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COLORADO RIVER—
BOULDER CANON DAM BILL

Statement of reasons for attitude of Upper Colorado River States, before the House Committee on Irrigation and Reclamation.

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STATEMENT

for

Upper Colorado River States

Regarding

Bill for Boulder Canon Dam
(Swing-Johnson Bill)

Before

Committee on Irrigation and Reclamation

of the

House of Representatives,

Washington, D. C.

By

DELPH E. CARPENTER,

Interstate Rivers Commissioner
for Colorado.

(1926)

The reasons for attitude of the Upper Colorado River States (Colorado, New Mexico, Utah and Wyoming) toward the Boulder Canon Dam Bill, now pending before the Congress, are stated by Delph E. Carpenter, Interstate Rivers Commissioner for the State of Colorado, in the record of his recent testimony before the Committee on Irrigation and Reclamation, House of Representatives, as follows:

The attitude of the upper states and the reasons therefor, should be clearly understood. The facts should be honestly considered and no injustice permitted. Neither should there be any false interpretation of their attitude.

A few details of the history causing the present demand for adequate protection will be found in testimony before the Senate Committee on Irrigation and Reclamation (S. Res. 320, 68th Cong., 2d Sess., Colo. River Basin, Dec. 15,-25, Part 6, pp. 655 etc.), in hearings held in re the companion bill to that now under consideration by this committee.

The Colorado River Compact was conceived and concluded for the purpose of preserving the autonomy of the states, of defining the respective jurisdictions of the states and of the United States and of assuring the peace and future prosperity of an immense part of our national territory. With it there will be no overriding of state authority by national agencies. Otherwise, interstate and state-national conflict, strife, rivalry and interminable litigation will be inevitable.

The bill under consideration is not proposed by the upper states. Their representatives had no part in framing the measure or pressing it to the attention of Congress. It had its origin with California representatives and is predicated upon the necessity of immediate action for the protection of the Imperial Valley, California, and of the reclamation project near Yuma, Arizona, without awaiting ratification of the Colorado River compact by Arizona.

The upper states have insisted that an interstate compact, approved by the seven Colorado River states and by Congress, be adopted as a prerequisite to any further major construction either in the upper basin or the lower basin of the Colorado River drainage, as a protection against a repetition of long years of unfortunate bureaucratic oppression and interstate strife aggravated and encouraged by governmental agencies acting through individuals inspired by ambition to substitute federal control for state authority over a subject matter properly within the jurisdiction of the states. But in view of the physical peril threatening the lower river country, we do not object to the present line of procedure if adequate measures are taken to protect our interests by ratification of the Colorado River Compact by the State of California and the United States, prior to any overt act upon which adverse claims might later be predicated. We take this attitude from a humanitarian standpoint and not because we believe it to be the best method or because we approve of the unfortunate attitude taken by California.

The upper basin states are the principal source of the waters of the Colorado River. They are arid. Without water they cannot exist. The first use of the water of the streams rising and flowing within their territory is necessary not only for the preservation of present conditions but for the assurance and protection of future development of their territory, growth of their cities and institutions, sustenance of their people and the promotion of their general welfare.

We understand the rights of the states of the upper basin, as states, in all respects to be equal to the rights and powers of the original thirteen states and all other states which have been admitted to the Union since the adoption of the Constitution. The states of the arid region are shorn of no power possessed by any of the states of the humid region. Every new state was admitted to the Union upon an exact equality with every other. This equality of power and jurisdiction is the fundamental principle of the union of states constituting our nation and each new state came into being as of the day of the Constitution and its rights and powers relate back to the origin of the Union and not to the day of its admission.

Without water, man cannot exist or states endure. To deprive a new state of its inherent sovereign right to control the uses of this natural element imperative to the existence of the state and to place this control in the hands of national agencies, would be to prevent equality with the original states, which are conceded to possess full power of control of their waters save for regulation of interstate commerce, and would ultimately destroy the autonomy of the new state.

The deliberate and constant pressure of certain enthusiasts for federal usurpation of state powers in the arid states, pressed before the courts and injected into executive orders, has awakened the people of the arid states to the necessity of first protecting their state autonomy before encouraging any further development which may become the basis of additional adverse claims. The states take this attitude in necessary self-defense and in protection of their rights to control and administer that resource necessary to their very existence.

