

*Appendix 213*

**THE COLORADO RIVER COMPACT:  
REPORT OF R. E. CALDWELL, COMMISSIONER  
FOR UTAH**

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*Mr. President and Members of the Utah Senate:*

It is my purpose to present to you in outline, matters concerning, pertaining to, and pertinent to the Colorado River Compact which is before you for ratification. I shall sketch the history of it, give you a few reasons for it, and indicate to you the scope and gist of it.

The Colorado River compact as it is before you, is the direct result of the work of the Commission which has come to be known as the Colorado River Commission.

**REASON FOR THE COMMISSION**

Chapter 68, Session Laws of the State of Utah, 1921, is an act providing for the appointment of a representative on behalf of the State of Utah to negotiate a compact and agreement between and among the States of the Colorado River Basin, and between the States of the Colorado River Basin and the United States of America respecting the use and distribution of the waters of the Colorado River and its tributaries, and the rights of said States thereto.

On the 14th day of January 1922, at the pleasure of Hon. Charles R. Mabey, Governor, I had the honor to receive an appointment as the representative of the State of Utah provided for by statute. Since receiving the appointment I have functioned as such representative, and I am now directed by the Governor and requested by your President to make a report of my stewardship and that of the Colorado River Commission to you gentlemen of the Senate.

Possibly what I shall say is a recapitulation of much of what you have already heard and know of this important matter.

It is my hope that when I have done this that there will have arisen in your minds out of your general conception of the Colorado River problem pertinent questions which you will wish to ask, and, time permitting, I should like to engage with you in a brief informal discussion believing it to be the surest way of getting before you the things which you wish to and should know.

Every raindrop, congealed, or fluid, which falls on a surface sloping to the Colorado River is necessarily a matter of consideration, and is affected by any use or control of the Colorado River.

The Colorado River is erratic in its flow, carrying past Yuma, Arizona, as much as 240,000 second-feet in floodtime and as low as 2,600 second-feet in the driest portion of the driest year. In acre-feet, the river flows annually, amounts varying from twenty-six million down to approximately ten million. Obviously, the best conservation of the water of the river and its potential value is to be accomplished by its control in such a manner that the flow may be equalized from wet to dry years, and within each year from the wet to dry season. This control may be accomplished quite thoroughly, if not completely, by utilization of available storage on the river.

The unprecedented storage necessary for this control cannot well be undertaken unitedly by all the States of the Colorado River Basin or at all, perhaps, unless there is settled in advance, upon some basic principles, and upon good irrigation and water-rights practice, the rights of the various interested States to the use of the water of the Colorado River and its tributaries. For this reason and purpose, the Colorado River Commission was formed in accordance with appropriate concurrent legislation of the States of Arizona, Colorado, California, New Mexico, Nevada, Utah, and Wyoming, and the United States of America.

#### THE COMMISSION

The Basin States mentioned above, each appointed a representative to act on the Commission, and the United States of America, as provided by Congress, appointed a representative to sit with the Commission in its deliberations on behalf of and in the interests of the United States of America which had given its consent that a compact might be entered into between and among the Basin States. The personnel of the Commission is as follows:

Hon. Herbert Hoover, Secretary of Commerce, representing the United States of America.

Hon. W. S. Norviel, State Water Commissioner, representing the State of Arizona.

Hon. Delph E. Carpenter, former Attorney General, and now a prominent water rights lawyer of the State of Colorado, representing the State of Colorado.

Hon. W. F. McClure, State Engineer, representing the State of California.

Hon. James G. Scrugham, State Engineer, representing the State of Nevada.

Hon. Stephen B. Davis, Jr., Supreme Court Justice, representing the State of New Mexico.

Hon. R. E. Caldwell, State Engineer, representing the State of Utah.

Hon. Frank C. Emerson, State Engineer, representing the State of Wyoming.

The representatives were appointed, respectively, by Hon. Warren G. Harding, President of the United States of America.

Hon. Thos. E. Campbell, Governor of the State of Arizona.

Hon. O. H. Shoup, Governor of the State of Colorado.

Hon. Wm. D. Stephens, Governor of the State of California.

Hon. Emmet D. Boyle, Governor of the State of Nevada.

Hon. Merritt C. Mecham, Governor of the State of New Mexico.

Hon. Charles R. Mabey, Governor of the State of Utah.

Hon. Robert D. Carey, Governor of the State of Wyoming.

#### MEETINGS

All the meetings of the Colorado River Commission were held during the year of 1922.

On January 26th, the Colorado River Commission appointees met in Washington, D. C., at the office of Mr. Herbert Hoover, Secretary of Commerce, presented their credentials, were accredited, and the Colorado River Commission was formally brought into existence.

