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January 28th, 1927.

Honorable Delph Carpenter,
Capitol Building,
Denver, Colorado.

My dear Delph:

I inclose copy of recent reply to speech of Senator Phipps.

Yours truly,

L. Ward Bannister

LWB:lmr

The Swing-Johnson Bill

and Other Water Legislation ---A Reply to Senator Phipps

An Address

By Mr. L. Ward Bannister,

Chairman of the Committee on Interstate Streams,
Denver Chamber of Commerce

Before the Denver Chamber of Commerce January 14, 1927

It is my purpose today to discuss legislation affecting: the San Carlos Government reclamation project now in course of construction on the Gila river in Arizona, the proposed power plant at Laguna dam on the Colorado river between Arizona and California, the proposed Casper-Alcova Government reclamation project on the North Platte in Wyoming and the proposed development at Boulder Canon on the Colorado river boundary line between Arizona and Nevada.

These four topics were covered in an address before you by Senator Phipps a couple of weeks ago. His address was intended in part as an answer to one recently made by me before the United States Chamber of Commerce at Colorado Springs in which, although belonging to the same political party, I expressed the fear that the Senator did not fully appreciate the intricacies of our Interstate water situation or the water interests of our State. The Senator's answer has not diminished the concern then felt and in connection with the discussion of the topics enumerated there will be stated even more definitely the grounds of my apprehension, although with the respect to which the Senator and his position entitle him.

While some parts of the Senator's water record may well cause concern, there are other parts to which he is entitled to credit. It is his right to be judged by his record as a whole. The Senator has introduced in the Senate certain bills authorizing Colorado and other states to enter into interstate agreements for a division of the waters of some of our interstate rivers. At the instance of the city of Denver, he did not fail to come to the city's support on some of the occasions when a fight was made to prevent the issuance by the Federal Power Commission of licenses for proposed power plants on the Colorado river in Arizona. Before the Swing-Johnson bill was amended to protect the upper states so far as possible and when therefore it should have been opposed, the senator was against it. More than this, he is an indefatigable worker, courageous, and is honest with his constituents as to where he stands, whether they may like his stand or not. These are great virtues.

It is with this acknowledgment that the discussion of the legislation referred to, inclusive of the Senator's relation to it, proceeds.

The Law of Interstate Streams

Legislation concerning interstate streams cannot be judged intelligently without preliminary observations as to the law governing the use of waters of these streams in the absence of interstate agreement and as to the content of the Colorado River compact.

Every American state has its own water law to be applied to water users within its own boundaries. In some of the states, that law is to the effect that all land ownerships contiguous to a stream shall be entitled to a fair share of the water regardless of relative dates of use. In still other states, the rule is that whether or not the land ownerships are contiguous to the streams is immaterial and that the water is to be parceled out among the users in the order of their seniority in time of use—to the oldest user the first right, to the second oldest user the second right, and so on. The former system is known as the riparian system; the latter as the appropriation or priority system. Under the latter system, whether the latest user obtains any water or not depends upon whether there is any water left for him after first satisfying the needs of the older users.

As for the division of the waters of interstate streams as between states, the Supreme court of the United States, in the case of Kansas vs. Colorado, the former being fundamentally a riparian state and the latter fundamentally an appropriation state, laid down as to the Arkansas, the rule of "equitable division"—that each state was to have a fair portion of the water for use within its boundaries without any conclusive regard to the relative dates of use as between the two states. In the later case of Wyoming vs. Colorado, a suit between two states, both of which were fundamentally appropriation states, the same court, while expressly commending its earlier decision in respect to a controversy between a riparian state on the one hand and an appropriation state on the other, declared, with certain important modifications, as to the Larimie, that the rule between two appropriation states should be to the effect that the states were to share in the waters of the interstate stream in the order of their seniority of use.

Of the Colorado River states, six, in their water law, are fundamentally appropriation states, while the seventh, California, is as fundamentally riparian. True, in California, they have both riparian and appropriation rights, but the appropriation rights there, in legal theory, are carved out of pre-existing riparian rights.

Which of the two rules would be applied by the United States Supreme court to a division of the waters of the Colorado among the states of the Colorado River basin, in the absence of interstate agreement, no one can predict with assurance sufficient to justify large capital investment either by governmental or private enterprise. To develop the river without court decision, which would take years to obtain, or without interstate agreement, is to build on chaos. One thing that is certain is that any division of the water between states which fails to take into account the future needs as well as present uses, cannot secure the approval of man's innate sense of justice. A monopoly or near monopoly of the use of the water by one state or by two states as against others would be as abhorrent as any other kind of monopoly at any time or any place. No state and no private interest will dare espouse a different view before the congress of the American people. However, another thing that is certain is that as a matter of caution Colorado in protecting herself against the other states should proceed upon the theory that the law may turn out to be "priority regardless of state lines."

The Colorado River Compact

The average annual natural flow of the Colorado river is something like 20,500,000-acre feet of water. Roughly speaking, the compact divides this flow by allowing annually to the four upper states of Wyoming, New Mexico, Utah, and Colorado, 7,500,000-acre feet, while assigning to the lower three of Arizona, Nevada, and California, 8,500,000-acre feet, and providing for a division between the same two groups, some years hence, of the remainder of the water less whatever amount, if any, should happen to be awarded to Mexico thru the medium of a treaty, should one be made, between Mexico and the United States. The division provided for by the compact cannot become effective, according to the terms of the compact, until that instrument shall have been ratified by all seven of the Colorado River states and by the congress. Thus far, it has been ratified absolutely by five out of the seven, the five being Nevada, New Mexico, Utah, Wyoming, and Colorado.

