona for the use of water or power without let or hindrance, except that the party contracting with the United States would agree that his particular claim should be subordinate to the Colorado River compact, not subordinate to the rights of the State of California —simply subordinate to the rights of the upper States as defined in the compact.

Mr. Hayden. The purpose of this amendment is that 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.

Mr. Carpenter. 'Except by contract made as herein stated' means this: If the flow of the Colorado River is controlled and regulated by the construction of the Black Canyon Dam, and any person in the State of Arizona attempt to take any water out of the stream which has been discharged from the reservoir and is being carried in the stream bed, as a natural conduit, for delivery to lower users, this law would be brought into effect and he would be prevented from using any of that water independent of the Colorado River compact but unencumbered by any other condition for the benefit of California and Nevada. In other words, the compact does not disturb the rights between Arizona, California, and Nevada, inter sese, as to their portion of the water.

Mr. Swing. The water which is stored by the Government at its own expense would be disposed of by contract as provided in this bill. There should be that privilege given Arizona to secure water on the same terms as is afforded to Nevada and California.

Mr. Hayden. How tight would you tie Arizona?

Mr. Carpenter. The thought of this amendment is that any water stored in this reservoir under the terms of the compact, when released from storage shall be burdened by the compact wherever it goes. As far as water is concerned, existing claims of the lower

[6]

States are protected by the compact. Water must pass through this reservoir to take care of the present existing lower claims.

As to future development from the main river, we insist that water stored in this structure by the United States be stored and released upon the express condition that the persons who receive the water shall respect and do so under the compact. It has nothing to do with the interstate relations between Arizona and California.

Mr. Swing. And also they shall make a fair contribution to the burden of returning this money to the Treasury of the United States.

Mr. Carpenter. Yes; that goes without saying. Anybody benefiting from this reservoir should help pay.

Mr. Swing. Whether he lives in the State of Arizona or the State of California or the State of Nevada?

Mr. Leatherwood. It goes without saying that as to any use of the water of the Colorado River by the State of Arizona, so long as she remains without the compact, that part which she would use which is not part of the stored water of this proposed dam, would be wholly without any restriction so far as the Colorado River compact is concerned and would be adverse to the upper basin States.

Mr. Swing. That would be true as to present vested rights only.

Mr. Leatherwood. Any rights that may be initiated.

Mr. Carpenter. Your question is answered by the fact that as to future uses from the main stream of the river, all water going to those uses will be stored water because the reservoir is so large that it will store everything that comes. Under the compact it does not impair any established, perfected uses.

Mr. Leatherwood. The upper States would have a right to rely upon the fact that there can be no use made by the nonratifying States of the waters of the Colorado River that are not stored?

Mr. Carpenter. Generally speaking, yes. But there will be cases where people along the river would take and use the water, because it would be going by. They could take it on the Arizona side and use it. We have felt that whatever rights they acquired would not materially jeopardize us.

Mr. Hayden. Suppose that a group of individuals in my State should apply to the Arizona Water Commissioner for the right to divert water from the Colorado River and apply it to beneficial use on their lands, and the commissioner gave them all the rights he could under the laws of the State, how would you keep them from diverting the water if it was flowing by their lands?

Mr. Carpenter. It would be a navigable stream and under the jurisdiction of the Federal Government. The Secretary of War would

[7]

protect this structure. Again, other matters might enter in. However, I do not believe there will be any particular disposition to prevent them from taking the water. There is plenty of water down there if stored. We are not alarmed about claims against us by the State of Arizona. California is the State which will first take water.

Mr. Hudspeth. Where do you provide in the six-State compact for the distribution of water, as to Arizona, that is to be stored? What does she get?

Mr. Carpenter. There is no disposition as to Arizona. The so-called six-State compact is misleading. It refers to the six-State ratification of a seven-State compact.

Mr. Hudspeth. If you should store a certain amount of water there, and California should desire to take all of that water, could she do so?

Mr. Carpenter. Assuming she could use it all.

Mr. Arentz. And Arizona would not want hers for 20 years.

Mr. Carpenter. That would be a matter, in the first place, for the United States controlling this dam, to say.

Mr. Hudspeth. Is it controlled by this compact—taken out of the hands of the United States?

Mr. Carpenter. The rights of the State of Arizona are not prejudiced. She is not included or excluded. The door is open and she may either come in or stay out. So far as any rights she may have are concerned, of course, they are not impaired. She may continue to remain on the side line, looking on as it were, and taking such action as she may see fit to protect her own interest or she may join. Her quarrel is not with the upper States, but is a fear of future conditions between herself and California. It is a local situation. Under the compact we make no attempt to allocate between those three lower States. We allocate to the lower group so much water. We do the same with the four upper States.

In the upper country we had a controversy between New Mexico and Colorado over the La Platte River. We settled that by a local compact entered into immediately after and in harmony with the main compact. It is intended that these local problems, involving only two or more States, shall be settled by supplemental compacts. And so here we would leave to Arizona, California, and Nevada the disposition of the water

given to the lower basin under the Colorado River compact. They are now engaged in an attempt to arrive at a compact, and that endeavor should be encouraged. It is desired by all that such an agreement should be reached.

They should not be prejudiced in the sense of shutting them out from any ultimate benefits so long as they act in good faith. But they should not stand by and leave those below in peril. Reasonable speed is to be expected.

[8]

Mr. Hudspeth. Suppose California should appropriate all of the water, would not that all go to her to the detriment of the State of Arizona?

Mr. Carpenter. The best answer to that question is that it cannot be done. California could not possibly appropriate all of that water if she tried to do so. She would drown herself out. Physical inhibitions would come into play."

After certain other minor changes were made by the House Committee, the first paragraph of Sec. 5 was reported out 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, 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 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. 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."

S. 3331 underwent the same changes before the Senate Committee in the 69th Congress insofar as Sec. 5 is concerned.

The first suggestion of a limitation was made by Senator Ashurst (February 25, 1927) in an amendment proposed to Sec. 5 of S. 3331 which would restrict the authority of the Secretary of the Interior to contract as follows:

> "*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 three hundred thousand acre-feet has been deducted for use within the State of Nevada."

No action was taken on this proposal and the 69th Congress adjourned without passing either H.R. 9826 or S. 3331.

In the 70th Congress, Mr. Swing introduced H.R. 5773 in which Sec. 4(a) was included without change in language (except for one typo)

[9]

from that approved by the House Committee in the 69th Congress. No amendment was made in committee, except to correct the typo.

No change was made in Sec. 4(a) on the House floor. H.R. 5773 was passed and sent to the Senate during the 1st Session of the 70th Congress.

Senator Johnson's companion bill (S. 728) contained a radical change requiring only *four*-state ratification of the Colorado River Compact. This was amended in committee to restore *six*-state ratification as follows (stricken in original; italicized "*five*" in amendment):

> "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 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."

The next suggestion of a limitation on California uses appeared in an amendment to Sec. 5 (not Sec. 4(a)) of S. 728 as reported out (on March 20, 1928) by the Senate Committee. The amendment appears in the italicized words following "Provided":

> "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, 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

[10]

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."

On April 26, 1928, Senator Johnson discussed the foregoing amendment to Sec. 5 (69 Cong. Rec. 7250):

"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 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.

I repeat and repeat how we have endeavored to protect these upper basin States. We write the bill around the compact, we make every drop of water that comes from the storage and the regulation of the Colorado River under this scheme subject to the compact. We write, then, that California shall use perpetually only a specific amount of water, naming the maximum amount which may be used.

All these things are done in the good-faith endeavor to protect in every possible way the States of the upper basin and those who claim that they want protection under the Colorado River compact. Yet some of them would prefer to let this water continue to flow down to the sea for an indefinite period, to go to waste in the Gulf of California, the land remain in drought to the detriment of people in southern Arizona and southern California, to permit that to be

done indefinitely, rather than to permit the measure of protection—and it is a full measure of protection that is accorded them—under this bill."

Also during the 1st Session of the 70th Congress the Senate received certain amendments to S. 728 on which no action was taken in that session. The first (to Sec. 5 but relating to a limitation) was by Senator Waterman on March 27, 1928, which was printed, but not offered. It limited the authority of the Secretary to contract, as follows:

> "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 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.' "

The next amendment was printed (but not offered) by Senator Bratton on April 20, 1928—to Sec. 4(a):

"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 six

[12]

States, including the State of California, shall ratify said compact, and shall consent to waive the provisions of the 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 four million two hundred thousand 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."

The next amendment to Sec. 4(a) was printed by Senator Phipps on April 20, 1928 as follows:

"On page 5, strike out lines 7 to 10 inclusive, and insert in lieu thereof the following 'until the Colorado River compact, mentioned in section 12 hereof, shall have been approved by the Seven States signatory thereto or until the State of California and at least five of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have approved said compact and shall have consented to a.' "

On May 3, 1928 there was printed the first so-called Phipps Amendment to Sec. 4(a), deleting the limitation language in Sec. 5 but adding the "shall conform to 4(a)" to Sec. 5, which limited the Secretary's authority to contract.

"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 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.' "

On May 28, 1928 (69 Cong. Rec. 10259) Senator Pittman (Nev.) discussed the recommendations of the Governors' Conference and stated that Nevada accepted those terms. He asked that an amendment to Sec. 4(a) drawn by Mr. Wilson of New Mexico be printed in the record, although he did not suggest action on the proposal. His discussion follows:

"Now, briefly, I desire to refer to another phase of this question. I have opposed final adjournment; I still believe if we shall be given sufficient time we may bring about action on the Boulder Dam bill. My fear has been, there being so many other matters before the Senate which Senators think of importance, and on which time is taken in discussion, that delay might eventually cause Senators to leave. Let me say that the States of Arizona, California, and Nevada are not

very far apart on any of the questions involved. We spent four weeks at Denver, Colo., last summer and last autumn discussing them. At that time California's representative and Arizona's representative presented to a commission representing the seven Colorado River States their position. California asked Arizona, 'If we agree on the equitable distribution of the benefits of the power development will you then be satisfied?' Arizona said, 'If you will agree on two things, the equitable distribution of water and of power; yes.' So they worked for weeks. I say that the question of power distribution has already been agreed upon; that is out of the way. The two power provisions, which I offered in committee as an amendment to the bill of the Senator from California (Mr. Johnson) and which were reported out favorably by the Senate committee, were also reported out favorably by the House committee and are now included in the House bill as it comes over here.

[14]

Those provisions satisfied Nevada and those provisions satisfied the people of Arizona. So we have nothing but a question of the division of water that separates the two States. Nevada is not complaining about water; she has always accepted the little handful of water that has been given her; but when we assembled at Denver the governors of the four upper Colorado River Basin States, trying to reconcile the difference on water between California and Arizona, finally made this proposition:

	Acre feet of water
California	4,200,000
Arizona	3,000,000
Nevada	300,000

How did they get at that? Under what is called the seven-state agreement we find this clause in Article III:

(a) There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

In other words, those State governors believed that there was only 7,500,000 acre-feet of water to divide, and they proposed to divide it, as I have said, 4,200,000 acre-feet to California, 3,000,000 acre-feet to Arizona, and 300,000 acre-feet to Nevada.

California said, 'We can not possibly do with that amount of water; we must have 4,600,000 acre-feet instead of 4,200,000 acre-feet.' Arizona would not yield more. Then, we came back here, and while no agreement was reached and never has been, and there is no provision in the bill with regard to the division of water, in a meeting that was held in my office between friendly representatives of California and friendly representatives of Arizona and the Nevada delegation it was discovered that there was another paragraph of Article III, which is (b) which reads as follows:

(b) In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters by 1,000,000 acre-feet per annum.

In other words, we discovered that there were 1,000,000 acre-feet of water more to divide than we had discussed at Denver. Then we said, 'Divide that 1,000,000 acre-feet between California and Arizona.' What is the result? California will get 4,700,000 acre-feet which is 100,000 acre-feet more than she finally insisted on at Denver; Arizona will get 500,000 acre-feet more than she insisted on, and Nevada would get exactly the same as originally planned. So there is plenty of water there.

[15]

While that tentative agreement was reached, between certain representatives of the three states after the bill was reported out of the Senate, because this extra million feet was not discovered until after the bill had been reported, for one reason and another, we have the deadlock which we find here. I am not here for the purpose of criticizing anyone as to why this deadlock exists, but it does exist, and it may continue notwithstanding how close we are to reaching a compromise. Therefore, we should pass this joint resolution as a safety measure.

I wish to place in the RECORD at this point a suggested amendment. It is not to be proposed, because that would be perfectly useless, but it has been suggested. It is in accordance with the conference to which I have just referred and it is designed to carry out that idea at some date. It was largely drawn by Mr. Wilson, the commissioner of New Mexico, in the course of the conference to which I have just referred. It is only to be published in the RECORD; it is not offered as an amendment.

The Presiding Officer. Without objection, the suggested amendment will be printed in the RECORD.

The suggested amendment is as follows:

Strike out all of lines 1 to 18, both inclusive, and insert in lieu thereof the following:

'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 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.

[16]

'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 unappor-

tioned 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.' "

When the Senate reconvened in the 2nd Session of the 70th Congress on December 5, 1928, the first order of unfinished business was S. 728. Since the House had already passed H. R. 5773, Senator Johnson asked unanimous consent to substitute H. R. 5773 for S. 728 (70 Cong Rec. 67). There was no objection and the substitution was ordered (70 Cong. Rec. 68). Senator Johnson then asked unanimous consent to strike out all after the enacting clause of H. R. 5773 and in lieu thereof to insert all after the enacting clause of S. 728 as reported out of committee. This was granted (70 Cong. Rec. 68).

[17]

On December 6, 1928, Senator Hayden made the following comment (70 Cong. Rec. 161):

> "Mr. Hayden. Mr. President, yesterday, just prior to the adjournment of the Senate, I offered an amendment to the Senate bill that has been offered as a substitute for House bill 5773, which relates to an apportionment of the waters of the Colorado River to the lower basin of that stream. The amendment was taken from the Congressional Record of May 28, 1928. On that date the senior Senator from Nevada (Mr. Pittman) asked to have the amendment printed in the Congressional Record, for the information of the Senate."

He then offered the amendment in the following language (70 Cong. Rec. 162):

> "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 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 sur-

plus 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."

Following this was a lengthy discussion of the proposal, during which Senator Hayden commented at 70 Cong. Rec. 163:

". . . The State of Arizona is, therefore, interested in an apportionment of the waters of the lower basin. That is what the amendment which I have offered proposes to do."

Senator King, in regard to the California demand for 4,600,000 acre-feet and Arizona's desire to limit California to 4,200,000 acre-feet a year, commented (70 Cong. Rec. 164):

"There is a difference now of 400,000 acre-feet between the two States. I do not pretend to determine which of the two States is right in this controversy, although I will say frankly to my friend from California that my sympathies have been with Arizona in some phases of the issues between the two States. I have felt that California has been rather too exacting, and that the rights of Arizona under the Constitution have not been fully recognized. In view of the fact that California furnishes no part of the water, that the dam site is in Nevada and Arizona, it has seemed to me that California ought to modify the demands

which she has made. If there are only 400,000 acre-feet dividing the two States, I suggest to the Senator that earnest efforts in the most conciliatory and Christian-like spirit should be made between the representatives of the two States to reach some common ground so that the compact may be ratified.

[19]

I make no comment at this time—I may later on—in regard to the scheme which has been proposed in the pending bill, but I do make an earnest appeal to my friends from Arizona and California to reach an agreement upon all controversial matters."

Senator Bratton of New Mexico again pointed up the fact that only 400,000 acre feet were separating Arizona and California (70 Cong. Rec. 165):

"The Senator from Arizona now is proposing an amendment to this legislation looking to an adjustment of the differences between Arizona and California. As I understand the purport of the amendment, it is to provide that in the act of ratification the State of California shall obligate herself not to claim more than 4,200,000 acre-feet annually of the apportioned water, and no more than 500,000 acre-feet annually of the unallocated or unapportioned water.

Mr. Hayden. No; the Senator has not had an opportunity, perhaps, to read the amendment carefully.

Mr. Bratton. I have not read it carefully, and I shall appreciate it if the Senator will correct me.

Mr. Hayden. The provision in the amendment is that the State of California shall agree not to use more than 4,200,000 acre-feet of the water apportioned in perpetuity to the lower basin, and not more than 500,000 acre-feet of the additional 1,000,000 acre-feet which the compact authorizes to be appropriated in the lower basin.

Mr. Bratton. That is the thought I had in mind, although I did not express it accurately.

If the State of California is willing thus to bind herself, is it the opinion of the Senator from Arizona that that will result in composing the differences among the lower-basin States, and will bring about a 7-State ratification?

Mr. Hayden. Certainly. That is exactly what we are trying to do.

Mr. Bratton. I understand that. The Senator believes that the adoption of this amendment probably will lead to an early ratification by all seven States?

Mr. Hayden. I certainly do, or I would not offer it.

Mr. Bratton. I appreciate that. I should like very much to know if the proposition is entertainable by the State of California.

[20]

Mr. Johnson. No; the amount is not one that it is possible to accept. I am very glad to use it as a basis for an endeavor to reach some conclusion, to do everything that lies within my power to the end that that conclusion will lead either to the ratification of the 7-State pact or to the passage of this bill; but I did not understand the Senator from Arizona in his speech of yesterday to say that a division of water alone would lead to a composition of the differences which exist. I understood him yesterday to insist not alone upon a division of water, as he suggests now, but, as well, to rest upon a substantial prohibition in this bill of the erection by the United States Government of a generating plant at Boulder Dam. Is not that what was said yesterday by the Senator from Arizona?

Mr. Hayden. The Senator from Arizona stated yesterday that there were three essentials to a complete settlement of this controversy: First, the insistence of the States of the upper basin on a 7-State ratification of the Colorado River compact; second, subordinate to that, an apportionment of the waters of the lower basin,

as authorized by the compact; and, third, a provision in this bill which will carry out the recommendations made in the President's message with respect to power.

Mr. Johnson. But the Senator stated yesterday distinctly what he desired, and that was that only private enterprise could erect a generating plant at the Boulder Dam; and he stated the reason. He said that his State desired to charge a taxable amount for the property thus created by private enterprise. Is not that correct?

Mr. Hayden. I interpreted the President's message to mean that the legislation enacted would provide for private development of power at Boulder Dam.

Mr. Johnson. Correct.

Mr. Hayden. In that event everything that Arizona has ever asked for would be accomplished.

Mr. Johnson. All right. Let me say, then, to the Senator from New Mexico, that there are two conditions annexed here: First, Arizona says, 'You must divide the water in accordance with what has been suggested.' Secondly, 'You must forbid the great Government of the United States from erecting, if it desires in the future, a generating plant at Boulder Dam.'

Mr. Bratton. Mr. President, will the Senator from Arizona yield?

The Presiding Officer. Does the Senator from Arizona further yield to the Senator from New Mexico?

Mr. Hayden. I do.

[21]

Mr. Bratton. Let us separate the two things for the moment and discuss only the division of water.

The Senator from Arizona now says that, in his opinion, a restriction to 4,200,000 acre-feet will bring about a ratification of the compact by all seven States, including Arizona. I understand the Senator from California to say that the amount thus designated is not altogether satisfactory.

Mr. Johnson. The Senator is quite right. That is correct, sir.

Mr. Bratton. Is the Senator in position to say what is entertainable?

Mr. Johnson. The lowest amount conceivable from the standpoint of the information now at hand with me is 4,600,000 to be put in as an amendment to this bill by the Senator from Wyoming; but what I was calling to the attention of the Senator was this:

Of what avail is it to say, 'You ought to make sacrifices of water and water rights that are now perfected'; of what avail is it to say to California, 'You must yield that which you practically have today, and that is absolutely necessary to the welfare of your people, to have a composition,' when the second condition is annexed that 'You, too, must say that your Government never shall be permitted to erect a generating plant at the Boulder Dam'?

Mr. Bratton. But if we pass the bill in the alternative condition in which it now stands that will govern; will it not?

Mr. Johnson. But you have not reached a composition between Arizona and California, then. That is the difficulty.

I will say to the Senator from New Mexico that in my opinion I could sit down with him, and possibly with the Senator from Arizona—because our relations are most friendly—and we might reach an agreement as to water. I am not clear as to that; I would be glad to; but I can not, sir, reach an agreement as to water that shall be a composition of the differences existing and pledge myself that the Congress of the United States will enact a law that a generating plant never can be erected by the United States Government.

Mr. Bratton. Discussing the subject of water separate and apart from all other features of the bill, there seems to be a difference of 400,000 acre-feet between Arizona and California.

Mr. Johnson. So there seems.

Mr. Bratton. Without taking sides either way, we in the upper-basin States desire to adjust the whole matter satisfactorily to all of the States concerned. Any other attitude would be unbecoming a State.

[22]

Mr. Johnson. I am sure that is the attitude of the gentlemen who confront me here.

Mr. Bratton. We entertain the friendliest feeling toward each State; but it does seem to me, representing one of the upper-basin States deeply and vitally concerned in the matter, that when we are dealing with 15,000,000 acre-feet, a difference of 400,000 acre-feet should not be permitted to defeat the entire proposal. I think each side could afford with profit to yield something, and not let a controversy respecting that slight volume of water defeat one of the most important measures that Congress has considered during a long time in the past and perhaps one of the most important that it will consider during a long space of time in the future. I want to join with the Senator from Utah (Mr. King) in saying that it is the earnest desire of the upper-basin States to aid the lower-basin States in adjusting and composing these differences and passing this legislation in a form that will be reasonably satisfactory to the two States and the other five as well.