At the first meeting of the Commission, held January 26th, in Washington, D. C., at the offices of Mr. Hoover, he was elected by the unanimous vote of the State representatives to the position of Chairman of the Commission, from which time all meetings were held under his chairmanship and leadership.

In all, seven meetings were held in the office of the Honorable Herbert Hoover, Secretary of Commerce, Washington, D. C.

In these meetings much of general interest and importance was discussed, and permit me to say that a complete record of these meetings is on file at this time in the office of the State Engineer. At this time no basic principles were laid down, no conclusions arrived at or anything very definitely accomplished. The Commissioners and the Chairman received, however, the necessary opportunity to get acquainted with one another's views, personalities, attitudes, and state requirements, which acquaintance was invaluable in the later work of the Commission. The last session held in Washington adjourned on the 30th day of January, to meet at an early date somewhere in the West in some of the Basin States at the call of the Chairman.

The first of these meetings of the Colorado River Commission were held at Phoenix, Arizona, on the 15th, 16th, and 17th of March. Thereafter meetings were held on March 20th at Los Angeles; at Salt Lake City on March 27th and 28th; at Grand Junction, Colorado,

March 29th; at Denver, March 31st and April 1st; and at Cheyenne, April 2nd.

These meetings held in the various States above-mentioned, had the double purpose of permitting the interested States to be heard as to their views on the Colorado River water-right problems and of acquainting the members of the Commission and its Chairman with the facts, so far as they could be gleaned, from those who wished to be heard before the Commission. A complete record of all these sessions is on file in the State Engineer's Office for the State of Utah.

At Denver, Colorado, at an informal session held in the Palace Hotel, Denver, the Commission agreed to meet at the call of the Chairman somewhere in the West, approximately sixty days after the record was complete and in the hands of the various commissioners.

It was later proposed to hold this meeting at Santa Fe, New Mexico, August 1st, but for unavoidable reasons it was postponed to meet November 9th. It began with a session on November 9th, and ended with a session on the 24th day of November.

The sessions held at Santa Fe were attended by all of the members of the Commission and the Chairman, which members were spokesmen for the respective States and the Chairman for the United States of America. Though all the sessions except one were executive, it was agreed by the members of the Commission that certain persons might be admitted. Each commissioner was permitted to have, if he wished it, at each session a legal and an engineering adviser, also such governors of the Basin States as were on the ground were invited to be present at the session. The participants in the discussions were the members of the Commission and the Chairman.

The sessions at Santa Fe were most interesting, and I think of great general interest and benefit. The result of these sessions is a compact signed by all of the State representatives and the representative of the United States of America.

A complete record of these sessions, I understand, will be made available for the files of each of the States concerned and the Governor of each State has been furnished with a certified copy of the compact as prepared and signed.

#### THE COMPACT

The compact as signed seemed to meet with the favor of all of the Commissioners and of the Chairman of the Commission. The compact though signed by the representatives of the States and the Chairman of the Commission is not binding until ratified by each of the legislatures of the several States and by the Congress of the United States. I have heard of no objection to the ratification so far from any State or from the Federal Government except that it

has been reported through newspapers that Governor Geo. W. P. Hunt, of Arizona, is opposed to the ratification; also it is reported that certain factions in Arizona are opposing the ratification of the compact.

I believe the compact to be fair in every way to Utah and to all of the other interested States and to be of such a nature that it will permit the fullest unrestricted development of all of the water resources of the Colorado River and its tributaries without doing violence to the rights or necessities of any Basin State.

It is entirely possible that without any compact whatever, the river would finally have been developed in such a way as to get a maximum benefit from the river for all concerned but it would have been after tremendous and prolonged litigation, unnecessary bitterness, suspicions and ill will. The big thing that the compact will do if ratified is to prevent litigation and knit the States together in a close and satisfied relationship working harmoniously and effectively for the full scientific development of all of the resources pertaining to the river.

This compact is a departure in several things. It distinguishes between different classes of rights and attempts to relegate each right to its appropriate relative position. Water rights for agriculture, including water rights for industrial, domestic, municipal, and culinary purposes, and excluding water rights for the development of electric power, are dominant as between the Upper Basin and the Lower Basin. Water rights for power purposes are secondary to the dominant rights and navigation is made subservient to all rights on the river. Thus, the rule of priority in this respect is for the first time definitely set aside for a special reason. For the first time a drainage area is divided into Upper and Lower Basins and a river divided between them for the benefit of the river system.

