

MINUTES AND REPORT OF THE7TH MEETING

of the

COLORADO RIVER COMMISSION

The 7th meeting of the Colorado River Commission was held at the Department of Commerce, Washington, D. C., Monday afternoon, January 30, 1922, at 2:30 P. M. There were present at the opening of the meeting:

Herbert Hoover	representing the U. S.. . . .	Chairman
R. E. Caldwell	"	Utah
Stephen B. Davis	"	New Mexico
W. F. McClure	"	California
W. S. Norviel	"	Arizona
James G. Scrugham	"	Nevada
Clarence C. Stetson.....		Executive Secretary

The following arrived shortly after the opening of the meeting:

Frank C. Emerson	representing Wyoming
Delph E. Carpenter	" Colorado

The meeting was called to order by the Chairman at 2:30 P.M.

The Chairman again presented for the further consideration of the members of the Commission the following tables, which had already been discussed at the Sixth Meeting:

- (1) Areas and Water Requirements. Prepared by the Reclamation Service of the U. S. Department of the Interior. See Table A. Minutes of Sixth Meeting.

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- (2) Report of the Committee on Water Requirements on
- (a) Total number new acres claimed irrigable for which water is asked by States in Colorado River Basin to be irrigated from Colorado and Tributaries. See Table B and Revised Table B., Minutes of Sixth Meeting.
  - (b) Cultivated acres of states in Colorado River. See Table C and Revised Table C., Minutes of Sixth Meeting.

### M E E T I N G

The following discussion ensued:

MR. HOOVER: We have had many days discussion in an informal way and I believe the time has come when we should get the various views into record. Do you think it possible for us to secure any agreement on any mutual limitation of acreage - subject to expansion after some term of years as water supply proves itself. Mr. Caldwell, can you modify your demand of one million acres?

MR. CALDWELL: My feelings in that matter, Mr. Chairman, at the present time, are as follows: I do not favor getting together in any conclusive way here on the basis of acres. Personally, I believe that the acres that have been submitted here, called claims in various states, are in excess of what can actually be developed. As for that which is claimed for Utah, under existing circumstances, I would not care to submit that technically as Utah's claim. It is what I think may be possible to irrigate in Utah. I do not want to say that Utah may not at some time be prepared to agree to an allocation of the water of the river on the basis of irrigable acres that each State may have.

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MR. HOOVER: Therefore, you do not consider it possible to get any agreement upon an acreage basis at the present time?

MR. CALDWELL: As far as I'm concerned, it might be taken as a suggestive matter. I understand that we might consider getting together on the basis of the Reclamation figures as to the acreage in the various States. I think, for a matter to consider, it should be submitted to the Commission and not to conclude at this time on a working basis. Nothing that I have said is to be taken as any indication that I will for Utah, at any time, accept any acreage limitation, or that I consider it the proper basis on which to allocate the water of the Colorado River.

MR. HOOVER: Could we now specify a specific number of acres that would fall within the scope of the river, on the basis of which computations may be made.

MR. CALDWELL: The estimate of acreage by the Reclamation Service may be somewhere near right and may ultimately be all that any State will wish within 50 years to reclaim. I am not prepared to conclude on that basis.

(Mr. Emerson entered the room at this point and Mr. Hoover explained to him the brief previous discussion.)

MR. CALDWELL: I may explain, if you wish, that if we finally determine to put it on an acreage basis, I think it is my duty as a Commissioner from the State of Utah to determine to my own satisfaction the acreage in our State. Personally, I do not think it should ever be necessary to do it under the circumstances, but it may come to that.

MR. McCLURE: The figures submitted by the Reclamation Service may be substantially correct. Can we from that arrive at statements from which to work?

MR. CALDWELL: I do not know what the statements could be, Mr. McClure.

MR. HOOVER: We were working this morning on the possibility of arriving at a possible maximum acreage for each state for the next twenty years, with a plan of giving additional rights at that time for any new acreage that may come into sight at that time, thus giving any new acreage the priority of the surplus water of the river. The summary of possible acreage of each state as given by the Reclamation Service is shown in Table A, minutes of 6th Meeting. The "claims" entered by the various Commissioners is shown in Table B minutes of 6th Meeting. This latter table is possibly in excess of the total water. The first table should furnish a basis of limitation for a period and give necessary assurances for development: protection to the construction of works; and if after 20 years further acreage was proved, they could be given priorities on the remaining water -- this could cover the next 100 years.

MR. CALDWELL: I think I have understood the situation for quite a while, Mr. Chairman.

MR. HOOVER: I think Mr. Carpenter said the other day that their estimate of over one million eight hundred thousand acres was subject to modification on their part.

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MR. CALDWELL: You previously said, Mr. McClure, that something I said sounded like a stall. I wonder if I understand what you mean?

MR. McCLURE: I mean as far as making progress at this meeting is concerned.

MR. CALDWELL: I do not believe we are going to progress to a real basis at this meeting.

MR. HOOVER: While we wait for Mr. Carpenter, there is one matter that I believe we should give immediate attention. We ought not to let this meeting break up without bringing in a broad visioned constructive plan in general terms so as to advance the whole subject, at the same time not asking anyone to commit himself as to water division. I would like to submit the following:

Whereas, the full utilization of the Colorado River is dependent upon the construction of large control and storage works at some point in the Grand Canyon, and

Whereas, it is vital for flood control and irrigation as to the states below that point,

Whereas, the present situation in the Imperial Valley is one of great jeopardy and urgently demands the construction of these works in protection of life and property,

Whereas, the settlement of the respective water rights of all states in the Basin would be simplified by the construction of such flood control and storage.

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THEREFORE, it is agreed

1. That the construction of such works should be expedited at the earliest possible moment.

2. That in view of the indissolvable problems of irrigation, flood control and power, in which the first two must have entire priority, it is desirable that the construction of said dam itself shall be undertaken by the Federal Government.

3. That in failure to secure early action by the Federal Government in this particular, its construction through private enterprise or action of the states and municipalities, should be investigated to determine if public interest, priority of irrigation and control and distribution of power can be protected under such construction.

MR. McCLURE: I think that is a fine and broad setting of general statements.

MR. HCOVER: Do you think there will be any objection to that?

MR. CALDWELL: As far as I'm concerned, there are several things in there that I would not care to assent to or dissent from at this time. As a basis of something to work on, we should have something of that sort. We might work out of it some basis upon which we can all conclude.

MR. HCOVER: Do you mind stating what the objections are?

MR. CALDWELL: I am very anxious to have work done on the Colorado River at the earliest possible moment. As to the agency that undertakes it I am not thoroughly cognizant why the Government should undertake it and have no argument why it should not.

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I do not know why private interests should be barred from developing the Colorado River. I suggest that you put in there "at some point or points on the Colorado River."

MR. HOOVER: I put in "The Grand Canyon." Is that too narrow?

MR. CALDWELL: Yes.

MR. HOOVER: I would be willing to cut out the whole of the last two paragraphs, and say "The construction of such work should be expedited at the earliest possible moment under such conditions as will give priority to flood control and irrigation over questions of power." Thus removing all of your objections. It does seem to me that we can at least agree upon this obvious national necessity. The proposal will then read as follows:

Whereas, the full utilization of the Colorado River is dependent upon the construction of large control and storage works at some point or points on the Colorado River, and

Whereas, it is vital for flood control and irrigation as to the states below such point or points.

Whereas, the present situation in the Imperial Valley is one of great jeopardy and urgently demands the construction of these works in protection of life and property.

Whereas, the settlement of the respective water rights of all states in the Basin would be simplified by the construction of such flood control and storage.

THEREFORE, it is agreed

W.

1. That the construction of such works should be expedited at the earliest possible moment under such conditions as will give priority to flood control and irrigation over questions of power.

