

Delph Carpenter

Father of Colorado River Treaties

Text of Governor Ralph L. Carr's 1943
Salute to Delph Carpenter



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INTRODUCTION

The July 22, 1991 cover story of *Time Magazine* was entitled "The Colorado - The West's Lifeline is Now America's Most Endangered River." The heading also called it "A fight over liquid gold" and stated: "In a huge portion of the parched West, life would be impossible without the Colorado River. Now the very prosperity that its waters created threatens the river's survival."

The rulebook for the Colorado River is the 1922 *Colorado River Compact*, a document now nearly 70 years old. *Time* said, "This critical document facilitated both the astonishing development of the West and the problems that followed as a result."

From these statements the enormous significance of the *Compact* is evident, and a key person in developing this and other compacts was Delph Carpenter, a Greeley lawyer who became an institution in the development of interstate water treaties.

The centerpiece of Delph Carpenter's career was the Colorado River Compact and the acknowledgement of his role came from no less a person than President Herbert Hoover. Hoover's admiration for the work of Carpenter is evident from the two letters included in this booklet.

Not only was Delph Carpenter an institution in the field of western water; he left a legacy through his son Donald, who became an attorney and accompanied his father to many water meetings including trips to see President Hoover. Delph Carpenter and Herbert Hoover were friends while Hoover was Secretary of Commerce. Later, when Delph Carpenter became disabled with Parkinson's Disease but struggled to continue his work, his son Donald took care of his father's personal needs while he continued to work on the interstate water treaties. At the time that Governor Ralph Carr delivered the speech which is reprinted here, Donald was on the East Coast awaiting shipment to Europe in World War II. Ex-President Hoover arranged for Donald to attend the banquet.

Donald Carpenter went on to a distinguished career as a district court judge in Greeley, including presiding over the water court.

Today's students of water resources management will benefit from study of this speech and the vision held by Delph Carpenter and his peers about Western water management.



Delph Carpenter, Father of Colorado River Treaties

ABOUT GOVERNOR CARR

Ralph L. Carr, two-term governor of Colorado, Republican, worked with and was a close observer of Delph Carpenter's achievements. Governor Carr was born December 11, 1887, in Rosita, Colorado. He graduated from Cripple Creek High School in 1905, earned his B.A. in 1910 and his LL.B. in 1912 from the University of Colorado. He began practicing law at Victor, Colorado, in 1912 and was manager of the *Victor Daily Record*. He also edited the *Trinidad Picketwire* and later practiced law in Antonito, Trinidad, and Denver. He served as Conejos County Attorney from 1922 to 1929, Assistant Attorney General of Colorado from 1927-1929, and U.S. District Attorney in Colorado from 1929 to 1933. He was legal adviser to the Colorado Interstate River Commission on the Rio Grande Compact. He was elected Governor of Colorado in Nov. 1938 and re-elected in 1940. His close association with Delph Carpenter and his family is evident in the moving oratory of his October 27, 1943, speech to the National Reclamation Association.

SALUTE TO DELPH CARPENTER

**Address by the Honorable Ralph L. Carr
Former Governor of Colorado
to the
Seventeen States of the National Reclamation Association
Denver, Colorado
October 29, 1943**

To Delph Carpenter: - the Father of Interstate River Treaties - we offer a Salute.

Wherever water users have settled their differences over river flows without expensive and protracted litigation, they owe a debt of gratitude to the man whose efforts, more than those of any other individual, have pointed the way. But, like so many men who have devoted their lives to a cause, Delph Carpenter's hope of recognition or reward would seem to lie in that far distant future whose blueprints we have never yet been permitted to scan.

The Father of Interstate Treaties on Western Rivers lies in his bed at Greeley, Colorado, practically unknown to this generation, and, surely, unsung. Of course, the handful of men, lawyers, engineers, and legislators who employ the tools which he fashioned to broaden the uses of water through the West, know and love and respect the Colorado lawyer, but the general public - the people who should know, do not even recognize the name.

But the times are busy ones. The problems of life - the business of earning a living - the necessity for getting things done, the war -

keep even those who understand from doing the things they feel should be done - from acknowledging his greatness and in some small measure meeting the obligation of the West to one of her most valuable sons.