Mr. Johnson. I am sure that is so.

Mr. Bratton. I want to urge that this difference of 400,000 acre-feet be not allowed to stand as a barrier to the passage of this legislation. There are no two men in the Senate more willing or disposed to discuss a thing dispassionately and progressively and constructively than the Senator from California and the Senator from Arizona."

During this debate, an important exchange was commenced at 70 Cong. Rec. 167 by Senator Hayden:

"I want the Senate to understand why it was that Arizona did not approve the compact. The reason was perfectly simple. The Legislature of Arizona, after the most careful consideration, arrived at the conclusion that it was unsafe for the State of Arizona to approve that agreement unless there should be an understanding as to how the waters of the lower basin should be apportioned between the States of Arizona and California. They found on record filings by the State of California which claimed all of the water of the Colorado River.

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

Mr. Hayden. I yield.

Mr. Johnson. Can the Senator state how much of perfected water rights there are in the State of California to-day from the Colorado?

Mr. Hayden. The best way I can answer the Senator from California is to read to him from a proposal made by the commissioners representing the State of California on the 1st day of December, 1925, wherein those commissioners suggested an allocation of water:

> That there is hereby allocated from the waters of the Colorado River in the State of California in present perfected rights,
>
> [23]
>
> in addition to all other allocations of beneficial consumptive use, 2,146,600 acre-feet of water.

In other words, in the year 1925 the State of California claimed to have perfected a right to the use of 2,146,600 acre-feet of water.

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

Mr. Hayden. I yield.

Mr. Bratton. Can the Senator tell us what the present perfected rights in Arizona amount to?

Mr. Hayden. I cannot; I have not that information at hand.

Mr. Johnson. Let me call the attention of Senators to the fact in that connection, too, that the amounts

that are now actually appropriated, and that are being applied to use, or are in process of being put to use, in either of which events the appropriation is perfectly good and the water cannot be taken away, are 4,508,708 acre-feet.

Mr. Hayden. Does the Senator include in that amount an appropriation filed by the city of Los Angeles for water for domestic use?

Mr. Johnson. Yes; it is a perfectly good filing and a legal filing. It has its standing to-day.

Mr. Hayden. I will say to the Senator very frankly and in the best of spirit that that filing, without the passage of legislation by Congress, without the construction pursuant to that legislation of a dam to impound the water of the Colorado River, will produce no more water for the city of Los Angeles than was contained in the ink used by the person who signed the document in behalf of that city.

Mr. Johnson. Let us even concede that——

Mr. Hayden. As a practical matter, the filing is utterly worthless unless the Congress of the United States appropriates money to build the Boulder Dam.

Mr. Bratton. How much is involved in that filing?

Mr. Johnson. One million and ninety-five thousand acre-feet.

Mr. Bratton. How far has that filing progressed?

Mr. Johnson. It has progressed to the extent that every legal formality has been complied with and over $1,000,000 have been expended already by the city of Los Angeles in respect to it.

In addition to that, I want to make clear—although I ought not to interrupt the Senator from Arizona, and I will conclude with just this statement—in addition to that there are rights to which appropriation rights have not yet attached, but which, under the known feasibility,

[24]

with the all-American canal, will be equal to not less than 338,800 acre-feet, making a total of 5,264,300 acre-

feet. I am giving these figures because I am going to compare them ultimately, and ask the Senator from Arizona to compare them, first, with the number of acre-feet which thus far have been appropriated by Arizona and the number possible to be used by Arizona under the construction that is contemplated by this bill; and I want those figures to be borne in mind by Senators when they consider water and water rights.

Mr. Walsh of Montana. Mr. President, will the Senator yield?

Mr. Hayden. I yield.

Mr. Walsh of Montana. I would like to inquire of the Senator from California what is the character of the diversion contemplated in the Los Angeles appropriation?

Mr. Johnson. The character is a pumping from the river over 1,400 feet of hills into an aqueduct.

Mr. Walsh of Montana. Does it contemplate any dam or any storage at all?

Mr. Johnson. No; not that I am aware of. I think no dam is contemplated there.

Mr. Walsh of Montana. Is any such amount of water available from the natural flow of water without storage?

Mr. Johnson. I do not think that amount of water is available at all at the present moment.

Mr. Walsh of Montana. I would think that the appropriation, to be of any value, must contemplate works making it feasible.

Mr. Johnson. Those works thus far have been commenced in the expenditure of a million dollars in surveys and the like, and somebody sometime—the city of Los Angeles or the Government or somebody—will unquestionably construct a dam.

Mr. Walsh of Montana. That is what I wanted to know. The dam would be constructed somewhere in the State of Nevada or Arizona?

Mr. Johnson. I presume that is likely, although this diversion is from Arizona.

Mr. Walsh of Montana. Would the city of Los Angeles be authorized, without specific authority from Congress, to throw a dam across the Colorado River in Arizona?

Mr. Johnson. I think not. My offhand 'shotgun' opinion would be no.

Mr. Walsh of Montana. Then, it seems to me there is some question about it.

[25]

Mr. Johnson. There is one aspect in which it might be done, and that is by the Federal Power Commission. It strikes me that under the Federal water power act the privilege could be accorded to the city of Los Angeles to erect a dam.

Mr. Walsh of Montana. Would not the appropriation be nugatory in the absence of that authority in view of the existing statute under which the water power commission is without power?

Mr. Johnson. I would change the adjective. I would not say 'nugatory.' I would say 'futile.'

Mr. Walsh of Montana. Suspended?

Mr. Johnson. Suspended is a better word still.

Mr. King. Mr. President, will the Senator from Arizona suffer an interruption?

Mr. Hayden. I yield to the Senator from Utah.

Mr. King. As I understood the Senator in reading from the document a few moments ago, it showed that there is a claim of 2,000,000 acre-feet plus of perpetual water right in California.

Mr. Hayden. That is right.

Mr. King. I would like to know if the document states just what was done to perfect those rights and whether there was any water used under those rights other than in the Imperial Valley?

Mr. Hayden. I have here a proposal made in 1925 by the commissioners appointed by the State of California to the State of Arizona for an apportionment of the water of the lower basin. The best way to

answer the Senator from Utah is to read just what the proposal says:

> ART. 3. The States of California and Nevada hereby release to the State of Arizona any and all claims of every kind and nature to the use of the waters of the Gila River, the Williams River, and the Little Colorado River and all of their respective tributaries for agricultural and domestic use, and the States of Arizona and California hereby release to the State of Nevada any and all claims of every kind or nature to the use of the waters of the Virgin River and all of its tributaries for agricultural and domestic use, in consideration of which there is hereby allocated from the waters of the Colorado River to the State of California 1,095,000 acre-feet of water per annum in perpetuity for beneficial consumptive use.

It will be observed that at that time the State of California asked the States of Arizona and Nevada to allocate for the use of that State 1,095,000 feet of water upon condition that California would waive any claim that it might have to the waters of the tributaries of the Colorado River in Arizona and Nevada. At that time apparently the

[26]

State of California had not made any filing, had not posted a notice on a stone or post somewhere near the Colorado River, had not filed a document in some public office, asserting an appropriation of water for domestic use by the municipalities of southern California.

I take it from the similarity of the figures, 1,095,000 acre-feet, that they represent an equal quantity of water desired by the cities of southern California, as was just expressed by the Senator from California. At that time California was seeking to obtain water for domestic purposes; and it was indeed very kind and very generous of the California commissioners to say that they would waive any and all claims to the waters of the

tributaries of the Colorado River in Arizona and Nevada in consideration of California being allowed to have that amount of water. They were willing to give Arizona and Nevada what the two States already possessed in order to obtain the use of 1,095,000 acre-feet of the water for domestic purposes.

Mr. Walsh of Montana. Mr. President, if the Senator will pardon me, I would like to pursue a little further the colloquy I had with the Senator from California.

Mr. Hayden. I yield to the Senator from Montana for that purpose.

Mr. Walsh of Montana. If the city of Los Angeles has this enormous appropriation of the waters of the Colorado River, a perfected appropriation or an inchoate appropriation, does it follow, if the Government erects this dam across the Colorado River and creates a great storage basin, that it must yield up that amount of water to the city of Los Angeles?

Mr. Johnson. I rather think so, just exactly as if it were a perfected right for irrigation purposes.

Mr. Walsh of Montana. Yes; but I always understood that the interest that stores the water has a right superior to prior appropriations that do not store.

Mr. Johnson. Possibly so. What is the point?

Mr. Walsh of Montana. The point is that apparently, if that is correct, then this expenditure is being made with no right in the Government of the United States to control the water which is stored, but that it must go to those appropriators.

Mr. Johnson. No; the bill provides that a contract in advance must be made for the storage of water by the Secretary of the Interior.

Mr. Walsh of Montana. A contract with whom?

Mr. Johnson. With those who utilize and take and appropriate the water.

Mr. Walsh of Montana. That is to say, the Government may dispose of the stored water as it sees fit?

[27]

Mr. Johnson. Yes; under the terms of this bill.

Mr. Walsh of Montana. Then how can it be said that the city of Los Angeles has a perfected interest?

Mr. Johnson. It has a perfected right there unquestionably, but the bill requires the city of Los Angeles to conform to it, and the city of Los Angeles is perfectly willing to conform to it just exactly as if it had no perfected right.

Mr. Walsh of Montana. Am I correct in the assumption that the Government of the United States must distribute the water to the various appropriators in accordance with their several appropriations?

Mr. Johnson. If they contract.

Mr. Walsh of Montana. Yes; but to contract means a liberty of contract. That is what I want to know. Can the Secretary give the water to them or withhold it from them as he sees fit?

Mr. Johnson. Certainly, because before he begins work upon the dam he has to have the contract in his possession for its payment, and he is the one who is to fix the sums that are to be paid.

Mr. Walsh of Montana. Yes, but that is quite contradictory. It seems to me that the city of Los Angeles has no rights by virtue of this appropriation.

Mr. Johnson. Certainly it has, but those rights unquestionably will be controlled by this bill.

Mr. Walsh of Montana. I should like to have a very much clearer understanding about that than I have.

Mr. Johnson. I fear I cannot make it any clearer to the Senator. I would like to do so if I were able.

Mr. Walsh of Montana. Let me inquire of the Senator, then, of what value to the city of Los Angeles is this appropriation? It goes to the Secretary of the Interior to furnish water pursuant to its appropriation. The Secretary of the Interior says, 'I do not accept your terms at all. I will not contract with you upon

that basis.' Someone else comes along who offers to make a contract with the Secretary of the Interior for the water, that is satisfactory to him and to them. Where, then, does the city of Los Angeles come out?

Mr. Johnson. I doubt very much if the Secretary, under the circumstances, would make such a contract.

Mr. Walsh of Montana. Then he is obliged to contract with the city of Los Angeles?

Mr. Johnson. No; he is not obliged to do so, but he is obliged to contract with somebody that makes the same claims to the same waters,

[28]

and unless the contract is by mutuality agreed upon then he will not build the dam. That is the condition precedent to the construction of the dam.

Mr. Walsh of Montana. Then he is at liberty to contract with the city of Los Angeles, which has an appropriation, or with someone else that has not an appropriation?

Mr. Johnson. Yes; he is at liberty to contract with the city of Los Angeles, which has an appropriation.

Mr. Walsh of Montana. But can he disregard the city of Los Angeles?

Mr. Johnson. I doubt very much if he can.

Mr. Walsh of Montana. And contract with someone else who has no appropriation?

Mr. Johnson. I doubt very much, first, if he would, and I doubt secondly, if he could.

Mr. Hayden. Mr. President, if the Senator from Montana will permit me, I want to assure him that so far as these paper appropriations of water are concerned there are just as many of them on the Arizona side of the river as there are on the California side.

Mr. Walsh of Montana. I rather assumed so.

Mr. Hayden. I am quite sure one paper appropriation of water is just as valuable as another. I do know that the Arizona High Line Canal Association has filed an application for all of the water of the Colorado

River in due and legal form in the State of Arizona. If that is of real and substantial value, then Arizona has good title to all the water in the Colorado River.

Mr. Walsh of Montana. I directed the inquiry merely for the purpose of trying to find out, if I can, under what kind of obligation the Government of the United States, should it build this dam, would be to those who have the appropriations.

Mr. Johnson. The Government would be under no obligations until it makes its terms. I seem unable to make that plain. But here is everything in this scheme, plan, or design: Everything is dependent upon the Secretary of the Interior contracting with those who desire to obtain the benefit of the construction, and he is not to undertake any expenditure nor to undertake any construction until that shall have been accomplished.

Mr. Walsh of Montana. Let us suppose the Arizona people are perfectly willing to meet the requirements and that the Los Angeles people are perfectly willing to meet the requirements, and other people who have not even attempted to make any appropriation are perfectly able and willing to meet the requirements. Who then has the right?

[29]

Mr. Johnson. The Secretary of the Interior and the Government have the right.

Mr. Walsh of Montana. The Secretary of the Interior may utterly ignore those appropriations?

Mr. Johnson. Possibly so.

Mr. Walsh of Montana. That is what I am curious to find out about.

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

Mr. Hayden. I yield.

Mr. King. It occurs to me that the Secretary of the Interior would be derelict in his duty, if this bill were to become a law, if he should spend one penny in the construction of a dam until he had determined the

different rights existing either in California or in Arizona with respect to the waters of the river. If there are suspended or inchoate rights in either of those States which might not ripen into perfected rights through a contract or recognition of the same, and there is sufficient water to meet all of those suspended or inchoate or perfected rights, it will be the duty of the Secretary of the Interior, if he were fully to discharge his duty, to obtain from those claimants a waiver of their rights, inchoate or perfected. If not, when the dam was constructed and the water impounded the Government of the United States might have a dozen law suits; persons who had made filings might insist that the water impounded was theirs; that they had been interfered with by a superior physical power, to wit, the Government of the United States, and that they had been prevented from completing rights which they had initiated either under State laws or by reason of acts of Congress. It is obvious that there are claims here for a vast amount more water than flows in the Colorado River.

Mr. Hayden. Mr. President, if the Senator will permit me, I should like to say that that is not an unusual situation. On every stream throughout the entire western part of the United States where irrigation is practiced appropriations have been filed for many times more water than flows in the streams. There is nothing to prevent any qualified citizen of the United States or any corporation organized under the laws of any State from posting a notice, upon a rock, or tacking it to a monument on the bank of the river or going to some county recorder's office and making a filing, claiming a vast quantity of water out of the stream. That condition exists everywhere and it does not alarm anyone. Appropriations of that kind have been made in California, and have been made in Arizona, and none of them are of any value whatsoever so far as the future is concerned until the Government of the United States spends some sixty or seventy

million dollars to build a dam and impound the waters of the Colorado River and make the same actually available for diversion and use.

Mr. King. Mr. President, if the Senator will pardon me, I think that the last statement made by him is a little too broad. The

[30]

Senator in the plenitude of his experience in the Western States knows that sometimes a right is initiated by the weaker party, if I may use that expression, and a superior party, sometimes by physical force, comes in and builds a dam sooner than the other man. I have known them to be driven from the construction by guns. It is obvious that the man who has been driven off or been prevented from completing his rights would have some standing in a court of equity if he were to attack the rights or the claimed rights of the superior party who had perhaps control of the dam and had taken the water out of the stream.

It seems to me that the statement made by the Senator should admonish us that if this bill is to be passed there should be a provision in it that there shall be no work done under the law until the conflicting rights, if there be any, shall be determined, and, if necessary, that a bill in equity be filed against all persons who claim water in the stream, in order that the rights may be adjudicated and waivers obtained.

Mr. Hayden. Let me say to the Senator from Utah that I do not concede that any such provision is at all necessary. The only thing required in this bill is contained in the amendment that I have offered, that there shall be apportioned to each State its share of the water. Then, who shall obtain that water in relative order of priority may be determined by the State courts.

Mr. King. If the Senator means by his statement that the Federal Government may go into a stream, whether it be the Colorado River, the Sacramento River, or a river in the State of Montana, and put its powerful

hands down upon the stream and say, 'This is mine; I can build a dam there and allocate water to whom I please, regardless of other rights, either suspended, inchoate, or perfected,' I deny the position which the Senator takes.

Mr. Hayden. The amendment that I have offered contemplates no such possibility.

Mr. Walsh of Montana. Mr. President, let me remark——

Mr. Phipps. Mr. President, will the Senator from Arizona yield to me?

The Presiding Officer. Does the Senator from Arizona yield; and if so, to whom?

Mr. Hayden. I yield first to the Senator from Montana.

Mr. Walsh of Montana. Let me remark in that connection that if, as contended apparently by the Senator from California, the city of Los Angeles has a right, inchoate in character, in process of perfection, which entitles it to a certain amount of water out of the Colorado River, if we allocate so much of the water to the State of Arizona as interferes with its rights, would not we be taking property from the people of Los Angeles without due process of law?

Mr. Hayden. If the right were of a character that must be recognized, I would agree with the Senator.

[31]

Mr. Walsh of Montana. That, I understand, is the contention of the Senator from California, that the hands of the Government are tied; that if we shall erect a dam there at all we shall have to give enough water out of that dam to the city of Los Angeles to satisfy its appropriation.

Mr. Hayden. But I am quite sure, if I understood correctly the Senator from California, that he qualified that statement by saying that, after all, the Secretary of the Interior could allow the city of Los Angeles to

have such quantity of water as might be determined by contract."

Senator Hayden also commented at 70 Cong. Rec 171:

"Mr. Hayden. I really cannot tell the Senator, because I have at hand no accurate figures on the total quantity of water in the Arizona tributaries.

Since that subject has been mentioned, let me say to the Senate that in the case of a river—for example, the Gila River—wholly within the State of Arizona, whose waters are used in the very heart of the State, if those waters were released from a reservoir when needed at a time of drought they must flow down a wide, sandy river bed for some 200 miles before they could reach any other State. It is perfectly obvious that under those conditions the water never would arrive. It would simply be lost by evaporation. Therefore we say that the physical situation is such that it is utterly impossible for any water out of the Gila River or its tributaries to be delivered to any other State or to Mexico during a time of drought, when water is needed; and that is the only time when Arizona would be called upon for a delivery of water. Therefore the physical facts are such that it is utterly impossible, even though some State had a right to acquire the use of water from that stream, for any other State to obtain any of the water. Therefore no State other than Arizona has any interest in the waters of the Gila River. That would be equally true of a tributary such as the Bill Williams, which in time of drought goes down to a mere trickle; or of the Little Colorado River, a tributary in northern Arizona which likewise goes dry in places during a period of drought. There is no water in the tributaries of the Colorado River in the State of Arizona that could be of any possible benefit to any other State in time of drought. If reservoirs existed on these tributaries, and any other State had a right to come into the State of Arizona and insist that the reservoir be opened and the water turned down its natural course to flow into some

other State, not a drop of water would arrive during the dry period. Therefore we have felt, naturally, that no other State had any interest in those tributary streams, and particularly so in the case of the Gila River, which empties into the Colorado River below the Laguna Dam.

Under the terms of this bill under the plan of the United States Reclamation Service the last and lowest point on the Colorado River where any water will be diverted from that stream is at Laguna Dam, and Laguna Dam is some 10 or 12 miles above the mouth of the Gila River.

[32]

It is true that at the present moment water is diverted from the Colorado River into the State of California just a short distance above the international boundary line at what is known as Hanlon Heading. It is possible for waters which come down the Gila River in time of flood to flow from that stream into the Colorado and then a short distance down the Colorado and into Hanlon Heading and over into Imperial Valley. But the diversion at Hanlon Heading, which is in existence at the present moment, is to be superseded by a transfer of the heading up the stream to Laguna Dam. The Imperial irrigation district is under contract with the Secretary of the Interior to move its heading to Laguna Dam and is now paying annually on that contract. The privilege that they can have of diverting water at Hanlon Heading is only temporary. There is in existence a restraining order of the courts to prevent a diversion there, and each year the court requires the posting of a bond that if any damage results to the United States reclamation project at Yuma by reason of the placing of a weir to divert water from the Colorado River into Hanlon Heading the United States will be made safe from all such damage. Everyone knows that under the terms

of the Swing-Johnson bill California never can obtain a drop of water out of the Gila River.

Mr. King. Mr. President, will the Senator permit an inquiry?

Mr. Hayden. Certainly.

Mr. King. Have the owners of the waters in Imperial Valley, or the irrigation district, at any time ever claimed the Gila River or any part of its waters as necessary for the irrigation of Imperial Valley, or as a proper tributary to their stream?

Mr. Hayden. Whether they have claimed it or not, there is no question but that they have used the waters of the Gila River when that stream happened to be flowing into the Colorado. But, as I stated to the Senator a moment ago, there are long periods in almost every year when, for more than a hundred miles from its mouth, the Gila River is absolutely dry. The Gila River, in truth and in fact, has been more of a menace to the Imperial Valley than a benefit. The people of the Imperial Valley would much prefer to move their point of diversion up the stream to Laguna Dam, and then obtain water from the Boulder Canyon Reservoir, than to depend upon any rights they may have to the waters of the Gila River, because the supply is so unstable as to be practically valueless to them.

Mr. King. I have understood from the records, and from my observation, that the Gila River is what some denominate as a 'flash' stream; that when they amounted to anything, and might be of any value for irrigation purposes in the Imperial Valley, the waters in the Gila came down at a time when there was ample water flowing down the Colorado River from above to answer all the demands of the Imperial Valley, and therefore the Imperial Valley had never used the waters of the Gila River.