MR. EMERSON: Mr. Chairman, I can say that that is going a little further than we need to go at this time and to me it appears that it is really going too far, if we wish to go through the procedure of a public hearing so that the different parties interested can express themselves, because the deciding upon who shall build that reservoir would be more or less predicted upon the views of the various communities and parties in interest. To my mind this meeting should result, if possible, in a general plan of agreement as to water rights for irrigation. It seems to me that we are all convinced that a great reservoir upon the lower river is necessary. At least I am thoroughly convinced and that will act both as a protection for water rights below and for water rights above. Wyoming is at the head of this thing. The water runs from us to other States. Our position is the only one in which that is true altogether. All that Wyoming wants is this: That if a large reservoir is constructed upon the Colorado River, a priority of right is not obtained by the construction of that reservoir and use of water therefrom that will preclude or interfere with developments in Wyoming as same became economically feasible from time to time. We have got to put a limit on acreage I know absolutely that that was in the mind of Mr. Mondell that we must say or put some limit on acres of land in the use of various

States. In the very wording of the Congressional Act, that inference is carried directly. I will continue to maintain my position that it is going to take a more or less uniform system of analysis, not so fine but what we can obtain same without any great amount of effort, say in the next six months. I would have seconded Mr. McClure's motion this morning if I had thought there was any possibility of passing the necessary approving legislation in the different States, when Colorado, Utah, New Mexico, and Nevada take such exception. So there is no use in passing a motion of that kind. I am convinced, however, that we can arrive at a fair amount of acreage. I want to say that I do not expect one thing to go over that would militate against Wyoming's interest. I feel that we should be able to get together. This Commission is missing a great opportunity if they don't get together but stick out too much on their own particular ideas on this thing: It is going to be a rough guess on acreage, no doubt, but whether we take Mr. Davis or Mr. Norviel's figures, the agreement will result in the same thing. It will be the open door policy. How can we think differently when we are convinced that there is water supply for all. I am firmly of the opinion that it is. Our development in the Upper States, no matter what they may be, will not interfere with the lower States so long as we have a great conservator of water in the form of a reservoir. The prime purpose of this meeting should be confined, if possible, to a basis to work from on an agreement as to the rights of the different States and the protection of these rights. If we find that a reservoir

is necessary, we might say so and go that far. I might say no farther at this time as to the means of building that reservoir. That is a little ahead of us. As far as Wyoming is concerned, I can subscribe to an understanding upon an acreage basis.

MR. HOOVER: Here is a large community in Southern California in great jeopardy. I have to look at this matter from a more national point of view than some of you. This Commission has been set up after great effort and great hopes are centered upon it; that we may reach a solution of these conflicting rights and that we may give stimulus to immediate relief. It would seem a great misfortune if we dissolved the Commission without at least agreeing upon so primary a necessity as a control reservoir. This whole business is utterly fruitless if we cannot agree on a simple statement of an obvious fact. The construction of this work should be expedited at the earliest possible moment under such conditions as will give priority to flood control and irrigation over questions of power and its very construction eases the whole question of water rights.

MR. EMERSON: I may not have made myself clear. If it is the opinion of the different interests here and the different states represented that a reservoir is necessary upon that river to properly protect the water rights above and below, we should say so, and this meeting should at least find a basis to work from in that respect.

MR. HOOVER: Then we cannot come to an agreement unless we agree to the distribution of water rights?

MR. EMERSON: As far as Wyoming is concerned, we want no agreement that we are not entitled to. I would subscribe to no development on the lower river that would not be entirely reasonable for our protection. We have had examples of work going on in the lower river and then holding us up for fifteen years in Wyoming.

MR. HOOVER: You would not agree to this resolution then unless it was accompanied by a final agreement as to distribution of rights?

MR. EMERSON: We are not here to jump in a band-wagon with California. We in turn want the lower river to agree with us that our rights in Wyoming are entirely protected. My figures are very reasonable. If Wyoming is to make any commitment to development on the lower river we want at the same time a reasonable agreement as to the protection of our rights. It is just working the matter both ways.

MR. HOOVER: I agree that Wyoming's demand is reasonable and I do not think your estimate of acreage, checked as it is by the Reclamation Service, will be challenged by the lower States, but I do not see that this implies you cannot agree on a simple statement that a great control reservoir is necessary. I take it that you are not willing to assent to this resolution.

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MR. EMERSON: Not without a reciprocating feature. It looks in my mind that the basis of this Commission in getting these States together was not to expect that States will subscribe to a doctrine that is a benefit to one and not to another.

MR. HOOVER: How about agreeing to an agreement that may carry benefits to one but no injury to another?

MR. EMERSON: I will do damage to another. (Repeats North Platte River example where Wyoming lost 15 years.) We find now that there is enough water in the North Platte River whereby every acre of Wyoming land, susceptible of feasible irrigation, could be reached. Meanwhile we had an embargo on the river. Why should I agree to subscribing to an agreement that would threaten to stop all developments on the Green River? It would be suicide to subscribe to an agreement for the benefit of those States on the Lower River without reciprocating benefits.

MR. HOOVER: Mr. Davis, what have you to say?

MR. DAVIS: I rather prefer to have Mr. Carpenter here before saying what I want to say. My thought is something like this, Mr. Chairman. (Mr. Carpenter entered the meeting.) I think I can make a kind of resume of the situation as it presents itself to me. Now I start as a representative of one of the Upper States with this thought. We are not asking for anything. The lower States of the river as I understand the situation are saying to us that they want us to limit our future use of that water in such a way as not to interfere with them down below. My own situation in New Mexico is this: I have to ask nothing from anybody. My neighbors up North, and South in Arizona, are not in a position and certainly do not desire to do me any injury. We have therefore, nothing to ask from anyone.

We say we think we have such and such irrigable acres in these upper states but we are asked to cut down our ideas. We are to give up the right to irrigate certain acres up there. We get nothing in exchange. I see nothing that The Upper States are going to get out of this agreement except possibly in the way of power development and possible use of power in the dams of the lower River, so that it seems to me the attitude of the lower States ought to be one of extreme liberality towards the upper States, since they are the ones that are asking and we are not asking for anything. There should be unlimited development in the Upper States. As a representative of one of the Upper States I would like to have that very much. I have tried to look at this from the more or less practical viewpoint that we all want development and I think we are all agreed that the first development ought to be on the dams of the lower river. I am perfectly willing to agree to that. We do not want to do a thing that will in any way interfere with that development. I can see how, if we arrive here at an agreement that there would be absolutely unlimited development in the Upper States, we would be setting our names to a piece of paper that would be absolutely worthless, because in my judgment no development could actually ever be worked out on such a plan as that. What I mean is this: Those dams will cost 100 to 150 million dollars. Someone has got to put up that money. I do not care whether it is Congress, the States, the City, or some power company. The first thing that

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that individual wants to know is this: When are we going to get it back? That depends ultimately on the flow of the water in that stream. Mr. McClure says: "I want you to put up one hundred million dollars. There is plenty of water in that stream." Mr. Carpenter here says that it is impossible for the upper States to use the water. This man who is going to put up the money wants something more than that. He does not want to go through an interminable amount of engineering investigations. He wants a record of it. He says, those people up there are making these claims anyway and I am afraid of them. The man that is going to put up this money wants to know it with some definiteness. If we cannot agree on a limitation of acreage on these Upper States we might just as well quit right now. If the lower States were willing to enter into such a compact we would have an instrument that is perfectly worthless as far as we are concerned. The limitations have to be extremely liberal. We want to ascertain whether there can be any agreement between these States as to that limitation. We should not digress in any way until we find out what the situation is. If we can't agree on the limitation, then I think we fail!

MR. HOOVER: Mr. Carpenter has been preparing his proposition of a basis for a compact. Will you let us have your proposal?

MR. CARPENTER: Mr. Chairman, I offer the following suggestion:

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"It is suggested that this Commission proceed to the formulation of a compact upon the following general position:

That the topography and configuration of the mountainous states of origin are such, and the water supply thereof is so abundant, and the areas which may be irrigated and the consumption which may take place therein is so limited by nature, that the states of origin will never be able to beneficially use even an equitable part of the waters rising and flowing within the respective territory of each, and the major portion of such waters will flow from such states irrespective of the uses and development within the states of origin. Therefore, all the high contracting parties may with security agree generally in substance as follows:

That the construction of any and all reservoirs or other works upon the lower river shall in no manner arrest or interfere with the subsequent development of the territory of any of the upper states or the use of the water therein and said works upon the lower river shall not have, assert or claim any prior or preferred right or title to the use of the waters of said stream as against the upper states."

I might state at the outset that the proposition which I shall attempt to present in part and the views which I shall attempt to express, impromptu as they will be and not prepared as I had wished them to be, will deal primarily with this subject from a legal status.

When I shall speak of a State, I wish to be understood as not speaking merely of any individual within that State, but of the State as a sovereignty, including collectively all the individuals and all the property of its citizens as one would speak of a nation. Our Federal Union was founded and has since continued, upon the fundamental principle that every attribute of absolute sovereignty, not by express language or necessary implication, surrendered to the Federal Government by the Constitution, remains in the State. In other words, the States are each still independent and sovereign in all respects, except for those powers surrendered to the central Government -- the United States of America.

All those states of our Federal Union, - Arizona, New Mexico and even Maine, - which have come into the Union after the adoption of the Constitution by the original thirteen, now stand and always have stood upon an exact equality with the original thirteen. No power or attribute of sovereignty retained by the original thirteen is to be denied to any of the newer states, whether that state be Maine, Vermont, Kentucky, or any of the Far Western states.