As the West stopped sowing its wild oats, and learned that there were other ways of earning a living beside the activities of the boom days of mining camps with Millionaire Row adding new members daily, with their gambling hells, their stock sales and their glamour, it was realized that the quieter brothers who had crossed the plains in the wake of the gold seekers and the adventurers had been at work also.

This was the region which Major Stephen T. Long in 1820 had condemned with the opinion that the country lying west of the Missouri and on either slope of the Rockies could never support human life and should be known as the Great American Desert. But the men who had tilled the soil "back there" discovered that the land covered with sage brush and buffalo grass which comprised the prairie dog's kingdom would produce crops, such as the Middle West and East never experienced, simply by the application of water through irrigation canals. With the

realization that agriculture could be carried on successfully, the true greatness of the West was guessed for the first time. Out of the necessity of life, a doctrine for the control and administration of the scanty flows of the streams of the arid areas was applied by the miners and early settlers.

The law of Old England, the law of the eastern United States, demanded that water be permitted to leave a man's land undiminished in quantity, and unpolluted in quality, at the same place whence it had always flowed in the past. But, if men were to cultivate their acres, if they were to establish homes in this western country, those humid region laws, fitted to different times and peoples and climates and ways of life, must be ignored.

The same spirit which carried the pioneers across the prairies and through the waters of unbridged rivers, furnished the solution. Men took water where they found it and carried it by canals, often for miles and miles, to the places where they wanted to use and enjoy it. When others came along to deny the right of the pioneers to continue this practice, they had resort to the courts. And those bulwarks of freemen, which interpret the laws to meet men's needs, to protect their rights and to permit them to enjoy the fruits of their labors, adopted a theory of law different from that recognized by their brethren who resided in the humid regions. They declared that the man who first diverted water from a natural stream and applied it to a beneficial use became entitled to divert a similar amount every year thereafter. His right assumed the nature of an irrevocable priority with a date

which went back to the first action taken in diverting or preparing to divert the water.

It was the doctrine of "First in Time, First in Right." Within its comprehensive terms, were found the bases for the settlement of all problems which might arise between rival claimants on the same stream. It defined each man's interest, and furnished a yard stick and guide by which those waters and their uses might be measured and delivered at all times in the future. It therefore spelled peace. It rewarded the diligent. It established stability. It protected titles to land by protecting the water rights used thereon. It was the foundation stone for the agricultural greatness which developed and which feeds a large part of the world today. It was different from the doctrine observed in the eastern States, where rainfall was adequate to supply the needs of growing crops, but it was not unknown to the law of waters.

It is in reality as old as civilization. It arose out of ancient practices and rules established in arid regions of the Old World. The first knowledge of irrigation practices like those now followed dates back to 4000 B.C. and is found in the Code of Hamurabbi. The practices of the Romans came to New Spain with the Conquistadores and the Padres. That part of the United States acquired from Spain and Mexico followed irrigation practices along the Rio Grande which controlled the distribution of water before the Pilgrims landed at Plymouth Rock.

But western rivers sometimes extend through half a dozen or more states. The time came

when the water users in one state complained of violations of their rights by the combined diversions of the water users in adjoining states. The lower states argued that the irrigators in states on the upper reaches of a given stream were diverting so much of the flow that crops on the lower river were being deprived of their needed water supply. In at least two instances international situations were involved in such lower river protests.

The water users in upper states where, the river-flow develops from the rains and melting snows which fall in their mountains, were quick to assert a claim to all the water flowing within their borders for that very reason. There was no tribunal which offered a forum for the settlement of such controversies between individual water users on the same river but residing in different states. The states as the representatives of their respective citizens and sections went to the United States Supreme Court and sought redress for the asserted wrongs.