The same five states have passed special statutes by which the compact will become operative among as few as six of the states if six see fit to ratify it.

The states which are withholding their ratifications are California and Arizona, the former chiefly because she is unwilling to ratify except in exchange for a dam which will protect from flood the 50,000 of her people who live below sea level; and the latter chiefly because, before committing herself to the Colorado River compact, she wants an agreement with California and Nevada dividing among the three that quantity of the water of the river which the compact allocates to them in their combined capacity, and an agreement on the part of California to pay to Arizona an annual tax of five or six dollars on every horsepower of electrical energy produced in Arizona and transported to California for consumption.

The Stake

If Colorado can protect her interests in the Colorado river, she will acquire, so the State Engineer's office informs us, water for over one million acres of additional land, situated partly upon the Eastern slope, yet mostly on the Western; water, too, for her expanding industries and growing cities. What would be brought to the Eastern slope would not exceed more than two hundred fifty thousand acre feet per annum out of the more than twelve million acre feet now by nature flowing down the river into the lower states. The other upper states have scarcely less at stake.

The San Carlos Project

After the Colorado River compact had been negotiated at Santa Fe in 1922, but while still unratified by the States negotiating it, the Congress enacted a statute authorizing the Secretary of the Interior, at an expense in excess of five million dollars, to construct a Government reclamation project on the Gila river near San Carlos, Arizona. The appropriation bills passed by the Congress since that time have carried appropriations with which the Secretary of the Interior could carry out the authority granted. The appropriation bill now pending carries another appropriation for that purpose. Some two weeks ago the contract for the construction of the dam was awarded and work under the contract is to be commenced immediately.

The bill authorizing this project and the subsequent appropriations of money never should have been passed or made until after the ratification of the Colorado River compact. The source of water supply is the Gila river, which not only is one of the tributaries of the Colorado river system, but rises in New Mexico, one of the upper states. The lands to be watered are expected ultimately to reach an acreage of one hundred twenty thousand acres, of which something less than one-half belongs to the Pima Indians and the remainder to

whites. The water required will be over three hundred thousand acre feet per annum. The average annual flow of the Gila is between two and three million acre feet and is subject to heavy water appropriations already existing in Arizona.

No sooner will this project be completed and the water applied to use than Arizona will be laying to the use a claim of priority of right as against all later uses in any and all states upon the Colorado River system. Colorado's senior senator has been a supporter of this project and of the money appropriations made in its behalf.

If we are to assume, that as between states, "priority of use regardless of state lines," is the law of interstate streams, then the San Carlos project is against the interests of every upper state on the Colorado. It is a direct injury to New Mexico in which the Gila rises, because that state contributes over four hundred thousand acre-feet per annum to the flow of the Gila and has sixty thousand additional acres of land which could be watered from it in the absence of the San Carlos and other earlier water priorities below. The project is an indirect injury to all the other upper states in two ways: In the first place, if the upper states stand by and allow Arizona to acquire water priorities against them with the aid of Government lands and Government money, without requiring an advance ratification of the compact, it is not at all impossible that Arizona may reach the point where she might regard herself as having acquired under the doctrine of "priority regardless of state lines," all that she could hope to acquire under the Colorado River compact. For the upper states, therefore, to assist Arizona in acquiring priorities is to lessen their own chance of securing a ratification of the compact by Arizona and therefore to lessen the chances of their own self-protection by effecting a reservation of the waters of the river system in their favor. The second indirect injury done to the upper states by the San Carlos project, again assuming "priority regardless of state lines," to be the governing principle as between states, is to remit later water uses in the upper states to a position of inferiority, as compared with the San Carlos use when it comes to yielding up water to satisfy earlier water uses in California or uses in Mexico which hereafter may be recognized by treaty between our own country and that one. The Gila empties into the Colorado and the Colorado continuing thereafter, as before, to form the boundary line betwen Arizona and California, passes out thru Mexican lands into the Gulf of California. Where you have a stream system composed of a main river and tributaries and where the priority system is its governing law, the rule is that as between two water users whose uses are not as old as is that of a third water user, that one of the two who is the later in the initiation of his use must be the one first required to surrender water to the third user whose use is older than both. Obviously existing uses in California and Mexico are older than uses not yet made in the upper states. When we of the upper states helped Arizona to put three hundred thousand acre feet of water upon Arizona land at San Carlos in advance of the ratification of the Colorado River compact, we simply helped to keep that much water from being put on land in Colorado, Utah, Wyoming and New Mexico.

How does Senator Phipps defend his course in giving his support to this San Carlos project? By asserting that the San Carlos dam offers a certain amount of flood protection to the Imperial valley in California and that not to allow Arizona to make the proposed use of the waters of the Gila is for the upper states to pursue a "dog in the manger" policy. The argument for flood protection is disposed of by the fact that Gila water helps the people of the Imperial valley to irrigate their own valley and that the establishment of a water priority in favor of the San Carlos project as against later additional uses in the Imperial valley gives those people more concern than would the absence of the San Carlos dam on the score of flood protection. They say so. Furthermore, from the standpoint of the upper states, themselves, it is poor policy to assist the lower states to projects of flood protection that at the same time may involve the acquisition of water priorities against us.