When I speak of a State, I speak of a State in the definition of one of the original thirteen States. As said in the case of *Coyle vs. Smith*, 121 U.S. 559, 579, the definition of a State of the Union is a definition of any one of the original thirteen.

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I have not addressed myself to that subject with the idea of annoying or irritating. I am moved to<sup>so</sup> speak because this is a compact commission created by seven States for the purpose of proceeding with the future disposition of the waters of the Colorado River, in mass, between the states as sovereignties.

Strange as it may seem to some, under our form of Government, when consent of Congress was given the seven States to enter into an agreement respecting the Colorado River, they were in that respect restored to their full inherent sovereignty as independent states (12 Peters 725). So that, whatever theories some may have or those representing various departments may entertain, as to what the law is or ought to be, I maintain that, in this discussion, we are meeting as representatives of sovereignties, the legal attributes and powers of which are those defined by the Constitution and the construction of that instrument by the Supreme Court of the United States. A discussion of these authorities will be found appended to the official report of my statement of June 4, 1921 made before the House Judiciary Committee in re House Resolution 6821, (serial 6), and need not here be further continued.

The states, except for regulation of interstate commerce and international obligations, have always been declared and construed to have control over the navigable and non-navigable waters within their borders.

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At the outset, it is the physical fact that from 60% to 70% of the waters that pass Yuma, Arizona, originate in the mountains of the State of Colorado. If it were true that the State of Colorado were an independent nation, the State would have the inherent right of absolute dominion over that entire water supply, except as voluntarily limited by agreement or treaty with other nations. Probably no better definition of the right of a nation to the exclusive enjoyment of the waters within its borders, notwithstanding prior appropriations in lower nations, may be found than in Judson Harmon's opinion in "Twenty-one Opinions of the Attorney-General - 274, 280-3." In other words, under the international theory, if it were possible for Colorado to make beneficial use of the waters of that river which rise within her territory and to wholly consume the same, if need be, it could legally deprive the lower river of that water with impunity, except only as to such part thereof as it might voluntarily yield. But fortunately, nature has here decreed that no such condition may ever arise.

In various cases decided by the Supreme Court of the United States it has been laid down as a general rule that while technically the State, (as with a nation), might assert its full right of the necessary use of an interstate stream within its borders to the damage of the lower State, nevertheless there might come a time when the use of all the water by the Upper State might amount to an unreasonable exercise of its sovereignty and thereby become a trespass upon the lower State, and thereby <sup>become</sup> subject to restraint by the Supreme Court.

With more than 60% of the water of this river rising within our territory, (Colorado), we are put into this position: Can we, in fact, use all this water upon our own territory? The answer is negative. The major part will always flow out to other States. It is unnecessary to consider the limits to which that State might go for<sup>or</sup>her to insist that every drop of her territorial water shall be used exclusively within her domain to the possible detriment of other States.

There is a natural apportionment of benefits.

The Upper States or the States of origin have the inherent right to the use of that portion of the water rising and flowing within their territory, necessary for their self-preservation and development, at least to the extent that they shall not unreasonably injure their neighbors below. When I speak of the states of origin, I speak primarily of those states in which the water has its rise. There is an overlapping in a considerable part, between these states. That is, the characteristics of origin, and beneficiaries overlap to some degree. Colorado might be taken as the nearest example of a State of origin, California that of an extremely beneficiary State. Intermediately would be those States which both contribute and receive.

With states of origin, no matter what the cause, if water is compelled to flow down from their mountains and out upon other territory, it is forever lost to them. There can be no recovery.

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If the right to make them yield that flow becomes of such a nature that they cannot avoid it, that right becomes an involuntary extra-territorial servitude upon their domain and amounts to a taking away of their property, insofar as it reaches out and takes from them that part of the natural supplies which rise within their borders. Such servitudes are frowned upon by international or interstate law.

On the other hand, I realize that if the use in the Upper States were said to be wasteful or wanton, it might be said to unjustly interfere with the lower States unless wasteful conditions likewise there obtained upon the Colorado River.

At this point I will mention the case of Kansas versus Colorado. In that case, the United States contended that within the Western States the rule of prior appropriations regardless of State lines governs the division of water under national control. The State of Colorado contended for the rule of absolute dominion and exclusive use of all water within its domain. The State of Kansas contended for the rule of continuous uninterrupted flow. The decision denied the right of the United States to interfere with the distribution of water supply within the States and denied the rule of priority regardless of State lines. It denied the extreme exercise of the right of absolute dominion by Colorado and the claims of Kansas. While it was proven that certain prior irrigation projects had been destroyed in Kansas, the Court held nevertheless that, in view of her necessities, Colorado had not

unreasonably exercised her sovereignty and the Court refused the injunction because Colorado had not exceeded her authority as a State.

In other words, were natural conditions different in the Upper States of the Colorado, we might be called upon to determine what part of the water supply rising in Wyoming, Utah and Colorado they should use and what part should go down the river. Fortunately, notwithstanding the observation made by the Commissioner for New Mexico, we are saved that unfortunate position. I have in my hand a map of the State of Colorado prepared by Engineer Meeker of Colorado after a considerable investigation extending largely over two seasons. The small green areas represent the irrigated lands, the yellow the possibilities, the blue the possible reservoir sites, the dark, of course, the rivers, and the heavy dark line, the Continental Divide. Certain blotches appearing along this line indicate the so-called diversions out of the watershed or wholly consumptive uses as regards the waters of this river.

The deeper color in the brown represents existing inter-watershed diversions. Upon this map will be found the following legend:

Annual stream-flow produced	12,100,000	acre-feet
Annual consumption 850,000 acres	1,100,000	" "
Annual unused flow to Colo. River	11,000,000	" "
Future maximum annual requirements of Colorado Lands,	4,000,000	" "
Ultimate annual surplus available to lower Colorado River,	8,000,000	" "

In other words, of all water rising in that State, we cannot take or use an equitable part. We cannot use the amount of water to which we would be reasonable entitled were the physical conditions different within our territory. The same is true, in a large measure of Wyoming, Utah and New Mexico. In other words, the four

"That the topography and configuration of the mountainous states of origin are such, and the water supply thereof is so abundant, and the areas which may be irrigated and the consumption which may take place therein is so limited by nature, that the states of origin will never be able to beneficially use even an equitable part of the waters rising and flowing within the respective territory of each, and the major portion of such waters will flow from such states of origin for the benefit of the territory of the lower states irrespective of the uses and development within the states of origin."

In view of the fact that no one of the States of origin will ever be able to consume the water within her borders, to now fix any harsher limitation upon her than nature has imposed, is to be looked upon with disfavor. To a state which produces and yields within and from her territory a resource so bounteous that she may not only develop all her own available lands, in course of time, but may also furnish the greater part of the supply with which to develop the lower states and make them prosperous, no other rightful position may be taken than that she be limited only by those bounds which nature has fixed, because the lands which she may reach are so isolated, so cut up by mountains, so scattered and limited in areas, that for her to attempt to fix a safe limitation upon her acreage, she would be compelled to far exceed in her forecast the acreage which will ever be actually reclaimed, in order that she might amply protect herself against future adverse assertions. Her claim would have to be far in excess of anything that has already been considered, in order that sufficient security might be given the future development within her territory, although the amount actually later developed might fall far below any figures already considered. Otherwise, her limitation of area would

be so out of proportion to her water supply that we could expect no other than an unfavorable view by her legislature and ultimate defeat of the present objective. I have, therefore, prepared the suggestion offered at the outset of my remarks. That in the main embodies my idea and I will discuss the subject more fully at a later date.

MR. HOOVER: You seemed also in the early part of your statement to claim complete state's right to every drop of water upon your state; you subsequently admit that this right has been much limited by the Supreme Court decisions. May I get one or two points clear? I take it that you necessarily deny the whole theory of priority of utilization as between states.

MR. CARPENTER: Emphatically.

MR. HOOVER: In this case, of contented complete states rights and discard of priority of utilization, what interests have the states of origin in any dams or works that could be built down below?

MR. CARPENTER: We have no more legal interest in a reservoir in Arizona than they have in a reservoir in Colorado.

MR. HOOVER: I gather then that if there is no established right by priority of utilization as between states they can build all the dams they like in the canyon without interference from you?

MR. CARPENTER: Yes. They, of course, would build these reservoirs below subject to our right of future development above.

MR. HOOVER: Aren't you asking them that they will never raise that right? In other words you are asking that right of priority of utilization should never be brought into action?