To present a case which involves an interstate dispute over the benefits from the flow of a river crossing the borders of half a dozen states, calls for the preparation and presentation of facts and of law on a colossal scale. Hundreds of thousands of dollars have been expended by the farmers on certain streams in an attempt to protect and preserve what they assert are their rights. One case - that one between the states of Kansas and Colorado which involves the water of the Arkansas River throughout its course in Colorado and across about 75 miles of irrigated lands in western Kansas -

has been in the United States Supreme Court with only a few periods of seething peace since 1901. The Colorado River with seven states, has furnished that highest Court food for thought on several occasions already.

The states, in their capacities as quasi-sovereignities might have had to resort to arms to settle these difficult problems. Men and states have gone to war over situations not half as vexing or as important as those involving the flows of western rivers. The enjoyment of a thing the presence of which spells life and growth and permanence; and the absence of which means decadence and defeat and death can easily be converted into a *casus belli*. Fortunately for this country, the states surrendered the right to wage war when they adopted the constitution.

Engaged in the practice of law in the city to which Horace Greeley had sent the Union Colony, Delph Carpenter caught the vision of the great Editor. Greeley had insisted and argued and demanded that more and ever more water be diverted and applied to the fertile soil of what is now classed as the fifth county in the country in agricultural importance. Delph Carpenter became an irrigation authority early in his practice, and his efforts and advice went far in accomplishing the results which Greeley had foreseen. Eventually he became Colorado's legal representative in the vital river cases and the water conferences which were ahead. But there remained to be applied the underlying law by which states might measure their relative rights to water. Resort to the Courts had proved unsatisfactory. The states themselves had not sensed the

problem. Water users and their interests were in a precarious state.

Delph Carpenter sought a better answer. He wished to avoid further submission to the courts of questions which could be more sympathetically weighed by men who knew irrigation and irrigation needs and methods - the farmers themselves, their engineers, their water distribution officials and their legal advisors. Determined that no more expensive litigation should be saddled on the shoulders of Colorado water users and of western water users generally, if he could avoid it, Carpenter through constant reading and study found the answer.

In a decision by Mr. Justice Holmes which involved western waters, a chance suggestion had pointed to the settlement of water quarrels by the states themselves. As he read and searched he learned that, early in our nation's history the question of the exact location of the boundary lines between some of the original thirteen states had been settled under a provision of the Constitution which saves to the states the right to contract with each other, with the consent of Congress. He studied the opinions in cases where boundary questions were considered by the great lawyers who occupied the Supreme Court bench during the years when the nation was forming.

If states can draw a line across lands so as to fix the limits of each state's ownership, Carpenter contended, they can just as certainly draw a line across the flow of a river. True, different problems are presented where a western stream of uncertain flow,

with torrential cloudbursts and frequent and prolonged dry spells, is the subject for division. But just as surely as men can measure human rights and are willing to accept the hardships from low flows while they claim the benefits from peak flows, the result can be accomplished. It took years to induce others to agree with him. But Colorado's outstanding irrigation lawyer knew he was right. The insistent, logical, persuasive arguments of the man with "the piercing blue eyes, the twinkling blue eyes, the understanding blue eyes," finally got the job done.

The legislatures of many states had to be sold on the idea first. These bodies must establish river commissions with power to sit around a treaty-table with representatives from other states and "equitably allocate" the benefits flowing from a river. And after the commissions had been authorized to act by legislative measures, there came the job of finding men with sufficient understanding of irrigation practices and needs, and equipped with the ability and courage, to adequately represent their states.

First, Nebraska and Colorado worked out their differences over the flow of the South Platte in a fashion which has proved satisfactory ever since the Compact was executed years ago with Delph Carpenter as Colorado's commissioner and with Robert H. Willis acting for Nebraska.

Came the controversy over the water of La Plata, a little stream rising in the La Plata Mountains a few miles inside Colorado and flowing swiftly across the interstate line into

New Mexico. Here the problem was a constant scarcity with enough cultivated acres in either state to justify the diversion of the entire flow. The problem of division was a tough assignment. But Delph Carpenter for Colorado and the late Stephen B. Davis for New Mexico arranged a settlement. It required two trips to the United States Supreme Court to sustain the agreement and to bring the announcement that compacts between states on irrigation streams are legal and valid.

