THE COLORADO RIVER PROBLEM

THE SAN CARLOS PROJECT
AND THE
COLORADO RIVER COMPACT

SPEECHES

OF

HON. CARL HAYDEN

OF ARIZONA

JANUARY 8, 1926, AND
FEBRUARY 5, 1926

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STATEMENT

OF

HON. CARL HAYDEN

A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Friday, February 5, 1926

The Committee on Irrigation and Reclamation of the House of Representatives had under consideration the bill H. R. 6251, by Mr. SWING, to provide for the protection and development of the lower Colorado River Basin.

Mr. HAYDEN. Mr. Chairman, I should like to submit some observations. I first desire to comment upon the report on the Swing bill by the Secretary of the Interior, with particular reference to this sentence, which appears on page 13 of the press release of his letter to you of January 18:

"I suggest for consideration, amendment to the effect that the benefits to be derived from this development shall be available only to those States or the citizens of those States which have ratified the compact."

I have great respect for Secretary Work. It is his ambition to make the Interior Department a great constructive arm of the Government for the development of the West. He is a man of high purpose and splendid courage. In seeking to accomplish good results he expects to be criticized but is not deterred from going ahead by any fear of what may be said about him.

Like every other man who accomplishes anything the Secretary is liable to make mistakes. I have seen him make more than one, but he is brave enough to admit that he may have been wrong and wise enough to rectify the error. Knowing Doctor Work as I do, I am certain that his suggestion that any State which has not ratified the Colorado River compact shall be denied the benefits of the proposed development was not based upon mature consideration. Its position in the text of his letter shows that it was a mere afterthought, or, as the Mexicans say, a "pelon," thrown in for good measure. It is a proposal upon which, after reflection, I am sure he will not insist.

I observe that those who redrafted the Swing bill to conform to the recommendations of the Secretary of the Interior have not accepted that bit of gratuitous advice. The bill, in its latest form, however, is based upon the fallacious idea that Arizona can be absolutely ignored; that my State has no rights which must be recognized.

ARIZONA WILL RESIST COERCION

In all candor I ask each and every one of the gentlemen around this table to take home to himself the situation thus created. Would

any Member of Congress remain content to see such discrimination practiced against his State and its citizens? The people of Arizona have the independence of character possessed by all true Americans. We are your own flesh and blood and will be just as quick to resent any attempt at coercion as you yourselves would be. I have no fear that Congress will adopt such a proposal, but I say to you with earnestness and sincerity that if enacted into law it will be strenuously resisted by the people of Arizona by any and every means.

Either Arizona has rights in and to the Colorado River or she has no rights. The Swing bill is obviously predicated upon the theory that Arizona has none. That may be true, but there are only nine men in the world who have the authority to say that it is true, and they have not spoken. No number of men in the President's Cabinet, or of this committee, or in Congress can be sure that such an assertion is true; nor will Arizona accept it as the truth until the final argument in opposition has been presented to the nine who constitute the court of last resort, the Supreme Court of the United States.

Those who seek delay can find it in such a lawsuit, for they may be sure that the people of Arizona will exhaust every resource before submitting to an act of Congress passed under the assumption that they have no rights which need to be respected.

Mr. SWING. What is it that you suggest be added to this bill?

Mr. HAYDEN. I shall discuss that question at the proper time.

Just as certain as this legislation is enacted there will be an interstate lawsuit. There is no way of escaping that consequence. One does not have to be a very profound student to recognize what will be the principal issues to be determined. The question of the ownership of the bed and bank of the Colorado River at the dam site named in this bill will surely have to be considered by the Supreme Court. I have never laid great stress upon the navigability of the Colorado River, but that stream has been declared to be navigable by an international treaty which is recognized to be the highest kind of law. It is also true that at one time steamboats carrying passengers and freight regularly passed up and down Black Canyon, where this bill says a dam is to be built. Iron rings are there in rocks now which were once used to aid the boats in going up to old Callville.