For three-quarters of a century courageous pioneers have been converting the American desert into a fertile empire by applying water to waste places and this, too, long prior to any federal aid or encouragement. The major reclamation of arid lands has been by private and state initiative and expense. The last census shows that more than 93% of the irrigated lands of the West were so reclaimed and that less than 7% of these lands are under national reclamation projects.

Long prior to any action by Congress, each arid state had created its own system of state (or territorial) control of diversion, use and distribution of water. Each state had, by constitutional provisions, by progressive legislation and by decisions of its courts, built up a system of local law, which was and is the basis of local rights, by which the state has permitted its citizens to use the property of the state (the waters of its streams) and has kept constant and hourly supervision and control of the use of this natural resource in order that waste may be prevented and

the maximum public benefit may be obtained. The laws of each state, while partaking of certain similar fundamental principles, have been moulded to fit local needs and conditions. These laws differ according to the natural conditions obtaining in each state due to topography, soil, climate, geographical location and other unalterable natural phases controlling the best use of water and essential to obtaining the maximum benefit of the state resource. Throughout the period of the evolution of state water law, the primary element of maximum benefits for the greatest public welfare has been the underlying principle and the United States fostered and encouraged this development of local law. These principles still obtain and the state machinery still progresses toward greater perfection, except where interfered with and overridden by federal courts and executive agencies since the enactment of the National Reclamation Act in the year 1902.

In each of the arid states the waters of the state are recognized to be its property, subject only to the rights of neighboring states, in the waters of interstate streams, as defined by interstate compacts or by the decisions of the United States Supreme Court between litigant states. The rights of the appropriator within each state are mere rights to the use of the property of the state subject always to the sovereign will and to the exercise of eminent domain in adapting the use of the resource to state progress.

The water laws of each state are rules of state administration of the use of a natural resource imperative to state existence. The usu-

fructory right of citizens (appropriators), *inter sese,* are thus fixed and determined, subject always to the superior right of the state to regulate, control, readjust, take by eminent domain and otherwise provide for the use of the precious element according to its will.

The National Reclamation Act was enacted for federal aid of state development under state law. This is conclusively evidenced by the reports of the National Irrigation Congress, the institution which promoted the legislation, by the Congressional Record and by the terms of the act. Before and at the time of its enactment it was expressly represented and agreed that there would never be national interference with state title and control of waters. Colorado, New Mexico, Utah and Wyoming (the upper states of the Colorado River basin) promoted the legislation. The Congressman from Wyoming fathered the act. At a critical period of its consideration before Congress it was charged that the Act would lead to the creation of a great federal bureau which would gradually usurp and override the powers and jurisdiction of the states, would wrest from the states the control of the uses of water imperative to state existence and would destroy the state administrative systems. In answer to the charge so made Congressmen from the arid States guaranteed that such a condition would never exist; that the states would be protected in their autonomy and that the Federal Government would never seek to override state jurisdiction and control of water supplies (See Cong. Rec., Vol. 35, Part 7, pp. 6679-80). Congress passed the National Reclamation Act on faith of this pledge.

Federal endorsement of reclamation gave such an impetus to construction by private enterprise that such development far exceeded the acreage in federal reclamation projects. This is well illustrated by the statement that a single individual (D. A. Camfield) was instrumental in bringing more acres under reclamation, from 1902 to 1912, than did the Reclamation Service. As a result we find that, in 1920, less than 7% of the irrigated lands of the West was served by federal projects. However, this fact has not deterred those in charge of legal affairs of the Reclamation Service from pressing unfortunate claims.

The pledge of preservation of state autonomy in reclamation matters was made by the representatives of the arid states in good faith. Congress accepted that pledge. Subsequent to 1902, development by private and state initiative, proceeded upon faith of this guaranty. The breach of this pledge has been the root of great evil. It has eaten its way into the very heart of western institutions and has gradually undermined, and is now, at this very hour, tearing down the authority of the states and seeking to place control of water supplies in the keeping of appointees of distant federal courts or of persons responsive only to federal authority and absolutely indifferent to and wholly removed from state laws and contrary to the decision of the Supreme Court (Kansas v. Colorado, 206 U. S. 46).