Then came the great Colorado River conference. This time seven states, the National Government and the Republic of Mexico were involved, with almost every range in altitude, both above and some below sea level, with variations in climate, character of vegetation, condition of evaporation, kind of soil and aptitudes of water users, offering every imaginable difficulty. At Santa Fe a representative of the Federal Government in the person of Secretary of Commerce Herbert Hoover, and Commissioners for the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming gathered. No similar effort probably has ever been attempted. The result which some hoped might be attained really seemed impossible. Each state had its own peculiar viewpoint.

But as the weeks passed under the calm guidance of the Secretary of Commerce, an understanding finally commenced to develop. The mind of Delph Carpenter reached the height of its accomplishments and his was the hand which penned the major portion of the great document. A peace treaty was

signed which permitted the construction of the great Hoover Dam near Boulder City, Nevada, and carried to the people of seven states and a sister republic encouragement and growth.

The people of seven states know the limits of the water rights available for future development. They can farm with assurance that so long as the river flows, acres will be irrigated, their people will prosper and America will profit. They know also, that, in the meantime, the less progressive states will lose none of the rights which are theirs and which must be saved for them until their lands are peopled, and funds are available for the construction of irrigation facilities. The power developed by the great turbines at Hoover Dam is shaping a new Southwest. Water is lifted more than a thousand feet over the Coastal Mountain Range, to bless and enrich the people of the Los Angeles district and Southern California generally.

Interstate relations involved in the sale and distribution of power and water at the dam have been adjusted, from time to time, through the aid of a committee of fourteen men from the seven states. When the cost of the dam has been repaid the early earnings will be the subject of further discussion. They should in the very nature of things go to the states for their enrichment and greater realization of water benefits.

After the execution of the Colorado River Compact, stricken with an illness which has never left him, nevertheless Delph Carpenter attacked the hardest task of his life - the settlement of the controversy, over the flow of

the Rio Grande, between the states of Colorado, New Mexico, and Texas, which had been aggravated by an international snarl with Old Mexico. This cause had potentialities for strife and conflict, and conceivably, for war.

For several hundred years the people along the lower Rio Grande near El Paso and in Mexico south of that city, had diverted the water of the Great River of the North to irrigate crops of grain, of vegetables, of tropical fruits - yes, even of grapes from which wines were pressed which challenged the pride of the vineyards of the Old World. Enormous agricultural developments in the '80s in the San Luis Valley of Colorado resulted in the construction of irrigation enterprises, some with main land canals carrying water thirty to forty-five miles from their river headgates. A similar development in New Mexico attended.

The people of the Republic of Mexico concluded that their thirst was attributable to the great irrigation development upstream. The government of the Republic of Mexico went straight to Washington, and to quiet the demands of the sister nation an international treaty was executed whereby the United States bound herself to deliver to the Acequia Madre - the Mother Canal near the City of El Paso, Texas - 60,000 acre feet annually to be used for irrigation by the farmers of Mexico. In order to accomplish this delivery and to assure the performance of the treaty obligation, the Department of the Interior issued an order forbidding the construction of any reservoir with a capacity in excess of one thousand acre feet on the upper reaches of

the Rio Grande in New Mexico and Colorado. Then to make the promise doubly good, the Interior Department withdrew from homestead entry forty acre tracts at strategic points along the river beds of the upper streams and tributaries. This embargo, with modifications and amendments, continued in full force for nearly 30 years.

Delph Carpenter set himself once again to accomplish the impossible. An armistice was signed in 1929 which gave the states courage and permitted development over a six-year period. When the armistice ended a complete survey of the Rio Grande Basin from the headwaters near Creede, Colorado, to Fort Quitman, Texas, below El Paso, was accomplished by the National Resources Planning Board aided by the three states. His illness prevented him from attending the later conference on the Rio Grande after the armistice was ended. A permanent compact was concluded in March, 1938.

Delph Carpenter's oft repeated statement, that any river question could be settled by any group of men with all the facts in their possession who were honestly bent on reaching an agreement, was proved true.