The senator's "dog in the manger" argument falls likewise. As I remember the fable of the ancient Aesop, the ox returned to his stall near sun-down and found a dog lying upon the hay in the manger. The ox could not get near the hay for the barking and biting of the dog. The dog himself could not eat the hay, yet would not allow the ox to have it, although the latter was preeminently fitted to make use of it. In the case of San Carlos, all of the upper states themselves had use for the hay, yet the senator's vote has helped give it away—away to a state which thus far has refused to enter into an agreement with us and which in the meantime is seeking to pile up against us all of the water priorities she possibly can. The case was not that of a dog and an ox but of many oxen, one of which, Arizona, was making way with the hay without division agreed upon.

It is only fair to the senator to add that Arizona, in acquiring the San Carlos project, put her cause in part upon the ground of humanity to the Pima Indians—the assertion being that before the whites had settled Arizona to any great extent, these Indians had ancient water rights for the watering of substantially the same Indian land which is included within the boundaries of the San Carlos project and that they now find themselves deprived of those rights and their lands of water. I believe this story to be true, but it does not move me in the least. If the Pima Indians of Arizona have been deprived of their ancestral waters, they were deprived by the whites of Arizona and I am absolutely opposed to the Arizona whites taking the waters of the whites of New Mexico, Colorado, Wyoming and Utah to pay off water debts to Arizona Indians. The plight of the Pimas is a sad one but to regard that, and at the same time disregard what is at stake between the upper states of the Colorado River system and the lower states is to heed the smaller humanity and ignore the greater.

What a chance has been thrown away! Over eighty per cent of the people of Arizona are said to reside in the valley of the Gila. If only we had insisted upon the ratification of the Colorado River compact as a condition for the authorization of the Government project at San Carlos, it might have been that, by this time, the upper states would have had the ratification of the compact and Arizona her project at San Carlos!

The Cameron Bill

Since the negotiation of the Compact at Santa Fe and while still unratified, Arizona, thru her Senator Cameron, introduced in the Senate a bill most innocent and general in its terms. It was a bill authorizing the Secretary of the Interior, in hereafter granting leases of water privileges for the generation of electric energy at Government dams, to make the period of lease fifty years instead of, as now, ten years. The bill passed the Senate committee, of which Senator Phipps is a member, passed the Senate and now is in House committee, where a protest of the city of Denver has been lodged against it. Under ordinary circumstances the bill would be commendable for by extending the lease-hold period, it gives to lessees a fairer chance to amortize their power plant investments. However, the particular purpose for which the passage of the bill is sought condemns the measure utterly if to be passed in advance of the ratification of the Colorado River compact. The specific, although unmentioned, purpose of the bill is to enable a power plant to be constructed on the Colorado river just below the Laguna dam on the boundary line between California and Arizona for the principal purpose of watering thousands of acres of land situated in Arizona and included within what is known as the Government's Yuma project and supplying energy to surrounding towns and cities. Indeed the principal backer of the bill is the Yuma County Water Users' association of Arizona, and the company that is expected, according to the general understanding current in the Yuma vicinity, to obtain the lease, is the Southern Sierras Power company which is a subsidiary of the Nevada California Electric corporation of our own city, and already buys power from what is called the "Syphon Drop" power plant belonging to the Yuma project.

If this bill should pass the Congress and a power plant be established under it, the water priority would be for anywhere from four to eight thousand cubic feet per second or from 2,900,000-acre fect to 5,800,000-acre feet per annum —a heavy draft on the river. If the water which is to be pumped to the land for irrigation is to be different from the water which operates the power plant as is the understanding, then the priority against the river would be correspondingly greater. These priorities if once acquired in advance of the ratification of the compact, Arizona will assert against Colorado and the other upper states. Furthermore to allow them to Arizona in advance of ratification will lessen the inducement remaining to her to ratify and therefore the chance of ratification itself.

Senator Phipps does not agree with me as to the viciousness of this bill and gave it his support.

What are the Senator's reasons? They are three: First, that the water appropriation for power purposes for the pumping of water for the irrigation of additional lands of the Yuma project was within the original plan of the project and that therefore the project's claim against the river is not being increased, or to use the Senator's own words—"On what reasonable theory could I oppose a project which adds nothing to the water rights already held by the Yuma enterprise?" Second; the Yuma project could buy electric energy elsewhere and if so, why not let it have the Cameron

bill with the plant which could be constructed under it. Third; the water which would be used by the power plant in the generation of power is already being used for the irrigation of the Imperial valley and in consequence the power plant use would not constitute any additional burden on the river as against the upper states. The first two of these reasons were the ones given to you in the Senator's address, but I have heard him on another occasion give the third also and I therefore include it.

When the Senator contends that the power plant use of the river "adds nothing to the water rights already held by the Yuma enterprise" and that the power plant use "has no effect whatever on its (the Yuma project's) existing water rights and therefore cannot in any manner increase its present appropriations as against the right of the upper basin states," he forgets the difference between an "unperfected" water right and a "perfected" water right. The former are initiated by the filing of claim and possibly the commencement of construction but they last, however, for but a brief time and, unless followed by application to use, they "lapse" and never become complete or "perfected." The "unperfected" rights cease to be dangerous to rival water users unless finally "perfected." The Senator, by his support of the Cameron bill is assisting Arizona to "perfect" water rights which she will assert against us and he did so in advance of the ratification of the compact.