This unfortunate condition has developed along two more or less interlocking lines: (1) Executive orders of federal officials and, (2) Pressing of adverse legal theories and claims by the Depart-

ment of Justice through its representatives having charge of federal reclamation matters.

(1) Executive interference took the form of illegal orders of the Secretary of the Interior and other executive branches, refusing to grant rights of way for private projects over public lands (under the Act of March 3, 1891, etc.), upon the theory of preventing private development in headwater states within the drainage basins of rivers where federal projects were contemplated or under construction. An embargo of this character was placed against private development in Colorado and New Mexico at all points in the basin of the Rio Grande above Elephant Butte Reservoir. Under these orders development initiated subsequent to 1904, was prevented on the upper Rio Grande in those states as completely as though the region had been invaded and held by an army of occupation. Justification was sought by excuses of complying with an international obligation with Mexico wherein the United States had agreed to deliver 60,000 acre feet of water per annum out of more than a million acre feet annually available. The real purpose was to prevent any construction on the headwaters of the stream while encouraging that construction along the lower river through which a monopolistic claim could later be asserted. This embargo was maintained in the face of repeated and forceful remonstrances, protests, legislative resolutions and speeches before Congress. Private capital ready, willing and able to bring about that condition of headwater control of the river essential to the very protection of the Elephant Butte Reservoir was refused opportunity of construction until the year 1925 when the embargo

order was annulled by the Secretary of the Interior in accordance with a lengthy opinion in which it is found that such embargo orders were and are illegal. But, notwithstanding their illegality, the states of Colorado and New Mexico were powerless to cause the removal and Congress refused to give permission to those states or their citizens to test the legality of such orders before the courts, thereby resulting in a reign of oppression for a quarter of a century.

A similar experience occurred on the North Platte though here no international treaty afforded excuse or justification for the illegal acts. The North Platte Project was initiated soon after the enactment of the Reclamation Act. Its principal unit is the Pathfinder Reservoir. The reservoir is located and the canals head in Wyoming. Upon initiation of the project the Interior Department prevented any further construction of the irrigation works upon the North Platte and tributaries in North Park, Colorado, and in the State of Wyoming at points above the Pathfinder Reservoir, again completely overriding local development at the headwaters and substituting federal control for local jurisdiction. This embargo has never been formally lifted and, although not recognized by the Secretary of the Interior, may still be enforced by his successor.

These embargoes affected large areas, literally crying with need for development, and with incidental benefits to federal reclamation projects through headwater regulation of river flow in Colorado, New Mexico and Wyoming, and, although illegal, were rigidly enforced.

Citizens of the states, ready, willing and able to build irrigation works were refused the privilege of crossing or occupying a few tracts of federal lands necessary to be crossed or occupied in building the projects. Their importunities were ignored. Employees of federal bureaus defiantly laughed in the presence of chief executives, representatives and senators of the states. Individuals were threatened with suits if they proceeded to cross public lands without federal authority. But development was proceeding along the lower reaches of these two rivers upon which would later be founded claims adverse to the regions where the rivers have their origin. The final effect of this unfortunate policy has been to discourage the investment of private capital in irrigation works and to divert investment into other channels.

(2) The pressing of legal theories adverse to state jurisdiction and contrary to the express assurances given by the proponents of the National Reclamation Act, by representatives of the Department of Justice having charge of legal matters for the Reclamation Service, has occurred in numerous instances. A few examples will suffice.

The case of Kansas v. Colorado was pending before the Supreme Court at the time of the enactment of the National Reclamation Act. Almost immediately thereafter the United States intervened in the case urging that, by the enactment of the measure, Congress had adopted a policy of national control and supervision over interstate streams, which was to supersede state control, upon a rule of priority of appropriation regardless of state lines. The Supreme Court in its opinion

repudiated the theory advanced by the Attorney General, and held that the states and not the United States had jurisdiction in such matters; that each state might determine its own laws and rules for the acquisition of titles to and administration of the uses of its waters and that the United States could no more interfere with such matters in the rivers of the arid west than it could in any of the original thirteen states (Kansas v. Colorado, 206 U. S. 46). The decision of the Supreme Court was in complete harmony with the assurances made by the proponents of the National Reclamation Act in the debates before Congress at the time of its enactment. But the ambitious men in charge of the Reclamation Service were not content to follow the decision of the court.