I do not mean by that to say that the waters of the Gila River did not commingle with the waters of the Colorado River, and at a time when there was water being taken out of the Colorado River at that

point for the Imperial Valley, but my understanding is that whenever there was water flowing from the Gila River into the Colorado River, at that time there was more than sufficient water flowing down the Colorado River to answer all the demands of the Imperial Valley.

Mr. Hayden. The flow of the Gila is so spasmodic and so irregular that no rule can be laid down as to when a flood may be expected. A study of the records will show that during some months each year the river has been dry, and in other years during some months water has flowed from the Gila River into the Colorado. But, in truth and fact, from the best information I have from residents of the Imperial Valley, they have not depended upon the Gila River for any part of their water supply. When the Gila River is in flood it carries large quantities of silt, and they would much prefer, for that reason, if for no other, to move the point of diversion up the Colorado River to Laguna Dam."

In discussing the 1925 California proposal and the 1927 Governors' Conference proposal, Senator Hayden commented (70 Cong. Rec. 171):

"These two documents express the demands of Arizona and California, made prior to the Denver conference. When the Denver conference was held, the governors of the four upper-basin States asked each State to indicate just how much water they wanted out of the Colorado River. The State of Nevada again asked for 300,000 acre-feet out of the seven and a half million acre-feet apportioned in perpetuity to the lower basin.

The State of Arizona again agreed that Nevada should have that quantity of water, and asked for one-half of the water in the Colorado River.

The State of California submitted a demand for 4,600,000 acre-feet of water. How they arrived at

that figure I do not know. It may have been based, first, upon present perfected rights, as they asserted, of 2,146,600 acre-feet, plus 1,095,000 acre-feet desired by the municipalities of southern California. But those two figures do not equal 4,600,000 acre-feet of water. Adding the amount of water asserted by California on December 1, 1925, to be a perfected right which is 2,146,000 acre-feet, to 1,095,000 acre-feet, which they did not at that time assert to be such a right, but as a mere desire on the part of the municipalities of southern California to obtain that amount, the two combined amount to 3,241,000 acre-feet. But in Denver, California asked for 4,600,000 acre-feet of water.

The governors of the four upper-basin States, having carefully considered the proposals made by the three States of the lower basin, made the following finding:

> The governors of the States of the upper division of the Colorado River system suggest the following as a fair apportionment of water between the States

[34]

> of the lower division, subject and subordinate to the provisions of the Colorado River compact:
>
> 1. Of the average annual delivery of water to be provided by the States of the upper division at Lees Ferry under the terms of the Colorado River compact:
>
> (a) To the State of Nevada, 300,000 acre-feet.
>
> (b) To the State of Arizona, 3,000,000 acre-feet.
>
> (c) To the State of California, 4,200,000 acre-feet.

The governors have not explained in any printed document, so far as I know, how they arrived at this compromise. I was told that it was based upon the following facts: They endeavored, by questioning the California representatives at that conference, to ascer-

tain not only what California claimed but the quantity of water to which California had actually perfected rights to use, based upon the normal flow of the Colorado River, unregulated by any reservoir; and they determined that amount.

They also endeavored to determine how much water was being actually used in the State of Arizona, or how much water the State of Arizona had acquired a perfected right to use, and from the total quantity ascertained to be the amount that California had a right to use; they subtracted the amount that Arizona now has a similar right to use and found the difference to be 600,000 acre-feet of water. So the governors said: 'Perfected rights must be respected. California has a larger perfected right to the use of water than Arizona. Therefore we will deduct from the demand of Arizona for one-half of the total quantity of the water of the stream, 600,000 acre-feet.'

Subtracting 300,000 acre-feet for Nevada from seven and one-half million acre-feet, and then dividing the remainder, would give to Arizona 3,600,000 acre-feet and to California 3,600,000 acre-feet. The governors, after careful consideration, recommended that from Arizona's demand of half the water, or 3,600,000 acre-feet, there be subtracted 600,000 acre-feet, leaving 3,000,000 acre-feet for the State of Arizona. They added to the other half of the water 600,000 acre-feet, increasing California's proportion of the water from 3,600,000 to 4,200,000 acre-feet. That was the recommendation of the governors.

The State of Arizona, through its legally appointed commissioners, consisting of the governor of the State, five members of the legislature of the State, and two other citizens of the State, by a formal vote, accepted the recommendation of the governors of the upper-basin States, and agreed to accept, out of the main Colorado River, 3,000,000 acre-feet.

Mr. Johnson. Is the Senator certain there was no condition attached to that?

[35]

Mr. Hayden. I can read the last expression made by the Arizona-Colorado River Commission.

Mr. Johnson. I am just asking the Senator; is he certain there was no condition attached to it?

Mr. Hayden. There were conditions, yes; but nothing of grave importance. I shall very shortly read the last statement on the subject of water as made by the Arizona commissioners.

The governors at Denver went on further and stated, in addition:

> 2. To Arizona, in addition to water apportioned in subdivision (b), 1,000,000 acre-feet of water to be supplied from the tributaries of the Colorado River flowing in said State, and to be diverted from said tributaries before the same empty into the main stream. Said 1,000,000 acre-feet shall not be subject to diminution by reason of any treaty with the United States of Mexico, except in such proportion as the said 1,000,000 acre-feet shall bear to the entire apportionment in (1) and (2) of 8,500,000 acre-feet.
>
> 3. As to all water of the tributaries of the Colorado River emptying into the river below Lees Ferry not apportioned in paragraph (2) each of the States of the lower basin shall have the exclusive beneficial consumptive use of such tributaries within its boundaries before the same empty into the main stream, provided, the apportionment of the waters of such tributaries situated in more than one State shall be left to adjudication or apportionment between said States in such manner as may be determined upon by the States affected thereby.

That last provision referred particularly to the Virgin River, which was partly in Utah, partly in Arizona, and partly in Nevada, the only important tributary that is a stream of interstate character.

4. The several foregoing apportionments to include all water necessary for the supply of any rights which may now exist, including water for Indian lands in each of said States.

5. Arizona and California each may divert and use one-half of the unapportioned waters of the main Colorado River flowing below Lees Ferry, subject to future equitable apportionment between the said States after the year 1963, and on the specific condition that the use of said waters between the States of the lower basin shall be without prejudice to the rights of the States of the upper basin to further apportionment of water as provided by the Colorado River compact.

[36]

As I said, the State of California refused to accept the Denver apportionment. At the close of the conference the Arizona-Colorado River Commission addressed this statement to the governors of the upper division of the Colorado River Basin:

> The lawful representatives of the State of Arizona, members of the Colorado River Commission of said State, and their advisers, in attendance upon the conference called by you and convened at the City of Denver, Colo., on July 22, 1927, deeply regret that the full purpose of the conference, to bring about an agreement which would result in complete ratification by seven States of the Colorado River compact and solution of the Colorado River problem, has not been effected.
>
> Such agreement not having been reached, we desire at this time to state concretely Arizona's position, as taken by her representatives at this conference and disclosed by the record, in a sincere and earnest effort to accomplish the purposes thereof.

This is the important part of the document with respect to water:

We hold that Arizona possesses the land, the natural facilities, to economically utilize within her borders a very large proportion, if not all, of the waters of the Colorado River system available for irrigational use in the lower basin; that as a matter of justice, right and equity, if the law of prior appropriation is to be superseded by a compact, she is entitled to the undisturbed, undisputed, and unlimited use, to the extent that such use is feasible, of the waters of her tributary streams, just as the State of California is entitled to and has the use of the water of her streams, and that she is equally entitled to at least one-half of the flow of the main stream of the Colorado River available for use in the States of the lower division, after due allowance is made for the practical irrigational requirements of the State of Nevada. Nevertheless, for the purpose of effecting an agreement at this time, and out of consideration for the untiring efforts of the governors of the States of the upper division to bring about such an agreement, and in deference to their judgment as to what under the circumstances would be fair and reasonable, we have accepted, with certain interpretations of language relating to the immunization of Arizona's tributaries against depletion for the benefit of Mexico, the proposal of the governors of the States of the upper division submitted on September 19, 1927, which said proposal, so interpreted, would allocate to the State of California 4,200,000 acre-feet of water per annum; to Arizona, 3,000,000 acre-feet and the right to the use of such of the waters of her tributaries as may be diverted therefrom for beneficial use; and would divide the unallocated flow of the river,

[37]

available for the use of the lower-division States, equally between Arizona and California.

Nothing was accomplished by the Denver conference with respect to a division of water by reason of the fact that California refused to accept the recommendation made by the four governors, and so the matter stood when Congress met.

Mr. Johnson. Mr. President, may I ask the Senator a question?

Mr. Hayden. Certainly.

Mr. Johnson. Does the Senator assert that Arizona accepted the recommendations made by the governors?

Mr. Hayden. I have just read the last word that Arizona said on that subject.

Mr. Johnson. With certain reservations.

Mr. Hayden. Arizona accepted the water proposal of the upper-basin governors with certain reservations, interpretative only with respect to any demand for water that might be made by Mexico. We will not disagree at all that the Arizona acceptance of the proposal was not consummated by a further negotiation and understanding until the minds of the governors and the representatives of all the States actually met and agreed upon the document. If they had done so, the controversy would have been over.

When Congress assembled in December, 1927, no agreement had been made. The senior Senator from Nevada (Mr. Pittman), in continuation of the earnest efforts that he has made all these years to bring about a settlement of the controversy between the States with respect to the Colorado River, invited a number of us to conferences in his office and there we talked over the situation.

It was discovered at that time, as the Senator said, that instead of being able to divide the 7,500,000 acre-feet of water, which was not enough to satisfy the demands of all the States, we could legally, under the terms of the Colorado River compact, divide an additional million acre-feet. Therefore the proposal was made that the recommendation made by the governors of the four upper-basin States be accepted and that

there be added thereto the additional million acre-feet of water apportioned by the compact to the lower basin, and that that quantity of water be divided equally between California and Arizona, which would increase the total apportionment to each State by 500,000 acre-feet. By the new plan the State of California would have 4,700,000 acre-feet of water in the main stream of the Colorado River, or 100,000 acre-feet more than that State asked for at Denver, and the State of Arizona would have 3,500,000 acre-feet, or within 100,000 acre-feet of the quantity she originally asked for at Denver. By such an arrangement it was felt that the rights and the desires of all of the States could be accommodated. That arrangement has been incorporated in the amendment which I have offered to the bill and which is now pending. I would like to discuss that amendment in detail."

[38]

Senator Hayden continued the explanation of his amendment at 70 Cong. Rec. 174:

"Mr. Hayden. The hour is getting late. If I may, I should like to continue the reading of the amendment that I have offered so that I may explain its terms. I have read the proposal now contained in the bill as reported to the Senate and as recommended by the Senate Committee on Irrigation and Reclamation for the purpose of pointing out that the committee placed in the bill the 4,600,000 acre-feet of water, which, as I have said, was the demand made by California; whereas in the amendment that I have offered is 4,200,000 acre-feet of water, which is the quantity recommended for apportionment to California by the governors of the four upper basin States. Thus far the provisions are the same except for the difference of 400,000 acre-feet. To go on with the amendment, which provides further—

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—

That refers to the extra million acre-feet apportioned to the lower basin by the Colorado River compact. So that, adding together the 4,200,000 acre-feet apportioned by paragraph (a) of Article III of the Colorado River compact and the 500,000 acre-feet apportioned to the lower basin by paragraph (b) of the same article of the compact the total quantity of water which we ask the State of California to be limited to is 4,700,000 acre-feet out of the main stream of the Colorado River, which is 100,000 acre-feet more than California demanded at Denver.

In addition my amendment provides—

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.

A similar provision is found in the committee amendment, and a similar provision is found in the recommendation of the governors, that the excess or surplus water be divided equally between the two States—

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.

That last phrase appears in the amendment as a sort of supercaution, so to speak. There were those who feared because the water used for irrigation upon the Yuma project in Arizona was first diverted from the Colorado River in California, carried for some distance in that State, and conveyed into Arizona by a siphon which goes under the Colorado River, that unless specific mention was made of the fact, California, because the water was diverted in that State, might be charged with water used in Arizona. Of course, we had no intention of doing anything of that kind and protected that point accordingly.

I have read what California is required to do and how that State is limited. Let me now tell the other side of the story, as it appears in the amendment.

The said ratifying act—

That is, the ratifying act of the Legislature of California—

> 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—

That is, the quantity apportioned to Nevada by the governors' conference at Denver—

> and to the State of Arizona 3,000,000 acre-feet for exclusive beneficial consumptive use in perpetuity—

That likewise agrees with the recommendation made by the governors of the upper basin States—

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—

Again dividing the water equally with California so far as the additional million acre-feet are concerned—

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—

As I have already explained to the Senate, the Gila River empties into the Colorado River below the Laguna Dam. It empties into it at a point where neither the State of California nor any other State can use any of its surplus waters. Therefore we felt justified in asking

[40]

the State of California to exclude from any computation of water the Gila River and its tributaries. The only other area that could have any possible claim upon the waters of the Gila River is Old Mexico, and even Mexico could not obtain any water from that stream in time of drought when the water was needed—

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.

During the consideration of the Colorado River compact by the Arizona Legislature those who opposed the approval of that agreement asserted that if the Legislature of Arizona ratified the Colorado River compact it would place a cloud upon the appropriation of all waters in the State of Arizona. Some were even so frightened as to think in case the Senate should ratify a treaty with Mexico granting a certain quantity of water to that country and the demand was made for it, that the treaty would be the supreme law of the land, and that the gates of the Roosevelt Dam or the gates of the Coolidge Dam would have to be opened and water turned down to Old Mexico.

It is an utterly foolish thing, a thing that it is physically impossible to do, but at the time it made an impression upon the minds of many people in the State of Arizona. They felt that they had in existence at this time actual, completely protected, bona fide, vested rights—if I knew of any other term that would describe the perfect water right which they possess I would use it—and they did not want to agree that a cloud of any kind could be placed upon their title to the use of that water. I refer particularly to the water now being used under the Salt River project. Therefore there has been insistence from time to time that the Gila River, of which the Salt River is the principal tributary, be exempt from any claim in the future so far as water for Mexico is concerned. But it will be noticed, Mr. President, that the State of Arizona and the State of California, if this agreement shall be carried out, will mutually agree to share equally the Mexican burden out of the waters of the main stream of the Colorado River.

In truth and in fact that is the only place where any water could be obtained for use in Mexico. In our arguments with our California brethren we have

found a peculiar situation. It was their desire to place upon paper the total amount of water running in every little stream in the State of Arizona which was tributary to the Colorado River, add that to the total quantity of water in the main stream, and then say, 'This total quantity of water is subject to the burden of furnishing water to Old Mexico, or may be subject under some future treaty. Taking the total water of the Arizona tributaries and the

[41]

total water flowing in the main stream, we will divide the obligation to furnish water to Mexico upon that basis.'

The water that is to be furnished to Mexico must all come out of the main river; we all agree to that; but the net result of such figuring on paper would result in Arizona being compelled to supply the great bulk of the water that must be supplied to Mexico under any treaty, and would practically exempt California from furnishing any appreciable quantity of water at all.

Arizona's answer to that contention has been that it would be just as reasonable and just as sensible to include in the total quantity of water to be calculated the flow of the Sacramento or the San Joaquin Rivers in California as to include the flow of the Gila River. In time of drought, when Mexico would make the demand for water, it would be as impossible to obtain any water out of the Gila River and deliver it to Mexico as it would be to obtain water from the Sacramento River or the San Joaquin River and deliver it to Mexico. Therefore we have said, and I think justly and fairly, that we were willing to divide with California the burden of furnishing water to Old Mexico, to assume an equal part of that burden, but that the delivery must be made and the division must be made out of the water that is divisible, and from the only source where water is obtainable for Mexico; to wit,

the main stream of the Colorado River. That is the only place where Mexico could get it, and that is the only water that could be divided. It is unfair to add up the total quantity of water that could be impounded by the Roosevelt Dam and the Coolidge Dam and some other reservoir upon some other tributary stream in Arizona, for the reason, as I say, that, if in time of drought the gates of the reservoir were opened and the water allowed to flow out, not one drop would ever reach Mexico, because it would be compelled to flow down during the time of drought in a wide sandy river bed for hundreds of miles, and the water would be totally evaporated and lost, and Mexico could not obtain a drop of it.

We, therefore, say that it is unfair and unjust and that it is not equitable to use the quantity of water that exists in the Arizona tributaries, or may be found in them, as a basis for determining what quantity of water must be allocated to Mexico. The physical facts are against any such plan. We do say that Arizona is willing, as this amendment provides, to agree that if, under any treaty with Mexico, it is necessary for the States of the lower basin to furnish water to lands in Mexico, Arizona will furnish an equal quantity of that water with California out of the main stream of the Colorado River. We believe that to be a fair and a reasonable proposition, and one that upon investigation I am sure the senior Senator from California and his colleague will find is the only practical way in which the burden of furnishing water to Mexico can be met.

Mr. Shortridge. Mr. President, may I ask the Senator a question?

Mr. Hayden. I yield.

[42]

Mr. Shortridge. Do you proceed upon the theory that Arizona is entitled to the same quantity of water as California?

Mr. Hayden. In the main stream of the Colorado; yes.

Mr. Shortridge. Quite regardless of the population of the two States?

Mr. Hayden. If that were the issue, Mr. President, the State of Arizona would be entitled to much more water than the State of California. That is to say, in the total area within the drainage basin of the Colorado River there is a much larger population in the State of Arizona than there is in the State of California.

Mr. Shortridge. I merely wish to know the position the Senator is taking.

Mr. Hayden. We found——

Mr. Shortridge. Will you pardon me to put the question in this form, for it may hereafter be the subject of some comment:

Do you contend, as to two States divided by a given stream, that each State's right to the water is dependent upon population, present or future, or upon present irrigated lands or lands subject to future reclamation and irrigation? Is it dependent upon territory, or is it dependent upon population—upon one, or the other, or both?

Mr. Hayden. It seems to me that it would be impossible to use one or the other or both of those factors as a means of determining what the relative rights of the States are.

Mr. Shortridge. Would the Senator contend that State A, for example, which had a very limited population, was entitled to as much of the given water as State B, with a very great population?

Mr. Hayden. If State A, with limited population, were so situated that because of the topography of the country or for other reasons it could not use the water within any reasonable period of time, then the fact that an adjoining State happened to have a larger population which could use it would be one that should receive very careful consideration. That, I believe, is the view of the State of Nevada at this time.

The State of Nevada is so situated that it can not use the water, and therefore it does not ask for more than a reasonable amount. But where the two States, State A and State B, regardless of their population, have lands upon which the water can be placed to beneficial use, it does not appear to us in Arizona that merely because one State happened to be settled sooner than another, that is any reason why the development of the other State should be denied.

[43]

Mr. Shortridge. May I ask the Senator, then, a final question? I have gathered from his remarks thus far that he seemed to insist that Arizona was entitled to one full half of the given water. Has not that been the contention of the Senator?

Mr. Hayden. Yes; that has been the contention of my State; and so far as I am personally concerned I think that contention can still be urged in all equity and all justice. But inasmuch as the commissioners representing the State of Arizona have submitted the matter to the mediation of four governors, who went into the matter very carefully and found that they were entitled to a less amount, in order to compromise our differences we have agreed to accept less.

Mr. Shortridge. I merely wished to know the position of the Senator.

Mr. Pittman. Just a minute, Mr. President. The Senator has mentioned Nevada as claiming only 300,000 acre-feet. I wish to say that the position of Nevada in the matter is this:

That the sovereignty of States is equal, without regard to population; that the State of Nevada, under the law of appropriation, if it had irrigable lands to put it on, could take all of the water of the Colorado River legally and proceed to put it on those lands, if it did it without interfering with prior rights of some other State or some other people. We contend also

that the State of Nevada has at least an equal right in the benefits to be derived from the use of the water from that dam, whether for power or whatever it can legitimately use it for.

The facts are stated accurately, however. While the State of Nevada might contend for one-third of this water to be used at some future date in the development of the State, our engineers have come to the conclusion that there are only about 100,000 or so acres of land that it would be practicable to irrigate; and we estimate that 300,000 acre-feet will accomplish that. We have therefor entirely removed from consideration, as far as Nevada is concerned, the legal question which was raised by the Junior Senator from California. We know we can not use it—at least, we are so advised—and we are perfectly willing and glad to allow all the rest of that water to be divided, if it may be equitably, between the other two States.

Mr. Hayden. Mr. President, in conclusion, let me say that I have offered this amendment in good faith. I have offered it in the exact language in which it appeared in the CONGRESSIONAL RECORD of May 28, 1928, when printed at the request of the senior Senator from Nevada (Mr. Pittman). I have offered it in the exact language as prepared by Mr. Francis Wilson, of New Mexico, the interstate river commissioner of that State, a disinterested person, a lawyer of great ability, a man of high character, who honestly and sincerely has sought on every and all occasions to bring about a settlement of this controversy between the States of Arizona and California with respect to the water of the lower basin.

[44]

I hope that the senior Senator from California and his colleague will take the amendment and study it. If they can suggest any better way of arriving at a settlement of our difficulties based upon this amendment, if they can suggest changes in it that will be

equitable as between the two States, I shall be delighted to confer with them and to do everything within my power to bring this matter to an adjustment.