"But," says the Senator, "if the Yuma project could not get power from the proposed power plant at the Laguna dam under the Cameron bill, the project would buy power from some other source." To this, I answer—Better let it buy elsewhere if it can, rather than that Colorado should assist by new departures in legislation! Furthermore, power generated elsewhere would not establish a water priority for power generation against the river.

The Senator's contention that the power plant water would be used anyway, after released from the power plant, by the Imperial valley for irrigation would be substantially true if the physical situation were to remain unchanged for, at the present time, the head of the Imperial valley ditch is below the location of the proposed plant. The situation, however, is not to remain unchanged. The Imperial valley district has with the Department of Interior a contract under which the head-gate of the present Imperial Valley ditch is to be moved on up the river to a point immediately above the Laguna dam, and the district has already paid to the Government something over two hundred thousand dollars under that contract. With the change of the situation it becomes evident at once that there will not be, by the power plant and the Imperial valley, a double use of the water used in the operation of the plant and that the plant-use will become an additional and new burden upon the river, only to be asserted in turn against Colorado and the other upper states. As for the Southern Sierras Power company, I want to see it obtain the lease upon the water privileges at Laguna dam if any company receives it, but I do not want any company to get it, until there shall have first been made an effective reservation of the waters of the river in favor of the upper states.

The Casper-Alcova Project

The Casper-Alcova project bill introduced by Senator Kendrick of Wyoming, always a great and forceful figure in the Congress, does not affect the Colorado river but the North Platte which rises in northwestern Colorado and then flows into Wyoming. This bill authorizes the Secretary of the Interior to construct a Government Reclamation project not far from the city of Casper. The project, should the bill be passed, will embrace some eighty thousand acres of land and call for about 160,000-acre feet per annum of water. The bill has passed the Senate, has been reported upon favorably by the proper House committee and would have been voted upon in the House but for the vigilance of Colorado representatives in that body, for it even had gone so far as to be placed upon the calendar. Negotiations were on between Colorado and Wyoming at the time the bill passed the Senate for an interstate compact between the two states, dividing the waters of the North Platte. The bill passed the Senate, in advance of any interstate compact and also passed it without any reservation of water for new and additional uses in Colorado. The average annual flow out of Colorado into Wyoming is between four and five hundred thousand-acre feet. The project will require about one hundred sixty thousand. It had already been settled in the case of Wyoming vs. Colorado involving the waters of the Laramie that as between these two states "priority regardless of State lines," with certain modifications, governs. Undoubtedly no sooner would Wyoming secure this project then she would assert its water use as prior to any later, new or additional uses from the North Platte in Colorado.

The Colorado members of the House at Washington are seeking to amend the bill in such wise as to effect a reservation of water in favor of Colorado. Whether or not they will succeed is doubtful. When I think of Wyoming in connection with the Casper-Alcova project and of her diplomacy in edging this bill along, instinctively I remove my hat, but when in the same connection I think of Colorado, I instinctively put it on again.

The Senior senator of our state does not agree with me on this bill and supported it both in his Senate committee and in the Senate, notwithstanding the fact that the Secretary of the Interior had reported against the project upon its merits and that our Interstate Stream commissioner then in negotiation with Wyoming, was not consulted or warned.

When the Senator addressed you the other day, he defended his action on two grounds:

First: That the bill does not represent an appropriation of money for the project proposed, but only an authorization that it be constructed.

Second: That at the time the bill passed the Senate, he and the Wyoming senators knew a compact was being negotiated between the two states by their respective Commissioners and that "it was clearly understood as between them (the Senators) that the passage of the bill as proposed would not be allowed in any manner to affect the rights of Colorado in the waters of the North Platte river." Only an authorization and not an appropriation of money! Is there anyone familiar with the different Reclamation acts of the Government who does not know that in the natural order of things, when the Congress authorizes by a formal act the Secretary of the Interior to construct a project, that the next thing it does is to appropriate by an appropriation bill the money whereby the Secretary may accomplish the authorization? If any of you have doubts upon this point, let me give you a parallel case:

Scene—The Committee room of the Senate committee on Appropriations in the National Capitol at Washington.

Dramatis Personae—The Senior senator of Colorado (who was a member of the Committee), other Committee members, Interstate Water commissioner of Colorado, Special counsel for the city of Denver.

Theme of Plot—The question being whether the second annual money appropriation should be made for the San Carlos project on the Gila, the project having been authorized by the Congress in 1924 but the authorization act containing no appropriation.

The first money appropriation already made and the proposed one under consideration were trifling in amount. The construction contract upon the San Carlos project had not been entered into and never was until two or three weeks ago. As part of the drama, the Water commissioner of Colorado and the Special counsel of Denver protested against any appropriations of money for the San Carlos project construction of which had been authorized by the earlier Act of Congress. Result—Protests over-ruled; money appropriation made—the Senior senator of Colorado concurring.