MR. CARPENTER: Litigation between States may be easily provoked by a continuation of construction of these gigantic works, especially upon the lower river, with the resultant confusion of titles. The damage to all parties resulting from litigation, extending as it would over a long period of years, would be very detrimental to all the States. Again, if the reservoirs were constructed upon the lower river, we would be confronted with this proposition, that while the Supreme Court of the United States denied the right to a lower State to claim preferred use by prior appropriation, nevertheless since that time the Federal Reclamation Service has assumed, notably on the North Platte River, to exercise almost absolute dominion over the entire territory upon that stream above Pathfinder reservoir, and to effectually prevent further development above that structure in Colorado and Wyoming, to as great a degree as though she had obtained a court injunction. While that illustration is but one that might be cited, the thought was that the Colorado River is still young and in the process of early development, and conflicts should be prevented.

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it is recognized that it requires a general co-ordination and co-operation of all the Western States to bring about the greater development upon this river. The thought is that the Upper States have no disposition to retard the earlier development below, providing they have assurances that after they have co-operated in bringing about that development, they will not be thereafter penalized, as they have been on other rivers. In that respect, it would be a protective clause for us. Unless some such protection clause is adopted, we are put in a position of constant exposure to attacks from below, whether they are justified or not. Most of those inter-state attacks have been prompted by political motives and very unfortunate in their effects upon the States involved.

MR. HOOVER: I was going to ask this. We have the declaration of the Supreme Court requiring an equitable division of the water. This is a distinct limitation of states rights. If we were to find that there was insufficient water in the Colorado River with which to meet the uses of the State of Colorado and all the States below, would not Colorado be limited under the decision of the Supreme Court?

MR. CARPENTER: If it were true that Colorado did in fact intend to utilize and consume that water wholly within her borders, then the Court might say: You must yield some for the lower country. Furthermore, even if by her action she were to consume more than a reasonable portion of her water supply of that river

to the great detriment of lower territory, she might be willing to voluntarily yield or the court might compel her to yield.

But, on the other hand, to say that a lower country, that furnishes no part of the supply and in which no part of the supply has its origin, may come up and compel us to turn down water wherewith to irrigate all her acreage, would be with far less justification than to say that Colorado might wholly consume the stream within her borders. If there must be any yielding, at most it must be all along the line. The greater yielding would naturally fall upon that territory which receives all the benefits and furnishes no part or a smaller part of the resource.

MR. HOOVER: Does not your proposal reach to the end that an equitable division of water is for you to perpetually take all the water you want. I am not disputing the matter; I am merely trying to get the various contentions clear. If we are to get equitable division there are perhaps two bases upon which it could be approached. First on the relativity of the land which should be made use of, and second, the relative percentage of the water. Your latter contention appears to be based on a percentage of water without regard to the question of relativity of land.

MR. CARPENTER: Then my question is narrowed to a greater degree than I intended. I think that the acreage is a factor that might enter into the discussion. But along with the acreage would come other factors. With the factor of acreage would also run the factor of origin which runs through all international law, that the nation of origin has naturally an inherent privilege to benefits that might be denied the lower nation. Acreage and volume

alone would not control. Acreage, volume and other factors and conditions that would have a bearing upon interstate justice should enter into the application of the rule of equitable apportionment. I might say that no two rivers would call for the same treatment. What would be a reasonable exercise in one case might be unreasonable in another. For instance, if one State wantonly destroyed and put her water to useless waste, that might be considered an unreasonable exercise of sovereignty. But to supply the water necessary for her inhabitants is her first right and her first duty as a state. I might say more: the lower state has full notice of the ultimate rights of the upper, and, if enormous diversions were permitted by a state on the lower river, without a due consideration of the conditions that would later obtain in the upper State, that lower river state should not later come in and claim that, because she had built her works, she had thereby put herself in a position to lay hold of the territorial waters of the upper irrespective of the present or future necessities of the upper state and her people.

MR. HOOVER: In other words, she would claim the priority of utilization? Then it comes to this: The Upper States want to be declared immune by the other States from litigation.

MR. CARPENTER: We do not feel, speaking for my own State, that we are asking quite that much. We take this position, as stated in my memorandum, that by reason of the fact that we furnish the

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greater part of the water that flows for the benefit of all of us and can never use even an equitable part of the water within our territory, we are entitled to freedom from attack from below. That has been the assurance thus far given us. I might call the attention of the Commission to the fact that at a recent discussion which took place at Riverside and later at San Diego, California, Director Davis of the Reclamation Service stated it to be substantially his position that he had considered that works to be constructed on the lower river should be constructed upon the principle of non-interference with the Upper Territory and that he would urge that a clause be written in legislation by Congress guaranteeing that construction of lower river works should never interfere with the freedom of subsequent development within the upper states. At the same times and places, the power interests came forward with a similar statement, which I have with me. It was made in writing and handed to me.

READS EXTRACT FROM STATEMENT MADE BY R. H. BALLARD AT HEARING BEFORE SECRETARY FALL, SAN DIEGO, DECEMBER 12, AS FOLLOWS:

"Our investigations indicate, in agreement with those of Director Davis, that there is water enough in the river, if it is properly conserved, to supply all possible demands for irrigation and domestic use and still have an abundance for power, and that there is power enough to meet the need of all the States tributary to the river."

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MR. HOOVER: That statement of Director Davis is based on his conclusions as to the area of irrigable lands. Yet we have before us estimates of the three Upper States which exceed Director Davis' estimate by roughly 3,200,000 acres. I doubt whether he would form that declaration again on the basis of such a claimed acreage as that.

MR. CARPENTER: The Southern California Edison Company representative made this statement:

"Our investigations indicate, in agreement with those of Director Davis, that there is water enough in the river, if it is properly conserved, to supply all possible demands for irrigation and domestic use and still leave an abundance for power, and that there is power enough to meet the need of all the States tributary to the river."

The Southern California Edison Company representative also said:

"We are willing that any license or permit granted us by the United States Government or the States, shall contain a provision that the existence and operation of our power structures in the river at points below the Utah-Arizona line shall not operate to confer any preferred right to the waters of the river as against full potential uses for irrigation and other beneficial purposes in the upper basin. We acquiesce furthermore in principle that the States within which power is developed have first right to its use."

MR. HOOVER: They might give some reconsideration to that statement when they find that the estimates of the Reclamation Service are exceeded by over three million acres---in fact practically doubled.

W.

MR. CARPENTER: Your tendency is to go upon the acreage only and to reason that if the lower States have not enough, the Upper States must yield enough to make up the deficiency.

MR. HOOVER: I think we have Mr. Carpenter's views clearly. In order that we might have some progress, we will now hear Mr. Norviel.

MR. NORVIEL: This is somewhat similar to the second proposition I made, as restated by Mr. Davis.

MR. HOOVER: Before you proceed I would like to get an expression from the other members whether they are prepared to adhere to Mr. Carpenter's view or not?

MR. CARPENTER: I might further state before we get their expression that I am in this position, that I represent a State whose people, by reason of successive defensive litigation of various suits, in none of which the adverse parties have as yet been successful, whose people have become keenly sensitive to not only their rights but some of them entertain views of the most extreme character and are very insistent that those most extreme views be adhered to. I am, therefore, put in this position, of saying frankly to the Commission that anything that is here done will be viewed with an unusual scrutiny and that the hazard of taking any position other than that which will meet with the common approval of the people is liable to ultimately meet in defeat, no matter how hard the rest of us try to prevent it. I do not mean that at all in the nature of a threat. I simply mean

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that those people are keenly sensitive to the fact that this enormous river and all its ramifications shown on this map is a resource rising and flowing within Colorado, which they feel they have a just right to use to the extent of their necessities, knowing as they do the natural conditions that force a limitation upon them that is more effective than all the compacts we could enter into -- that is, the limitations brought by nature herself. Their tendency would be to look with a great deal of suspicion upon any other limitation.

MR. HOOVER: Our one desire is to find something that is just between all. I would like to know what Mr. Norviel's opinion is as to Mr. Carpenter's proposal.

MR. NORVIEL: It is the same proposal that he has made all the way along, that they do not propose to be limited by anything except nature and at the same time they are undertaking to go beyond that. He comes back always to the same point -- we cannot be limited by anything but the natural limitation that the Maker of the World has given us. That is about all I have to say. I do not think my people would agree at least to taking any water out of the basin if we must give up to the full limitations of nature. They certainly would not allow going beyond nature in that part of the country. I hope we can get along without that, but it seems to be insistent.

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MR. HOOVER: What are your views, Mr. McClure?