As I understand the parliamentary situation, the House bill has been substituted for the Senate bill, and there now appears upon our desks as an amendment to the House bill the Senate bill as reported to this body. So there is one amendment pending; and the amendment which I have now offered, and which is now pending, is the only amendment to the bill at the present moment upon which a vote could be taken. Am I correct in that assumption?"

The debate on H. R. 5773 and the proposed amendments continued on December 7, 1928 at which time Senator Pittman of Nevada commented (70 Cong. Rec. 232):

"What is the difficulty? We have only minor questions involved here. There is practically nothing involved except a dispute between the States of Arizona and California with regard to the division of the increased water that will be impounded behind the proposed dam; that is all. An agreement has been entered into between the seven States interested in this river by which half of that water is retained to the four upper States and half of it let down to the three lower States. The four upper States have ratified the agreement. The question is now for Arizona to ratify the agreement. Arizona, as I understand, will ratify the agreement whenever there shall be a provision in the bill or a separate agreement between Nevada and Arizona and California dividing the water let down to the three lower States. Of the 7,500,000 acre-feet of water let down that river they have gotten together within 400,000 acre-feet. They have got to get together, and if they do not get together Congress should bring them together."

There followed a lengthy discourse by Senator Johnson on California rights, which is of some importance but not

vital to this compilation, except for the following passage beginning at 70 Cong. Rec. 235:

"Mr. Hayden. Mr. President, will the Senator yield?

The Presiding Officer. Does the Senator from California yield to the Senator from Arizona?

Mr. Johnson. I yield.

[45]

Mr. Hayden. Can the Senator tell me how many acres are now being irrigated in Imperial Valley?

Mr. Johnson. Approximately 400,000.

Mr. Hayden. The district comprises a larger area?

Mr. Johnson. Very much larger.

Mr. Hayden. I understood the Senator to say 476,000 acres.

Mr. Johnson. The Senator may be right. Under the appropriation the canals constructed and now in use provide for about 515,000 acres.

Mr. Hayden. The reason why less than the total area under the canal is irrigated is, as I understand it, because with the present unregulated flow of the river there is not water enough to irrigate those lands.

Mr. Johnson. That is true in large measure.

Mr. Hayden. So that it could not be reasonably expected that there would be any material increase in the area of land irrigated within the present limits of the Imperial irrigation district unless Boulder Canyon Dam were built.

Mr. Johnson. To a large extent that is true.

Mr. Hayden. So that whatever these water rights may be, although they may date back to 1896, there is no way in which the water to supply those lands can be obtained except by the construction of Boulder Canyon Dam.

Mr. Johnson. Adequate water, I will say. I think that is quite so. There are constant accretions and constantly new land, as the Senator knows, is being put under irrigation, but to take a large area I think we

would need the storage capacity in order to accomplish the desired results.

Mr. Hayden. Warning in that respect has come to the farmers of Imperial Valley on more than one occasion, because they have suffered a shortage of water and have lost large sums in perishable crops.

Mr. Johnson. Quite so. In one year there was a drought, which, I think, caused a loss of $5,000,000.

Mr. Hayden. I am merely bringing out the fact to illustrate that however far back this water right may date—and it may go back to 1896, indeed—it is not a perfected water right in the sense that it supplies all the water necessary for the irrigation of the land in the Imperial Valley and that something must be done to perfect

[46]

it, to wit, secure appropriations from Congress, build a dam and impound the water. It is the contention of the people of Arizona that under those circumstances it shall not be urged that the maximum amount applied for in 1896, which can not be obtained from the river's natural state, is the limit of California's water right.

Mr. Johnson. That is a very natural contention, too. I am not going to quarrel with the Senator about his contention in that regard. In fact, I would rather not quarrel with him at all. But the difficulty is that I think he makes it necessary. He thinks I make it necessary, and so there we are."

On December 8, 1928, Senator Bratton of New Mexico had printed a proposed amendment to section 4(a) as follows:

"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-

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."

In explanation of his amendment, Senator Bratton said (70 Cong. Rec. 333):

[47]

"As I understand, California holds to the belief that 4,600,000 acre-feet is an irreducible minimum. Arizona contends that a maximum of 4,200,000 acre-feet is the largest that she will consider. Personally, I am not wedded to either figure. The thing that is uppermost in my mind is to do equity and justice as nearly as can be done toward both States, and, at the same time, pass a bill that will be effectuated, and will secure the results which we all desire.

I think we should adopt that course. The two States have exchanged views, they have negotiated, they have endeavored to reach an agreement, and until now have been unable to do so. This controversy does not affect those two States alone. It affects other States in the Union and the Government as well.

Without undertaking to express my views either way upon the subject, I do think that if the two States are unable to agree upon a figure then that we, as a dis-interested and friendly agency, should pass a bill which, according to our combined judgment, will justly and equitably settle the controversy. I suggest 4,400,000 acre-feet with that in view. I still hold to the belief that somewhere between the two figures we must fix the amount, and that this difference of 400,000 acre-feet should not be allowed to bar and preclude the passage of this important measure dealing with the enormous quantity of 15,000,000 acre-feet of water and involving seven States as well as the Government.

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

Mr. Bratton. I yield.

Mr. King. I will ask the Senator if it is not a fact that at the time when the governors' conference considered the matter and recommended a settlement upon a basis of 4,200,000 acre-feet to California there had not been fully discussed and fully appreciated the fact that there was probably a million acre-feet subject to capture which, under the compact, was allocated to Arizona and to California, so that if 4,200,000 acre-

feet were awarded out of the 7,500,000 there would be an additional 500,000 acre-feet out of this 1,000,000 acre-feet which, under the compact, was to be allocated to the two States, so California in the aggregate would get 4,700,000 acre-feet?

Mr. Bratton. That is true if the estimated surplus actually exists. At the same time, Arizona would get her 3,000,000 acre-feet agreed to by the governors as her just share of the allocated water, plus 500,000 acre-feet, being one-half of the unallocated surplus, so that while California would get 4,700,000 acre-feet Arizona would get 3,500,000 acre-feet. The surplus to which the Senator from Utah refers would be equally divided between Arizona and California. Neither State would get an advantage by reason of the division of the surplus."

[48]

The Phipps Amendment to the Hayden amendment to the Johnson substitute (of the language of S. 728 for that of H. R. 5773) was offered on December 10, 1928 (70 Cong. Rec. 324):

"Mr. Phipps. Mr. President, will the Senator from New Mexico yield to me for a moment for the purpose of presenting an amendment?

Mr. Bratton. I yield to the Senator.

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:

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 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,

[48a]

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 four million six hundred thousand 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 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'.

[49]

Senator Phipps' amendment (in the last portion quoted) consisted of an amendment to Sec. 5 requiring that all water delivery contracts executed by the Secretary of the Interior should be for "permanent service and shall conform to paragraph (a) of Section 4 of this Act".

The question of division of water continued in an exchange between Senators Johnson and King (70 Cong. Rec. 330):

"Mr. Johnson. Speaking in round numbers, the annual consumption of water that is constantly, continually utilized is 2,100,000 acre-feet, I think, in the Imperial Valley; but I will segregate the figures as best I can if the Senator desires them.

Mr. King. Mr. President, the hearings disclose that the volume in the Colorado River often is less than 1,200 second-feet, and, as I read the record, I am inclined to believe that the quantity of water used in the Imperial Valley is less than that indicated by the Senator from California. The Senator knows that even if I had the power I would not deprive the people of Imperial Valley of a single drop of water to which they are entitled. The quantity of water which they

have used from year to year they are entitled to have in the future. If they have actually applied to beneficial use 2,000,000 acre-feet, then they should in the future have the same amount.

As I have indicated, in view of the claims of the Senator from California that his State should have 4,600,000 acre-feet and in addition 500,000 acre-feet of a claimed unappropriated 1,000,000 acre-feet, and in view of the fact that the necessity for the 4,600,000 acre-feet partly rests upon the assumption that the Imperial Valley has used 2,000,000 acre-feet, then it is important to determine just what amount the Imperial Valley has used.

If but 300,000 acres have been cultivated annually and twelve or fifteen hundred thousand acre-feet are all that have been actually applied and all that are actually necessary to cultivate the lands which annually have been irrigated, then it would seem that there is sufficient reason for the contention of Arizona that California should not receive the 4,600,000 acre-feet as claimed.

Mr. Johnson. I do not know whether the Senator is speaking from the legal standpoint now or from an equitable standpoint that ultimately he would like to see adopted. From the legal standpoint they are entitled under their filings to water for the purpose of irrigation that they put to beneficial use in the territory covered by the particular filing. There is no question on that score.

Mr. King. I am not certain that I understand the Senator, but

[50]

if I interpret his position correctly there would be some question. To illustrate my meaning, if the people of Imperial Valley have made filings for 5,000,000 acre-feet of water and have used only 1,000,000 acre-feet annually, that would be the measure of their vested right for which Congress should legally and equitably provide.

Mr. Johnson. No; as I understand, the filings are made for the use of water for a particular designated territory, and then the water is appropriated for beneficial use for that particular designated territory.

Mr. King. Mr. President, if pursuant to the filing for a particular designated territory, water is used upon that territory, and a right acquired, then there would be no disagreement between my friend and myself. If, however, there is a filing by the Imperial Valley corporations or by individuals or corporations in Arizona or California which is not followed by actual physical appropriation upon the lands in question, that would not be the basis of a vested right so far as we desire to provide for vested rights in the bill which is under consideration.

Mr. Johnson. No, Mr. President—and I hope the Senator from New Mexico will pardon me, for this will be my last interruption upon that subject, and only in response to my friend from Utah do I trespass upon the time of the Senator from New Mexico—when an appropriation is made for a particular territory, if the water is put to beneficial use and then reasonable diligence is exercised in utilizing additional water in that territory for additional land, the right is a perfected right under the water law of the West."

The problem of the Gila River was discussed by Senators Hayden and Phipps at 70 Cong. Rec. 335 and 336:

"Mr. Hayden. Under the circumstances I should like to inquire of the Senator from Colorado how he arrives at the figure 4,600,000 acre-feet of water instead of 4,200,000 acre-feet as proposed in my amendment?

Mr. Phipps. It was just about as difficult for me to arrive at 4,600,000 acre-feet as it would have been to arrive at 4,200,000 acre-feet. The arguments pro and con have been debated in the committee for quite a period of time. The contentions made by the Senators from Arizona have not been conclusive to my

mind. For instance, I will refer to the fact that Arizona desires to eliminate entirely all waters arising in the water-shed and flowing out of the Gila River.

Mr. Hayden. There is nothing of that kind in the Senator's amendment.

[51]

Mr. Phipps. There is nothing of that kind in the Senator's amendment, but that has been one of the arguments advanced by California as being an offset to the amount to which Arizona would try to limit California.

Mr. Hayden. If the Senator thought there was force in that argument, I should think that he would have included in his amendment a provision eliminating the waters of the Gila River and its tributaries, as my amendment does.

Mr. Phipps. I do not consider it necessary because the bill itself, not only the present substitute measure but every other bill on the subject, ties this question up with the Colorado River compact.

Mr. Hayden. My amendment does that.

Mr. Phipps. Yes; that is true, but under estimates of engineers—one I happen to recall being made, I think, by Mr. La Rue—notwithstanding all of the purposes to which water of the Gila may be put by the State of Arizona, at least 1,000,000 acre-feet will return to the main stream. Yet Arizona contends that that water is not available to California; whereas to-day and for years past at least some of the waters from the Gila River have come into the canal which is now supplying the Imperial Valley.

It is not a definite fixed fact that with the enactment of this proposed legislation the all-American canal is going to be built within the period of seven years; as a matter of fact, it may not be built at all; we do not know as to that. But I do not think that the water from the Gila River, one of the main tributaries

of the Colorado, should be eliminated from consideration. I think that California is entitled to have that counted in as being a part of the basic supply of water.

Mr. Hayden. I will state to the Senator that the primary reason why the Colorado River compact was not approved by the State of Arizona was that the Gila River and its tributaries were included in the Colorado River Basin. The people of Arizona felt—and justly so—that they had appropriated and put to beneficial use all of the waters of that stream, and that by remaining out of the compact under no circumstances could the waters of that stream be burdened with furnishing any water to Old Mexico, while by entering the compact they would assume a liability that does not at the present moment exist. Such being the case, since the Gila River is the very lifeblood of our State and the great majority of the people of Arizona live within its drainage, they felt that they were asked to do more than they should be required to do in approving that Interstate Agreement.

Mr. Pittman. Mr. President——

[52]

The Presiding Officer. Does the Senator from Arizona yield to the Senator from Nevada?

Mr. Hayden. I do.

Mr. Pittman. I think it is true, as stated by the Senator from Colorado, that Mr. La Rue has estimated that even after all of the water of the Gila that may be put to beneficial use by every means, even including pumping, is taken out, the return flow will still supply 1,000,000 acre-feet at the mouth of that river where it flows into the Colorado.

Mr. Hayden. No; the Senator from Nevada is mistaken. If the Senator will examine Mr. La Rue's report, he will find this to be the fact: That if three or more million acre-feet of water were diverted out of the main stream of the Colorado River and conveyed

into the lower Gila Valley, and there used for irrigation, after a water table was established in irrigating some 800,000 acres of land, the return flow from that land would provide a very substantial amount of water for Mexico, because it could be used at no other place. Originally, however, that water must be diverted from the main Colorado River, diverted out of the Colorado River for irrigation of lands in the Gila Valley, and would represent but little, if any, water from the watershed of the Gila River in Arizona.

Mr. Pittman. Does the Senator know what he figured the present return flow is to the Colorado from the Gila?

Mr. Hayden. The figures that Mr. La Rue used must have been derived from the record of stream measurements made by the United States Geological Survey. Over a long period of years the Geological Survey records will show an average run-off into the Colorado River of somewhere in the vicinity of a million acre-feet. That record goes back over a long period of years. The record will show a continual diminution of the run-off, first, because of the construction of the Roosevelt Dam; second, other uses for irrigation in the drainage area of the Gila; and, more recently, the construction of the Coolidge Dam. So that as reservoirs are constructed on the Gila and its tributaries, the quantity of water that will run out of that stream into the Colorado River will be reduced. The only way in which the water discharged from the mouth of the Gila River can be increased is by diverting water from the Colorado as proposed in the plan of irrigation which the State of Arizona has recommended, using that water to irrigate lands in the lower Gila Valley.

* * * * * *

Mr. Hayden. Nothing could prevent the return and drainage water from passing into Mexico.

[53]

But there is another side of the story. What I have stated is true of every acre irrigated in Colorado, Wyoming, New Mexico, Utah, Nevada, or Arizona, because in each case when the water is applied to the land some part of it can return to the stream, and ultimately go down to Mexico. In the Imperial Valley, however, there is no chance there for any return flow. There you are at the bottom of the bowl, with the result that from a broad national point of view it is uneconomic to irrigate lands in the Imperial Valley.

An acre-foot of water used in Colorado will probably return 50 per cent to the stream. An acre-foot of water used in Arizona will return at least 25 per cent to the stream for additional use; but an acre-foot of water diverted for use in the Imperial Valley is gone forever. There is no place where any part of it can be used again. Therefore, when the Californians appear before the Congress of the United States they set up not the highest use of water, not the most economic advantage that could be taken of a national asset. That is not the basis of their claim. The basis of their demand is that of necessity, that they must have so much water. The senior Senator from California (Mr. Johnson) himself in his remarks the other day, stated that the Imperial irrigation district claimed the right to waste 900,000 acre-feet of water into the Salton sink. If that water were used in the upper basin, if it were used in Arizona, it would irrigate more than 200,000 acres of land. Its use in the Imperial Valley, where there is no land below that the water can be again applied to beneficial use, means a loss to the Nation of farms and homes for thousands of American citizens.

Let me make it perfectly clear to the Senator from Nevada that if that is all the objection any one has to the amendment I have offered—that it lays a claim to return waters of the Gila River passing out of the mouth of that stream into old Mexico—we can very

readily change the amendment to cure that fault without difficulty.

But I return to the question that I addressed to the Senator from Colorado (Mr. Phipps). He states that the State of California shall be allowed 4,600,000 acre-feet of water. The only basis there is for fixing that figure is that the State of California has demanded that much water. The State of California has said that her necessities are such that she must have that much water to irrigate lands within the State and to furnish water for domestic use in the State of California.

Mr. Shortridge. Mr. President, may I ask the Senator a question?

The Presiding Officer. Does the Senator from Arizona yield to the Senator from California?

Mr. Hayden. I yield.

[54]

Mr. Shortridge. Suppose it is agreed that California shall have that quantity of water. In view of the physical facts, will not Arizona have ample for all her purposes and uses? Will there not be plenty left for her?

Mr. Hayden. I am sorry that there will not. That the total quantity of water is so limited is the basis of the controversy between Arizona and California.

Mr. Shortridge. Including, of course, all your tributary waters, which you claim to own, I take it, in fee simple, absolutely?

Mr. Hayden. The State of Arizona claims the waters of her tributaries to no more or no less extent than any other State would claim the tributaries of the Colorado River within its boundaries. If the water has been placed to beneficial use, then a right has been acquired to use it. If it has not been placed to beneficial use, of course the water will pass into the main stream of the Colorado River and become part of the body of water which is divisible.

Mr. Shortridge. Arizona does not claim title to the water after it has passed into the stream on its way to the gulf?

Mr. Hayden. Not at all."

At 70 Cong. Rec. 339 Senator Phipps modified his proposed amendment in two respects:

1. He suggested that California's limitation should be irrevocable and unconditional.

2. He suggested a change from the one year period for 6-state ratification of the compact to six months.

The debate on this phase was:

"Mr. Bratton. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator will state it.

Mr. Bratton. Is the amendment offered by the senior Senator from Colorado (Mr. Phipps) subject to amendment?

The Presiding Officer. It is not at this stage.

Mr. Bratton. That is the inquiry I wanted to propound. In view of that, if the Senator from Arizona will permit me——

Mr. Hayden. Certainly.

[55]

Mr. Bratton. I suggest to the Senator that on page 2, line 18, following the word 'agree,' there should be inserted the words 'irrevocably and unconditionally.'

Mr. Phipps. Will the Senator give me a reference to the substitute bill, the Johnson bill, now before the Senate?

Mr. Bratton. I refer to the amendment offered by the Senator himself as a substitute.

Mr. Johnson. Will the Senator state again the line and page?

Mr. Bratton. It is the amendment of the senior Senator from Colorado, page 2, line 18. Following the word 'agree' insert the words 'irrevocably and unconditionally.'

Mr. Phipps. Mr. President, it had not occurred to me that should be necessary. An agreement on the part of a State by its legislature may be looked upon as binding upon the State as a moral obligation. However, I do not see that any harm would be done by making the modification the Senator suggests; therefore I will ask permission——

The Presiding Officer. Does the Senator from Colorado withdraw his amendment?

Mr. Phipps. No. I was about to ask permission to perfect my amendment by adding the words which have been suggested by the Senator from New Mexico.

The Presiding Officer. The Senator from Colorado modifies his amendment by adding the words suggested by the Senator from New Mexico.

Mr. Phipps. I desire to perfect my amendment by adding after the word 'agree,' in line 18, on page 2 of my amendment, the words 'irrevocably and unconditionally.' Then the amendment would stand in that form.

Mr. President, at this point I want to make the request that I be further permitted to make another change in the pending amendment and that is to make the term for agreement under the 7-State compact, the time during which the 7-State compact may be entered into before a 6-State compact shall become effective, six months instead of one year. It seems to me that one year is perhaps longer than necessary in which all of the seven States might, if they are going to at any time, agree to a 7-State compact.

The Presiding Officer. The Chair will state that the Senator has a right at any time before his amendment is acted upon to modify it as he desires.

[56]

Mr. Phipps. I was aware of that, but I desired that those who are deeply interested in this amendment should know my reasons and the modus, and then I desire to perfect my amendment by changing 'one year' to 'six months.' "

On December 11, 1928, Senator Hayden, for parliamentary reasons, withdrew his proposed amendment. As a result, Senator Phipps' proposed amendment to the Hayden amendment to Sec. 4(a) lost its status and was again proposed by Senator Phipps without change in language (including the proviso added to Sec. 5) (70 Cong. Rec. 382):

"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.

[56a]

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 understand, 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.

[56b]

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.

The Chief Clerk. On page 4 it is proposed to strike out all of lines 22 to 25, inclusive, and on page 5 to strike out lines 1 to 14, inclusive, and to 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 work of 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 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 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.

[56c]

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.'

At 70 Cong. Rec. 383 Senator Hayden proposed an amendment to the Phipps amendment to Sec. 4(a) which would reduce the limitation on California from 4,600,000 to 4,200,000 acre feet per annum. This was defeated on a roll call vote (70 Cong. Rec. 384).

Senator Bratton then proposed a substitute to the Phipps amendment which would change the 4,600,000 to 4,400,000 acre-feet per annum for California (70 Cong. Rec. 385) and in explanation, he commented (70 Cong. Rec. 385):

"Mr. President, it is perfectly obvious to all of us that we have an immense project here, respecting which

the two States, California and Arizona, can not agree. The dispute has narrowed itself primarily to 400,000 acre-feet of water, California saying that 4,600,000 acre-feet is her irreducible minimum and Arizona insisting that California shall be limited to 4,200,000 acre-feet.