If the Colorado River is navigable, in the customary sense of that term, then the State of Arizona owns the bed within its boundaries and can not be either lightly or wantonly deprived of all the benefits which inure to the State by reason thereof. Certainly Arizona can not be expected to remain content and silent when it is proposed to build a dam, one-half of which will be located on property belonging to the State, not only without its approval but by openly and completely disregarding its ownership.

STATE JURISDICTION OVER APPROPRIATIONS OF WATER

Then there is another question, which to my mind is of much greater importance, that will also have to be decided by the Supreme Court—the question of the jurisdiction of the States over appropriations of water within their limits. I doubt very much whether Representatives in Congress from the arid West, where the doctrine of riparian rights does not and has never prevailed, will be in any hurry to accept the theory of this bill that Congress can make appropriations of water; that Congress, without the consent of the State, can take water for beneficial use for power or irrigation or other purposes.

Mr. LEATHERWOOD. Without the consent of the State?

Mr. HAYDEN. Not only without the consent of the State but utterly ignoring the State, yet such are the terms of this bill. It represents the first attempt to pass legislation by Congress whereby the Federal Government is assumed to have that power.

Members of Congress from the West have always contended that the United States has no jurisdiction over appropriations of water for irrigation, power, or other uses. There is no law upon the Federal statute books asserting such a right, and Congress has in many instances declined to interfere with the laws of any State relating to the appropriation, use, or distribution of water. Two good examples of an acknowledgment that the States, and the States alone, have control over appropriations of water are to be found in the reclamation act and the Federal water power act.

Jurisdiction over appropriations of the waters of streams is one of the highest attributes of sovereignty in the States of the arid region. Water to them means life. Their entire future is bound up in its conservation and beneficial use. To strip them of their exclusive control over it by a transfer of authority to the Federal Government would leave the States of the West a mere aggregation of dependencies subject to the whims of Congress controlled by a majority membership from States where the value of water for irrigation is little known and slightly appreciated.

AN EVIL PRECEDENT

I am sure that the serious-minded Congressmen from the West will not fail to realize that the passage of a law which denies the right of Arizona to control appropriations of water within her borders would be but the first step toward the nationalization of every stream where the Federal Government may desire to take charge. Self-protection will compel everyone who is jealous of the rights of his State to oppose the adoption of so far-reaching and such an evil precedent. After the Colorado River is nationalized, what river in the West will next be arbitrarily taken over from the States?

Mr. WINTER. Has not the Supreme Court spoken on the question of the right of the States to regulate appropriations of water and the necessity of obtaining the State's consent?

Mr. HAYDEN. That issue has not been definitely determined by the Supreme Court. In the case of Wyoming against Colorado briefs were filed by authority of the Attorney General of the United States admitting that Congress has for many years affirmatively consented to the adoption of the doctrine of appropriation throughout the West, but contending that at any time the Federal Government could resume its rights as a riparian landowner and take charge of the remaining unappropriated waters.

Mr. LEAVITT. Who represented the Department of Justice in that case?

Mr. HAYDEN. There were two briefs filed in Wyoming against Colorado, one by John W. Davis, as Solicitor General, and another by his successor, James M. Beck. In each instance the same contention was made.

Mr. LEATHERWOOD. Is it not true that the United States Supreme Court in both the Colorado against Kansas case and in the Wyoming against Colorado case, while not directly passing upon the question which you have raised did decide both cases by accepting the doctrine of appropriation as existing at that time?

Mr. HAYDEN. That is true. The court in each instance disregarded the representations made by the Department of Justice and left undetermined the question as to what jurisdiction Congress has over unappropriated waters. I can assure you that that is an issue which will have to be determined if the Secretary of the Interior attempts to proceed in accordance with the terms of this bill.