The Senator's second defense, you will recall, was that he had an understanding with the Wyoming senators to the effect that the bill would not affect the water interests of Colorado in the North Platte. Senators' conversations are lawful, they frequently result in laws, excellent laws, but the conversations in themselves are not the law and are powerless to protect one state as against another under congressional legislation. With the case of Wyoming vs. Colorado before him, under which Wyoming was awarded 88 per cent of the waters of the Laramie and Colorado only 12 per cent, was the Senator right in espousing the bill for the Casper-Alcova project in advance of the Interstate agreement, or was the Denver Chamber of Commerce right in opposing the measure and in commending the Colorado house delegation at Washington in its attempt to stop the progress of the Bill, or failing that, to bring about its amendment? I was the "committee of one" to whom the Senator referred who drafted the resolution which the Denver Chamber of Commerce passed and I have no apology to offer. Should the Bill be passed and the project constructed, not only would Wyoming acquire a water priority which she would assert against later developments in northwestern Colorado, but the priority would embarrass Colorado in her negotiation of a compact with Wyoming for the latter state would realize the advantage given her by the Bill authorizing the project.

The Senator described the activity of Congressman Taylor in whose political district the North Platte area lies, in his endeavor to defeat or amend the

bill, as "political bunkum". The congressman happens to be a Democrat, while I am a Republican. I want to say, however, that other things being equal, I am for any Democrat who brings home the water and against any Republican who doesn't. The only trouble is to find the other things equal! But how reprehensible to condemn a repentant Democrat who devotes himself to that pure liquid, which never made an enemy or lost a friend! It is too much like disturbing a penitent sinner at the altar! Then, too, was it "political bunkum" for the Colorado commissioner on Interstate streams, who happens to be a Republican, to draft the amendment that Congressman Taylor is to present?

The Senator marvels that the Denver Chamber of Commerce should concern itself about water for northwestern Colorado when the water could not be used by any industry in Denver. Evidently the Senator does not fully realize that the Denver Chamber of Commerce stands not only for Denver but for a square deal for every part of Colorado and believes that all parts must advance together and none without the other.

The Boulder Canon Project—The Swing-Johnson Bill

TERMS OF THE BILL

If the Swing-Johnson bill, inclusive of the protective amendments which were offered by the upper states, should be passed, the Government, through the Secretary of the Interior, would be authorized to build, own, and operate, a dam at or near Boulder canon on the river boundary between Arizona and Nevada,—a dam sufficient to impound 20,000,000-acre feet of water, for the purpose of protecting the lowlands of California and Arizona against flood, for the irrigation of five hundred thousand acres of government and private lands in California and Arizona, for municipal and domestic use and for the generation of hydro electric power. The Bill authorizes also the building of an All-American canal whereby to carry a portion of the impounded water into the Imperial valley and neighboring districts of California, the canal to serve as an enlarged substitute for the canal now supplying the valley and which, for a portion of its distance, crosses into Mexico. As for the power plant, which the bill likewise authorizes, it may be built and operated either by the Government, or, through contract with the Secretary of Interior, private enterprise may lease the water privileges, build, own, and operate, the plant. Knowing as we do the avowed policy of the Administration to keep the Government as far as possible out of business, we may feel assured that unless compelled by extraordinary circumstances, such as by the failure of private applicants to bid enough to permit the Government to reimburse itself, the Government is not going into the power business at Boulder canon. Uncle Sam by nature is a policeman and not a producer.

The dam is to be the greatest in the world, yet according to the terms of the Swing-Johnson bill it ultimately is not to cost the people of the United States a single cent. The total cost of the dam, canal, and power plant, and interest during construction, would be somewhere around $125,000,000, whereof approximately $40,000,000 would be for the dam, $30,000,000 for the All-American canal, $35,000,000 for the power plant, if, as unlikely, the power plant were to be constructed by the Government, and the remaining $20,000,000 for interest. While the Bill provides that the initial cost of whatever the Government may construct shall be advanced by the Government, yet it also provides that the Secretary of the Interior shall not turn a spade until he has in his hands contracts covering delivery of irrigation and other water and delivery of electrical energy or else of water privileges that others may develop the energy, in a sum sufficient to reimburse the Government within a period of fifty years for its outlay with interest added.

The river is international, and Mexico is already using over 600,000-acre feet for the irrigation of approximately 200,000 acres of land, and is increasing the use for additional lands as rapidly as possible in the expectation that in some way or other it will be able to establish a claim against the United States for the retention of all the water thus applied. The substitution of an All-American canal for the present international canal serving the Imperial valley and vicinity would have the effect of protecting the states of the Colorado river basin against any increased uses in Mexico, and the cost of the substituted canal, if Mexico will not lessen her water demands against the present canal, is not to be thought of in comparison with the economic gain to our own countrymen as the result of preventing increased uses in Mexico.

While we should continue to hope and work for the universal ratification of the Colorado River compact which the Commissioners of the states negotiated under the chairmanship of Secretary Hoover, the Swing-Johnson Bill offers to the upper states of the basin, in the meantime, the maximum protection that is humanly possible short of such universal ratification. In the first place, the bill assures us of the ratification of the compact upon at least a six-state basis, for it provides that the Secretary of the Interior shall start no construction work and that the Government shall appropriate no waters until first as many as six of the River states, inclusive of California, whose adherence is certain, shall have ratified. By that provision the upper states become protected as against any and all appropriations made in Nevada or California, in that through the ratification of the compact these two states agree that there shall be exempted in favor of the upper states and as free from appropriations made in the two states themselves, the very quantity of water which the Compact itself reserves for the upper states.