MR. McCLURE: I must be dull of comprehension, Mr. Chairman, Mr. Carpenter seems to me to take the position that Colorado must be protected to an extent which would make her absolutely safe, regardless of other interests. California stands clearly upon the matter of beneficial use, not that California desires to or would set up a claim which would injure her neighbors. Happily, we are encouraged to believe that there shall be no damage to any State because of as generous use as California may choose to exercise. When I return to California, I dislike very much to have to report that the States have not been able to come to any conclusion among themselves that gives us any clearance. I had hoped that we might take action which would give that clearance, because that is what we need and need as speedily as possible. I am frank to confess that I do not grasp as fully as I wish the exact attitude of Colorado, notwithstanding Mr. Carpenter's statement. I would like to know what character of assurance he would demand from the lower States.

MR. CARPENTER: That the construction of any works shall in no manner interfere with the development of the territory of any of the Upper States, or the use of water therein, and said works shall not have any preferred right of title to the use of water of said stream as against Upper States.

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MR. HOOVER: Mr. Emerson, what would your views be on this proposal?

MR. EMERSON: Why, it would be agreeable to me, as an Upper State, provided the lower States could subscribe to it, but I hope to see a plan evolve that all seven States can subscribe to.

MR. HOOVER: Mr. Scrugham?

MR. SCRUGHAM: The fundamental objection is that projects on the lower river can not be successfully financed unless Mr. Carpenter's proposal is materially modified. If this Commission fails to come to an understanding, it will be a serious reflection upon the personnel of our organization. It will mean the holding up of construction work and serious delay in the financing of future projects. Unless Mr. Carpenter can modify his statements, I do not believe that this Commission can come to any agreement.

MR. CALDWELL: I do not quite take the view of Colonel Scrugham. I believe that if Mr. Carpenter's idea prevails, as I understand it, it would still be possible to finance the Boulder Canyon Dam and the other developments on the river, as is evidenced by the statement that is being submitted by private interests and as evidenced by statement of Director Davis to which I can refer. I feel that Director Davis is willing, notwithstanding the viewpoint of Mr. Carpenter, to recommend that the Government build a Boulder Canyon Dam, so we have a case of private interests and Government interests, each of them willing to go into the development of the Colorado River. Personally, I do not think that the attitude would be a bar to the development of the Colorado River.

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MR. HOOVER: In other words, you think Mr. Carpenter's view ought to be accepted by the other States?

MR. CALDWELL: Mr. Chairman, I have tried to remain open-minded in these matters. I confess very frankly that my leaning is toward the idea advanced by Mr. Carpenter. I do not want to be in the position of throwing the commission into a dead-lock on the proposition at this time. We should search for some common ground that we can get on and have this for a basis. I am not prepared at this time to suggest that ground. Director Davis has made a statement "There is plenty of water for all" and I am sure he never meant to qualify that statement in any way, for instance by saying "I made this statement on the basis of so many acres for Utah, so many for Colorado, etc." I believe he will stay to/<sup>his</sup> statement, unqualifiedly.

MR. CARPENTER: I might say that this whole matter, of course, came rather impromptu. I neglected to state <sup>in my</sup> / earlier statement that while nature has fixed certain barriers in the form of a continental divide down through the territory of Colorado, there are some existing diversions that are wholly consumptive, taking the water through the drainage. We would be perfectly willing to enter into a reasonable limitation upon that wholly consumptive use, not feeling that we should be more penalized than anyone else, so as to keep it more within bounds. I might say, furthermore, that we wish it distinctly understood that our position in this particular case should not constitute a precedent at all on any other drainage in Colorado that might not be directly affected.

MR. HOOVER: Mr. Davis, what are your views?

MR. DAVIS: I think what I said before: -- I am still of the opinion that an agreement of that kind would be futile; nevertheless, such an agreement would amply protect the interests of New Mexico, and if it is satisfactory to the Commissioners of the lower States, it is satisfactory to New Mexico.

MR. McCLURE: May I ask Mr. Carpenter one question? Would you not be willing to take a statement or declaration of this Commission, being expressed at the bottom of your page as you have presented it somewhat in this manner:

"That the construction of one reservoir upon the lower river shall in no manner arrest or interfere with the subsequent development of the territory of any of the upper states or the use of the water therein and said works upon the lower river shall not have, assert or claim any prior or preferred right or title to the use of the waters of said stream as against the upper states."

We are asking that a start may be made in a development which could injure no one.

MR. EMERSON: It could injure someone.

MR. McCLURE: How?

MR. CARPENTER: If you wish to limit yourself to one reservoir, we have no objection. We, with proper protection to us, do not care how many reservoirs you build. We want you to get the maximum benefits from every quarter. I do not mean by my resolution to limit your construction of the lower river. My thought is to give you absolute free unbridled rights, all objections withdrawn on our part, in return for your declaration of non-interference.

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with the development over the next 50 or 100 years of the upper territory. If it is thought wise and more prudent that some kind of limitation be put upon this, not in the short period of 10, 15, or 20 years, but a proper time, the life of states considered, I will be very glad to enter into discussion. My thought is this, to bring about an adjustment in line with that which has heretofore been thought could be obtained, that is to say a full development of the lower river as rapidly as possible with a full declaration of protection against adverse claims on behalf of that construction against the upper states in the years to follow, because we realize that the development on the lower river is imminent and to a degree are willing to forego demands that we might justly make in order to bring that about. When we have thus aided wherever we can to bring that about, our past experience has taught us to bear well in mind that before we enter upon any such an undertaking we must be assured that we will not be penalized. It has been forced upon us by a department of Government naturally administered by human beings. Through errors of judgment on their part, we have been brought into that defensive position.

MR. SCRUGHAM: Would you accept a change in your proposal as follows: "That the construction of any and all reservoirs or other works in any State upon the stream system shall in no manner arrest or interfere with the subsequent development of the territory of any of the other States or the use of the water therein for a period of twenty years. At the expiration of the time as agreed upon, and if the demands for water from the stream system render it necessary

or desirable, then, a definite allocation of water rights may be negotiated."

MR. CARPENTER: I would not care to agree to that for such a short time. Twenty years is a mighty brief span in view of the probabilities of the speed of our development. Those of us in the upper area are firmly convinced that it will occupy practically half of a century.

MR. SCRUGHAM: If the limit is made for fifty years, it would be a serious bar to financing. I even question the wisdom of a twenty year time allowance.

MR. CARPENTER: I will be glad to consider it further but not at this time would I like to render my opinion.

MR. NORVIEL: I have a new proposal as follows:

"It is agreed that no state nor any of the citizens thereof, shall obtain, nor shall any development on Colorado River in any of said states thereby create, a priority of right as to time or quantity of water by virtue of the earlier development and use of the waters of Colorado River as against any other state, or the citizens thereof; and all priorities as between said states, with respect to the use of the waters of Colorado River, are hereby specifically waived.

Provided, however, that each state shall be free to develop by reclamation -- new lands up to the following acreages from Colorado River waters, excepting the Gila River:

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Wyoming	543,000 acres
Colorado	1,018,000 "
Utah	456,000 "
New Mexico	483,000 "
Nevada	82,000 "
Arizona	676,000 "
California	481,000 "

Provided that adequate storage be created at one of the major dam sites in the Grand Canyon -

Provided also that a permanent commission shall be created, which shall, whenever it be shown to the satisfaction of said commission that there are lands within any state, in addition to the areas hereinabove, stated, that may be irrigated from the waters of the Colorado River without detriment to the proper irrigation of other areas hereinabove stated for each state, have power to grant to such state the use of waters of said river for such additional acreage.

MR. DAVIS: I would like to have it distinctly understood that the paper I prepared and submitted is not a proposition. It simply represented an idea that was then in my mind and I am not in the least committed to it and I would like to modify it in one or two respects.

MR. HOOVER: Mr. Norviel's idea here involves a limitation of acreage on some basis; as I assume he does not rigidly adhere to the acreage mentioned. It then becomes a question of a sort of deferred determination of the allocation of the water above a certain maximum upon a basis of actual priority of development.

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MR. CARPENTER: I am willing to agree that every state shall be entitled to 50% of the water in her domain. I am willing to yield that Colorado shall yield water in excess of 50%. The States of Arizona, etc., should be limited to the use of 50% of the water within their territory.

MR. HOOVER: In your preliminary statement you only suggested one-third yourself.

MR. DAVIS: Probably Colorado is the only State that would agree to that.

MR. HOOVER: Mr. Norviel's proposition raises the broad question as to whether or not it is feasible to proceed on some such idea that he has placed before us and try to find some kind of acreage limitation with the door open to a subsequent allocation when need is proved. I would like to find out whether there is any hope of coming to an agreement on that line.

MR. DAVIS: New Mexico agrees to the general plan but not to the acreage allotted to that State in these figures.

MR. HOOVER: How would that strike Wyoming?