THE COLORADO RIVER COMPACT

I speak as one who has consistently advocated the settlement of all disputes over the waters of the Colorado River by friendly agreements rather than by appeals either to the courts or to Congress. I have done so from the conviction that the best way to avoid the nationalization of the river was to proceed by compacts which acknowledge and confirm to the States their rights over appropriations of water. I have long insisted, and still contend, that the Colorado River compact should be adopted as the best available means of promoting development and preventing litigation between the seven States having an interest in that stream. I have urged its approval many times as an agreement under which the people of Arizona could live and prosper.

My position has always been that whenever the Colorado River compact is approved by my State, Arizona should insist that there be no development on that river in the lower basin until a supplemental compact had been agreed to by the States of Arizona, California, and Nevada. The compact contemplates and provides a means for the negotiation of just such agreements. Arizona stands in even greater need for protection against prior appropriations in California than do the States of the upper basin and has the same reasons for blocking development until her future is provided for and protected.

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The negotiation of such a tri-State agreement is now under way. Commissions have been appointed to arrange for an equitable apportionment of the waters of the Colorado River among the States of the lower basin. Meetings have been held and proposals have been submitted, which are now under consideration. Certainly it is better to try to do justice by mutual accord than to await the long delays which are always incident to interstate lawsuits.

There are those whose impatience prompts them to seek a short cut to accomplish the ends they seek, but where the future welfare of entire Commonwealths are involved, we must allow time for the people concerned to understand the plan proposed and to reach a sane and sensible decision which will be fair to themselves and to their neighbors. It will be impossible to gain any time by waiving aside the necessity for an agreement among the three States of the lower basin or by refusing to acknowledge the rights of any one State of the seven.

INTIMIDATION WILL FAIL

Arizona has a well-established tradition of resistance to coercion. Two Presidents have tried intimidation and both failed. Theodore Roosevelt sought to club us with his big stick into joint statehood with New Mexico, but, powerful and aggressive as he was, his command was vehemently repudiated. President Taft endeavored to tell us what kind of a constitution we should adopt, but all his efforts came to naught. And so it will be with every other outside attempt to interfere with the will of a free and courageous people. The only way to accomplish anything with Arizona is to first acknowledge its equality with every other State in the Colorado River Basin, and, with that as a basis, to deal fairly and justly in a spirit of helpfulness and cooperation. I know that I speak for my people when I say that they will resist compulsion, such as is proposed in this bill, every inch of the way.

Mr. SWING. I am sure that the California representation are willing to go more than half way to bring Arizona into the friendly family of States. We hope to succeed in that. In the meantime the consideration of a very urgent necessity which, as you know, is just as urgent for thousands of people on the Arizona side of the river for flood protection as it is on the California side, can be moving ahead and can be whipped into shape, and in some way, in the event of failure to arrive at an agreement that is fair and just, at least, the homes and lives of those who are not at fault may be protected. I join with you in thinking that an agreement will be reached, but this meeting is for a discussion of the bill. I suggest, Mr. Chairman, that since Doctor Mead is here that we hear him. There are some things that I will desire to say in reply to Mr. HAYDEN'S position when we come to a discussion of the bill.

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Mr. LEAVITT. I would like to ask Mr. HAYDEN a question. Suppose Arizona should never ratify this agreement, would the theory be that the dam never could be built?

Mr. HAYDEN. The chief difficulty in Arizona is that we have been unable to obtain an understanding with California. The Governor of California at first refused to appoint anyone to meet with the representatives from Arizona and Nevada to negotiate a supplemental agreement. That led many people in Arizona to at least temporarily support the position of those who are violently opposing the Colorado River compact. It was perfectly evident that without any previous negotiations with Arizona California hoped to secure the enactment of legislation by Congress in violation of Arizona's rights. It was proposed to take away whatever privileges Arizona might have without even talking with my State about it. I am glad to say that California has changed its attitude. Nevada has always been willing to confer. Commissioners have been appointed from the three States and they are now functioning.

Mr. LEAVITT. Does it look as though an agreement will be reached?

Mr. HAYDEN. The signs are very encouraging. What, then, is the necessity for discussing the question of constructing any dam until ample opportunity has first been given to work out a satisfactory agreement between the three States of the lower basin?