What about the protection given by the bill as against water appropriations in Arizona? These appropriations or uses may be considered as of two classes: Those to be connected with the project which the bill authorizes, and those not thus connected. There will be no such connected uses for power generation in Arizona because the bill requires the location of the power plants connected with the project to be in a ratifying state; in other words, in Nevada, unless Arizona should ratify the compact in which event their location in the latter state would be immaterial. As a matter of fact, physical conditions for power development are better on the Nevada side of the river than on the Arizona.

As for Arizona uses of water from the project for irrigation, the bill permits them, but undertakes, and I am strongly inclined to believe successfully, to protect the upper states by exempting in their favor the quantity of water reserved to them by the compact itself and by directing the Department of the Interior, in the administration of the waters of the project, to observe the terms of that instrument.

When it comes to Arizona appropriations or uses of water, not connected with the Boulder canon project authorized by the bill, but taken from other points on the river or its tributaries generally, the Bill seeks to protect the upper states by limiting the quantity of water that Arizona and her people, under water rights initiated hereafter, may store upon or transport over Government lands, to such a quantity as does not encroach upon the amount reserved to the upper states by the compact. There may be some question as to whether such a limitation by the Congress on the use of Government lands would be valid—we are without precedents—but the probability is in favor of the validity, for otherwise the Government would be precluded from determining how its own lands should be used. At any rate the limitation is the best that can be devised short of Arizona's ratification of the compact.

When it comes to Arizona water appropriations or uses to be made hereafter and not requiring the use of Government lands for storage or transportation, the probability is that as a physical matter there are few if any appropriations or uses of major importance that could be made. Whether this is the probability or not, the bill undertakes to subordinate them also to the terms of the compact altho with what legal success no one can say definitely one way or the other.

The protection which the bill gives the upper states, as against the lower states of California and Nevada is as complete as ever an interstate agreement with those states could make it, because, by the insured subsequent ratification of the compact by California for which the bill opens the way, the upper states obtain that very agreement. As to Arizona the bill gives the upper states, by strong probability, full protection against any and all Arizona water appropriations or uses from the waters of the project itself and probably against most appropriations or uses of consequence not connected with the project. The bill gives us a whole loaf of protection from California, another from Nevada and at least two-thirds of a loaf from Arizona. Without the bill, we are likely to lose not only the two-thirds of a loaf, but two whole ones as well. Would the Senator have us forego all of the bread?

DANGER FROM POWER LICENSES

The ideal solution of the controversy between the upper and lower states, which is the greatest controversy over the waters of the river, would be the ratification of the compact upon a seven-state basis. We still may and should work for that objective, but if in doing so we either oppose or kill by intentional neglect the Swing-Johnson bill, the upper states run the risk of the resumption on the part of the Federal Power commission of the granting of power licenses on the lower river, and in the uncertain condition of our interstate law governing the use of interstate streams, they run the possible risk, much as they may contend for the contrary rule, of water priorities being acquired by licenses of the Commission

sufficient to exhaust the entire now unused flow of the river, with the consequent possible effect that these states would be required as a matter of law to allow this water thereafter to go down unused to satisfy the needs of the power plants licensed instead of being permitted to use a fair part of it for irrigation, industrial, municipal, domestic, and other uses in the expansion of their economic life within their own borders. We of the upper states do not say that this is the law—in fact most of us contend to the contrary—but we also know that so far as the law is concerned, the whole question is in doubt. In a matter so grave as the economic future of our region let us run no risks. Let us build on certainties, not upon doubts. To protective provisions inserted in the licenses of the Federal Power commission, in the attempt to protect the upper states, we dare not trust, because no one can predict with sufficient certainty whether provisions of that kind would be valid or not.

The danger that the Commission may resume the issuance of licenses is not fanciful. The sword of Damocles hangs over us. We do not know when it will fall. Three times now during as many years, the Commission, largely at the instance of the upper states, suspended action upon one of the applications, that of James Girand for a power plant on the Colorado in Arizona near the mouth of Diamond creek. It did so with great reluctance on account of the heavy expenditure which Girand and his associates had made already, and only because the public interest of the basin as a whole seemed to require a division if possible of the water of the river between the two groups of states before the acquisition of any more water priorities for power purposes in either group. At the time of the last suspension by the Commission, which was in October, 1925, the action was suspended upon over twenty other applications, but, according to the order of the Commission itself, the suspension was only for "a reasonable time" wherein to permit the states affected to reach an agreement over a division of the uses of the river. So deeply impressed was the Commission by the equities of the Girand application that a companion order was entered to the effect that upon a withdrawal of the general order of suspension, the Girand application should be given preferred consideration. We may hope not, but the Commission may conclude that "a reasonable time" will have expired with the adjournment of the coming January sessions of the California and Arizona legislative sessions. We have no assurance that it will not.