The Reclamation Service surveyed and decided to build the Grand Valley project, to divert and apply waters of the Colorado River near Grand Junction, Colorado. The Colorado courts have a complete code for judicial determination of the relative rights of appropriators and water users within the state. A proceeding under this act was instituted by the water users in the water district in which would occur the diversion by the proposed Grand Valley Canal. Government counsel appeared before the State Court and insisted that the proposed project would occupy a preferred position compared with other appropriators; that the United States and not the states is the source of title to all water rights; that by the enactment of the National Reclamation Act Congress had, by implication, set apart and dedicated all of the then unappropriated waters of western rivers for the primary purpose of ultimate diversion by canals

to be built under the National Reclamation Act and that all rights of other appropriators and users must be subordinate to the preferred right of the Government to divert as much water as it might see fit under date of the approval of the National Reclamation Act. Government counsel were unsuccessful in this litigation and thereupon became incensed and declared without cause that they could not obtain "justice" before state courts although they were afforded the same consideration as other appropriators whose rights were determined by the decree entered in that case.

Following the rejection of the legal theories advanced by the Department of Justice in the Kansas-Colorado and Grand Junction cases counsel for the Reclamation Service advocated the theory that the waters of the non-navigable streams of the West always have been and still are the property of the United States (not of the states) subject to disposition by Congress and not by the states; that, owning the water, the United States may do with its property as it may see fit regardless of the will of the states and that the disposition of all unappropriated waters of the West is in Congress and wholly removed from state control. This argument was frequently presented before various Federal Courts throughout the West and repeatedly rejected (See Bergman v. Kearney, 241 Fed. 884, 892), but notwithstanding these decisions, the claim was presented and twice argued by the Solicitor General before the United States Supreme Court in the case of Wyoming v. Colorado. The court declared consideration of the theory unnecessary. But counsel for the Department of the Interior still urge and are seeking to

apply the theory, because, they say, the Solicitor General so argued and they must follow that theory.

To the theory last mentioned has more recently been added the theory that not only are the waters of the western streams the property of the United States and wholly removed from state control and subject to the will of Congress, but that the federal courts have the right to oust all state authorities from the administration of appropriations (both intrastate and interstate) upon whole river systems, by taking jurisdiction of the adjudication of priorities between appropriators, wherever located upon the stream, entering decrees of their own, regardless of decrees by state courts dealing with the same subject matter, and thereafter perpetually to enforce the federal court decrees by bailiffs, appointed by the federal courts, who would take charge of the administration of all diversions from the river and enforce the federal court decrees, regardless of state court decrees, state laws and the state officials authorized by state law to administer the waters of the streams under state authority.

This unfortunate plan of bringing about federal usurpation of state jurisdiction has not only been seriously pressed to the attention of several federal courts throughout the West but is now being set in motion by the Federal District Court at Reno, Nevada, on the Truckee River, and is being urged wherever convenient opportunity permits before the federal courts of states of the West, with the knowledge of the Attorney General, and, notwithstanding recent importunities by the Attor-

neys General of four of the western states, no action has been taken to correct this abuse, which, if allowed to continue, will not only set into confusion the administration of western rivers, but will result in a direct and complete usurpation of state powers and the removal of all jurisdiction over water right matters from state authority into the keeping of federal courts of other states than those in which the diversions occur, for example, the administration of Wyoming appropriations by the Federal District Court of Omaha, Nebraska. Under this theory the state of origin of a river would be helpless to provide for the changing necessities of its people, through the exercise of eminent domain, for the reason that the right of some lower appropriator in another state would be affected and would be immune from process of eminent domain in the state where the necessity for change of use occurs. Other evils, too numerous to mention, will flow from an enforcement of this unrighteous doctrine, and in the end, it is safe to say that the states would find themselves powerless in the handling of the waters of their own streams, the orders and decrees of their courts to be nugatory and the actions of their state officials of no avail and, probably, in contempt of the orders of a federal court situate in some other state, a forum selected by the legal department having charge of national reclamation affairs.