If this legislation shall be effectuated, the dam constructed, and the river controlled, and the benefits designed to be accomplished by the measure given full fruition, these States must ratify the compact. In my judgment that will never be accomplished if we give to one all that she asks and deny to the other everything she seeks.

It seems to me, therefore, Mr. President, that in justice to the two States, they having been unable to agree, we should tender our offices by dividing the difference and requiring California to limit herself in her act of ratification, irrevocably and unconditionally, to a maximum consumptive use of 4,400,000 acre-feet. That divides the difference and is the amount fixed in the amendment I have proposed. It differs from the proposal of the Senator from Colorado by reducing California's claim 200,000 acre-feet. It differs from the amendment of the Senator from Arizona by increasing California's consumptive use by 200,000 acre-feet.

[57]

I believe this is an equitable solution of the problem. It may not be entirely satisfactory to either State, but in my judgment it is the best compromise that is available at this time.

Mr. Ashurst. Mr. President, for years, in some portions of the press and on the floor of the Senate, Arizona has been accused of being unwilling to extend the hand of amity, compromise, and friendship on this bill. The accusation is false. Arizona scorns all bribes and wears no chains.

I am going to vote for the amendment just offered by the Senator from New Mexico, and by so doing

Arizona takes another step looking toward a compromise of the differences surrounding this legislation. In making this advance looking toward some composition of our differences, and in hope of reaching some *modus vivendi,* I trust that Arizona shall no longer be accused of stubbornness.

Mr. Johnson. Mr. President, the offer that has been made by the Senator from New Mexico (Mr. Bratton) is, I take it, an offer by way of compromise. The Senator from New Mexico represents one of the States of the upper Colorado River Basin. He, of course, is intensely interested in what shall be done with the waters of the Colorado, just as the States of the lower basin are equally interested in what shall be done with the waters of the Colorado.

It is a fact, sir, that in the State of California there are rights perfected to-day and those which may be perfected in the near future, rights indeed that under the law no human agency can take from the people who reside in the State of California, that far exceed the amount of water that is fixed as the maximum in the amendments that California ever shall use. Were I here in disinterested position, Mr. President, were the dire necessity of Imperial Valley not so clearly before me, sir, if I did not understand as few men upon this floor understand the absolute necessity of legislation of the character that has here been proposed, never for one instant would I assent to an amendment such as has been presented by the Senator from Colorado or that which has now been presented as an amendment by the Senator from New Mexico.

I venture the assertion, and I call upon men whose vision is greater perhaps than a mere limited territory that they may represent, that never in the history of legislation has there been written into a law such a drastic provision as that which is suggested by the Senator from Colorado and that which is in part suggested by the Senator from New Mexico.

Do Senators realize what this provision is? In order that its citizens may be protected from flood, in order that its citizens may have what God gives even to the birds of the air and the beasts of the field, which is potable drinking water, it compels the State of California, before it shall consider even legislation of this sort, by act of its legislature 'irrevocably and unconditionally'—and I read the language of the amendment itself—to agree with the United States and for the benefit of

[58]

the other States of the Colorado River Basin——

> as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use 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.

More than that and within a brief period by perfected rights, that the law can not touch in this particular territory that is thus assured, can be obtained. Talk to me of taking water from the State of California? Not a bit of it! Not a bit of it! All the expert testimony—and I have put in the RECORD that of the distinguished engineer of the State of Nevada—is that if we give to the State of Arizona the water that the State of Arizona now asks, she can not by any possible process of irrigation use that water to the full or utilize all of it. All of the testimony that has been adduced reaches that conclusion, save that, of course, of some of the gentlemen connected with the State of Arizona.

But that is neither here nor there. I want Senators to understand what the amendment is. It is the most drastic amendment that was ever written into a law

against the people of a State, the most drastic thing that was ever asked of them. I would stand here and never tolerate it if I did not know that 60,000 people are in jeopardy in the Imperial Valley who demand and who ask and who beg and who pray that they may have the consideration of the Congress.

I say to the gentlemen from Arizona, 'You say that California shall have but 4,200,000 acre-feet.' We say, and the testimony of Mr. Francis Wilson is the best upon that subject, that the irreducible minimum of the State of California is 4,600,000 feet. You say to us, 'You must bind your people for all time in the future never to go beyond it by this amendment.' The amendment does not divide the water between Arizona and California. It fixes a maximum amount beyond which California can not go. I say to the gentlemen from Arizona, though I think it is a wicked amendment, though I think it is an amendment that harnesses the State of California and its people as they never should be harnessed in the days to come, though I believe it to be an injustice against those who reside in California and in its southern part to-day and those who may reside there in the future—I say to you that if 200,000 acre-feet of water will settle this controversy with them, whatever the wrong, whatever the injustice, whatever may be the yoke that is put upon our people, I will take that as a compromise and a settlement of the differences that exist.

But unless it be by compromise, this injustice ought not to be put upon us and the compromise should be that the amendment as written, with the permanent amount of water that the Senator from New Mexico (Mr. Bratton) offers, shall be adopted, and then that the bill shall be passed without further delay and without any filibuster

[59]

at all. If we can compromise, let it be done upon that basis, but do not require us to do what is unnecessary

and what ought not to be crowded down our throats unless it be actually by way of compromise.

Mr. Pittman. Mr. President, I want to say that the amendment of the Senator from Colorado (Mr. Phipps) now offered is substantially recommended by the committee. The bill as originally introduced by the Senator from California (Mr. Johnson) had no reference in it to water at all, but it became evident to the committee that there had to be some reference with regard to water because not only were the States of California and Arizona interested in this larger supply of water but the four upper States were interested as well. This amendment was offered in committee by the Senator from Wyoming (Mr. Kendrick) for the purpose of protecting the water rights of the four upper States. In other words, there are only 15,000,000 acre-feet in the river. Seven million five hundred thousand are forever to be retained in the upper States, to be put in use some time in the future.

Now, unless there was an agreement as to exactly how much water should go to the lower States out of the 7,500,000 acre-feet that went down to them, what might be the result? If Arizona stays out of the agreement, she would have her legal right to appropriate as much water as she could put to beneficial use. On the other hand, California would only be restricted by the 7,500,000 acre-feet that went down, with the result that there would be nothing in the compact to prevent California from using the entire 7,500,000 acre-feet and there would be nothing in the compact to prevent Arizona from using the 7,500,000 acre-feet if she never went into the compact.

So the upper States said: 'We have got to be assured that there is not used in the lower basin more than the 7,500,000 acre-feet because, if there is more used, then when we get ready to use it in the future it will not exist under the law of appropriation that applies in that section of the country.' Consequently,

in view of the fact that Arizona might never go into the compact, might never be bound by the compact, might be perfectly free to exercise her equal right and put to use as much as she could put to beneficial use, it was said in the committee, 'If Arizona does not come in and if it is limited to six States only, then we must be assured that California will not take the full 7,500,000 acre-feet and then Arizona take some more.' So the Senator from Wyoming (Mr. Kendrick) offered an amendment in committee, to which the committee agreed, and that amendment provided that California should never consumptively use of the Colorado River over 4,600,000 acre-feet.

The Phipps amendment does not do anything else except that it states how California shall ratify. The Congress of the United States could not impose it upon California unless California assented to it, because California already has sovereign rights over the water, and the law recognizes her right to use as much

[60]

as she can put to beneficial use. Consequently the Senator from Colorado (Mr. Phipps) has simply taken the amendment which was recommended by the committee and put it in legal language and provided a legal method for California to ratify it. I do not think it is any harder on California than it was before.

Let me now call attention to the fact that the committee adopted the Kendrick amendment. They adopted the amount that California demanded, which was 4,600,000 acre-feet. I voted for that amendment. Why? I voted for it because otherwise Arizona would not participate in the compact and would not participate in the division of water. In other words, it was apparent to me that California was so dissatisfied with it that we had to treat without Arizona. We treated without Arizona in the committee, and we put the amount in there that California demanded before the four governors at Denver.

I participated as a representative of Nevada for four weeks in the hearing at Denver, where the governors of the seven States met. Those governors decided that California was entitled to only 4,200,000 acre-feet of that water. They may have been right or wrong. The dispute has been going on for a long time. On the other hand, California contended that she had to have 4,600,000 acre-feet.

Now, we have this situation: We have the committee, which adopted the Kendrick amendment, standing for 4,600,000 acre-feet. We have the four governors of the upper States who arbitrated, standing for 4,200,000 acre-feet. We have a difference of just 400,000 acre-feet out of a total of 7,500,000. I think the proposition of splitting that in two is going to accomplish more good and get rid of more disputes than anything else that can possibly be done. I believe that if the two Senators from Arizona vote for 4,400,000 acre-feet, in accordance with the amendment of the Senator from New Mexico (Mr. Bratton), they will be able to go before their legislature and sustain that position and I believe if they do go before their legislature and sustain the proposition, that Arizona will ratify the 7-State agreement.

Mind you, this 6-State agreement is only an expedient. It is not what any of the seven States want. All of the seven States want a fair treaty between the seven States, and we have been striving to that end for several years. It looks to me as though we are on the eve of getting an agreement. I do not believe it is possible for the two Arizona Senators to pledge what the Arizona Legislature will do in this matter, but I believe that they have influence with it, and I believe when they go before the legislature and say 'We stated on the floor of the Senate that this was a fair compromise, and we were representing the sentiment of the people of the State,' the legislature will ratify it.

I think it would be a terrible mistake when everyone has reached the point of compromise as we have here. If California's allotment

[61]

is reduced 200,000 acre-feet out of 7,500,000 and Arizona concedes 200,000 acre-feet to California for the purpose of compromise, we should vote for it, because if we do not bitterness is bound to exist between these States. If we do not, there have got to be a number of other provisions in the bill to satisfy the other States, because there is fear in the four upper States with regard to any kind of a ratification except by all the States. That fear does not exist in my mind; I think it is perfectly groundless. I think it is as groundless as is the fear of Mexico getting any more water than she is getting now. However, I plead with the Senators to allow us to make the first compromise that has ever been made in seven years with regard to this matter, and vote to split these 400,000 acre-feet and make the quantity that California will receive 4,400,000 acre-feet.

Mr. Johnson. Mr. President, I thought I made myself plain upon this matter, but I want to make it doubly so. If we are compromising on the question of water, I will submit to what I think is an injustice; if we are compromising our controversy, I am willing to accept it; but I want to know first whether we are settling the controversy and whether or not we are settling the matters of difference. The junior Senator from Arizona (Mr. Hayden) has been very active, and I ask him if that is the situation?

Mr. Hayden. Mr. President, I have been very active submitting various suggestions of compromise to those who spoke for the State of California. I have had no response to those offers. The only thing that I could do was what I have done this morning, to submit the issues separately to the judgment of the Senate, and that is what we are doing now. We are taking up the

question of the quantity of water that the State of California shall receive, and let the Senate vote on it. When we come to other issues we shall again ask the Senate to vote on those. That is all we can do."

The Bratton amendment to the Phipps amendment was put to a vote and approved (70 Cong. Rec. 387), thereby establishing the 4,400,000 acre-feet per annum limitation on California.

[62]

Senator Hayden then stated that he proposed to offer an amendment differing in some respects from his original proposal (70 Cong. Rec. 387 *et seq.*):

"Mr. Hayden. Mr. President, as the senior Senator from California is well aware, there have been other issues in controversy between the States of California and Arizona with respect to the apportionment of water, one issue being whether or not the States of Arizona and California should share equally the burden of furnishing water to Mexico. Another was whether the Gila River, one of the principal tributaries of the Colorado River in Arizona, should be completely reserved for use in the State of Arizona.

In offering my original amendment I provided for both of those matters. I have had conferences with some gentlemen from California, and they have suggested some changes in that part of my proposal. I intend to submit it now, so that it may be printed for the information of the Senator from California and the entire Senate, in order that we may take it up for consideration later.

I now send the amendment to the desk and ask the clerk to read it for that purpose. I shall offer it later.

Mr. Johnson. Mr. President, has the amendment been printed.

Mr. Hayden. My original amendment was printed. I have made some changes in it.

Mr. Johnson. The original amendment that the Senator refers to is the one we passed upon, is it not?

Mr. Hayden. No, sir. The Senator will remember that I offered an amendment which was pending, which comprised——

Mr. Johnson. Why not have the amendment printed and lie on the table?

Mr. Hayden. I desire to have it read and printed and lie on the table.

Mr. Heflin. Let us have it read.

Mr. Johnson. Let us dispense with the reading of it for the moment and go on with the bill. Of course, the Senator has that right if he wishes.

Mr. Hayden. I prefer to have it read, so that the Senate may understand what it contains.

Mr. Johnson. All right.

[63]

The Vice President. The amendment will be read for the information of the Senate.

The legislative clerk read the amendment, as follows:

Amendment by Mr. Hayden to the amendment offered by the Senator from Colorado (Mr. Phipps): On page 3, after line 7, insert a new paragraph, as follows:

'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 2,800,000 acre-feet for exclusive

beneficial consumptive use in perpetuity and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) 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 (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, 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 over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin and (5) 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 (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact.'

The Vice President. The amendment will be printed and lie on the table."

Before action was taken on the above proposal Senator Hayden offered (70 Cong. Rec. 388) an amendment which would strike the provision for six-state ratification of the Colorado River Compact as contained in

the Phipps version of Sec. 4(a).

The amendment offered by Senator Hayden was defeated (70 Cong. Rec. 394) and the authorization for a six-state compact remained.

On December 12, 1928 the Senate again considered the Phipps amendment to Sec. 4(a). Senator Phipps suggested two changes in his proposal, which changed the first paragraph of 4(a) to read as finally adopted. The suggestions were made as follows (70 Cong. Rec. 459):

> "Mr. Phipps. Referring to the amendment which is now before the Senate, in order to remove any possible misunderstanding regarding the 4,400,000 acre-feet of water, I desire to perfect the amendment by inserting, on page 3, line 4, after the word 'by' the words 'paragraph (a) of article 3 of,' so that it will show that that allocation of water refers directly to the seven and one-half million acre-feet of water that are mentioned in paragraph 3.
>
> Mr. Hayden. I will state that I have no objection to the amendment offered by the Senator from Colorado to his own amendment, because it makes it even more in conformity with the amendment that I now offer.
>
> The Presiding Officer. The Chair will state that the Senator from Colorado has the right to modify his amendment.
>
> Mr. King. Mr. President, will the Senator yield?
>
> The Presiding Officer. Does the Senator from Arizona yield to the Senator from Utah?
>
> Mr. Hayden. I yield.
>
> Mr. King. If I may have the attention of the Senator from California and the Senator from Colorado, I direct attention to line 5, page 3, of the amendment offered by the Senator from Colorado. Let me read back a few words:

'plus not more than one-half of any excess or surplus waters unapportioned by said compact.'

I was wondering if there might not be some uncertainty as to what surplus waters were therein referred to. I think it was the intention to refer to the surplus waters mentioned in paragraph (b) of article 3 of the compact, being the 1,000,000 acre-feet supposed to be unappropriated.

Mr. Johnson. No; that is not quite my understanding. It is by no means certain that there is any other, and it is by no

[65]

means certain that there is the 1,000,000; but the language referred to any other waters.

Mr. King. Speaking for myself, I have no objection; but I was under the impression that the purpose was to link it with paragraph (b) so as to be sure that California was to receive one-half of the 1,000,000 acre-feet.

Mr. Johnson. Not necessarily. This gives one-half of the unapportioned water, and I think it is a better way to leave the matter.

Mr. King. If it is sufficiently certain to suit the Senators of the lower basin, I have no objection.

Mr. Johnson. I think it is."

Senator Hayden then formally offered his amendment which would add the second paragraph of 4(a), providing for a tri-state compact. In explanation, he said (70 Cong. Rec. 459 *et seq.*):

"Mr. Hayden. Mr. President, an examination of the amendment offered by the Senator from Colorado (Mr. Phipps) will disclose that it proposes that the State of California shall agree with the United States, for the benefit of the States of Arizona and Nevada, that the aggregate annual consumptive use of water

from the Colorado River by the State of California shall not exceed 4,400,000 acre-feet. Further, that the State of California may have one-half of any excess or surplus waters unapportioned by the Colorado River compact.

The first part of my amendment is a mere corollary to the amendment offered by the Senator from Colorado. It provides that the remainder of the seven and one-half million acre-feet there shall be apportioned to the State of Nevada 300,000 acre-feet, and to the State of Arizona 2,800,000 acre-feet, which, combined, with 4,400,000 acre-feet which the State of California will use, completely exhausts the seven and one-half million acre-feet apportioned in perpetuity to the lower basin.

The second proposal in my amendment is that the State of Arizona may annually use one-half of the surplus or unapportioned water, which is likewise a corollary to the proposal made by the Senator from Colorado, which likewise disposes of the total quantity of surplus or unapportioned waters in the lower basin.

Mr. King. And that is provided in the compact, is it not?

Mr. Hayden. Yes; and the compact has been so interpreted. If the Senator from Utah is interested in an interpretation of the meaning of surplus unapportioned water, I might well

[66]

read to him an answer to a question I addressed to Mr. Hoover shortly after the compact was written. I asked Mr. Hoover:

> What is the estimated quantity of water which constitutes the undivided surplus of the annual flow of the Colorado River and may the compact be construed to mean that no part of this surplus can be beneficially used or consumed in either the upper or the lower basins until 1963, so that the entire quantity above the apportionment must flow into Mexico,

where it may be used for irrigation and thus create a prior right to water which the United States would be bound to recognize at the end of the 40-year period?

Mr. Hoover's answer to that question was:

The unapportioned surplus is estimated at from 4,000,000 to 6,000,000 acre-feet, but may be taken as approximately 5,000,000 acre-feet.

He referred to the unapportioned surplus in both basins.

The right to the use of unapportioned or surplus water is not covered by the compact. The question can not arise until all the waters apportioned are appropriated and used, and this will not be until after the lapse of a long period of time, perhaps 75 years. Assuming that each basin should reach the limit of its allotment and there should still be water unapportioned, in my opinion, such water could be taken and used in either basin under the ordinary rules governing appropriations, and such appropriations would doubtless receive formal recognition by the commission at the end of the 40-year period.

There is certainly nothing in the compact which requires any water whatever to run unused to Mexico, nor which recognizes any Mexican rights, the only reference to that situation being the expression of the realization that some such right may perhaps in the future be established by treaty. As I understand the matter, the United States is not 'bound to recognize' any such rights of a foreign country unless based upon treaty stipulations.

So Mr. Hoover, who was the chairman of the commission which made the compact, expresses it as his opinion that surplus and unappropriated waters above the allocation in the compact are unaffected by the compact, and are subject to appropriation in any State. I think that is not only a very important interpretation

of the compact, but it is a sane, logical, and legal conclusion.

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

[67]

Mr. Hayden. I yield.

Mr. King. Does the Senator interpret the compact to mean that if there is any unappropriated water in addition to the 1,000,000 acre-feet referred to in the compact, that that is subject to the same disposition or division as the 1,000,000 acre-feet?

Mr. Hayden. There is no question about it, in the light of the statement I have just read, which was written to me in answer to a specific question which I propounded to Mr. Hoover.

Now, I direct the attention of the Senate—and Senators will find on their desks a copy of my amendment—to the fifth and sixth items of it. The fifth item, beginning in line 22, reads:

> 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.

That is a mere repetition of language which appears in the Colorado River compact. In section (e), Article III, of the Colorado River compact are found these words:

> The States of the upper division shall not withhold water, and the States of the lower division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

I will state frankly that I placed that provision in my amendment after conferences with gentlemen representing the State of California, who thought it proper that there should be the same pledge as between the

three States in the lower basin as is contained in the original compact with respect to the upper and the lower basins. I could see no harm in it; on the contrary, it might, in time, be a valuable provision for the benefit of some State which might otherwise be injured. If a provision of that character is found in the original compact, it would therefore be well to repeat it in any supplemental agreement between Arizona and Nevada.

The sixth provision in my amendment is:

> That all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact.

That provision conforms to a similar provision in the Phipps amendment, which states that such uses, that is, by the State of California, shall always be subject to the terms of said compact. So that as to five of the substantive propositions

[68]

that are contained in my amendment, as numbered in it, there can be no controversy. I have mentioned these matters first so that we may get down to the gist of my amendment.

Proposal No. 3 in my amendment is——

> 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.

The fourth provision is——

> that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, 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 over and above the quantities which are

surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River one-half of any deficiency.

Let me read the portion of the compact to which reference is made in my amendment. It is paragraph (c) of Article III:

> If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b).

That is, over and above the seven and a half million acre-feet apportioned in perpetuity to each basin, a total of 15,000,000 acre-feet, and over and above 1,000,000 acre-feet additional which the lower basin is given the right to use. From that surplus of unapportioned water Mexico must first be satisfied.

Continuing the reading of paragraph (c) of Article III of the compact:

> And if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lees Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

In paragraph (d) the upper basin is required to deliver

[69]

75,000,000 acre-feet during the course of any 10-year period, but, in addition to that, the upper basin assumes the duty of supplying one-half of any water that may

be demanded by Mexico under any treaty, in the event that the surplus waters are not sufficient to meet the Mexican demand.

My proposal is that as far as the lower basin is concerned the State of Nevada shall be exempt from furnishing any water to Mexico under any conditions. The State of Nevada has been so modest in its demands, asking for only 300,000 acre-feet of water, which quantity of water is so small that we have felt in Arizona that there should never be any question but that the State of Nevada should have all of it.

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

Mr. Hayden. I yield.