THE SWING-JOHNSON BILL AND SENATOR PHIPPS

There are many things in the Swing-Johnson bill with which Senator Phipps is in agreement. He believes in the division of water between the two groups of states which the bill attempts to make; that the dam itself, should be built, owned and operated by the Government; that the best site for the dam probably is the Boulder canon site, which already has been approved by the Department of Interior although he would like to have the selection further confirmed by engineering authority. He believes too that the dam should be devoted: First, to flood control; Second, to irrigation and other water uses except power generation; and Third, to the generation of power, in the order of dominance named which is what the bill itself provides. He also thinks that the Government should regulate the discharge of waters from the dam in order to comply with the order of dominance just mentioned. He imparts financial standing to the project by expressing the opinion that there will be a ready market for the electric energy generated. He admits that California will ratify the compact immediately upon the passage of the bill and goes so far as to say that as a very last resort (which, however, he does not believe has come as yet) he might be for the bill. To this extent the Senator's agreement with the principles of the Bill is both gratifying and hopeful. In itself, however, it brings no water to Colorado because of his residuum of negation. Water can be produced only by the pump of affirmative action.

The Senator's objections are numerous. As a present substitute for the bill or at least as a preliminary to any bill of such character, he insists upon a seven-state ratification of the compact, although after four years of waiting that much desired objective has not been achieved. Indeed, during that time Colorado and the other upper states have lost ground and are threatened constantly by even greater losses. What about San Carlos? What about the Laguna dam power plant and the Cameron bill authorizing it? What about the Federal Power commission licenses which are ever in the shadow?

The Senator thinks it un-American to seek to make the Colorado River compact the law of the river as against Arizona unless with the full voluntary consent of the State. I think it un-American not to defend Colorado; un-American to allow Arizona to hold off any longer with one hand the passage of the Swing-Johnson bill, while at the same time grasping at water priorities against the upper states with the other. It never has been un-American to curb aggression even by a state and it is not so now.

While the Senator believes that if the bill passes, California will enter immediately into the compact on a six-state basis, he thinks Arizona will stay out. It is far from certain, however, that Arizona would enter the compact if the bill were not passed and it is certain that California would stay out. Let's have a compact at least on a six-state basis as against none at all.

The Senator fears that should the bill be passed, Arizona will attack its constitutionality in the courts. I say—let her attack; there are six states to defend, and the Government as well. It is better to fight for our rights and take a chance in the fight than to stand by and see them go without a fight. Does the Senator imagine that the Colorado River compact itself, even if ratified by all seven states, is going to escape challenge on constitutional grounds from some private water user, if from no other quarter?

In opposition to the bill and in support of a contention that six-state ratification, which, the Swing-Johnson bill insures, "will probably have no legal efficacy" he quoted the opinion of one Ward Bannister given the Senate committee on Irrigation and Reclamation, December 15, 1925. Of course, the eminence of the authority quoted is conceded as is also the compliment implied by the citation. However the want of legal efficacy of six-state ratification was stated, by the opinion, to exist as against Arizona and not as against the other two lower states entering into the compact. That such a compact would not, of itself, give protection against Arizona with her out of it is as clear as that it would, on the other hand, give protection against Nevada and California with them in it. Obviously the protection against Arizona must be and now is found in the protective provisions of the bill aside from those founded on the idea of a six-state compact.

The Senator also again quotes from the same general opinion in support of the contention that the bill probably would not protect as against Arizona, the quotation being—"I do not believe it (the Swing-Johnson bill) can be drawn so as to protect the upper states *with certainty* in the absence of universal ratification of the Colorado River compact." The Senator quoted correctly but in his application failed to observe the words "with certainty." Both of the specific opinions quoted were expressed before the amendments protective of upper states had been prepared or made. Those amendments now are part of the Bill. They accomplish about all that can be accomplished without Arizona's ratification of the compact. Altho these amendments may not be fully accompanied by absolute "certainty" as to their validity against Arizona and altho the protection they afford may not be as "certain" as it would be under a compact ratified by Arizona, the validity is probable enough, in our jeopardy, to justify our support of the bill. When we are inclined to doubt this proposition, all we have to do is to contemplate the protection we should have if the bill were not passed. The "certainty" of protection is greater under the bill than it would be without it, because under the bill we get at least the protection which a six-state compact affords against California and Nevada, together with the probability of a most s u b s t a n t i a l measure of protection against Arizona, whereas without the bill there is a strong chance of getting neither.

The Senator does not like the Bill's authorization of the building of an All-American canal. He, to use his own language, is "not at all satisfied that such a canal could prove an economic success" and may want to amend the bill with a substitute device, such as pumping, for supplying the Imperial valley without using the present Imperial Valley ditch which passes through Mexico. The Secretary of the Interior believes that an All-American canal is feasible and that it should be built unless Mexican interests now obtaining water thru the present international ditch will lessen their demands on the water transported in order that the Imperial Valley may have more. This is a minor matter. The great thing is to build the dam for the Lower States and to reserve water for the Upper. If the Senator wants to amend, let him amend. We should be satisfied so long as his insistence on the smaller thing does not go so far as, should it prove unavailing, to prevent a favorable vote upon the greater thing in which Colorado is infinitely more interested.

When it comes to the generation of power at the dam, the bill, allowing the government either to build and operate the power plants itself or, as the Federal Water Power act itself permits, lease the water privileges to municipalities or to private corporations with the same preference in favor of the municipalities as the Federal Water Power act provides, the Senator favors the elimination from the bill of the alternative of governmental ownership and operation and recommends a further amendment of the bill, by putting the disposal of

water privileges for power generation under the Federal Power commission, which has general jurisdiction of the leasing of water privileges at government dams. Being for private enterprise myself, I see no objection, providing: first, that the amendment clearly provides that the power plants are to be constructed in a ratifying state and that the uses of the impounded waters for power generation and other purposes be put under those provisions of the bill protective of the Upper States and if the Secretary of the Interior be authorized to regulate the discharge of the water from the dam; second, that the necessary arrangements be made with Secretaries Work and Hoover and the proponents of the bill so that the bill as thus amended in favor of the private power industry will have the support that insures passage. This second condition is just as essential as the first. Indeed there are one or two other changes that might be made in favor of private power. But if in the end, a choice must be made between what would satisfy the private power industry on the one hand and what yields water to Colorado and the other Upper States on the other, then I am for Colorado.