These attacks upon the jurisdiction of each state of the arid region to the control of that element imperative to the sustenance of its people and the preservation and growth of its institutions and its very existence as a state, are the very root of most of the evils that have developed in con-

nection with national reclamation, are in contravention of the fundamental principles of our government, are contrary to the pledge made by the proponents of the Reclamation Act at the time of its consideration by the Congress, are in defiance of the plain decision of the Supreme Court in Kansas v. Colorado, and are a bold attempt to wrest from the states the control of their own streams and place it in a federal bureau with headquarters at Washington, which, in turn, will administer the streams by means of bailiffs appointed by federal courts or by other federal employees wholly independent of state authority.

With these conditions well known to the people of the states of the upper basin of the Colorado River, employees of the United States Reclamation Service appeared at the various capitals of the states of origin of the waters of the Colorado River and proceeded to make an investigation of Colorado River problems within each of those states without announcing their purposes. Concurrently with these investigations the legal phases of the river were considered by government counsel and the final analysis of all problems was included in a series of typewritten reports bound in four volumes and then and since kept in the confidential files of the Bureau of Reclamation at Washington and Denver. This report became known to several citizens of the upper states. The legal report, upon the relative rights of the states and of the United States to the waters of the river and all of its tributaries, was very startling and fantastic in the plot outlined, the gist of which was and is that thereafter not the states but the United States Reclamation Service was to become and continue

to be the repository of all knowledge on the subject of water supply, reclamation and other like matters in the Colorado River drainage; that the control of the river must ultimately come into the hands of the Reclamation Service and be taken away from the states; that the status of existing vested rights of individual appropriators would have to be worked out by court proceedings in the United States Supreme Court by reason of the fact that states were interested; that to accomplish this a suit should be aggravated between two or more of the states of the basin, whereupon the other states and the United States would intervene and the court would appoint a master; that the master would naturally turn (not to the states) to the Reclamation Service as the only "reliable" source of information; and that, after a long protracted period of court proceedings, a gigantic final decree would be entered adjudicating the thousands of individual rights; that this decree would have to be administered and could not be administered by the states but must be perpetually administered by the Supreme Court; that the Reclamation Service, being the repository of all knowledge and, according to their admission, disinterested, would be the natural bureau to which the Supreme Court would turn and appoint as the perpetual administrator of the enormous court decree, and all subsequent decrees, for the entire basin. (See report W. J. Eggleston, District Counsel U. S. Rec. Service, Vol. 4, Part 19, Typewritten Report.)

This is the report made by the Reclamation Service under appropriations of Congress for a study of the Colorado River problems with the

idea of controlling the floods and saving lower river from inundation. These studies led to the compilation of the publication "Problems of the Imperial Valley and Vicinity" (Sen. Doc. No. 142, 67th Congress, 2nd Session) and brought to the attention of the upper states that not only did the Reclamation Service intend to violate the pledge made to the States at the time of the enactment of the reclamation law and to ignore state law and jurisdiction of other non-navigable streams in the arid west, but intended to supersede all state law and override all state authority in the entire Colorado River Basin.

As already observed, each of the states of the Colorado River Basin has its own complete machinery for initiation and perfection of water rights and the administration, distribution and control of its water supplies, including the inherent authority to condemn such water rights as may be necessary for superior uses in progress with the growth of the state, the increase of her population and the changing necessities of her people. In all those states the waters are declared and recognized to be the property of the state and the citizens are permitted to use the state waters according to state law. This state machinery of administration is efficient. Each state exercises complete jurisdiction over the subject matter, subject only to the rights of adjoining states to equitably participate in the benefits of common streams upon such bases as may be agreed by interstate compacts or by equitable apportionment by the United States Supreme Court.