Mr. ARENTZ. If the opposition should be confined to the idea that this dam site was the wrong one, and instead of the Boulder Canyon Dam there should be a series of dams beginning at Lees Ferry and continuing downstream, how could we arrive at any conclusion?

Mr. HAYDEN. I am not one who is cock-sure as to just how the Colorado River should be developed. I do believe that no dam should be built which does not fit within a well-considered plan for the highest and best utilization of that stream for irrigation and power. It has always been my contention that neither the general public nor Congress, speaking for the public, was the most competent authority to designate where the first dam on the Colorado River should be built, as is proposed in this bill. That is an engineering question which should properly be left to those best qualified to pass upon it. Engineers, like all other professional men, are sure to disagree about the details, but they are generally in accord with the idea that a complete development of the Colorado River will require storage above the Grand Canyon, power dams within the canyon region, and reservoirs below to reregulate the water for irrigation. The great majority of people in Arizona ask for nothing more than fair and impartial consideration of the merits of the various dam sites within the States, a consideration which this bill denies.

Mr. LEAVITT. The bill leaves some leeway as to where the dam should be located.

Mr. HAYDEN. No, sir. The bill specifically provides for the construction of a dam at Black Canyon, otherwise known as the lower Boulder Canyon dam site.

Mr. LEATHERWOOD. Mr. HAYDEN has raised a question to which every member of the committee, every western Representative who hails from a Simon Pure appropriation State, should give very careful consideration and study. Without expressing any views whatever with reference to the bill, because I have not had time to form any conclusions as to that, the State of Utah will not surrender, and I think rightly so, to the theory that the State does not control the unappropriated waters within her boundaries. I think it is a matter which we all ought to consider very carefully and seriously.

Mr. SINNOTT. What would be the position of your State, Mr. HAYDEN in case this bill was predicated upon the improvement of navigation?

Mr. HAYDEN. The decisions of the Supreme Court lean much more toward the authority of Congress to do almost as it pleases with a river in improving navigation. Perhaps Arizona would not have as good standing in court under that theory as under the bill here presented.

Mr. SINNOTT. Then to advance a little further, could the bill be predicated honestly upon the improvement of navigation?

Mr. HAYDEN. I think not. There is no navigation of any practical consequence on the Colorado River at this time. There was until the transcontinental railroads were constructed, and then the business did not pay, and the boats ceased to operate.

Mr. SINNOTT. Of course, if it were predicated upon navigation, then the Federal Government would be supreme.

Mr. HAYDEN. My good friend from Oregon knows that the Constitution of the United States gives Congress much greater jurisdiction over river improvements for navigation than for any other purpose.

Mr. ARENTZ. Do you see any reason why Doctor Mead and these other gentlemen can not be heard on this bill at this time?

Mr. HAYDEN. None at all. I shall be glad to extend every courtesy to those who are here to appear before the committee.

Mr. ARENTZ. There is a long distance between the hearing on this bill and the passage of the bill.

Mr. HAYDEN. I am sure that the gentleman from Nevada is correct in that statement, and I did not want to let this opportunity pass without pointing out some of the difficulties which will be encountered.

Mr. WINTER. I want to state just in one sentence the position of Wyoming in this matter on the point raised by Mr. HAYDEN. We are firmly standing on the rights of the State to control the waters within its boundaries and shall insist upon the necessity of securing the consent of the State in any appropriation thereof.

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The San Carlos Project and the Colorado River Compact

SPEECH

OF

HON. CARL HAYDEN

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, January 8, 1926

The House had under consideration the bill (H. R. 6707) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1927, and for other purposes.

The Clerk read as follows:

For construction of the Coolidge Dam across the canyon of the Gila River near San Carlos, Ariz., as authorized by the act of June 7, 1924 (43 Stat. L., pp. 475, 476), and under the terms and conditions of, and reimbursable as provided in, said act, the unexpended balance of the appropriation for this purpose for the fiscal year 1926 is reappropriated and made available for the fiscal year 1927: *Provided,* That no part of the money herein reappropriated shall be available in the fiscal years 1926 or 1927 for relocation of the railroad right of way.