As between the two divisions the privilege to initiate a right by mere storage of water is abrogated or at least abridged.

The compact may be summarized somewhat as follows:

1st. The Colorado River Basin is divided into Upper and Lower Basin and the States are grouped for convenience.

2nd. The unit of partition and appropriation on the Colorado River is the acre-foot, as between the basins.

3rd. A definite amount of water is allocated to each of the subdivisions of the Basin in perpetuity and the surplus in the river over and above this amount is dedicated first to the satisfying of any international water obligation from the Colorado River which the United States of America may assume with respect to the United States of Mexico and any surplus then left in the river is to be divided or allocated among the States or between the divisions by another commission to be assembled not earlier than forty years hence, unless by the common consent of all of the interested States.

4th. Agriculture is made paramount, the development of electric power secondary, and navigation subservient on the Colorado River.

5th. An ex officio committee is constituted for the purpose of collecting, compiling, and publishing Colorado River data.

6th. Litigation between claimants is not prohibited by this compact with respect to the waters of the Colorado River System not covered by the terms of the compact.

7th. Rights of Indian tribes are protected.

8th. Present legally applied use of water of the Colorado River System is not impaired.

9th. When storage capacity of 5,000,000 acre-feet is created in the river for the benefit of the Lower Basin, claims by users in the Lower Basin to low water of the river as against the claims of the users of water in the Upper Basin shall cease and the rights of the Lower Basin users attach to water which may be stored.

10th. If the compact is terminated by unanimous agreement of the signatory States, all rights established under it shall continue unimpaired.

I have now encompassed the whole of what I promised to say, but I am sure that you will permit the following observations which, I think, are pertinent and will be of interest and possibly of help to you in the line of thought to be taken up.

1. The Upper States are not limited as to their diversions.

2. They are only charged with that which they consume.

3. The river may be wholly diverted by the Upper States and more than enough to supply the quantity required to pass Lee's Ferry will still be assured.

4. It will be impossible under any conceivable circumstance for the Upper States to prevent 75,000,000 acre-feet going past Lee's Ferry in any ten-year period.

5. Should the Upper States divert 180,000,000 acre-feet of water onto the uplands during any ten-year period, there would still be 90,000,000 acre-feet pass Lee's Ferry out of the return flow to the river.

6. The reconstructed Colorado River would have an average annual flow of from 20,000,000 to 22,000,000 acre-feet, and if it is assumed to be 20,000,000 acre-feet, approximately 18,000,000 acre-feet would pass Lee's Ferry if there were no diversions.

7. Assuming that the reconstructed river has 22,000,000 acre-feet in it, the compact has left for future allocation after 40 years, 6,000,000 acre-feet of water if either the Upper Basin or the Lower Basin has wholly beneficially consumed its allocation.

8. It follows that if when a new apportionment is undertaken, it is apparent that either basin has had more or less than its share of the

water, an adjustment for the sake of equity may be had out of the 6,000,000 acre-feet of water unapportioned except that the Mexican burden, if the United States assumes any, shall be taken from the 6,000,000 acre-feet surplus unapportioned, before any further apportionment is made.

9. The States of the upper division would in all probability consume less than  $1\frac{1}{2}$  acre-feet of water per acre of land irrigated except that the small portion which may be diverted from the Colorado River Basin by tunneling will be wholly consumed. On a basis of  $1\frac{1}{2}$  acre-feet per acre consumptive use, the Upper States would be able to irrigate 5,000,000 acres out of 75,000,000 acre-feet during a ten-year period.

10. The Lower Basin States, for the most part, when they divert their water, wholly consume it and they get no credit for use of return flow for it does not exist, and they are, therefore, limited to the diversion of 8,500,000 acre-feet and are held strictly to the requirement of "consumptive beneficial use" of such as they do divert.

11. Out of the apportionment of 16,000,000 acre-feet, as now made by the provisions of the compact, each of the basins is required to stand its own losses due to evaporation from the surfaces of large reservoirs, etc., and out-basin diversions are not prohibited.

12. The creation of 5,000,000 acre-feet storage capacity in the river for the benefit of the Lower Basin, automatically terminates claims which Lower Basin users may assert as against users in the Upper Basin.

I am quite sure that there is nothing in this compact that in any way does violence to any of the fundamental water-rights practice and principles which have grown up in Utah and the arid West during the past three-quarters of a century, and that in every way where it is a departure that it is an advantage and a step forward.

I believe that the legislature of the State of Utah should ratify this compact as it now exists without any hesitation and in the interest of the development of the Colorado River, the largest single undeveloped resource of the United States today.

The compact in full is in the hands of the Members of the Senate.