It was this complete state jurisdiction of the one great resource imperative to the very existence

of each of the states, its people and its institutions, that the United States Reclamation Service proposed to override and destroy, and proposed to substitute bureaucratic machinery, wholly unresponsive to state law, upon the Colorado River and every one of its tributaries.

In the winter of 1917-18 "The Irrigation Age", a severe critic of the policies of usurpation of state policies promoted by the Reclamation Service, published at Chicago, was persuaded to remove to Salt Lake City and there to become the exponent of the plans of the Reclamation Service upon the Colorado River, including the advocacy of an immense monopolistic reservoir upon the lower river (similar in physical and possible effect to the Elephant Butte Reservoir on the Rio Grande and the Pathfinder Reservoir on the North Platte) in harmony with the plans outlined by the Reclamation Service after the legal and engineering investigation above mentioned. This paper was used to promulgate propaganda advocating the monopolistic plan in question and to urge the calling of a meeting to put over the scheme.

A meeting was held at Salt Lake City January 18-21, 1919, and attended by citizens of the Colorado River states. Resolutions prepared by federal representatives were rejected. "The League of the Southwest" was organized for the purpose of promoting the development of the river but the resolutions adopted were not in harmony with the plans outlined in the four volume, confidential report in the archives of the Reclamation Service, in that the resoiutions called for first development at the headwaters, for encouragement of private

and corporate initiative and the use of private funds, for the lifting of all embargoes to the granting of rights of way for irrigation works over public lands, for strengthening of state control and condemned government usurpation of state authority.

Subsequent meetings of similar nature, with similarly disappointing results to the proponents of the federal plan, were held at Los Angeles.

The state representatives stubbornly resisted any further encouragement of federal construction of any project which would tend to increase the desire of the Reclamation Service to further usurp and override state authority or would in any way tend to weaken state jurisdiction or strengthen the grip of that bureau whose principal desire seemed to be to ultimately wrest control over western rivers from the states.

The necessity for an interstate compact on the Colorado River became self-evident. The autonomy of the states must be preserved. While the plan outlined by government counsel would be destructive of that autonomy, an interstate compact, approved by Congress, would avoid the unfortunate situation. The necessity for immediate aid in flood control for the lower river country was pressing. This would require construction of a reservoir so immense that it would create a monopolistic control of the water of the entire river, upon which would later be founded claims more oppressive than those theretofore experienced on the Rio Grande and North Platte, but this unfortunate situation could be avoided by a compact concluded and approved by the states and by the

Congress prior to any construction. The people of the lower river were entitled to aid and, if willing to protect the states of origin of the waters of the river by interstate compact, should be permitted to proceed with their protective measures as soon as a compact could be made effective. The upper states offered this solution. The lower states gladly (then) accepted.

A meeting of the "League of the Southwest" was called at Denver, Colorado, August 25-27, 1920, at which officials of the Reclamation Service and representatives of the Imperial Valley in California and of Arizona pressed the necessity of immediate measures for flood control, with incidental development of power and expansion of irrigation. At this meeting the Director of the Reclamation Service assured the representatives of the seven states that the construction of such reservoirs need in no manner interfere with the future development of the upper reaches of the stream within the states of origin of waters to be impounded by the reservoirs, that there is sufficient water to supply the present and future necessities of all the states whose territory is involved and that all present and future interference with development on or from the upper reaches of the stream should be avoided.

Upon faith of these representations and in response to pleas for flood protection upon the lower river, the following resolution was adopted:

> "*Resolved,* that it is the sense of this conference that the present and future rights of the several States whose territory is in whole or in part included

within the drainage area of the Colorado River, and the rights of the United States, to the use and benefit of the waters of said stream and its tributaries, should be settled and determined by compact or agreement between said States and the United States, with consent of Congress, and that the legislatures of said States be requested to authorize the appointment of a commissioner for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislature of each of said States and the Congress of the United States."