People living on the streams where Delph Carpenter acted are not the only ones whose lives have been benefited by his efforts. Recently a compact on the Republican River between the states of Nebraska, Kansas, and Colorado was executed and ratified by the Congress only to be vetoed by the President because of pronouncements which, it was asserted, might affect power development. A new version which meets this objection has

since been signed by the three state commissioners, ratified by the legislatures of the states and approved by Congress. Compacts are contemplated on many other western rivers.

Every effort to reach a settlement out of court has failed on the Arkansas and North Platte Rivers. Cases involving their streamflows are pending in the Supreme Court of the United States. Those problems might well have been solved long ago had their people caught the vision. The compact plan has proved wise in the case of many of the members of the sisterhood and upon some of its greatest rivers.

The hand of Delph Carpenter has reached wherever men have settled their rights and crystallized their claims, as well as to those rivers where men hope for peace and the progress which is certain to follow the intelligent development of river flow benefits. During the trying weeks of the Colorado River Conference Delph Carpenter suffered pains which were soon to take him to his bed for life. In spite of his physical handicaps, Carpenter arose from his couch to spend long, difficult days in the sessions at Santa Fe over the Rio Grande. So weakened had he become that his work was carried on through an assistant who heard the whispered suggestions of his chief and transmitted them to the other states' representatives. Just as deftly and tactfully as in his younger, stronger days he guided the argument and led the conferees to the answer.

A man of strong convictions, and possessed of a speaking manner which enabled him to make his points clearly and definitely, Carpenter served his neighbors in the Colorado Senate. But his greatest faculty lay in diplomacy and persistence.

To know him is to love him.

A sense of humor which sends its portent in the twinkle of his clear blue eyes has saved many difficult situations.

History teems with tales of brave men who have given their lives for their country in time of war. Comparatively few make up the list of those who made the supreme sacrifice in time of peace and in the name of fair play for men in their everyday activities.

Delph Carpenter developed an idea which meant untold blessing to countless millions now living and yet unborn. By sheer hard work and unbelievable persistence he put it into action.

The West as a Man should do him Honor. Colorado as a state should recognize his service. I was about to say that a monument as high as the Western Rockies should be raised in his honor while he still lives and can draw some measure of comfort and some degree of compensation from the knowledge that the people whom he served, understand and are grateful. But a monument of stone and steel would be inadequate. The Colorado River Compact is the finest memorial that could be erected.

Several years ago I referred to the statement by an unknown writer in the Edinburgh Review which Judge Beaman presented to

the Supreme Court in the first Arkansas River argument. The presentation here as a tribute to Delph Carpenter seems fitting:

That although the tomb of Moses is unknown, the traveler of today slakes his thirst at the well of Jacob. The gorgeous palaces of the wisest and wealthiest of monarchs, with their cedar and gold and ivory, and even the great Temple of Jerusalem, hallowed by the visible glory of the Deity Himself, are gone; but Solomon's reservoirs are as perfect as ever. Of the magnificent and costly architecture of the Holy City, not one stone is left upon another, but the pool of Bethesda commands the pilgrims' reverence at the present day. The columns of Persepolis are moldering into dust, but its cistern and aqueduct remain to challenge our admiration. The golden house of Nero is a mass of ruins, but the Aqua Claudia still pours into the city of Rome its limpid stream. The Temple of the Sun, at Tadmor in the wilderness, has fallen, but its fountain sparkles in the rays of the morning as when thousands of worshipers thronged its lofty colonnades. And if any work of this generation shall rise over the deep ocean of time, we may well believe that it will be neither a palace nor a temple, but some vast aqueduct or reservoir; and if any name shall hereafter flash brightest through the mist of antiquity, it will probably be that of the man who in his day sought the happiness of his fellow men and linked his memory to some such work of national utility and benevolence.

May I close with the prediction that the name of Delph Carpenter will live as long as our civilization persists and the snows which make the rivers of the West fall upon the silver topped Rocky Mountains.

THE WHITE HOUSE
WASHINGTON

June 29, 1929

Mr. Delph E. Carpenter
Greeley, Colorado

My dear Mr. Carpenter:

Your note of June 25th to Richey with the clipping enclosed, has come to my hand.