MR. EMERSON: I believe I would agree to it in about the same way as I agreed to Mr. Carpenter's proposal. It would be satisfactory on the whole to Wyoming but I would feel the impossibility of getting it by the legislators of some of the states on the basis of the figures suggested. I would concur with Mr. Davis in that regard.

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MR. HOOVER: In other words, you favor the idea, subject to an adjustment of acreage. Mr. McClure, what would be your re-action?

MR. McCLURE: I have put the caption on that sheet tentatively as "Arizona and California." I respond favorably.

MR. HOOVER: Would you go further and respond to it on a basis of further adjustment of the acreage?

MR. McCLURE: I would not at this time say "no."

MR. HOOVER: Mr. Caldwell, is there any possibility of arriving at any plan subject to the adjustment of the acreage?

MR. CALDWELL: I do not look with favor on that at this time. Possibly I may come to it. I think I have made myself clear before on the matter.

MR. HOOVER: If we were able to expand the acreage?

MR. CALDWELL: I am opposed to the whole acreage idea, because I believe it is a harder proposition than it would be to adhere to the water idea.

MR. HOOVER: Mr. Carpenter, would there be any hope of agreeing on this line subject to an adjustment of acreage?

MR. CARPENTER: I have my serious doubts of our legislature looking with favor upon an acreage limitation. Personally, I might entertain more liberal views in that respect than others in my State might. If it be true, however, that we should finally agree upon that, then the acreage here specified must be amplified, because there are two factors left out of these figures (Cites as one example the City of Denver.) The entire water supply for the

City of Denver is included in that figure (1,825,000) The development of small enterprises should be included in those figures. We feel frankly that we are inclined to insist that it be very liberal in view of the fact that we feel that the water supply feature is entitled to consideration from our end of it. Of all the States that furnish much and get little, we are that State. You take our neighboring States -- the consummation of water within their domain is entirely out of proportion to Colorado. I am put to a rather embarrassing position on some of these matters of limitation.

MR. NORWIEL: I do not think the Commissioners ought to take it that this is an ultimate limitation but that it is trying to strike a balance. We have taken Director Davis' figures as the possible acreage irrigable in the States and have not attempted to limit the States, but that when this acreage has been reached, a larger acreage might be allocated. It seems to me that this is something we might agree<sup>all</sup>/on with equanimity.

MR. CARPENTER: I would most certainly object to a condition "Provided that adequate storage be created at one of the major dam sites in the Grand Canyon." If you are going to put that in, it will be hopeless to get approval from my country, unless you put in a provision for construction of dams elsewhere. I think the construction of those lower dams is primarily the concern of the lower area. It is their responsibility and their profit. I mean by that that the benefits to run from their construction should run primarily to the States in which they are located.

There are reservoirs in Colorado and Utah that will have to be constructed ultimately. That is a matter for our territory to bring about because the benefits will run primarily to our country.

MR. NORVIEL: It is not intended, of course, to assume that any other State is particularly interested in this, but as you have expressed yourself that the lower states are practically at their full development, further reclamation development is arrested now.

MR. McCLURE: Do you mean Mr. Carpenter that this will put a stop to construction elsewhere?

MR. CARPENTER: It prevents allocation until that reservoir is constructed.

MR. NORVIEL: We might add without objection a word "may" which would lake the clause read: "Provided that adequate storage may be created at one of the major dam sites in the Grand Canyon."

MR. CARPENTER: Your major dam site -- it would require a year and a half running constantly without any withdrawal to fill that reservoir. Whether there are one or a dozen reservoirs, the effect would be the same.

MR. HOOVER: We revolve round and round this point. Is there interstate priority of utilization or is there not?

MR. CARPENTER: I thought this statement covered that:

"That the construction of any and all reservoirs or other works upon the lower river shall in no manner arrest or interfere with the subsequent development of the territory of any of the upper states or the use of the water therein and said works upon the lower river shall not have, assert or claim any prior or preferred right or title to the use of the waters of said stream as against the upper states."

That is a distinct limitation of the construction of dams below.

MR. HOOVER: In other words, suppose this clause in your suggestion were introduced there with the alteration that "except as above, the acreage which we do not at present possess", then you have no objection?

MR. HOOVER: Before I go on, Colonel Scrugham, have you considered Mr. Norviel's suggestion?

NOTE: (See Page 50)

MR. SCRUGHAM: We are willing to accept it.

MR. NORVIEL: I have added after the word "one" the words "or more" so that the proviso now reads: "Provided that adequate storage may be created at one or more of the major dam sites in the Grand Canyon. I move the adoption, by the Commission, of this proposition.

MR. HOOVER: Does someone second the motion?

MR. McCLURE: I second the motion. (Motion as follows:)

MR. HOOVER: It has been moved and seconded that this proposal as written down by Mr. Norviel should be accepted by the Commission. All those in favor say "aya".

The following answered "Aye";

Mr. McClure  
Mr. Norviel  
Col. Scrugham

Those opposed "No"; The following were opposed:

Mr. Caldwell  
Mr. Carpenter  
Mr. Davis  
Mr. Emerson

THE MOTION IS LOST

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MR. HOOVER: Would this proposal be accepted as a basis of discussion with such altered acreages as may be agreed? The proposition would then read as follows:

It is agreed that no state nor any of the citizens thereof, shall obtain, nor shall any development on Colorado River in any of said states thereby create, a priority of right as to time or quantity of water by virtue of the earlier development and use of the waters of Colorado River as against any other state, or the citizens thereof; and all priorities as between said states, with respect to the use of the waters of Colorado River, are hereby specifically waived.

"Provided, however, that each state shall be free to develop by reclamation--new lands up to the following acreages from Colorado River waters, excepting the Gila River:

Wyoming	acres
Colorado	acres
Utah	acres
New Mexico	acres
Nevada	acres
Arizona	acres
California	acres

"Provided that adequate storage may be created at one or more of the major dam sites in the Grand Canyon-

"Provided also that a permanent commission shall be created, which shall, whenever it be shown to the satisfaction of said commission that there are lands within any state, in addition to the acres hereinbefore stated, that may be irrigated from the

waters of the Colorado River without detriment to the proper irrigation of other areas hereinbefore stated for each state, have power to grant to such state the use of waters of said river for such additional acreage.

MR. DAVIS: Yes.

MR. EMERSON: May I interject again? Here is a matter I have been trying to get before the Commission. I want it to go in as showing a basis that Wyoming thinks will be reasonable to work on.

(Reads following Statement):

January 30, 1922.

First. that the construction of a great reservoir at some point upon the Colorado River below the mouth of the San Juan River is necessary in order to secure proper flood control and to provide adequate storage of water for irrigation and that same should be undertaken with all expedition.

Second. that the provision of such a reservoir should serve to protect water rights and the use of water both present and future above and below such a reservoir, and therefore an agreement should be entered into by and between the seven states represented on this Commission whereby the use of the waters of the Colorado River and its tributaries should be enjoyed by each State without interference from any other state.

Third. that while it is the general opinion that the water supply of the Colorado River is ample and sufficient for all

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practical development out of the river and its tributaries practical considerations of finance and politics make it seem advisable to set a maximum limit of use by each state of the waters of the river and its tributaries, by agreement to extend over a period of years at which time any necessary readjustment may be considered, and that a permanent Commission should be created which shall undertake such re-adjustments at such period of time. That last provision is acceptable to me if there is a continuing Commission. I might say, whereby the need of any State that might find that they could irrigate acreage in excess of that allotted to /it, could be considered by the Commission. Now in support of that I might say that Wyoming realizes that this is a matter of co-operation, that our viewpoints differ. We think we have a lesson in point upon the construction of a reservoir upon the lower river and the investment of certain rights there. When such a reservoir is established an embargo is placed upon the Upper River. That is a thing we wish to keep away from. Wyoming, therefore, cannot be expected to subscribe to any program that only proposes a development of the lower river without returning to us a reasonable agreement as to the protection of our rights. It seems to me that in consideration of the practical phases of the matter, we must place some limit for the development before we can expect proper action by the several legislatures to ratify any agreement or compact that may be proposed by this Commission.

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It seems to me the construction of one great reservoir at a proper point is necessary for proper irrigation both above and below the reservoir. At the present time there are certain states that will not concur with the figures of Director Davis. At the same time if we take the larger figures we are deviating from the hypothesis upon which we are basing our structure. To arrive at the figures that this Commission should adopt may well be a matter to be continued for some little time. The general plan of limitation of acreage may be accepted as something to work from at this time. It is a basic principle without getting down to definite figures. It is a question as to whether we shall or shall not limit the acreage, which is a very material question before this Commission at present.

MR. MCCLURE: This meeting can make no agreement but such an agreement may be made hereafter.

MR. EMERSON: Exactly. Within the year.