* * * * * * *

Mr. MORROW. Mr. Chairman, I offer an amendment, which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from New Mexico.

The Clerk read as follows:

Amendment offered by Mr. MORROW: Page 27, line 13, beginning with the word "For," strike out the entire paragraph.

Mr. MORROW. Mr. Chairman and gentlemen, I am offering this amendment in order to obtain an explanation as to whether the compact entered into by my State and the upper-basin States is being affected by carrying out this project. You have all heard of the Colorado River compact, where six States have ratified and the State of Arizona has not. The gentleman from Arizona [Mr. HAYDEN] assured me that he can make a proper explanation.

This proposition in the construction of the Coolidge Dam at San Carlos, Ariz., is to impound 1,000,000 acre-feet of water to irrigate 80,000 acres. The impounding of this water a million acre-feet will take the natural flow of the Gila River, which rises in my State, and has a drainage equal, if not greater in my State than it has in the State of Arizona. There is no doubt but that the Pima Indians have certain rights to the water. Water is the vital thing needed in the arid section of our country, and I want to know if my State is losing its water rights. I do not desire to interfere with a project that is authorized and should be carried forward; but if this is for the protection of the Indians and is primarily an Indian project—and the Indian Department says it is for the purpose of giving

to each Indian, 4,000 of them, an irrigated tract of 10 acres each—it means only 40,000 acres.

This extension of 40,000 acres more will require 460,000 acre-feet of water. It is true that in the State of New Mexico at this time we have very little land under irrigation from the waters of the Gila or the San Francisco, a branch of the Gila River; but we have in New Mexico lands that can be irrigated to the extent of 77,000 acres tributary to these rivers.

In the Colorado River compact, which has not yet been ratified by the State of Arizona, Arizona is now securing certain water rights that eventually will affect the upper basin and will affect my State more, perhaps, than any other of the States that are located in the upper basin, for the reason that the Gila River flows into the Colorado below the proposed Boulder Dam. If the gentleman will offer a proper explanation I will not insist on my amendment, but I desire an explanation. My people in the State expect their rights protected and water to use in New Mexico and to the arid region is like the blood in the human body; without it we can not survive, and we can not go ahead, improve, and support a population.

Mr. CRAMTON. If the gentleman will yield, I will say that this project is going forward under a bill which passed the Congress, I think, in June, 1924.

Mr. MORROW. I am aware of that.

Mr. CRAMTON. Which specifically authorized the project. That came from the legislative committee, and I assume that committee gave consideration to questions such as the gentleman suggests, but the questions which the gentleman suggests have never been before our committee.

The area involved, as I understand it, is 80,000 acres, of which 40,000 is Indian land and 40,000 other land, and no doubt the gentleman from Arizona [Mr. HAYDEN], who is on his feet, will be able to give further information to the gentleman from New Mexico.

Mr. MORROW. The impounding of 1,000,000 acre-feet, the usage of 320,000 acre-feet, the natural flow of the stream being 425,000 acre-feet, it will take practically two years and a half to fill the reservoir so that no water would be left for New Mexico to appropriate later on.

Mr. HAYDEN. Mr. Chairman, I rise in opposition to the amendment. I thoroughly sympathize with the desire of the gentleman from New Mexico [Mr. MORROW] for information about this appropriation. I agree that he has a perfect right to make inquiry as to how the construction of the Coolidge Dam might affect future irrigation developments in his State.

Mr. MORROW. And in the upper basin also?

Mr. HAYDEN. In answer to the inquiry of the gentleman with reference to the Colorado River compact, as one who was and is friendly to that agreement I can state that under its terms an additional quantity of water was allotted to the lower basin to compensate for the inclusion of the Gila River in the Colorado River system. The provision of the compact which so provides reads as follows:

ART. 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.

(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.