I am not so much interested in my worries as I am in expressing to you the feeling I have over the consummation of the Colorado River Compact. That compact was your conception and your creation, and it was due to your tenacity and intelligence that it has succeeded. Sometime I want to be able to say this and say it emphatically to the people of the West.

Yours faithfully

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

November 27, 1922

Mr. Delph E. Carpenter
State House
Denver, Colorado

My dear Carpenter:

This is just by way of mentioning again the admiration and appreciation I have for the way you have built up the whole conception of the compact from its start and for the ingenuity and flexibility of mind which you have brought to bear upon it.

As a reminder of a personal relation which I hope we have established, I am sending you herewith a photograph of a better looking man, with the hope that you will substitute it for the one you have and that you will make a return to me of its natural quid pro quo (please note the introduction of proper legal terms).

Yours faithfully,

HH:B

A Testimonial of Appreciation Presented to Honorable Delph Carpenter

Friend of Reclamation and Servant of the West; Counsellor of all who till the soil; Crusader for better irrigation theories, and Builder of better rules and practices, who went forward, patiently and unselfishly, when illness and physical suffering dictated rest and relaxation; Father of Interstate River Compacts; Dreamer who visioned the West's potential greatness; Westerner who blazed the trail to economic freedom and prosperity for us and millions yet unborn; Diplomat who sought to preserve the rights of mankind through the application of enduring principles; and Statesman who sought the ultimate good of this Nation through fair adjustments among the sovereign States of our Great Republic;

This salutation from his friends, the grateful water users of the Seventeen Western Reclamation States, is presented in deep appreciation of the West's first citizen as a personal tribute to Delph Carpenter from the National Reclamation Association assembled in Annual Convention at Denver, Colorado this twenty-ninth day of October in the year Nineteen hundred forty-three.

By the Directors

STATE OF ARIZONA

STATE OF CALIFORNIA

STATE OF COLORADO

STATE OF IDAHO

STATE OF KANSAS

STATE OF MONTANA

STATE OF NEBRASKA

STATE OF NEVADA

STATE OF NEW MEXICO

STATE OF NORTH DAKOTA

STATE OF OREGON

STATE OF OREGON

STATE OF SOUTH DAKOTA

STATE OF TEXAS

STATE OF UTAH

STATE OF WASHINGTON

STATE OF WYOMING

SECRETARY, WASHINGTON D.C.

INTERSTATE COMPACTS *

ARTICLE 61

Colorado River Compact

37-61-101. Colorado River Compact.-- The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

W. S. Norviel, for the State of Arizona;
W. F. McClure, for the State of California;
Delph E. Carpenter, for the State of Colorado;
J. G. Scrugham, for the State of Nevada;
Stephen B. Davis, Jr., for the State of New Mexico;
R. E. Caldwell, for the State of Utah;
Frank C. Emerson, for the State of Wyoming;
who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado

River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this Compact: -

(a) **The term "Colorado River System"** means that portion of the Colorado River and its tributaries within the United States of America.

(b) **The term "Colorado River Basin"** means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) **The term "States of the Upper Division"** means the States of Colorado, New Mexico, Utah and Wyoming.

(d) **The term "States of the Lower Division"** means the States of Arizona, California and Nevada.

(e) **The "Lee Ferry"** means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) **The term "Upper Basin"** means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) **The term "Lower Basin"** means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) **The term "domestic use"** shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively

the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States or Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of the desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide the apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters

for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

ARTICLE V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with poer to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,
W. F. McClure,
Delph E. Carpenter,
J. G. Scrugham,
Stephen B. David, Jr.,
R. E. Caldwell,
Frank E. Emerson,

Approved:
Herbert Hoover.

37-61-102. Compact effective on approval.-- That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

37-61-103. Approval waived.-- That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

37-61-104. Certified copies of compact.-- That certified copies of this article be forwarded by the governor of the state of Colorado to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, New Mexico, Utah, and Wyoming.

*From Colorado Water Laws, 1979. George E. Radosevich, ed. County Information Service, Department of Economics; and Environmental Resources Center, Colorado State University, Information Series No. 17, p. I-80.

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