MR. HOOVER: You can perhaps amplify that a little.

MR. EMERSON: Certain of the states will not accept Mr. Davis' figures, and on the other hand, our very hypothesis is attacked -- an ample water supply is the basis of the solution of this question. If there is water enough, there is nothing to quarrel about.

MR. HOOVER: What is your impression on Mr. Emerson's proposal, Mr. Carpenter?

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MR. CARPENTER: My impression is on the line made in the last statement by Mr. Emerson. The whole problem rests on the amount of water supply. If there is truth in the statement that there is ample water supply, there is no need of any acreage limitation. On the other hand, if we contend that there be ample water supply coming in a particular State and that State's acreage is small compared with the water supply of other states, that be amplified in proportion of acreage to water supplied. That might result in profitable discussion. Just to stand purely on acreage without the question of water supply frankly does not appeal to me. The objection to acreage limitation in Colorado is that the acreage limitation is hopelessly out of proportion to the water supply that flows out of the State to other people and amounts to a self-denial on the part of Colorado.

MR. HOOVER: In other words, you don't accept any basis of compact founded on a limitation of acreage.

MR. CARPENTER: I am not in a position at this time to accept any such basis.

MR. HOOVER: So you do not accept Mr. Emerson's resolution?

MR. CARPENTER: I could not.

MR. DAVIS: I take the position that I will take a limitation provided I can have a fair distribution. I will not take it, however, on the basis of Mr. Davis' figures.

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MR. HOOVER: Mr. Caldwell, would you be willing to enter upon a compact based on any acreage, at all?

MR. CALDWELL: I think I have answered that question as well as I can. As I have said before, I am not prepared at this time to say that I would not accept an acreage basis at this time.

MR. HOOVER: At what sort of interval of time, then?

MR. CALDWELL: I think we should at least go over to another meeting of this Commission. I have said that I do not consider it the proper basis on which to get any justice to all the interests represented.

MR. NORVIEL: What basis do you suggest?

MR. CALDWELL: Water. Water enough for all.

MR. EMERSON: If there is water enough for all, we have the open door policy.

MR. CALDWELL: I think the objections to it have developed right here in this Commission.

MR. CARPENTER: I ask any man here if the general declarations up to this date have not been in harmony with the last paragraph of my statement.

MR. NORVIEL: I will be frank to confess that I was basing my judgment of these things on Director Davis' report of 1921 but I am now faced with three or four times the possible irrigated acreages in those statements. I assumed that this report contained a fairly accurate statement of the new acreages that might be brought under irrigation, but if the claim made here by the Com-

missioners, (and I have no reason to contend against it) are comparatively true, of course that would necessarily change the whole situation.

MR. HOCVER: I take it that on Mr. Emerson's proposal, we have a favorable acceptance from Mr. Norviel, Mr. McClure, Emerson, Judge Davis and Colonel Scrugham. Mr. Caldwell and Mr. Carpenter are against it.

MR. DAVIS: I would like to ask one question. When would Mr. Caldwell be ready to give a definite answer to the question previously asked: When would you be willing to enter upon a compact based on acreage?

MR. CALDWELL: When I have consulted my home government.

MR. DAVIS: Then it means we cannot get together on this point at this meeting.

MR. EMERSON: If we enter into a reasonable agreement along the lines I suggested, it can be put over in Wyoming.

MR. CARPENTER: If our acreage was not so absolutely out of proportion to the water supply, I would feel a much lighter mental attitude. I can't feel like accepting it at this time.

MR. CALDWELL: May I ask why you prepared this elaborate setting of acreages in Colorado?

MR. CARPENTER: To prove that the assertions we made were true, that with all probable future uses, there would be ample water going below. It was the object of proving to our satisfaction that we could not as a state use even an equitable part of the water of the river rising in our territory.

MR. HOOVER: We have not been able to get to any agreement on a general single idea for a compact. Therefore, this session has no result except to define differences. The question arises, is it worth while to have another session? Or shall we make the declaration now that we are so hopelessly far apart that there is no use in proceeding? Do the Commissioners think there is any basis of arriving at an agreement?

MR. NORVIEL: I do not think we should foreclose our meetings that at this time. I think/we should hold the matter open and be subject to a call of the Chairman; if after further investigation and study, after we get home and think over the subject, we think we can do better at another session, then we will notify you and another session should be called.

MR. SCRUGHAM: We will/ either make or not make effective, the intent of Congress and the State Legislatures in creating this Commission, within the next few months. I believe that we have made a failure thus far. If we cannot get harmonious action, we might as well quit. I believe that we are wasting our time if we cannot come to some substantial agreement at an early date.

MR. CALDWELL: I would like to dissent from that view. It may/ not be near so hopeless as you think. In fact, I never felt qualified to come to an agreement on this important matter at this time, and I have so expressed myself before this Commission. If this Commission, however, all excepting myself, feels that it is a waste of time to continue further, I do not think I should impose my objection on this Commission. I do think it would be a very serious

reflection on us should we adjourn now after these conferences, with the acknowledgment that we do not care to discuss it more. I confess that it has been with some difficulty that I have been able to get clear in my mind the views of many of the members of this Commission and as they have talked, talked, and talked, their ideas have cleared quite a good deal. I should like to have further opportunity of getting clarified, by further meetings. I think that the Chairman, if I remember correctly, deplored the fact in the early stages of this meeting that we had so limited data. We came here totally open-minded, I believe, without any program, and all that we have done we have done since we got here. All that we thought, all that we tried to systematize, has been done since we are here. It is only the part of wisdom to adjourn this meeting subject to another call and try again. We could not in any event get past the legislatures until they meet the next time. The Colorado River has been running down in its present course for many a generation. I believe that we should use the time that we have now and the time that we may have to conclude on this thing in an attempt to agree on a policy on the Colorado River. There has been one statement that has been persistently made by the best informed people and by the best thinkers in the Colorado River matters and on the matter of its developments; that statement is that it should be developed according to some unified comprehensive plan. I do

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believe that the rights on the river, if we had such a plan in hand  
would be/<sup>much</sup> more easily allocated, and simplified, if we had that plan.

I find myself lacking clearness even in this problem, because I am unable to propose a definite plan of development of the Colorado River. That matter has not been discussed here as to the advisability of this Commission looking into a complete and harmonious plan for the development of the Colorado River. I know there are engineers besides those connected with the Reclamation Service who have made comprehensive studies of the Colorado River, and who do have very definite ideas as to the proper development of that river. I think it is due the Commission that they hear those engineers, get those facts; I do not interpret further-more the temper of the people of California, from what contact I had with them, just as I have felt that the interpretation has been given here. I believe/<sup>it</sup> that is very clearly in the minds of the people of Southern California that there is water enough in the river easily to supply all the irrigation needs on the river and that after that comes the matter of power and so on. Down in San Diego, the one thing that nearly every speaker from California referred to, announced and reiterated, was that they were very anxious and willing that the right of developments on the Upper States should be protected. I believe that is the spirit and the attitude of the people of California. I shall not be satisfied to believe otherwise until I have had further evidence. I do not believe that

our people would feel satisfied if we met here and agreed to disagree on the small amount of evidence that we have had presented at this time.

MR. HOOVER: Might I just clear that point. I assume that your idea is that Mr. Carpenter's suggestion should be submitted to Mr. McClure's associates and get their re-action. That is, to determine whether they do or do not agree to the unlimited uses of the water in the upper states.

MR. CALDWELL: I certainly would like to suggest that Mr. Norviel and Mr. McClure do not take home to their States the idea that they met here commissioners unwilling to be generous and helpful.

MR. MCCLURE: That is exactly the attitude we are getting.

MR. HOOVER: Perhaps you can put it in the way that it would be desirable to consider this proposal of Mr. Carpenter's and get the views of your own people.

MR. CALDWELL: One of the first things I heard when I got here was that the case was to be discussed on the data prepared by the Reclamation Service. I believe that the upper states have met pretty thoroughly that proposition. We are all uncertain as to the way in which the acreage was arrive at, etc. Mr. Davis has himself pretty thoroughly canvassed the situation in California. Mr. Davis stands high in the estimation of the people of California. I believe Mr. Davis could get before the people of California and advise them that they have nothing to fear as to their irrigation interests in the lower parts of the river from permitting

unrestricted irrigation developments on the river above. If Mr. Davis will do that, I believe we can get by on a treaty easily.

MR. HOOVER: Would it not be desirable for every delegate to take all these various proposals and to discuss them with their own people. I would also suggest that we address Mr. Davis of the Reclamation Service, a specific letter, asking whether he still adheres to his original assurance of ample water upon the basis of these enlarged demands.

