A HISTORY OF THE GENERAL DAM ACT OF 1906

by

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STATEMENT BY AUTHOR

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CHAPTER I

WATER POLICY IN THE UNITED STATES TO 1900:
A SUMMARY VIEW

The approval of the Federal Water Power Act on June 10, 1920, ended a period of conflict and controversy which had prevailed since the birth of this young republic. Numerous federal water resource laws enacted by congress proved wholly inadequate for the changing conditions of the country. The General Dam Act of June 21, 1906, was but one of the many such bills enacted into law. It was an attempt, only partially successful, to provide through general legislation rules fixing conditions for the construction of water power works in navigable streams; and takes its place in the gradual development of water policy which began in the late 18th century and culminated in the act of 1920.

The problem of water policy is extremely complex. The federal government has been involved with water resource legislation since the beginning of its history. It has had to deal with such varied and sundry interests as waterway

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improvement and regulation for purposes of navigation, flood control, drainage, and irrigation. This study has intentionally been confined to the problems of federal regulation of water power works in navigable rivers outside the public lands for the purpose of producing hydro-electricity. No attempt has been made to deal with irrigation, flood control, or other problems relating to water policy, except where they add to the understanding of the material or are directly concerned with hydro-electric development.

As early as 1787, when the Congress of the Confederation passed the Northwest Ordinance, consideration was given to this issue by providing that "the navigable waters leading into the Mississippi and St. Lawrence . . . [shall] be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States. . . ." On streams subject to congressional jurisdiction under the Commerce Clause of the Constitution, the government could grant or deny privileges of water power development. In August of 1789 the federal government undertook national control of waters by assuming expenses for the maintenance of piers at Philadelphia. Merchants of that city petitioned congress on March 16, 1796, for the improvement of navigation in the Delaware River due to certain navigational dangers brought about by
the insufficiency of public piers in the river. In his Farewell Address later that year, President Washington called for a network of national highways and canals which would bind the various sections of the nation together, North, South, East, and West.

It was not, however, until after the turn of the century, on March 19, 1802, that Jefferson's Secretary of the Treasury, Albert Gallatin, received permission to expend money for the construction of certain public piers, provided "the jurisdiction of the site where any such piers may be erected shall be first ceded to the United States. . . ." Five years later a resolution conveyed authority to the Secretary of the Treasury for "opening roads and making canals"—a resolution which caused Gallatin to recommend, on April 4, 1808, a subsidy for canals along the Atlantic seaboard and communications between the Atlantic and western waters and the Great Lakes. The Gallatin plan included canals forming a great turnpike of inland

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4 As quoted by Conover, p. 17.
navigation from the Hudson to Cape Fear, and the improvement of numerous rivers at a cost of $20,000,000.5

In 1820, at the behest of Secretary of War John C. Calhoun, funds were made available for the first time by congress for a survey of the Ohio and the Mississippi to determine the best method of improving navigation on these rivers. The task of conducting the survey was assigned to the Corps of Engineers,6 a branch of the United States Army which had been created by congress in 1802. The 1820 act apparently climaxed earlier waterway legislation; no other significant legislation was promulgated prior to mid-century. Nevertheless, the federal government had by this time become firmly involved in the intracacies of waterway development and regulation. These measures were "pork-barrel" legislation and did not come about due to any major economic interests, which became vocal much later.


By 1850 statehood had been attained by Texas and California, and vast areas of the West had been annexed to the national domain. At the time of the Louisiana Purchase, less than fifty years earlier, it was believed the western half of the United States would remain unoccupied for at least 200 years, if indeed it ever could be inhabited by the white man. But with the continuing movement westward and the rapid development of the East, interest in waterways and water resources steadily increased. In 1850 congress appropriated funds for topographical and hydrographical surveys of the Delta and the Mississippi, and enacted the first Swamp Act, the provisions of which were eventually extended to many regions of the United States. This act


8Waterway transportation was of primary importance in the West, for "the principal avenues of internal trade before 1860 were the interior waterways of the United States. Of these, the Mississippi and its Western tributaries played a part until the beginning of the twentieth century." See L. B. Schmidt, "Agriculture in the West as a Field of Historical Study," Arizona and the West, Vol. I, No. 4 (Winter, 1959), 338.
provided that certain unsold public swamp lands were to be
turned over to the jurisdiction of the state in which they
lay, for sale by that state. The proceeds were to be used
for the construction of levees or other works for the
protection of these lands. After the passage of this act,
however, no outstanding water resource legislation developed
until after the Civil War had ended in 1865. In that year
the United States Supreme Court handed down a significant
addition to national water policy in the case of Gilman v.
Philadelphia, declaring that for the purpose of regulating
commerce, navigable waters were "the public property of the
Nation, and subject to all requisite legislation by congress."