Pursuant to this resolution and in a spirit of desire to protect the lower river territory from destructive floods and to encourage development of lower river projects, without injury to present and future development in the states of the upper basin of the Colorado River drainage, their representatives joined in pressing the proposal for an interstate compact as a necessary prerequisite to authorization of the monopolistic structures proposed for lower river protection. The 1921 sessions of the Legislatures of each of the seven states approved the plan proposed and authorized the appointment of commissioners. The Congress, by act approved April 19, 1921, gave consent that the States might enter into such a compact and directed the President to appoint a representative of the United States to assist in its formulation. With all possible dispatch the commissions of the States and the representatives of the United States proceeded to a consideration of the entire subject

matter and concluded the Colorado River Compact at Santa Fe, New Mexico, November 24, 1922. The 1923 sessions of the Legislatures of all the States, except Arizona, unqualifiedly ratified and approved the compact. The government of Arizona had undergone a political change and the Governor and Legislature deemed it advisable to further consider the interests of Arizona, particularly as related to a division between Arizona, California, and Nevada, of the waters allocated by the compact to the Lower Basin, before approving the compact.

Thus the matter went over until the 1925 session of the state legislatures, but, in the meantime, the applicants for power development in the Colorado River Canon in Arizona, at the "Diamond Creek" site, pressed their claim before the Federal Power Commission to be permitted to proceed with their structure without awaiting action by the State of Arizona upon the compact. While they offered to make their project subject to the compact, they could not so confer complete jurisdiction of the subject matter as to protect the upper states and the application was resisted before the Federal Power Commission by representatives of the states of the upper basin, who demanded that no action be taken by the commission until the compact had been ratified by the State of Arizona.

Soon thereafter, it having come to the knowledge of representatives of the upper states that the policies of the State of Arizona were still undertermined, that powerful influences would be bruoght to bear to press the claim for immediate power development in that state and that there

was a likelihood that no definite action looking to the approval of the compact would be taken by Arizona at the 1925 session of the Legislature, the states of the upper basin came forward with the proposal that they would be willing to abide the outcome of the consideration of the Colorado River Compact by the Arizona legislature, it having become apparent that there was no material opposition to the compact as between the upper basin and the lower basin, and that they would be willing to waive the requirements of Article XI of the compact (providing that it should not become effective until all seven states had ratified) and offered to make it effective as between the six ratifying states, upon enactments of concurrent legislation for this purpose by the six ratifying states and upon approval of their action by Congress, thereby to leave the interests of Arizona unaffected and without prejudice to the rights of that state to approve the compact when her relations with California and Nevada had been satisfactorily adjusted.

All four of the upper basin states promptly passed the measures necessary to make this policy immediately effective as did also the Legislature of the State of Nevada but the Legislature of the State of California did not concur and burdened its resolution with a condition that it should not be effective until a reservoir of 20,000,000 acre feet capacity had been authorized for construction by the United States at or below Boulder Canon on the Colorado River.

The present bill was introduced by the representatives in Congress from California for the

purpose of complying with that provision of the California resolution.

The condition attached to the California resolution was not the suggestion of or in harmony with the policies of the upper states. The upper states had not only proposed a Colorado River Compact in the first instance, as a means of opening the door to lower river development, but had promptly proceeded to authorize and conclude such a compact. Upon failure of the State of Arizona to take any action and in order to encourage early construction of flood control reservoirs for the protection of the territory of the lower Colorado River, the upper states agreed to underwrite the hazard of ultimate failure of Arizona to ratify the compact and to make it effective between the six ratifying states, but this California refused to do.

The upper states have done everything within their power to speedily solve the underlying legal problems involved in the construction of flood control works for the lower river territory. They insist that they be afforded the protection of the Colorado River Compact, preferably by all seven states, before any further claims attach to the river.

They are not willing to permit their territory to be burdened and their people to be harrassed with any such conditions as have prevailed upon the Rio Grande, North Platte and other rivers. In necessary self defense they must resist the construction of any reservoir upon the lower river until their rights have been settled by compact. They are willing to permit the California method to obtain, that of authorizing the reservoir as a

condition concurrent with the ratification of the compact, providing the act for that purpose contain those measures necessary to afford this protection. They have come forward with the amendments to the proposed bill for the purpose of seeking to accomplish this protection. While not altogether satisfied with the bill, even with the amendments proposed, by reason of their preference for a seven state compact, they are willing to hazard their future status if these amendments are included in the act.