MR. CALDWELL: Mr. Chairman, I do not believe I have made myself clear about all I have said about water enough for all. We do not submit that as a claim because I do not know whether that is right. I do not think that it is foolish or, under the circumstances, <sup>an</sup> extravagant thing to present. If we must get together on an acreage basis, Utah must investigate herself the acreage before she accepts the estimates set down by the Reclamation Service. I believe, Mr. Davis said that the Green River investigation shrunk from 250,000 to 15,000 acres. Maybe the other projects will shrink in the same way. Director Davis may recommend that in his opinion that is the case, and that notwithstanding all the alleged claims of the State, there is still enough water to irrigate all the lands in the Upper River. I cannot but regret that the matter of such claims have been given such prominence in this Commission, because they are undoubtedly inaccurate in nearly every respect.

MR. CARPENTER: May I suggest, Mr. Chairman, If you will recall in a private conversation, I stated at that time I hoped that the states of origin could make out a policy within sixty days. Unfortunately, I was unable to confer with the Upper State delegates.

Next, I came in here, not prepared to present the matter with a full statement, giving it as my own viewpoint from my own State. I feel frankly that this is a matter requiring very prudent and thoughtful treatment. Hasty treatment would be unwarranted. We are here with a pretty sacred trust and it should not be treated lightly. I really believe that in the months and weeks to come many small matters of difference can be argued out. I would say frankly that I would be open to severe censure if I should go home saying that I signed anything without the fullest and most frank understanding with the officials and the government of my State.

MR. HOOVER: I am only groping around here for a useful subject for further consideration at the next meeting. In the meantime I assume that Nevada, California, Wyoming, and New Mexico, have a sufficiency of data on which they are prepared to act but that Utah, Colorado and Arizona have not sufficient data. That will require certain periods of time. I do not assume that we could do all those things in even sixty days. How much time do you think will be required, Mr. Caldwell, on your part?

MR. CALDWELL: How long did it take Colorado?

MR. CARPENTER: It took us the better part of two seasons to gather that data in the thoroughness with which it is gathered.

MR. HOOVER: The home consideration of these proposals will probably require a month, but I do not know how many years the collection of further engineering data will take.

MR. DAVIS: I want to withdraw in the meantime from the record that New Mexico would accept any acreage less than the full amount that is claimed. It does not seem to me that what we have split

on here is a question that can be solved by any investigation that can be made within the next few months. We have split on the underlying and fundamental principles as to whether there will be any limitations stated in this compact. In all frankness, I can't see how investigations in the field, in the limited extent they can be made within the next few months, are going to help the Commissioners to make up their minds and so state. I feel that if we can't agree now, we can't agree at all, and it seems to me useless to have a further meeting until either the two representatives of the lower state yield somewhat from their position or Utah and Colorado yield from their position.

MR. SCRUGHAM: I wish to register a protest against the idea that the function of this Commission is to work up the details of the technical data required by this investigation. We are here to formulate a broad constructive policy for development which necessitates breadth of view and team work in action. I am opposed to the policy of spending several months time in getting information on small details.

MR. NORVIEL: In reply to Judge Davis' last statement (it seems that that was directed towards Arizona) I will state that Arizona is remaining steadfast in a position that is apparently unattainable. I struck a middle ground in the beginning and maintain that ground. I am willing to concede both ways, either way, in order that we may come to some sort of an agreement, but I do not want to limit ourselves to the ultimate uses of the above under the present circumstances and to leave us with what

may remain. If Mr. Caldwell has full faith and credit in what he says, that there is water enough for all and if Mr. Carpenter is of the same opinion, then I see no reason why this Commission should not now at this time lay out a broad general plan of the whole Colorado River basin as one unit without any State lines interfering and let priorities prevail. If there is water enough for all, in the matter of irrigation they cannot be hurt. If we develop our lands first, and yet if there is water enough for all, they cannot be hurt.

MR. EMERSON: They can be hurt. We have been hurt on the North Platte River, and we do not want it repeated on the Colorado.

MR. NORVIEL: I am speaking of absolute beneficial use of water necessary for irrigation in the United States, if there is water enough for all, the lower States' earlier development cannot injure the upper States. They say to us, "go on and make your developments, build your homes and your farms, but do it at your peril", but they come back to the same principle that there is enough water for all. If there is enough water for all, then the earlier development on the lower river should have the priority of right in the basin as a whole without objection from the upper states.

MR. EMERSON: When five states are willing to subscribe to a basis along my lines and both other states have said that they do not want to subscribe, now, but they leave the door open, we may be able to get together before the year is out.

MR. NORVIEL: Then why can't we agree on a middle ground temporarily for a number of years and then readjust matters?

MR. EMERSON: The year is yet young.

MR. CALDWELL: I have held back nothing, Mr. Chairman, I have spoken very frankly, everything I have to say. I have just taken the stand that it has occurred to me to take. I think it is a part of wisdom that we should defer conclusion on this matter to a future time. We should have another meeting and see if something does not develop. My conscience is perfectly clear as to the attitude I take. I assure you there is no occasion for suspicion on my part and my ambition is to do something constructive for the development of the Colorado River.

MR. HOOVER: What time do you suggest?

MR. CALDWELL: I do believe that a lot of information on this matter would help these Commissioners. It is proposed now that we take a trip down over the Boulder Canyon dam site. Why?

MR. SCRUGHAM: I issued an invitation, you don't need to accept it Mr. Caldwell.

MR. CALDWELL: I am not looking for a pleasure-trip out of this proposition. I would like to propose that we not only visit the Boulder Canyon dam sites but that we visit other dam sites and that we inform ourselves. It does have a bearing on the rights relating to the river.

MR. CARPENTER: I know that to some members of this Commission it seems to have been a fruitless conference. To some of us who are somewhat experienced in conferences of anywhere from three upward, I am free to say that this to me has been a very profitable conference and there is more nearly an approach to a common accord here than I have expected when I arrived in Washington. Here are seven divergent interests. We should have the adjournment late enough so as to have the maturity and the benefits of consultation at the next conference.

MR. HOOVER: How much time would you suggest?

MR. CARPENTER: Ninety days.

MR. HOOVER: Would it look well in the eyes of the people who delegated this job if we adjourn for ninety days?

MR. CARPENTER: I am free to say that I have not taken that into consideration.

MR. SCRUGHAM: Don't you think it is unfair to all interests to adjourn now?

MR. CARPENTER: I think it would be the height of crime to the people who sent us here to adjourn permanently now. I am unwilling personally to abide with the wishes of the whole Commission.

MR. EMERSON: I can conceive that meetings hereafter may iron out the opinions here expressed. We have five states accepting it and two that can't decide right now, but leave the door open. I would suggest a later meeting.

MR. CARPENTER: Is there not a Mr. La Rue who made a thorough study of this proposition?

MR. CALDWELL: He is at Pasadena, California. I wrote Mr. La Rue to outline to me a trip down the river that I might take, so as to be acquainted with the river. He outlined a very interesting trip in a letter to me, which I intended to bring with me, but I forgot it, and did not bring it along. He suggested while making the trip, "Why not have the Colorado River Commission make the trip", and especially included Mr. Hoover in the invitation. I believe we should think over making such a trip.

MR. HOOVER: I do not have a feeling that it is going to advance these particular questions. I hesitate to say that we have delayed this question for even sixty days.

MR. EMERSON: There would be no ratification of this matter anyway until the legislatures meet. If we could have at this meeting agreed <sup>upon</sup> some kind of basis it would have been mighty good.

(It was suggested by Mr. Hoover that the next meeting take place in the Southwest.)

MR. EMERSON: That would be very agreeable to me. If we terminate here now, I would have felt that I have thrown away several weeks. I am willing to submit to what would meet the convenience of the rest.

MR. CARPENTER: Each of us should have time to consult our own Government. My own observation has been that the opportunity of personally exchanging views has been very profitable. I would expect the same freedom of thought from others to my proposition that I expect to give to theirs, and that can be brought about to the exchange of views.

MR. HOOVER: Then we leave it on this basis. It is moved that the Commission should adjourn to the earliest practicable date, say about March 15, somewhere in the southwest, possibly Phoenix, at which time an opportunity will be given for public hearings. Are we agreed?

THE MOTION WAS UNANIMOUSLY CARRIED

The Chairman read the Minutes of the Third, Fourth, and Fifth Meetings of the Commission which on motion duly made and seconded were approved.

The Chairman then submitted various letters applying for the position of Secretary to the Commission and for the position of Engineer to the Commission. Mr. Stetson was instructed to inform the writers of these letters that for the moment, there was no positions open with the Commission.

Thereupon, the meeting adjourned at 6:10 P.M., subject to the call of the Chairman.

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Clarence C. Stetson  
Executive Secretary