Mr. COLTON. Will the gentleman yield?

Mr. HAYDEN. I yield to the gentleman from Utah.

Mr. COLTON. Is the gentleman advised as to the other rights which are to be satisfied out of the million acre-feet allotted to the lower basin in excess of the amount allotted to the upper States?

Mr. HAYDEN. I have talked on that point with Mr. Norviel, who represented the State of Arizona as one of the commissioners to negotiate the Colorado River compact. It was his contention, as such commissioner, that the Gila River and its tributaries should not be included in the Colorado River system. Failing in that he finally agreed that an additional million acre-feet be allotted to the lower basin to compensate for the inclusion of the Gila drainage basin in the Colorado River system.

Mr. COLTON. Then the gentleman understands that the water to be impounded by this dam is a part of the million acre-feet allotted by the compact.

Mr. HAYDEN. That would be a logical conclusion, because the million acre-feet were allotted to compensate for the inclusion of the Gila River in the Colorado River system.

Mr. COLTON. I am not questioning the gentleman's statement, but my advice was that there were rights in Mexico and in the Imperial Valley of California that would be taken care of or were to be taken care of out of this million acre-feet.

Mr. HAYDEN. I am interested to know where the gentleman from Utah received that advice, because it is news to me. I have never heard any other explanation than that the additional million acre-feet of water was apportioned to the lower basin for the reason that I have stated.

Mr. COLTON. I will say to the gentleman that I can not tell him exactly, but my understanding was reached from a conversation with a representative from my State on the commission that drew the compact at Santa Fe.

Mr. HAYDEN. I shall now answer another question propounded by the gentleman from New Mexico. His first interest relates to the Colorado River by reason of the fact that the San Juan River drainage area is a part of the upper basin. His second interest is because the Gila River, upon which the Coolidge Dam is located, heads in New Mexico. The Colorado River compact is designed to prevent litigation between the seven interested States and was written primarily to take care of the situation on the main stream. It does not contemplate and could not affect an apportionment of the waters of a tributary like the Gila as between the two States of Arizona and New Mexico. An apportionment of the waters of the Gila River, if undertaken, would have to be cared for by a supplemental agreement between Arizona and New Mexico. No such supplemental compact has been made and, in my judgment, is not necessary, because an apportionment of the waters of the Gila River will soon be accomplished by a suit which was filed

in the Federal court for the District of Arizona on October 3, 1925. I have suggested the settlement of that suit by stipulation, but in any event the Federal judge will determine the quantity of water that may be used from the Gila River in each State.

Mr. CARTER of Oklahoma. Will the gentleman yield?

Mr. HAYDEN. With pleasure.

Mr. CARTER of Oklahoma. What effect would the Coolidge Dam have on the apportionment of the water between the two States and what rights would it give the San Carlos project over and above New Mexico which it does not now have?

Mr. HAYDEN. The construction of the Coolidge Dam has been authorized by Congress, and that fact would have to be recognized in any negotiations which contemplated an apportionment of the waters of the Gila River between the States of Arizona and New Mexico. No such apportionment could give the San Carlos project any better right to the use of water from the Gila River than it now has by reason of the fact that its construction is authorized by law and has been actually undertaken by the Federal Government.

The gentleman from New Mexico has stated that he is informed that it is possible to irrigate 77,000 acres of land in New Mexico with water from the Gila River. I have traveled across the plains in the vicinity of Lordsburg in his State and have no doubt but what such an area of land as he has mentioned might be irrigated if water could be obtained from the Gila River. The word "possible" must be used advisedly, because there is not water enough in that stream to irrigate any such area of land in New Mexico without depriving other lands of water to which they have a vested right, or at least a better right than the lands on the Lordsburg plains.