This necessarily includes the power to keep them
open and free from any obstruction to their navigation
interposed by States or otherwise; to remove such
obstructions when they exist; and to provide, by such
sanctions as they may deem proper, against the
occurrence of the evil and for the punishment of
offenders.9

Following this decision, congress on June 23, 1866,
granted right-of-way on public lands to ditch and canal

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9 This case arose when the defendants began con-
structing a bridge over the Schuykill River in Pennsylvania
under authority of the legislature of that state. The
building of the structure in the river would prevent the
passage of vessels on the Schuykill which lies entirely
within limits of the state. National v. states rights set
the tone of the case. Three justices, Clifford, Wayne, and
Davis, dissented to the decision finally handed down by the
court. Gilman v. Philadelphia, 70 U.S. 713, 724-725; also
in 18 L. Ed., 96.
owners. Less than a month later telegraph companies were permitted to construct transmission lines over the public domain and across the navigable waters provided they did not obstruct navigation.

The year 1866 marked the beginning of a new era in the development of rivers and harbors legislation. From that date until 1883 with but one exception, an annual appropriation was made by congress for rivers and harbors work. Between 1865 and 1875, four topographic and geographic surveys were conducted, two by the Department of the Interior and two by the Department of War. In 1879 the U. S. Geological Survey and a Mississippi River Commission were created. Congress became more deeply involved by

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10 Congress, House, Laws of the U. S. Relating to the Improvement of Rivers and Harbors from August 17, 1790 to March 4, 1907. Document No. 425, 58th Cong., 3d Sess., 1904-1905, pp. 151-156. This is a two-volume work compiled by the Office of the Chief of Engineers, U. S. Army. Legislative acts herein referred will also include their location in the United States Statutes. Hereafter this source will be cited as H. Doc. 425.

11 XIV Stat., 211.

12 No appropriation was made in 1877 and the one of 1868 was passed as part of the Deficiency Appropriation bill. Refer to E. L. Pross, "A History of Rivers and Harbors Appropriation Bills, 1866-1933" (unpublished Ph.D. dissertation, Ohio State University, 1938), p. 43.

13 Duplication of surveys under the jurisdiction of these departments following the Civil War led to the
the Homestead Act of 1862 and the Desert Land Act of 1877. Major John Wesley Powell's explorations of the Grand Canyon and the arid lands of the West in this period increased public interest in natural resources and represented the earliest steps toward reclamation. It must also be remembered that during the decade from 1870 to 1880 the creation of the Geological Survey, while the Mississippi River Commission and other water resource development organizations were located within the Department of War. See U. S. Geological Survey: Its History, Activities and Organization (New York: D. Appleton & Company, 1918), p. 6. This work is Volume I of Service Monographs of the U. S. Government.

Moreell (p. 34) discusses this development at length: "During the 15 years that followed the close of the Civil War, Congress had enacted the Homestead Act and the Desert Land Act which have been interpreted by the Western States to mean that the Federal Government irrevocably and unconditionally surrendered to those States whatever rights it may have had to control the use of water of non-navigable streams. On this assumption of State ownership of such streams grew the appropriative system of water rights which has been so important to the development of irrigation in the 17 western states."

Major Powell explored the canyon of the Colorado River in 1869. His studies on lands of the arid region of the United States were reported in 1879; "the first comprehensive account of this region." Charles R. Van Hise, Conservation of Natural Resources in the United States (New York: The Macmillan Company, 1910), p. 197. Van Hise served as a member of the National Conservation Commission created in 1908. His publication on conservation served as the standard text on that subject until very recently, and remains a source worthy of study. Also see Powell's Report on the Arid Region of the United States (1879) and Report on the Geographical and Geological Survey of the Rocky Mountain Region (1877), both published by the Government Printing Office, Washington, D. C.
Granger Movement was sweeping the West. Cheaper transportation, one of its demands, could more easily be obtained if waterway rehabilitation occurred.16