Mr. King. Does the Senator interpret the compact to mean that if there should be, for instance, 16,000,000 acre-feet of water in the river, and by any treaty negotiated between the two Governments Mexico should be allocated a million acre-feet, that that million acre-feet should be taken from the million surplus; that is, the 16,000,000 and not any part of the 15,000,000 be called upon to meet that payment?

Mr. Hayden. The compact, from the literal interpretation of its words, means that the upper basin and the lower basin shall meet that deficiency equally, regardless of how much water is apportioned in each basin.

In further answer to the question of the Senator from Utah, the compact states that any water must first be supplied to Mexico out of the surplus or unapportioned water; but if it is necessary to supply Mexico with any water out of that water which is apportioned in each basin—that is to say, the 7,500,000 acre-feet apportioned to the upper basin and the 8,500,000 acre-feet apportioned to the lower basin—then the upper basin is burdened with furnishing one-half of the water, and these words, I think, should convince the Senator:

> And if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall

be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lees Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

Mr. King. I am not quite sure yet, in view of the statement of the Senator. My understanding is that if there should be, as an illustration, 18,000,000 acre-feet in the river, and the upper States should subtract from the stream 7,500,000 acre-feet and there should flow down the difference between 7,500,000 acre-feet

[70]

and 18,000,000 acre-feet, and by treaties Mexico should be allotted 3,000,000 acre-feet, 500,000 acre-feet more than that surplus, then the upper States would be called upon to furnish one-half of that 500,000 acre-feet and the lower States one-half of that 500,000 acre-feet. But suppose Mexico should be allocated only 2,000,000 acre-feet, and that quantity of water was there plus the 7,500,000 acre-feet allocated to the lower basin, then that unappropriated 2,000,000 acre-feet—unappropriated because it is above the 7,500,000 acre-feet—would be taken from the lower basin States and there would be left 7,500,000 acre-feet and the upper States would not be compelled to contribute anything.

Mr. Hayden. I do not so interpret the Colorado River compact. The compact is perfectly clear to me not only because of the specific reference to the 7,500,000 acre-feet apportioned to each basin but also to the additional 1,000,000 acre-feet:

Such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b).

That is, over and above the 7,500,000 acre-feet plus the 1,000,000 acre-feet, and then in addition thereto, if

it is necessary to furnish water to Mexico, each basin shall share the burden equally.

All that my amendment seeks to accomplish is to follow the same rule that was laid down as between basins, which is an equality of obligation to furnish water to Mexico under any treaty, of which each basin must furnish an equal amount. My amendment seeks to establish the same principle with respect to that part of the water which must be furnished by the lower basin to Mexico by requiring California and Arizona to share that burden equally.

Mr. McKellar. How would they do it under the bill as now proposed?

Mr. Hayden. The bill does not cover the subject at all.

Mr. McKellar. This, then, is an addition to the bill.

Mr. Hayden. Yes; and I want to make that certain. The effect of my amendment would be, if carried out by the tri-State agreement that is contemplated under it, to use round figures, in the event that a million acre-feet of water must be furnished to Mexico under some treaty, 500,000 acre-feet of that amount would be furnished by the upper basin, 250,000 by Arizona and 250,000 by California. Arizona and California would each assume one-quarter of the burden devolving upon the lower basin. I would relieve Nevada from furnishing any water at all, because of the very small amount of water allotted to that State under the tri-State agreement. It seems to me if it is fair to divide the burden between the basins equally, then likewise it is fair to divide the burden equally between Arizona and California.

[71]

Mr. Shortridge. Mr. President——

The Presiding Officer (Mr. Fess in the chair). Does the Senator from Arizona yield to the Senator from California?

Mr. Hayden. Yield.

Mr. Shortridge. The Senator's position is that the States of Arizona and California shall contribute equal amounts quite regardless of whether one or the other has used or needs the water to be delivered to Mexico. Is not that the position of Arizona? So that if that contingency should arise, a treaty having been entered into and a demand having been made upon the United States for a certain quantity of water, California must contribute as much as Arizona contributes.

Mr. Hayden. No more and no less.

Mr. Shortridge. No more and no less, even though California has not the water to deliver, having devoted it to beneficial uses, and Arizona not having devoted its portion to such uses.

Mr. Hayden. In that event, if Arizona had not used her water, of course it would be surplus water and there could be no question about calling upon California for any water. It is only in the contingency that both States are using all of their water, having made valid appropriations of it by applying it to their lands. Then the question comes that there will be a shortage of water in order to supply Mexico under the treaty. Who is going to bear the shortage? It means that certain farm lands in both States will not receive as much water as they otherwise would. In that event Arizona says that California and Arizona should bear that burden equally.

Let me point out to the Senator the other side of the picture. The time when the demand would be made would be during a period of drought. The Senator is well aware that we have long cycles of dry years in the West. The record of a study of the flow of the Colorado River will show that for a period of years by reason of lack of rainfall there is a great reduction in the flow of that stream. For another period of years we may have floods that will greatly increase the average flow of the river. During periods of flood or rainy years Mexico would have all the water she would want, and everybody

else would, too. The pinch comes only during a period of drought. Then by reason of the decreased flow of the river there would not be delivered to Mexico all the water she was entitled to receive under the treaty.

Mr. Shortridge. Mr. President——

The Presiding Officer. Does the Senator from Arizona yield to the Senator from California?

Mr. Hayden. I yield.

[72]

Mr. Shortridge. Taking it as of that condition of affairs and as of that time—Arizona is not then using her water, but California is using her water—does the Senator still think that California should contribute one-half of the waters demanded by Mexico?

Mr. Hayden. If Arizona were not using the water, it would not disappear. It would remain in the channel of the Colorado River and would go down to Mexico, and Mexico would be supplied without any demand upon California at all. If Arizona were not using the water, out of Arizona's share of that water Mexico would be fully supplied. It is only in the contingency that both States are using the full allotment of water provided in the bill, and in that event, if a demand comes from Mexico for water, what is the situation? A period of drought has arrived. Mexico has certain rights to water under a treaty. The water is taken out in the upper basin and in California and Arizona and Nevada, and diverted to such an extent that there does not cross the Mexican border line the quantity of water Mexico has a right to receive. Under the terms of the treaty, the Mexican Government would request of our Government that there be delivered at the boundary whatever shortage existed. Where should that water be obtained? Only in the main stream of the Colorado River.

Mr. Shortridge. May I ask the Senator a further question?

Mr. Hayden. Certainly.

Mr. Shortridge. Does the Senator construe the compact and the proposed amendment to make it necessary for either California or Arizona to discontinue the use of water which it may have put to beneficial use in order to meet the demands of Mexico?

Mr. Hayden. Certainly. A treaty would be the supreme law of the land.

Mr. Shortridge. Certainly.

Mr. Hayden. And if the treaty provided that a certain quantity of water should be delivered to Mexico, the compact contemplates that then and in that event, out of the waters appropriated and used in both States, if there were a shortage, the upper basin would be compelled to let down half of the quantity necessary to supply Mexico. Under my amendment California would furnish one-quarter and Arizona the other quarter until the total quantity was furnished to Mexico, and it would then of necessity deprive land of irrigation water.

Mr. Shortridge. Does not that excite some fear in the mind of the Senator as applied to his own State?

Mr. Hayden. That is exactly what it does; and it was fear which prevented the Legislature of the State of Arizona from ratifying

[73]

the Colorado River compact when first presented to it. The Legislature of the State of Arizona viewed the matter in this light. It was said that by the inclusion of the Gila River and its tributaries in the Colorado River system and then placing upon that system in its entirety the burden of furnishing water to Mexico under any treaty, if Arizona ratifies and approves the compact, she takes on an obligation which may in time to come interfere with the proper irrigation of land now under existing irrigation projects in the Gila River or its tributaries. If anyone does not approve the

compact the only place the water can be obtained from Mexico is out of the main stream of the Colorado River, because, as I have said a number of times to the Senate, this demand would be made during a time of drought, during a time when the tributaries were diminished by reason of a long dry season; and anyone who is acquainted with the Gila River knows that in such a period it is absolutely dry."

Senator Hayden commented on the relationship of the Gila River to Mexico and California as follows (70 Cong. Rec. 464):

"Under the plan contemplated by the Swing-Johnson bill, once it is put into effect, neither the State of California, nor any other State for that matter, would ever obtain any water out of the Gila River. That would be ended. So we in Arizona say that if that is the case, what interest has the State of California in the Gila River? Her wants and needs will be completely supplied by the water impounded at Boulder Dam. The Gila River has never been anything but a menace to the State of California. Senators who are familiar with the facts will remember that the original break in the levee, which inundated a part of the Imperial Valley, was caused by a flood which came down the Gila River. The Gila River broke the levee and the Colorado River entered the break and kept it open. That was what happened. At all times the flash floods of the Gila, which vary tremendously in their volume, are a greater menace to the Imperial irrigation district than the floods of the Colorado River, so far as breaking the levee is concerned.

In addition to that, talk with any farmer in the Imperial Valley, and he will tell you that the muddy, silty flood waters of the Gila River—and that is the only kind they ever get out of that stream—are a positive detriment to their land and they will be most happy

when they can escape from the necessity of accepting any water from the Gila River.

Under the new scheme the Colorado River water will be desilted at Boulder Dam and will come down relieved of a great burden of silt which now fills the canals or is deposited upon the lands of the Imperial Valley farmers.

In fact, under the plan proposed in this bill the State of California, once the Boulder Dam is built and once the

[74]

all-American canal is connected with the Laguna Dam, will have no further interest in the Gila River, and can have none. Whatever water can flow in that stream will be of use not to California but to Mexico and to Mexico alone.

Such being the case, the people living on the Gila River in the State of Arizona feel that they should not have their present rights burdened by any demand that may be made by Mexico. They are willing that the State of Arizona shall assume one-half of the burden of furnishing water to Mexico under any treaty that may be made, notwithstanding the fact that in the main stream, which is the only place where the water can be obtained, Arizona will be allocated but 2,800,000 acre-feet and California 4,400,000, a difference of 1,600,000 acre-feet in favor of California. Yet, notwithstanding the fact that Arizona has 1,600,000 acre-feet of water less than California in the main stream, Arizona will will equally assume the burden. We will pay that price in order that there may be no cloud upon the water rights of the existing irrigation projects on the Gila River."

Senator Johnson obtained the floor to state his views on the Hayden amendment (70 Cong. Rec. 466):

"However that may be, there are certain reasons it seems to me, why the amendment should not be adopted.

The vice of it is, first, in the exemption of the tributaries of the State of Arizona, particularly the one to which he has just adverted, the Gila River, and, secondly, in the endeavor to divide, in the fashion which he says is a perfectly plain and perfectly frank and perfectly open division, the burden that may come to the Colorado River in relation to Mexican lands. He is quite right in one thing. The desideratum that ought to be a desideratum of everybody connected with this bill, whether he represents a State or whether he represents some outside influence, should be entirely the ratification of the Colorado River compact, and anything that will enable us to reach the ratification of that compact that is within reason I am very glad indeed to undertake and very glad indeed to accept.

The argument to me has grown somewhat stale, in relation to every amendment that is presented, that if we would accept that particular amendment then we may at some time in the future accomplish the desideratum that is ours and ratify the Colorado River pact. I need but refer to the very frank statement of the Senator from Arizona (Mr. Ashurst), for which I thanked him yesterday, in that regard, where he said, and said without equivocation in the slightest degree:

> If the Senator from California (Mr. Johnson) beguiles himself into the belief that because of the adoption of this amendment, opposition will relax as to other features of this bill, he is sadly mistaken. The adoption

[75]

> of this water division amendment will by no means remove the thorns and blades of injustice that would yet remain in the bill respecting power and other subjects, and we shall contend to the last, indeed we shall retire into the rocky passes of the Senate rules and there fight until we secure a bill which will, amongst other features, require a 7-state ratification of the so-called Santa Fe—or Colorado River—compact.

That was a statement frankly made by the senior Senator from Arizona yesterday. When upon every amendment it is insisted that if that particular amendment should be adopted we may reach a conclusion and a compromise, I confess, with the eloquence of the Senator from Arizona ringing in my ears, I receive such assurance with a wee bit of skepticism.

Let us see what the Colorado River compact relates to. I read first from the purposes of the Colorado River compact, Article I:

> The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River system.

Now, what is the Colorado River system? The Colorado River system then, with meticulous care, is described in the compact in Article II:

> As used in the compact (a) the term 'Colorado River system' means that portion of the Colorado River and its tributaries within the United States of America.

Again, sir, we find in Article III the reference to the Mexican situation, and I read it because I have in my hand at the present time the compact itself. We find in paragraph (c) of Article III the following:

> If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right in the use of any waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantity specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lees Ferry water to supply one-half of the

deficiency so recognized in addition to that provided in paragraph (d).

We find, therefore, that the compact toward which we are all devoting our efforts in order to get everybody satisfied and to unite in agreeing upon it provides for a division of the

[76]

water of the Colorado River basin, and we find, sir, that in this compact the Colorado River basin embraces not alone the main stream, but embraces the tributaries of the main stream as well.

Sir, the distinguished Senator from Arizona (Mr. Hayden) read remarks that were made in answer to queries of his in writing of Mr. Herbert Hoover, who is to be inaugurated soon as President of the United States. He laid great stress upon Mr. Hoover's ability. He said Mr. Hoover knew more about the Colorado River and its intricacies and all the technical aspects of it than probably any other one man, and read to his purposes, as was his right, certain questions that he had propounded in writing to Mr. Hoover and answers which Mr. Hoover had in writing made to him.

But, Mr. President, in reading the queries that thus the Senator put in writing to Mr. Hoover, and which he says were answered so elaborately, so well, so intelligently, and so accurately, the Senator omitted to read one of the very first of the queries that thus he propounded to President-elect Hoover. This is one of the queries that he then propounded to Mr. Hoover that Mr. Hoover in writing answered to him:

> Question 4. Why was the term 'Colorado River system' used in paragraph (a) of Article III, wherein 7,500,000 acre-feet of water is apportioned to the upper and lower basins respectively?

That is the question propounded in writing by the junior Senator from Arizona to Mr. Herbert Hoover,

who at that time was the president of the Colorado River Commission, and here is the reply that was made by Mr. Hoover to the distinguished Senator from Arizona:

This term is defined in Article II—

I have just read Article II to Senators—

> as covering the entire river and its tributaries in the United States. No other term could be used, as the duty of the commission was to divide all the water of the river. It serves to make it clear that this was what the commission intended to do and prevents any State from contending that, since a certain tributary rises and empties within its boundaries and is therefore not an interstate stream, it may use its waters without reference to the terms of the compact. The plan covers all the waters of the river and all its tributaries, and the term referred to leaves that situation beyond doubt.

What is the Senator asking by this amendment? He is asking, indeed, that we amend the Colorado River compact by the action

[77]

of the Congress of the United States; and then, followed to its logical conclusion, what must occur? Every State must in like fashion take up the amendment of the Colorado River compact, possibly, and thereafter amend it in conformity with this particular amendment.

Mr. Hayden. Mr. President, if the Senator from California will be kind enough to yield, I am sure he does not want to overstate my position. I am not asking that the Colorado River compact be amended in any particular.

Mr. Johnson. I am stating the effect of the Senator's amendment.

Mr. Hayden. I am asking that this effect be secured: That the State of California, which has and will have

no interest in the Gila River, waive any claim to the waters of that stream.

Mr. Johnson. The Senator from Arizona is asking, in effect, sir, that the Colorado River compact be amended. I stand by that statement because it is entirely accurate. That would be the effect of the Senator's amendment if adopted, that the Colorado River compact shall be amended. No one here ought to wish that to be done, and when the definition is made by the compact itself as to what the Colorado River system means, we ought not to be required here to take as a condition precedent to legislation by the Congress of the United States another definition entirely. That in reality and in effect is what is sought by the amendment that is submitted by the Senator from Arizona.

There is, however, another thing in this amendment, too. It sounds well; how fair it is smilingly to say to us, 'Why, we will divide this water into two parts, and each of us will bear a like burden.' It is all well enough to say that the Gila River is this and the Gila River is that; that no water of the Gila River comes down under certain circumstances and too much water comes down under other circumstances; it is all well enough to say when the all-American canal ultimately shall be constructed that that all-American canal will be above where the Gila River runs into the Colorado River and that there will be no occasion for differences at all; all those things may be well enough as matters of speculation; but the fact is, sir, that there comes from the Gila River 3,500,000 acre-feet, all of which is claimed by the State of Arizona—every drop of it. When Arizona says that she has but 2,800,000 acre-feet of water, to that must be added the Gila River with its 3,500,000 acre-feet, and it will then be found that Arizona has in reality two-thirds of the water of the Colorado River itself. If we should exempt, as possibly we may should this amendment be adopted, the Gila River from any burden or any servi-

tude that might thereafter attach because of water to Mexico, we should then exempt a large portion of the water of the stream from bearing its part at all, and say the rest of the stream, owned in equal shares, shall bear the burden equally, so far as California is concerned and so far as Arizona is concerned.

[78]

Mr. Hayden. Mr. President, will the Senator from California yield to me?

Mr. Johnson. I yield.

Mr. Hayden. Taking the statement that there are three and one-half million acre-feet of water in the Gila River in Arizona, if Arizona obtains 2,800,000 acre-feet, from the Colorado the combined sum amounts to 6,300,000 acre-feet. The State of California has allocated to it——

Mr. Johnson. California has allocated to it 4,400,000 acre-feet of water.

Mr. Hayden. It is the Senator's contention that when the time comes to supply water to Mexico the proportion borne by Arizona and California should be in that ratio?

Mr. Johnson. By no means; I am not asking that at all, because we hope by the storage in this dam to control Mexican water; and if the Senator from Arizona will follow the testimony of Mr. Hoover, which he has read to-day, he will find that that is one of the designs; but what I do not wish to do is to exempt the Gila River at this time and put the whole burden upon the two States subsequently in the proportion the Senator has indicated.

Mr. Hayden. The Senator is unwilling that California should divide the burden equally with the State of Arizona?

Mr. Johnson. Not a bit; but there would not be an equal division under the system the Senator proposes. It is a division, on the one hand, by which it is pro-

posed to exempt from the stream, first, 3,500,000 acre-feet—and sometimes the people of Arizona have said that there were 6,000,000 acre-feet in that stream, as the Senator is well aware, but taking the lower figure, 3,500,000 acre-feet—the Senator is seeking to deduct that first and then have a division made of the waters that are in the main stream itself.

There is not any necessity for any action in this regard at all. It is an uncertain thing to do to-day; it is a thing from which no man can tell what the consequences may be; and it ought not to be done. Particularly, it ought not to be done in view of the definitions that are found in the Colorado River compact, and which I have read here. Sufficient it is, for us to accomplish that purpose subsequently when the dam shall have been erected. Into this bill write, if you desire, any notice to Mexico that you wish—and I want no water to go down there in excess of that which any law permits Mexico to have to-day—do anything in regard to international comity that you desire, but do not write into this measure in this fashion an exemption which would destroy in one aspect, the definitions that are contained in the Colorado River compact and would put an additional

[79]

burden on the waters that are to bear the burden of Mexico. That is unjust and unfair from our standpoint.

Mr. Hayden. Mr. President, if the Senator will yield to me, I want to find out what he thinks is just and fair.

Mr. Johnson. I think it is just to do nothing in relation to that portion of this amendment. It has no place in this bill at all. What are the reasons why the Senator wants this amendment?

Mr. Hayden. The reason I want this amendment is that I may say to the people of Arizona that the State

of California has agreed with them to furnish one-half of any water that may be demanded by Mexico.

Mr. Johnson. But the Senator does not say anything of the kind in the amendment. He says after exempting the tributaries in the State of Arizona that then the State of California agrees out of the main stream to bear one-half of the burden.

Mr. Hayden. Would the Senator be willing to have incorporated in this bill the simple proposition that California shall accept one-half of that burden?

Mr. Johnson. I do not want anything to interfere with the compact.

Mr. Hayden. There would be no interference with the compact. The compact provides for an equal division.

Mr. Johnson. No; I am speaking as to the exemption of the tributaries in Arizona. Let them alone; let the situation remain as it is. We will bargain with Arizona ultimately or agree with her ultimately, as the case may be, but this is neither the time nor the place to alter the compact that is now the desideratum of everybody connected with this enterprise.

Mr. Hayden. If the Senator will permit me to say so, I am not seeking in any manner to interfere with the compact. The only effect that the compact can have upon his State is that that State will be bound to furnish one-half of the water which Mexico may receive under any treaty. Beyond that the State of California has no interest in the matter."

Senator Pittman expressed his views on the Hayden amendment and offered two changes: (1) To strike the preamble requiring California to agree to a tri-state compact, and (2) To add a seventh provision dealing with the effective date of the tri-state compact, as follows (70 Cong. Rec. 468):

"Mr. Pittman. Mr. President, the Senate is apt to forget that

any States are interested in this legislation except the States of Arizona and California. As a matter of fact, one of the reasons that started this whole compact was the realization of four States in the upper Colorado River that unless this impounding of water at Boulder Dam was regulated, when they got ready to use the water of the Colorado River in the future there would not be any; it would all be appropriated in the lower basin. Consequently, we started out in 1921, with the aid of Congress, which authorized the seven Colorado River States to try to agree on the distribution of water and the terms upon which it would be used.