The Senator's address was not as clear in consistency as it might have been, but one of the things causing me the greatest concern was an apparent suggestion that the Swing-Johnson bill could be dispensed with entirely and, failing a seven-state compact, the whole problem of the reservation of water for the Upper States and of flood control and water uses for the Lower States could be worked out by the Federal Power commission under the Federal Water Power act. This method would not bring about a ratification of the compact on a six-state basis with the protection such a compact would afford. The Commission under its present powers could not impose on Arizona, protective provisions in favor of the Upper States with one-tenth the effectiveness that they can be imposed by the Congress itself. Any attempt to carry out such a suggestion, as compared with other protective methods, would be but to trifle with the water future of this city and state. I protest against it and will fight it at every turn. I, too, am for private enterprise, but I am for it in the Upper States as well as in the Lower. The private enterprise of farms not yet under irrigation and of factories not yet expanded or built in these Upper States, is just as precious as is any private enterprise, whether in the power industry or in any other industry in the states below, and by the Eternal, it shall be protected!

We are reminded by the Senator that projects cost money and that the proposed development in Boulder canon will not be without some burden upon Colorado. Is this an argument against the project? If so, let's get out our pencils. The government is not likely to build or operate the power plant but only a dam and the All-American canal, leaving the power plants to private enterprise, but, assuming that the power plant is to be included, the total cost would be $125,000,000.00. That money the Government is to get back out of revenues from the project and cannot commence work upon the project until the revenue contracts are in hand. Even if those contracts should fail to yield any expected return, Colorado's share in the loss would be about 1 per cent of the cost of construction, or $1,250,000.00. What is that compared with one million acres of irrigated land or any substantial part of it at $125.00 per acre, or a gross annual income of $50.00 per acre? When did the Senator ever fail to invest a million to make a hundred million? You and I are not going to be any less wise than he if we can help it.

The Senator believes the Federal Power commission should not issue any licenses during a wait for a seven-state compact. So do we all. But the Senator did not pledge himself to obtain from the Commission any advance assurance that the Commission would extend the present period of suspension which was only for a "reasonable time." Who's going to put the bell on the cat that we may know when the licenses are coming? Colorado now appoints the Senior Senator to the job and the whole state will look on while he does it. Will he do it, as he ought to, before the Swing-Johnson bill comes to vote, so that all Senators and Congressmen may know in advance what they may expect, if the bill should not be passed? And if the Commission should extend the time, how is the Senator during this period of what has been a rather watchless, instead of watchful, waiting, going to hold back the Congress itself and the Senate? The Congress that, with his help, voted the San Carlos project, under which already Arizona claims to have acquired a priority against us? The Senate that, with his help, voted the Cameron bill for the power plant at the Laguna dam under which she will claim another? And what is he going to do about that Cameron bill now in the House? These are questions that count.

No, the policy of further waiting on Arizona is wrong. The Bill gives Arizona all the privileges in the way of uses of water and of power, which it gives to California or to Nevada. Welcome hands are out for her at any time she may choose to enter the compact and we all hope that she will come in. But to wait longer is impossible. Physical conditions tell us that the Imperial valley with its fifty thousand people and its one hundred millions of property and the adjacent Arizona lands are menaced yearly by flood. The human nature of the Congress tells us that the Congress will be providing a dam for flood control sooner or later. Sound business considerations tell us, as the Senator himself advises, that when the dam is built, the impounded waters, in order to reimburse the Government out of revenue for costs of construction, should be used to generate power and to water thirsty lands. Caution on the part of the Upper States dictates that no dam should be built, even for flood purposes, without a ratification of the compact on at least a six-state basis and without protective provisions against the State not ratifying. These Upper States cannot afford to run the risk of priorities being acquired against them in the generation of power or the irrigation of land or for any other purpose under the guise of flood protection. Since therefore a dam is going to be built anyway, let us of the Upper States not adopt a position of opposition but rather one of constructive aid at all times and with a reservation of water in our behalf primarily in mind. Let us build this dam at a time when, in doing so, we can count on a compact from Nevada and California, whether we can obtain one from Arizona or not. Let us do it while we can have their affirmative help to extend against Arizona, provisions protective of the reservation of water so much needed. As for the Senator, he did not by his address close the door against his own aid. Let us all hope and believe that we shall have it before it is too late. He cannot be anything else than for Colorado. The Colorado Engineering council representing over 2,000 technical men of the State, the Colorado Association of Commercial Organizations, the City of Denver, the Denver Chamber of Commerce, all of the newspapers of the city, many of the papers outside, Secretaries Work and Hoover and most of the Colorado river States have come out for the Bill. Let us be swerved neither to the right nor to the left by considerations that are minor, but press forward, keeping steadily in view the one supreme objective by which all loyalty is to be tested—water for the Upper States and therefore for Colorado.