NEW MEXICO HIGH-LINE CANAL IMPRACTICABLE

In my opinion the proposal to irrigate 77,000 acres of land in New Mexico with water from the Gila River is but another example of the many reclamation schemes that have been conceived in the minds of men who depend upon fancy rather than facts for their inspiration. Probably we shall always have with us those who can not look upon a stretch of level desert land without weeping because it is a desert. They rebel because Divine Providence has so arranged the world that vast areas in Asia, Africa, Australia, and America are condemned forever to remain as deserts. Their real complaint is against the lack of rainfall, which unfortunately nature does not distribute as needed over all parts of the earth.

To make up for the lack of moisture which fails to fall from heaven, some of those who indulge in such dreams engage themselves in the delightful occupation of constructing imaginary canals following the contour lines on topographic maps. Some one has no doubt amused himself by following that pastime in New Mexico without first ascertaining how much water there is in the Gila River and who has the best right to use it.

I earnestly suggest to those who have proposed this plan that they first devote their energies to a study of the adequacy of the water supply, and when they have done so I am

sure they will no longer stand in the way of real and actual development, as is proposed by the construction of the Coolidge Dam. The truth is that there is not water enough in the Gila River to irrigate all the level desert land that could be irrigated if it were a larger stream. The water is not there.

Mr. MORROW. But the gentleman will admit that if the water was impounded, they could utilize it?

Mr. HAYDEN. Not even if the entire flow of the Gila River were impounded. I repeat, that there is more land capable of irrigation from that stream than all the water that ever flows in it any time can supply.

Mr. MORROW. That is absolutely true; but if you build your dam and impound the 1,000,000 acre-feet, there will not be any left for New Mexico.

Mr. HAYDEN. There will be left for the residents of New Mexico the same right to water as there is for the residents in Arizona above the Coolidge Dam. If they now have a vested right to water, it will be recognized by the Federal court, and that is as far as the court can go, because, as I have said, there is not water enough for everybody.

The Pima Indians were the first appropriators of water on the Gila River. They have been deprived of the use of their water by the negligence of the Federal Government in failing to protect them in times past both from diversions above and against a ruination of the watershed by overgrazing. The only way to restore the ancient water supply of the Pima Indians is to create a great reservoir at San Carlos. All the engineers who have examined into the matter agree that San Carlos is the proper place and to build the Coolidge Dam is the proper way to accomplish that result. The primary purpose of the act passed last year by the Congress to continue the construction of the San Carlos project was to take care of the Pima Indians. When 10 acres of irrigated land is provided for every man, woman, and child in that tribe—and there are about 4,000 of them—it is conceded that Congress will have done its full duty.

In order to do that the Coolidge Dam must be built. It is possible to impound at San Carlos about twice the quantity of water necessary for the lands of the Pimas, and the surplus water will be used upon the lands belonging to white settlers, but the Indians must be first provided with water. That is clearly stated in the law. There is only one place to apply the surplus water to be stored at San Carlos, and that is to lands in the vicinity of the Pima Indian Reservation.

Mr. ARENTZ. Do the Pimas have the prior water right?

Mr. HAYDEN. The gentleman from Nevada should know that it is conceded by everybody that the Pima Indians are the prior appropriators, not by years but by centuries.

Mr. ARENTZ. So the white settlers come after the Pimas are served?

Mr. HAYDEN. Certainly.

Mr. ARENTZ. I would like to ask the gentleman another question. The people of Nevada and of California, although I am speaking more particularly of Nevada, are very much interested in the Colorado River. They want to see a dam constructed there soon. Has the gentleman any inside information from the Governor of Arizona as to what he wants or whether he will approve the Colorado River compact?

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Mr. HAYDEN. I am sure that the Governor of Arizona is perfectly competent to speak for himself in that regard.

Mr. ARENTZ. The gentleman does not profess to know, then?

Mr. HAYDEN. I have no inside information at this time.

To return to the question asked by my friend the gentleman from New Mexico [Mr. MORROW], I must say that as a practical proposition it is indulging in an idle hope that any vast area of land can be irrigated in the State of New Mexico as the gentleman has indicated by his figure of 77,000 acres. That can not be done, and it is not right that it should be done, because to do so would deprive the Pima Indians of their water rights.