Now we come down to this proposition:

The Senate has already determined upon the division of water between those States. How? It has been determined how much water California may use, and the rest of it is subject to use by Nevada and Arizona. Nevada has already admitted that it can use only an insignificant quantity, 300,000 acre-feet. That leaves the rest of it to Arizona. As the bill now stands it is just as much divided as if they had mentioned Arizona and Nevada and the amounts they are to get; but there is just one other phase to the matter. The amount that either one of those States is entitled to under this legislation may be reduced if at some future time it is agreed, by treaty or contract or otherwise, that a certain amount of this water should, in justice, be used in Mexico.

Presently, as I have said before, I think the amount that can be used in Mexico is insignificant. I think, also, that under the comity that exists between nations the only water that Mexico could claim would be water that she has appropriated from the natural flow of the stream, and that she could claim none of the benefits of the water increased by our own impounding works. That, however, is not the question. The question is one of satisfying the States.

Why should we satisfy the States? Because if you do not satisfy a State as to the exact thing that is going to happen to it under legislation, it will oppose the legislation.

As a matter of fact and as a matter of law, I do not believe that the Gila River is in any danger whatever from any demands for water in Mexico for two reasons: In the first place, there is bound to be enough overflow or return flow to satisfy that demand. In the second place, the Congress of the United States has no constitutional authority through the passage of any act to take away a vested water right. If the people of Arizona on the Gila River have put to beneficial use the water of that stream—and they claim that they have—then there is no power in Congress to take it away from them, nor would there be any power by treaty to take it away from them. A treaty certainly is nothing more than a statute and in my opinion we could not make a treaty that would violate the Constitution of the United States any more than we could a statute. That, however, is not the question. The question is, Are we going to reach a settlement

[81]

with Arizona?

A majority of the people of Arizona believe that there is danger of their vested rights in water, of the water that they are actually using, being taken in part to supply Mexican demands. As I have said before, I do not think there is any ground for that belief; but if that is the belief of the majority of the Legislature of the State of Arizona and their governor, then we have, if possible, to remove their fear before we can get their ratification.

Do we want their ratification? Is their ratification necessary to this legislation? I think it is. Why?

This bill provides that no construction shall take place—nothing shall be done until six of the seven States, including California, ratify. Where are we

going to get the States to ratify? We had six States that ratified the 7-State agreement; but since that ratification the Legislature of Utah has solemnly annulled its ratification. Now we stand in the position that there are no six States in the humor at the present time to ratify. Utah has refused to ratify the agreement and is out of it. Arizona has refused to ratify it. We must get one of those States to ratify in order ever to work under the bill if we pass it—one of them. We must either get Utah back or we must get Arizona.

As a matter of fact, there have been rumblings in the State of Colorado against the safety of a 6-State compact. Personally, I do not agree with them. I do not think there is any ground for any fear. I think the 6-State compact protects the upper basin; but there is a fear there, nevertheless, and a fear expressed by some very able lawyers in Colorado.

Colorado might pull out of a 6-State compact. It would be a splendid consummation if we could get all seven States to agree with regard to this whole legislation.

Let us see what we are up against. There is no question but that we have settled satisfactorily to all States the water question. Now we have gotten down to the question of liability to Mexico, which, while to my mind it amounts to nothing, arouses a great deal of fear in the minds of some people in Arizona.

Admitting that all of the water of the Gila is now being put to use, except the return flow—and in this amendment the return flow is subject to the demands of Mexico—if it is all put to use, as a legal matter, that can never be disturbed. The Senator says, 'Why mention it if it can never be disturbed?' There is only one reason I know of and that is to overcome the fears of the people who do not believe as I do, that the fears are groundless.

Our engineer in Nevada, Mr. Malone, agrees with Mr. La Rue

with regard to the return flow of the river. At the present time it is at least five or six hundred thousand acre-feet. It will undoubtedly be increased greatly with further irrigation from the Colorado River water. The Department of the Interior has estimated that there never can be, from the waters of the Colorado, over three or four hundred thousand acres irrigated, and that not by subsurface pumping but by diversion. There is such a limit on it.

As I understand this amendment, Arizona to-day has practically allocated to it 2,800,000 acre-feet of water in the main Colorado River. It is there for their use. As I understand it, they are willing to give up any amount that may be necessary to meet the demands of Mexico from that 2,800,000 acre-feet, provided it is matched by an equal amount of water out of California's allocation of 4,400,000 acre-feet.

In the circumstances, I am exceedingly anxious to bring about a condition that will cause the Legislature of Arizona to ratify the 7-State agreement. I am afraid if we do not make that possible, we may go on trying to get a 6-State agreement for a year or so and maybe find we will have to come back here and try to get legislation for a 5-State agreement or something else.

I would not ask of California to bear any additional burden over what Arizona bears. I can not see that it does. I can not see that there is any danger. But there is one thing in this amendment—and I want the attention of the Senator from Arizona to this—which I do not like. I do not like the form of it. I do not like the method of getting at it. It provides:

> 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.

That does not seem to be the regular form of entering into an agreement, to have California first proceed to limit herself as to what she will do as consideration for the passage of this measure. I think it should be a mutual agreement between the three States. I do not think we should bind up this tri-State agreement with ratification. I did believe that it was essential to have California limit herself as to the amount of water she would take in a ratification, in view of the fact that possibly Arizona would never ratify. But this is attempting to have the State of California in advance, as a condition of the taking effect of this measure, state that she will enter into certain agreements with Arizona. In other words, it is coercive.

Mr. Hayden. Is it any greater coercion, if the Senator will permit me, than for the State of California to insist that, as a condition to her ratification of the main contract, Congress

[83]

shall do certain things, to wit, provide storage to the extent of 20,000,000 acre-feet of water in the main stream.

Mr. Pittman. I do not consider that coercion.

Mr. Johnson. It was impossible to hear what the Senator from Arizona said. All I heard was, 'the State of California.'

Mr. Hayden. I withdraw the remark, because I do not want to have any remark I might make misinterpreted.

Mr. Pittman. I do not think that the demand on the part of California that there should be a storage of at least 20,000,000 acre-feet of water is coercion. I think it is essential, as shown by the report of the commission. A demand for what is essential is not coercion.

This is what I suggest, that we provide for an agreement between the three States, and let them enter into it if they want to, but if they do not want to, let them stay out of it. That is not coercing a State.

This is what I propose, to strike out all of the Hayden amendment down to and including the word 'agree' on page 1, in line 6, and in lieu thereof insert the following:

> The States of Arizona, California, and Nevada are authorized to enter into an agreement, which shall provide.

Then go ahead and put down the provisions of the Hayden amendment, and at the end of the Hayden amendment put in a seventh paragraph, which shall read:

> Said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California and Nevada.

The Constitution requires that before States may enter into an agreement they shall be authorized by Congress to enter into the agreement. I start out by having Congress, by this act, authorize an agreement. I make the agreement specific by reason of the fact that otherwise it might be held that they would have to come back to Congress for approval of the agreement they entered into. They approve a specific agreement in advance and authorize it. The terms are set out. It does not take effect unless all three States ratify the Colorado River compact.

Mr. Hayden. It should not.

Mr. Pittman. It should not. It does not require California to enter into that agreement. It does not require Arizona to enter into that agreement. It does not require Nevada to enter into that

agreement. If they do not enter into that agreement, then we have the bill as it stands. Whatever States

do not ratify are not bound by this measure. That, then, becomes an optional matter and not a coercive matter.

I am confident, however, that if the State of Arizona were willing to enter into such an agreement she would, of course, ratify the Colorado River compact, and if she were not willing to ratify the Colorado River compact she would not want California bound by these conditions, because she would not be in the 7-State compact, and would have nothing to do with it.

Therefore I say that the fair and practical way is to set out the terms of an agreement which the Congress of the United States would be satisfied for the States to enter into, and say that if they see fit to enter into it they may, but it shall not become effective as a subsidiary agreement to the main 7-State compact until those three States do ratify the 7-State compact.

I offer that as a suggestion. I do not want to interfere with the vote on this amendment, but I would like very much to have it in a voluntary agreement, rather than impose it upon California as a condition of the ratification.

Mr. Hayden. Mr. President, I am not at all insistent that my amendment be adopted in the exact language in which it is offered. The suggestion made by the Senator from Nevada is entirely satisfactory to me.

Mr. Pittman. Then I offer it.

The Presiding Officer. The amendment would be an amendment in the third degree, and it would not be in order.

Mr. Hayden. Have I the privilege of perfecting my amendment so as to carry out the suggestion of the Senator from Nevada?

The Presiding Officer. The Senator can do that.

Mr. Hayden. Then I am pleased to do that."

Senator Pittman continued his comments (70 Cong. Rec. 471):

"Mr. Pittman. Mr. President, this question has been here now for seven years. The seven States have been attempting to reach an agreement. Apparently the Senate of the United States is about to reach an agreement as to what ought to be done. The Senate has already stated exactly what it thinks about the water. That might have been an imposition on some States. Why do we not leave it to California to say how much water she shall take out of the river or leave it to Arizona to say how much water she shall take out of the river? It is because it happens to become a duty of the United States Senate to settle this matter, and that is the reason.

[85]

Has the State of California or Arizona or Nevada asked for any different kind of an agreement than the one that is here? Does the State of New Mexico desire that there should be a different agreement between California, Arizona and Nevada than the one that has been suggested? If so make another suggestion. Why be so fearful with regard to the imposition upon Nevada, Arizona and California when the representatives of neither one of those States so far have got up here and raised such an objection? California has not asked for any particular form of agreement between the States; Nevada has not asked for any particular form of agreement between the States; Arizona has not asked for any particular form of agreement between the States. Arizona, however, has stated that unless certain things are agreed to by California this bill shall not go into effect. I objected to that. I do not think that California alone should be made to agree to anything. I think, however, that if we have in mind a certain agreement that might be entered into by the three of them, if something better shall be submitted we ourselves ought to submit it. That is all that is happening here.

We have already decided as to the division of the water, and we say that if the States wish they can enter into a subsidiary agreement confirming that. We have already agreed that the 7-State pact shall be binding."

Senator Johnson voiced his feelings (70 Cong. Rec. 471):

"Mr. Johnson. Here is the difficulty which strikes me in the matter: First of all, we are authorizing the doing of something that already the States have the right to do. Secondly, we are stating the things that the three States are to do, and we are making a sort of Procrustean bed upon which they must lie in the determination of matters that are suggested within this amendment, without any elasticity, without any opportunity to alter phraseology or possibly terms. What is done by the amendment is to put the impress of the Federal Government upon the necessity of agreement, and, if one of the States should not agree, leave that State in a position which would not be particularly enviable.

With the distinct understanding that this authorization is one that is after all an authorization that is wholly unnecessary, because the parties may, in any fashion they desire, meet together and contract and subsequently come to Congress for ratification of that contract; that there is no impress of the Congress upon the terms, which might be considered coercive to any one of those States, I am perfectly willing to accept the amendment.

Mr. Pittman. There is nothing necessary at all, of course, so far as the adoption of this amendment is concerned, unless the element of time is considered valuable. If it should happen, mind you, that two weeks from now the legislatures of the three States,

being in session, should be perfectly satisfied with the terms of this proposed agreement and should ratify

it, they could on the next day also ratify the 7-State agreement. On the other hand, if we do not adopt this amendment now, but allow the three States to meet together and agree and they should agree, then it will be necessary for them to come to Congress next fall; and we might find that Congress next fall would not ratify the agreement entered into by the three States, might we not?

Mr. Johnson. That is possible.

Mr. Pittman. Suppose, for instance, a majority of the Senate found there were certain things in the agreement it did not like.

Mr. Johnson. That is all right; but what I want to make clear is that this amendment shall not be construed hereafter by any of the parties to it or any of the States as being the expression of the will or the demand or the request of the Congress of the United States.

Mr. Pittman. Exactly, not.

Mr. Johnson. Very well, then.

Mr. Pittman. It is not the request of Congress.

Mr. Johnson. I accept the amendment then."

The Vice President then put the question on the Hayden amendment (as modified by the Pittman suggestions) to the Phipps amendment to Sec. 4(a) of the Johnson substitute bill and it was adopted without a roll call (70 Cong. Rec. 472).

The Phipps amendment to the Johnson substitute was approved without roll call (70 Cong. Rec. 473).

(Note: The Phipps amendment at all stages dealt not only with Sec. 4(a) but also included the provision in Sec. 5 that all contracts executed by the Secretary "shall conform to paragraph (a) of section 4 of this Act".)

On December 14, 1928, H. R. 5773 as amended was approved by the Senate.

The House concurred in the Senate Amendment (70 Cong. Rec. 837-38) without further change.

[87]

Section 8

The evolution of Sec. 8 of the Project Act commenced with H. R. 6251 (69th Congress, 1st Session). This section as introduced read:

> "SEC. 8. (a) That the United States, in managing and operating the dam, canals, and other works herein authorized, including the delivery of water for the generation of power, irrigation, or other uses, shall observe and be subject to and controlled by the Colorado River Compact as signed at Sante Fe, New Mexico, on November 24, 1922, and particularly described in section 13 herein.
>
> (b) Also all rights of the United States in or to waters of the Colorado River, howsoever acquired, as well as the rights hereafter arising of those claiming under the United States, shall be subject to and controlled by said compact.
>
> (c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River, or for the generation or transmission of hydroelectric power generated by means of the waters of said river, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river, for the use of which the same is necessary, convenient, or incidental, shall likewise be subject to and controlled by said compact.
>
> (d) The conditions and covenants referred to herein shall be deemed to run with the land and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit,

license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water thereunder, by way of defense or otherwise, in any litigation respecting the waters of the Colorado River."

In the hearings on H. R. 6251 before the House Committee on Irrigation and Reclamation, (69th Congress, 1st Session), at p. 39, Charles P. Squires, a witness from Nevada suggested an addition to the then language of Sec. 8(a) as follows:

"I would respectfully suggest to your committee that a clause be added to the committee print bill now under consideration,

[88]

directing that the Secretary of the Interior, in the allocation of rights, shall make such allocation in accordance with the terms of a compact now in process of negotiation between the States of Arizona, California, and Nevada, provided such a compact shall be negotiated and ratified by the legislatures of said three States and consent thereto be given by Congress on or before March 4, 1927.

Such a clause, permitting Arizona, California, and Nevada to proceed with the orderly and peaceful solution of their own problems, but leaving the Secretary of the Interior free to act under the terms of the bill as now drawn in case no agreement is arrived at, may be added, substantially as follows:

Page 9, section 8(a), line 7, add, following the word 'herein':

and by the terms of a compact between the States of Arizona, California, and Nevada for the division of the benefits accruing to said three States, under

said Colorado River compact, provided such a compact between said three States shall be negotiated and ratified by the legislatures thereof and consent thereto be given by Congress on or before March 4, 1927.

Mr. Hayden. You are a member of the commission that is negotiating the compact between the three States of the lower basin?

Mr. Squires. Yes, sir.

Mr. Hayden. When do you expect to have your next meeting?

Mr. Squires. It has been my hope to have one very soon. When I left Nevada some of the members of the California commission were absent, and prior to that some members of the Arizona commission had been absent from the State. I anticipate that we will have a meeting very soon.

Mr. Hayden. Do you sincerely believe that the representatives of the three States can reach an agreement with respect to an apportionment of water and other matters of difference between them?

Mr. Squires. I sincerely do.

Mr. Hayden. Is that opinion based upon meetings that have been held and your information as to the general situation?

Mr. Squires. Yes, it is.

Mr. Hayden. I believe you stated that Nevada wanted an assurance of sufficient water for her land, and would be satisfied with about 300,000 acre-feet.

[89]

Mr. Squires. Yes, sir; probably not quite that. We don't know just what it will amount to, but that will be ample. That figure was suggested by the California and Arizona commissions in these sessions we had.

Mr. Hayden. Are you satisfied that 300,000 acre-feet will fully take care of all of the needs of the State of Nevada?

Mr. Squires. I am satisfied that it will be ample.

Mr. Hayden. What is the proposed division of the water?

Mr. Squires. The unconsumed portion would run back and flow down the stream and then divide between the other States.

Mr. Hayden. Between California and Arizona?

Mr. Squires. Yes, sir.

Mr. Hayden. After Nevada has been cared for?

Mr. Squires. Yes, sir.

Mr. Hayden. Upon what basis?

Mr. Squires. Upon such basis as the States agree upon.

Mr. Hayden. Has there been any tentative division of the waters between the two States?

Mr. Squires. There have been some proposals back and forth, which have not been mutually satisfactory, but which have shown rather a tendency toward coming to an agreement, I think."

Mr. Squires proposal was not then accepted by the committee.

On February 27, 1926 Mr. Swing introduced H. R. 9826, as a substitute for H. R. 6251, without change in Sec. 8. On the same date S. 3331 was introduced in the Senate and Sec. 8 was the same as in H. R. 9826 and as originally proposed in H. R. 6251, *supra.*

The committee print of April 10, 1926 (at p. 93 Hearings before House Committee on Irrigation and Reclamation) deleted Sec. 8 (a) and (b) and (at pp. 93 and 94 of the reported hearings) substituted the following:

"SEC. 8(a) The United States, its permittees, licensees, and

[90]

contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized,

shall observe and be subject to and controlled by said Colorado River compact and the terms of such compact, if any, between the States of Arizona, California, and Nevada, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before March 4, 1927; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: Provided, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress in the construction, management, and operation of said reservoir, canals and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said the Colorado River compact."

A second committee print of April 14, 1926 contained several amendments to Sec. 8, including the Nevada proposal which appeared as subsection (d). The new section appears at pp. 117 and 118 of the printed committee hearings:

"SEC. 8(a) All appropriations of water from the Colorado River, incident to or resulting from the construction, use, and operation of the works herein authorized, shall be made and perfected in and in con-

formity with the laws of only those states which may or shall have approved the Colorado River compact ratified in section 12 of this Act.

(b) The place of application to use of the waters impounded, discharged, delivered, or carried by the works or structures herein authorized, whether for domestic, irrigation, generation of power, or for other beneficial purposes, and whether the use be by the United States or by others shall be confined in each and every instance to the States that shall have approved said Colorado River compact, and nothing herein contained shall be construed to interfere with the State control of the use of water in any of said States, but present users of water in any nonapproving State shall not be affected by the requirements of

[91]

this paragraph.

(c) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(d) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal,

including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, for the equitable division of the benefits including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before March 4, 1927; and the terms of any such compact concluded between said States and approved and consented to by Congress after said dates; Provided, That in the latter case such compact shall be subject to all contracts—if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

(e) Nothing in this Act shall be deemed to waive any of the rights or powers reserved or granted to the United States by paragraph 7 of section 20 of the Act providing for the admission of Arizona, approved June 20, 1910, and by the 10th paragraph of Article XX of the constitution of Arizona, but the Secretary of the Interior is authorized on behalf of the United States to exercise such of said rights and powers as may be necessary or convenient for the construction and use of the works herein authorized and for carrying out the purposes of this Act."

Mr. Delph Carpenter, a witness from Colorado commented on the proposal for a lower basin compact at pp. 202 and 203 (House Committee Hearings):

"SECTION (d) is proposed by Nevada, which State makes a proposal, I might observe out of consideration for the protection of the three lower States—in the recognition of any compact that may

hereinafter be entered into between them respecting the use and disposition of the Colorado River water allocated by the Colorado River compact. On the phraseology of this amendment we have no comment. That is more a matter for the proponents of the amendment. We do, however, heartily join in the request of Nevada that this or some such provision be put in this bill, because it was the thought of the framers of the Colorado River compact that the water allocated to the lower basin would be ultimately apportioned between the three States of the lower basin by separate subsidiary compacts concluded between them. The suggestion has recently been made that the upper States should have joined in an apportionment of the lower basin water between the lower States. The upper basin States refrained from considering any such proposition because it became very evident at the outset that the problems of the Colorado River, because of the climatology and geography, and all other natural features controlling the water of that river, irrespective of the will of man and the works he might create—all those features divided the river into two natural basins, in which the natural features were to be contrasted rather than compared.

Therefore it would be very presumptuous for the upper States to have stepped in and tried to force a local apportionment between the three lower States. The negotiations now proceeding, or which recently proceeded, between Nevada, Arizona, and California, are in harmony with the intent of the compact and should be encouraged; and anybody who attempts to interfere with those negotiations should be discouraged in such effort."

and at page 204 of the Hearings:

"Mr. Hayden. I desire to inquire as to the desirability of fixing a time limit, such as March 4, 1927, within which the State of Arizona must agree.

Mr. Carpenter. I have been fearful that the section would be misconstrued in the very manner that you suggest. I think it is the intent of the framers of the amendment that the compact when entered into and approved by Congress should be controlling upon the works herein authorized, but they wish to fix a reasonable time within which to arrive at a compact to deal with the waters with perfect freedom, knowing that if the Secretary of the Interior enters into contracts for disposition of water and power to be generated, that any compact between the three States would confront those contracts, and the three lower States might be put in a position of recognizing those contracts irrespective of their effect upon any one State. It was the thought of the framers of the amendment to stay the hand of the Secretary of the Interior in any such contracts for such a time as may be necessary for the three lower States to conclude a compact. That is the reason for inclusion of the date."

SEC. 8 was reported out of committee without further change,

[93]

except the deletion of subsection (b). Section 8 of S. 3331 went through similar changes before the Senate committee and was reported out in the same form.

