

Appendix 1017

WATER: ARIZONA

**DECISION OF THE SECRETARY OF THE INTERIOR,
FEBRUARY 9, 1944**

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
INFORMATION SERVICE

For Immediate Release: Thursday, February 10, 1944.

Secretary of the Interior Harold L. Ickes announced today he had signed, on behalf of the United States, a contract to deliver to the State of Arizona annually 2,800,000 acre-feet of Colorado River water from storage in the Bureau of Reclamation's Boulder Dam reservoir, subject to its availability for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act.

Commissioner of Reclamation Harry W. Bashore said the contract would become effective when ratified by the Arizona legislature and when this body unconditionally ratifies the Colorado River Compact. The legislature on March 25, 1943, voted to ratify the Compact, provided a contract for the delivery of water from Lake Mead was executed between the United States and Arizona.

The Secretary signed the contract after considering fully the objections presented by the State of California in a hearing on February 2 and representations made by the State of Arizona in reply. The contract had previously been approved by the Committee of Fourteen, which is composed of two representatives of each of the seven Colorado River Basin states. All members of the Committee except those from California approved the agreement which the Secretary has now signed.

In announcing his decision, Secretary Ickes issued the following memorandum:

"MEMORANDUM re hearing February 2 on California's objections to the proposed contract between the United States and Arizona for the delivery of water from Lake Mead

"There has been submitted to me for approval and execution a proposed contract between the United States and the State of Arizona for the delivery of water from Lake Mead for use in Arizona. Section

A567

5 of the Boulder Canyon Project Act authorizes me to contract for the storage and delivery of water impounded by Boulder Dam. Under subdivision (a) of Article 7 of the proposed contract the United States agrees to deliver annually from storage in Lake Mead for use in Arizona a maximum of 2,800,000 acre-feet of water, subject to its availability for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and under subdivision (b) of Article 7 the United States agrees to deliver one-half of any excess or surplus water unapportioned by the compact to the extent such water is available for use in Arizona under the compact and act. The contract is conditioned upon the unconditional ratification of the compact by Arizona.

"The proposed contract was drafted by the Committee of Fourteen after the Arizona legislature last Spring passed an act contingently ratifying the compact—the contingency being the execution and ratification by the legislature of a contract for the delivery of water from Lake Mead. Representatives of the Bureau of Reclamation worked closely with the Committee and made a number of modifications which were accepted by the Committee and Arizona. Bureau representatives under my instructions have taken the position throughout the negotiations that any contract proposed should not commit the Department as to any controversial issue regarding the amounts of water available to Arizona, or to any compact state, under the compact and the act. The proposed contract has been approved by the representatives of each of the Colorado River states, except California.

"I have considered carefully the objections made by California in its printed brief and at the hearing before me on February 2. California is fearful that subdivisions (a) and (b) of Article 7 construed together create an inference that the maximum of 2,800,000 acre-feet which the United States agrees to deliver under subdivision (a) is water apportioned to the Lower Basin under Article III (a) of the compact and that Arizona could contend, to California's prejudice, that this constituted an administrative determination that Arizona was entitled by this contract to 2,800,000 acre-feet of III (a) water. I am convinced that California's fears in this respect are unfounded for at least two reasons. First, I wish to make it clear, and to emphasize, that the delivery of water under both subdivision (a) and subdivision (b) of Article 7 is expressly 'subject to its availability under the Colorado River Compact and the Boulder Canyon Project Act.' The proposed contract does not attempt to obligate the United States to deliver any water to Arizona which is not available to Arizona under the terms of the compact and act. Secondly, Article 10 was purposely designed to prevent Arizona, or any other state, from contending that the proposed contract, or any provision of the proposed contract, resolves any issue on the amounts of waters which are apportioned or unapportioned by the compact and the amounts of apportioned or unapportioned water available to the respective states under the compact and the act. It expressly reserves for future judicial determination any issue involving the intent, effect, meaning and interpretation of the compact and act. The language of Article 10 is plain and unequivocal and adequately reserves all questions of interpretation of the compact and the act.

"It is my opinion that I have authority under Section 5 of the act to execute such a contract as is proposed to be made with Arizona. The Department has made contracts with California and Nevada for the delivery of waters from Lake Mead subject to its availability under the compact and act. Now that Arizona has agreed to ratify the compact, it is my opinion that Arizona is entitled to be accorded the same consideration that the Department has accorded to California and Nevada. Accordingly, I have decided to approve and execute the proposed contract with Arizona.

"(Sgd.) HAROLD L. ICKES,
Secretary of the Interior."

"FEBRUARY 9, 1944."

California and Arizona have been at odds for more than 20 years over the division of the waters of the Colorado River system. The fundamental controversy between the two states concerns the amount of water to which each state is entitled under the Compact and the Boulder Canyon Project Act.

The dispute dates back to 1922 when six of the seven states in the Colorado River Basin agreed to the Colorado River Compact which apportioned the waters from the main river and its tributaries to the Upper and Lower Basins. Arizona was the lone objector. Subsequently the legislatures of all states, except Arizona, ratified the Compact.

In 1928 the Congress passed the Boulder Canyon Project Act which provided that the Act would not become effective until the California legislature agreed to limit its use to 4,400,000 acre-feet of water apportioned in Article III (a) of the Compact, plus one-half of the excess or surplus unapportioned water. California passed such a limitation act in 1929.