Mr. MORROW. After you get through with the 40,000 acres and take care of these 4,000 Indians, your white Indians in Arizona are no better than the white Indians up in New Mexico.

Mr. HAYDEN. What the gentleman says is very true; but water will not run uphill, and the physical situation is such that there is only one suitable place to impound the floods of the Gila River. The San Carlos project having been carefully investigated and approved by Congress, this appropriation, which the gentleman's amendment would strike from the bill, is in reality a mere matter of routine which must be performed in order to carry the law into effect.

Mr. MORROW. When the gentleman says water will not run uphill the gentleman means after you have got it downhill and have impounded it. [Laughter.]

Mr. LEATHERWOOD. Will the gentleman yield?

Mr. HAYDEN. I yield to the gentleman from Utah.

Mr. LEATHERWOOD. Do I understand the gentleman to say that the rights of the Pima Indians are vested rights?

Mr. HAYDEN. The law of my State provides that the first in use shall be first in right, and there is no question but that the Pimas were the original appropriators on the Gila River and have a vested right to water.

Mr. LEATHERWOOD. For further information, is it conceded that the right of the Pima Indians is a senior right to any rights of New Mexico upon the river?

Mr. HAYDEN. Or to the right of any white man anywhere on the river above.

Mr. HUDSPETH. Will the gentleman yield?

Mr. HAYDEN. I yield to my friend from Texas.

Mr. HUDSPETH. As I understand, there is a reservation in New Mexico where there are quite a number of Indians. Does the building of this San Carlos Dam take any rights away from those Indians which they had prior to the building of this dam?

Mr. HAYDEN. I know of no such Indian lands in New Mexico, but in no event would it be possible to do that.

The CHAIRMAN. The time of the gentleman from Arizona has expired.

Mr. MORROW. Mr. Chairman, I ask unanimous consent that the gentleman may have two additional minutes. I would like to ask the gentleman a question.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

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Mr. MORROW. The appropriation of this 1,000,000 acre-feet at the Coolidge Dam in no way violates the compact that the six States have signed by taking any water from their proportion of it.

Mr. HAYDEN. No; it can not violate either the letter or the spirit of the Colorado River compact.

Whether 1,000,000 acre-feet or any larger or smaller quantity of water is diverted from the Gila River for beneficial use on lands in Arizona is a matter that does not and can not be of any interest to the States of the Upper Basin. The water of a tributary to the Colorado River if not used in one of those States may be used in another, and, therefore, can become the basis for a controversy. The Gila River, however, empties into the Colorado River at a point where it is impossible to divert the water for use on lands in any other State except California. The Imperial Canal takes water from the Colorado River at Hanlon Heading, which is below the mouth of the Gila, but the diversion at that point is only temporary, since the Imperial irrigation district is obligated to extend its main canal up to the Laguna Dam, which is above the mouth of the Gila River.

Every lawyer will agree that a suit can not be maintained in any court unless an injury or damage, real or prospective, can be shown. Since no other State in the Colorado River Basin can use the water of the Gila River after it empties into the Colorado River, it can never be a matter of concern to them as to what use Arizona may make of that water. Whether there be 1,000,000 acre-feet of water available for storage in the Gila River and its tributaries or three times that amount, the fact remains that, so far as an apportionment of the waters of the Colorado River is concerned, the use of water from the Gila in Arizona is of interest to that State and to that State alone.

Mr. LEATHERWOOD. Was the water of the Gila River taken into consideration in determining the normal flow of the Colorado River at the time the compact was framed?

Mr. HAYDEN. I have heretofore stated that the commissioner from the State of Arizona who assisted in drafting the Colorado River compact advised me that the additional 1,000,000 acre-feet mentioned in the compact was granted to the lower basin to compensate for the inclusion of the Gila River in the Colorado River system, so the question that the gentleman from Utah has asked must have been taken into consideration at that time.

Mr. MORROW. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

There being no objection, the amendment was withdrawn.

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