Accompanying this trend of greater private and public interest in water resource development, rivers and harbors appropriations continued to be expanded, until the 1882 Rivers and Harbors bill was sent to President Arthur for signature. The measure was promptly vetoed. Arthur wrote:

My principal objection to this bill is that it contains appropriations for purposes not for the common defense or the general welfare, and which do not promote commerce among the States. These provisions, on the contrary, are entirely for the benefit of the particular localities in which it is proposed to make the improvements. I regard such appropriation of the public money as beyond the powers given by the Constitution to Congress and the President.17

Congress overrode the president's veto but the press was in general agreement with the chief executive.18

16 See Pross, p. 47.

17 The full text of Arthur's veto, dated August 1, 1882, is found in James D. Richardson, (ed.), Messages and Papers of the Presidents (Washington: Government Printing Office, 1898), VIII, 120-122. The President "... also deplored the ever increasing size of the appropriations and suggested as an immediate solution that only one-half the aggregate amount be used and that the Secretary of War should allot this according to the President's wishes." Consult Pross, p. 65.

18 Ibid.
fall election of 1882 the Republican majority in congress was lost; the Rivers and Harbors measure, accompanied by several other controversial issues, apparently played a part in the result.

Movements for irrigation and reclamation were also firmly established by the 1880's. These activities threatened to create obstructions to the navigation of inland waterways; yet no general legislative control over the erection of such obstructions existed until the Rivers and Harbors Act of 1884. This law was the first act relating to water power development, and was the first directed toward regulation of obstructions to navigation. It provided also for the removal of such obstructions when deemed necessary. Water power dams being obstructions in the waterways, came under the jurisdiction of such statutes. Under the 1884 law the Secretary of War decided when a structure in a navigable stream was obstructive, and was empowered to remove such obstruction and then refer the matter to the attorney general for the recovery of the expense of removal from offenders. This and some 30 similar special


21 Ibid.
statutes enacted prior to the 1906 General Dam Act were perpetual in their terms and without major restrictions except for protection of navigation, but they remained subject to alteration or repeal.22

A second significant achievement in water power legislation in 1884 came in an act of July 5 which permitted a water power and mill company to construct a dam and other pertinent works for water power across the Mississippi River.23 It required that the dam should be constructed in such a manner as to permit the free passage of logs and rafts, and so as to allow the national government to construct a suitable lock for navigation in connection with the dam at any time. The act further stipulated that the dam might be possessed by the United States for navigational purposes by paying the actual cost. However, the government could not destroy the water power created by the dam.24

22Report of the President's Water Resources Policy Commission, "Water-Resources Law" (Washington: Government Printing Office, 1950), III, 262. For the purposes of this study only the third volume of this report was especially helpful. Volume I contains the "General Report" while the second volume discusses "Ten Rivers in America's Future." Hereafter this source will be cited as Water Commission Report.


24See Conover, p. 21.
On August 11, 1888, in providing for a federal navigation improvement, Congress empowered the Secretary of War "to lease the use of power in waters surplus to the needs of navigation, with rates, conditions, and periods deemed by him to be 'just, equitable and expedient'." Later in that year Congress authorized federal surveys combining irrigation and flood-control projects. But water policy was soon to be further complicated by still another development: the rise of hydroelectricity and hydroelectric projects. Realizing the need for more uniform control of water resources, Congress passed the Rivers and Harbors Act of 1890.

This law represents a genuine attempt on the part of Congress to reach a satisfactory general prohibition against the building of dams and other structures in navigable waters without the permission of the Secretary of War.

The act of 1890 provided:

That the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity

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26 Ibid., p. 263. XXV Stat., 505, 526.


of any waters, in respect of which the United States has jurisdiction . . . is hereby prohibited. The continuance of any such obstruction shall constitute an offense and each week's continuance of such construction shall be deemed a separate offense. Every person and every corporation which shall be guilty of creating or continuing such unlawful obstruction . . . shall be deemed guilty of a misdemeanor. . . . 29

No restriction was made on the power of the Secretary of War to grant leases except that the leases were not to interfere with navigation; but he was authorized to grant water power leases for 20 years on the Green and Barren Rivers of Kentucky. This was a first step into a new field for this legislation. 30