On the Senate floor, Senators Pittman of Nevada (Feb. 22, 1927) and Ashurst of Arizona (Feb. 25, 1927) each proposed an amendment to Sec. 8 of the committee version of S. 3331 which would give to their two states a share of the energy generated at Boulder Canyon in the event the compact provided for was not entered into by Arizona, California and Nevada. This suggestion was again made in the 70th Congress but was not adopted.

Mr. Swing introduced H. R. 5773 in the 70th Congress. SEC. 8 provided:

"SEC. 8(a) All appropriations of water from the Colorado River, incident to or resulting from the construction, use, and operation of the works herein authorized, shall be made and perfected in and in conformity with the laws of those States which may or shall have approved the Colorado River compact ratified in section 12 of this Act.

(b) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(c) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, for the equitable division of the benefits, including power, arising from the use of water accruing to said States,

[94]

subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by

said States and to which Congress shall give its consent and approval on or before June 1, 1928; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided,* That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

(d) Nothing in this Act shall be deemed to waive any of the rights or powers reserved or granted to the United States by paragraph 7 of section 20 of the Act providing for the admission of Arizona, approved June 20, 1910, and by the tenth paragraph of Article XX of the constitution of Arizona, but the Secretary of the Interior is authorized on behalf of the United States to exercise such of said rights and powers as may be necessary or convenient for the construction and use of the works herein authorized and for carrying out the purposes of this Act."

S. 728 was introduced by Senator Johnson and Sec. 8 was similar except for a reservation of power rights for Arizona and Nevada, which reservation was deleted by the Senate Committee on Irrigation and Reclamation (See S. Rep. No. 592, 70th Congress, 1st Session 3).

Both the House (69 Cong. Rec. 9984) and Senate (S. Rep. No. 592, *supra* at 3) Committees amended Sec. 8(c) to provide for a compact between Arizona, California and Nevada "or any two thereof" and to change the pertinent date from "June 1, 1928" to "January 1, 1929". In addition the Senate deleted Sec. 8(a) in committee (S. Rep. No. 592, *supra* at 3) and Sec. 8(d) (70 Cong. Rec. 586-92), thereby perfecting the present language of Sec. 8 of the Boulder Canyon Project Act.

[95]

PROPOSAL BY CALIFORNIA AND NEVADA FOR A LOWER BASIN COMPACT (DECEMBER, 1925)*

The States of Arizona, California, and Nevada by their proper authorities have appointed representatives for the purpose of negotiating a compact between said States in reference to the use of the waters of the Colorado River, and after negotiations between said respective representatives they have agreed upon the following articles:

ART. I. The purposes of this compact are to provide for the equitable division and apportionment of the use and benefits of the waters of the Colorado River; to establish the relative importance of different beneficial uses of said water; to promote interstate comity; to remove causes of future controversies; to bring about the effectiveness of the Colorado River compact; and to secure the development of the Colorado River.

ART. II. As used in this compact (a) the term "Colorado River" means the main stream of the Colorado River at and below Lee Ferry, together with any and all tributaries within any of the signatory States entering said river below Lee Ferry, except the Gila River and its tributaries, the Williams River and its tributaries, the Little Colorado River and its tributaries, and the Virgin River and its tributaries; the mouth of each said rivers above excepted shall be deemed to be the highest point to which the flood or back waters from the Colorado River may extend, whether caused by artificial means or otherwise.

(b) The term "Colorado River compact" means that certain instrument or compact respecting the Colorado River signed by the commissioners from the States of

* The text is copied from the Hearings before the Senate Committee on Irrigation and Reclamation on S. Res. 320 (68th Congress, 2d Session), pp. 626-28.

Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and approved by Herbert Hoover, as representative of the United States of America, at Santa Fe, N. Mex., November 24, 1922.

(c) The term "operative horsepower" shall be understood to mean the average for the year at the plant switchboard of the daily maximum generated horsepower that is sustained continuously for a period of 90 minutes.

(d) All other terms, words, phrases, or expressions used in this compact shall be understood to be used in the same sense and with the same meaning as used in the Colorado River compact hereinabove defined.

ART. III. (a) The States of California and Nevada hereby release to the State of Arizona any and all claims of every kind or nature to

[96]

the use of the waters of the Gila River, the Williams River, and the Little Colorado River, and all of their respective tributaries, for agricultural and domestic use, and the States of Arizona and California hereby release to the State of Nevada any and all claims of every kind or nature to the use of the waters of the Virgin River and all of its tributaries for agricultural and domestic use, in consideration of which there is hereby allocated from the waters of the Colorado River to the State of California 1,095,000 acre-feet of water per annum in perpetuity for beneficial consumptive use.

(b) There is hereby allocated to the State of Nevada such waters of the Colorado River as can be put to beneficial use within the State not exceeding 300,000 acre-feet of water per annum for beneficial consumptive use in perpetuity.

(c) There is hereby allocated from waters of the Colorado River to the State of Arizona its present perfected

rights to the beneficial consumptive use of 232,000 acre-feet of water per annum in perpetuity.

(d) There is hereby allocated from the waters of the Colorado River to the State of California its present perfected rights, in addition to all other allocations, the beneficial consumptive use of 2,146,600 acre-feet of water per annum in perpetuity.

(e) The use of waters of the Colorado River not otherwise hereinabove expressly allocated is hereby allocated in equal shares to the States of Arizona and California, it being the intention of the signatory States, subject to the terms of the Colorado River compact, to divide for use in said States all of the waters of the Colorado River: *Provided,* That any water allocated by this paragraph (e) but not actually applied to agricultural or domestic use by January 1, 1975, shall thereafter, notwithstanding the foregoing allocation, be subject to appropriation for use in either Arizona or California.

ART. IV. It is the intention of the signatory States to so divide the waters of the Colorado River as to provide for the maximum thereof within said States, and notwithstanding the foregoing allocations no State shall withhold water and no State shall require the delivery of water which can not reasonably and beneficially be applied to agricultural or domestic use within said State.

ART. V. The chief official of each signatory State charged with administration of water rights, together with the Commissioner of Reclamation of the United States, shall cooperate ex officio to promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water from the Colorado River and the interchange of available information on such matters.

ART. VI. That in the event the United States of America shall construct a dam in the main stream of the Colorado

River at or near Boulder Canyon, creating a reservoir of not less than 20,000,000 acre-feet of water, at which hydro-electric power shall be generated by persons or agencies other than the United States of America, then such persons or agencies

[97]

generating such power at said dam shall each pay to the Secretary of the Interior $1. per annum, for each operative horsepower which may be installed by him or for his or its benefits, in addition to any and all other requirements by the United States, which said sums so paid shall be paid by the Secretary of the Interior to the States of Arizona and Nevada in equal parts annually, said payments to be made at such times and under such reasonable regulations and in such installments as the Secretary of the Interior may by general order prescribe. No payment under this article shall be required until power-generating machinery upon which said payment is based shall have been placed in actual operation. The provisions of this article shall not be construed as affecting or intending to affect the taxing power of any of the signatory States, but that in the event any of such persons or agencies generating power at said dam shall pay any tax, assessment, impost, or other liability, demand or charge upon said power or works therefor, under the taxing power of the State or subdivision thereof, then and in that event, for the year immediately following such payment, the amount of money so paid shall be deducted from the amount to be paid to the Secretary of the Interior as hereinabove in this article provided for the benefit of the State to whom such payment was made. The payment of said sums to the said Secretary of the Interior for the benefit of Arizona or Nevada shall be in lieu of all license or other fees now or which may hereafter be required by the said States or either of them for the use, license, or privilege of storing water, or building and operating generating plants, transmission lines or otherwise, in connection with the said dam.

ART. VII. Should any claim or controversy arise between any two or more of the signatory States over the meaning or performance of any of the terms of this compact, then upon the request of the governor of any one or more of the signatory States it shall be the duty of the governors of the signatory States to appoint a commission with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the States affected and by the Congress of the United States.

Nothing herein contained, however, shall prevent the adjustment of any such claims or controversies by any then present method or by direct legislative action of the interested States, with the approval of the Congress of the United States.

ART. VIII. In the event this compact should at any time be terminated by unanimous agreement of the signatory States, all rights established under it shall nevertheless continue unimpaired.

ART. IX. The provisions of this compact have reference to the use of the waters of the Colorado River for agricultural and domestic use only and have no reference to the use of said waters for the generation of electric power except that the use of said waters for the generation of electric power shall forever be and remain subordinate to the use thereof for agricultural and domestic purposes, and except further as hereinbefore expressly provided in Article VI hereof.

ART. X. Jurisdiction in the United States of America to construct the said dam and incidental works referred to in Article VI hereof is

[98]

hereby conceded, and consent is hereby expressly given by the signatory States to said construction and to the use and benefit of any property of the respective signatory

States which may be found necessary or convenient of use by the United States of America for said purpose.

ART. XI. This compact shall become binding and obligatory when the Colorado River compact has become binding and obligatory upon all of the signatory States thereto and when this compact shall have been approved by the legislatures of each of the signatory States hereto and by the Congress of the United States. Notice of the approval of the legislature shall be given by the governors of each of the signatory States to the governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the governors of the signatory States of the approval by the Congress of the United States.

In witness whereof the representatives of the States of Arizona, California, and Nevada have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America, and of which a duly certified copy shall be forwarded to the governor of each of the signatory States.

[99]

ARIZONA COUNTERPROPOSAL

(DECEMBER, 1925)*

The States of Arizona, California, and Nevada have appointed representatives for the purpose of negotiating an agreement among said States in reference to the waters of the Colorado River, who after negotiations have agreed upon the following articles:

ARTICLE I

It is recognized by the parties hereto that the unregulated normal flow of the Colorado River is insufficient to

* The text is copied from Hearings before the Senate Committee on Irrigation and Reclamation on S. Res. 320 (68th Congress, 2d Session), pp. 820-24.

properly irrigate the lands already under cultivation by irrigation from the waters of said river; that the benefits of the storage of the flood waters of said river within the United States belong wholly to the citizens of the respective States; that without disparagement of the treaty making power of the United States Government, the States party hereto and Congress of the United States in consenting to this agreement shall be understood as declaring: That it is their purpose to utilize within the borders of such States all of the waters of the normal flow of the Colorado River heretofore appropriated and put to beneficial use in accordance with the laws of the States in which the same are being put to beneficial use, and all of the flood waters of the Colorado River capable of being utilized within the borders of the United States, for any purpose, by the construction of storage dams within the United States, and particularly that the Republic of Mexico and the citizens thereof shall take notice that they can not acquire any moral or equitable claim to the waters of the Colorado River temporarily made available for use in said Republic of Mexico by the regulatory effect of any dam or dams constructed in pursuance of this agreement as it is the intention and purpose of the States party hereto and the United States to ultimately utilize all of such waters within their own borders. Any express or implied acknowledgement of rights to the Republic of Mexico to the waters of the Colorado River by any instrument, agreement or compact signed prior to this agreement which is inconsistent with the declarations of this paragraph, if there be any such inconsistent acknowledgement or declaration is hereby withdrawn and shall not be renewed or reasserted without the consent of the States party hereto.

ARTICLE II

The States of Arizona, California, and Nevada hereby agree that the waters of the Colorado River and its tributaries in said States shall be divided, allotted, and appropriated as follows:

[100]

(a) All of the waters of the tributaries of the Colorado River which flow into said river below Lee Ferry, Ariz., are hereby allotted and appropriated exclusively in perpetuity to the States in which such tributaries are located and may be stored in and diverted from said tributaries or the main channel of the Colorado River for use in said States.

(b) There is hereby allotted and appropriated to the State of Nevada for use in said State that portion of the total amount of water of the main Colorado River as measured at Lee Ferry, which can be beneficially used for agricultural and domestic purposes, not exceeding 300,000 acre-feet per annum.

There is hereby allotted and appropriated for agricultural and domestic use to each of the States of Arizona and California from the remainder of the water available as measured at Lee Ferry, one-half of the waters of the Colorado River.

(c) Any dimunition [*sic*] of the amount of water allotted to each State between the point of measurement and the point of delivery, caused by evaporation and seepage in storage or in transit, shall be borne by each State from its original allotment.

(d) The States of Arizona, California, and Nevada hereby agree to limit and control future appropriations and beneficial use of water in said respective States to such an amount and in such manner as will insure that present perfected rights in each State will be fully protected and supplied out of waters hereby allotted to said State.

ARTICLE III

The following rules shall apply to the use and storage of water under this agreement:

(a) The use of water for irrigation and domestic purpose allotted in Article II hereof shall be superior to any

right of storage for power purposes or navigation and any of said States may divert from the river the water allotted to it at any point on the river, provided that if any State shall take any water so allotted to it out of the main channel of the Colorado River at a higher elevation than the highest elevation of the bed of said river in said State, the works constructed for such purpose shall not interfere with a beneficial development in the State entitled to develop such fall of the river and the State or States taking out water at such higher elevation shall fully compensate the other States affected thereby for the loss of power caused thereby to such States.

(b) The prior construction of any dam or reservoir for power purposes shall not give any prior or superior right to such dam or reservoir to the regulation of the flow of the river for the benefit of such dam or reservoir but the rights of all dams and reservoirs constructed under this agreement for power purposes shall be on

[101]

equality regardless of the date of construction thereof subject to the following:

(1) Yearly and seasonal stored water shall be held at as high elevations on the river as possible in order to reduce evaporation losses and provide regulation for power as well as for irrigation, domestic and flood control purposes.

(2) Reregulation storage for seasonal and daily variations in demand shall be located as close to the land to be irrigated as possible and water for irrigation and domestic purposes shall be supplied first from the nearest reservoir above the point of diversion of such waters.

ARTICLE IV

The territory of no State shall be entered upon for the purpose of construction or maintaining works utilizing the

water of the Colorado River except with the consent, and subject to the laws of such State.

ARTICLE V

The necessity for flood protection and development of the Colorado River as herein provided for is hereby recognized and established. All private or public lands in Arizona, California, and Nevada that are necessary for the construction and operation of works for the control and utilization of the Colorado River for flood protection, irrigation and domestic uses of water and the construction of dams for power purposes in pursuance of the provisions of this agreement shall be subject to the right of eminent domain of the State wherein such lands are located unless they have already been put to a more necessary public use.

ARTICLE VI

Each of the States party hereto, and the United States, recognize the acute necessity for flood and drought protection for lands now in cultivation by irrigation from the waters of the Colorado River and hereby pledge their good faith to grant the necessary permits and licenses for such construction, also rights of way to any district or agency that may be created in pursuance of the terms of this agreement for the immediate construction of a reservoir in the main channel of the Colorado River at such point as may be determined upon by the Federal Government, if it be a Government project, or by the majority of the States party to this agreement, if by some other agency. Such permits, licenses, and rights of way shall include those necessary for the construction of the dam and reservoir and appurtenant works including hydro-electric power plants and transmission lines provided, that no dam or other works shall be built in the bed of the Colorado River at any point in the river which when constructed will back up the water of the river so as to limit or interfere with the construction of a dam selected by any of the States for

the diversion of water for irrigation or domestic purposes in that State.

[102]

ARTICLE VII

Any State in which reservoir sites exist in the Colorado River or its tributaries, directly or through any district or agency created in pursuance of and hereafter authorized by the laws of said State, may build dams, hydro-electric power plants and appurtenant works in such State and operate or lease the same. Where the reservoir is situated in two or more States, such dams, power plants and appurtenant works may be built, operated or leased jointly by the two or more States, or by any district or agency that may be created in pursuance of the laws of such States. Such State or States may sell or lease the power produced by such dams or power plants, and may impose taxation on such dams, power plants, transmission lines, and other property incident thereto, and may collect royalties on the power produced by such dams or power plants or any of them or impose a tax on such power or provide for both such tax and royalties on such power. Where development works are constructed in two or more States, the entire hydroelectric plant, including dams, reservoirs, power houses and appurtenant works shall be considered a unity in all matters relating to the financing of construction, the operation, lease, collection of royalties, and taxation, regardless of the location of the power plants with reference to State boundaries. The cost of the construction of all such development works shall be borne by the respective States, districts, or agencies created in pursuance of the laws of such States, and all power and revenue from the sale or lease of power, or royalties on the same, or taxation of such power or works, shall be divided among the States in direct proportion to the present amount of fall which the

river makes in each State between the dam and the elevation of the bed of the stream reached by the back water when the reservoir is filled. Where the river forms the boundary between two States, each State shall be allotted one-half of the fall which occurs in the present river bed on such joint boundary for the purpose of computing the relative proportions allotted to each State.

ARTICLE VIII

The use of power developed by such dams and works shall never vest in perpetuity in any private person or corporation, but the States and citizens of States in which such power is developed shall have preferred rights to its use whenever the need for it may arise: *Provided,* That leases for the use of power for terms not exceeding 50 years may be made by any such State or States or any district or agency hereafter created in pursuance of law when approved in such manner as may be provided by the laws of such State or States in which the power sites are situated: *Provided further,* That any State party hereto shall have the right to grant in perpetuity to any political subdivision or municipality of such state the share of the power to which such state is entitled under the provisions of Article II hereof.

ARTICLE IX

In the construction and operation of all dams and power

plants for the utilization of the waters of the Colorado River, undertaken in pursuance of the terms of this agreement the following rules shall apply:

Where such dams and power plants are located wholly in one State, the laws of that State shall govern such construction and operation. Where such dams and power plants are located in more than one State the States affected

shall agree upon the plans and rules and regulations for such construction and operation, and upon the agency to be adopted for such joint construction and operation, *provided:* That in the event two States are affected and they shall be unable to agree upon any such matter each of said States shall appoint a competent person as arbitrator and the two arbitrators so appointed shall agree upon a third arbitrator and the three arbitrators so appointed shall determine all such matters not agreed upon by said States.

ARTICLE X

Whenever the construction of a reservoir in two or more States shall be determined upon, the States in which the same is situated shall agree upon the royalties and taxes to be collected on the power to be produced by such reservoir and the works connected therewith and make any agreement that may be necessary to the taxation of such reservoir and works, provided said States shall be unable to agree or it shall be found impracticable to carry out a satisfactory agreement because of restrictions in the constitutions of said States or any of them, said States shall have allotted to them for their several use, benefit, and disposition their proportionate share (as determined by Article VII) of the power produced by such reservoir and works.

ARTICLE XI

In the event the United States shall undertake the construction, financing, and operation of any development on the Colorado River for flood control, irrigation, or power purposes, and requires the repayment of funds advanced for such purposes, such repayment to the Government shall be made in accordance with the reclamation act and amendments thereto. Each State shall assume an obligation in proportion to the allotment of water and power as provided in this agreement, and assure the Government the repay-

ment of all construction costs together with any interest charged for the full amount so advanced.

The allocation of water and power as in this agreement provided shall inure to the benefit of the States party hereto. Operation and administration of the same shall be under such State agencies as are created in accordance with the irrigation laws of the respective States. After all obligations to the Government have been met, the entire benefits shall become the property of the States interested, as provided in Article VII of this agreement. The contract with the United States to construct works in the States shall provide for dams, power plants, irrigation works, canals, and pumping plants which will enable each of the respective States to irrigate in each State an amount of land proportionately equal to the allotment

[104]

of water of such State. Any irrigation development where there is a cost for pumping shall be the beneficiary of the revenues derived from the sale of any portion of the power which is allotted to the respective States. Contracts for the sale of power shall be made agreeable to the respective States within which the power is developed.

ARTICLE XII

This agreement shall not become effective until it is approved by the Legislatures and Governors of the States of Arizona, California, and Nevada and by the Congress of the United States.

Submitted by the Arizona committee.

[105]

RECOMMENDATIONS OF GOVERNORS' CONFERENCE (1927)*

The governors of the States of the upper division of the Colorado River System suggest the following as a fair apportionment of water between the states of the lower division subject and subordinate to the provisions of the Colorado River Compact in so far as such provisions affect the rights of the upper basin states:

1. Of the average annual delivery of water to be provided by the states of the upper division at Lees Ferry, under the terms of the Colorado River Compact

(a) To the State of Nevada, 300,000 acre-feet.

(b) To the State of Arizona 3,000,000 acre-feet.

(c) To the State of California, 4,200,000 acre-feet.

2. To Arizona, in addition to water apportioned in subdivision (b), 1,000,000 acre-feet of water to be supplied from the tributaries of the Colorado River flowing in said State, and to be diverted from said tributaries before the same empty into the main stream; said 1,000,000 acre-feet shall not be subject to diminution by reason of any treaty with the United States of Mexico, except in such proportion as the said 1,000,000 acre-feet shall bear to the entire apportionment in 1 and 2 of 8,500,000 acre-feet.

3. As to all waters of the tributaries of the Colorado River emptying into the river below Lees Ferry, not apportioned in paragraph 2, each of the States of the lower basin shall have the exclusive beneficial consumptive use of such tributaries within its boundaries before the same empty

* Text copied from Wilbur & Ely, Hoover Dam Documents 38 (2d Ed. 1948). See also 70 Cong. Rec. 172 (1928).

into the main stream, provided the apportionment of the waters of such tributaries flowing in more than one state shall be left to adjudication or apportionment between said states in such manner as may be determined upon by the states affected thereby.

4. The several foregoing apportionments to include all waters necessary for the supply of any rights that now exist, including water for Indian lands for each of said states.

5. Arizona and California each may divert and use one-half of the unapportioned water of the main Colorado River flowing below Lees Ferry, subject to further equitable apportionment between the said states after the year 1963, and on this specific condition, that the use of said waters between the states of the lower basin shall be without prejudice to the rights of the States of the upper basin to further apportionment of water, as provided by the Colorado River Compact.