By this time it had become apparent that a more mature right-of-way policy should be enacted. Land required for hydroelectric sites had to be acquired by statutes that had not originally been designed for electric power projects. This causes many sites to be occupied without legislative authority. Constructive legislation had to be formed if illegitimate expansion was to end. This involved applications for rights-of-way over the public lands. A right-of-way act passed on March 3, 1891, brought applications for articles of incorporation from 154 companies; twelve were


30  Consult Pross, p. 129.
approved. A statute of January 25, 1895, further authorized the Secretary of the Interior to issue permits for rights-of-way on public lands that were not within the limits of national parks, forest, or military and Indian reservations. When these measures proved insufficient, congress enacted the Right-of-Way Act of May 14, 1896, under which the Secretary of the Interior could permit rights-of-way with the necessary ground on the public lands and forest reserves "for the purposes of generating, manufacturing, or distributing electric power." The Secretary could also issue general regulations governing the applications. These permits, when issued, were revocable at the will of the Secretary of the Interior.

But just as the Rivers and Harbors Act of 1890 encumbered the Secretary of War, considerable burden was imposed on the Secretary of the Interior by the act of 1896. Further, as numerous applications for permits in forest reservations were being presented, the Secretary of Agriculture became involved in the development of water power.

32 XXVIII Stat., 635.
33 XXIX Stat., 120.
Rights-of-way problems improved very little and remained dormant until 1901 when the Secretary of the Interior received lucid control of water power rights-of-way. As late as 1905, in fact, the Public Lands Commission referred to existing rights-of-way legislation as "numerous and apparently often incongruous." The National Conservation Commission recommended in 1909 that "all the right-of-way laws be codified and made just, reasonable, and certain."

Prior to 1899, then, congress recognized the principle of use of the water by public and private interests, subject to the provision that such use did not interfere with the governmental right of regulating navigation. Dams and other structures could not interfere with navigation; and the government could build a lock in the dam at its own expense. Moreover, if at any time all the water of the stream over which the dam was constructed would be required for the preservation of navigation, the entire flow could be used. The government might also make improvements in the stream after the dam had been completed without paying any

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compensation for interferences with the rights of the user, though compensation would be paid for damages to his tangible property.\textsuperscript{36} The scores of complaints of owners of such dams, whether for irrigation or hydroelectricity, were quite justified.

The last major act to regulate the construction of dams across navigable waters, prior to the definitive act of 1906, came with the passage of the Rivers and Harbors Act, March 3, 1899.\textsuperscript{37} By now congress had become alarmed by the numerous navigational obstructions being built under the authority of the individual states, and decided that the act of 1890 would have to be extended and strengthened in no uncertain tones.\textsuperscript{38} Accordingly, congress assumed full control over navigable streams, forbidding the construction of dams, piers, dikes, and other structures without "the consent

\textsuperscript{36} George F. Swain, Conservation of Water by Storage (New Haven: Yale University Press, 1915), pp. 53-54. Swain served in the Waters Section of the National Conservation Commission. In private life he held a position at the Massachusetts Institute of Technology and was professor of Civil Engineering at Harvard University.

\textsuperscript{37} H. Doc. 425, pp. 843-902. XXX Stat., 1151.

\textsuperscript{38} See C. S. Kinney, Irrigation and Water Rights 2nd ed. (San Francisco: Bender-Moss Company, 1912), p. 588. Chapter 16 (pp. 558-602) is especially noteworthy for its discussion of navigational rights.
of congress to the building of such structures" and until
"the plans for the same shall have been submitted to and
approved by the Chief of Engineers and by the Secretary of
War. . . ." No deviation from approved plans could be made
either before or after completion of the structures without
the consent of such modification by the Chief of Engineers
and the Secretary of War.39

The Rivers and Harbors bill of 1899 caused little
debate in the House, perhaps because each water power de­
development was still to be decided by congress except when
the project was on a stream, the navigable portions of which
were wholly within a state.40 No formal objection was
raised in the Senate, but the measure was nearly fili­
bustered out of existence by a group interested in seeing a
channel built across Nicaragua. Senator Francis E. Warren of
Wyoming, a leading spokesman for irrigation of the arid West,
wanted the bill sent back to conference because no provision
had been made for irrigation. William P. Frye of Maine
broke the filibuster by agreeing to a recommittal. The

39
As private power interests at this time were in
their infancy, they did not attempt to influence the legisla­
ture. The House Committee reporting the bill stated that the
interests of commerce would be served by its passage.
Congress, House, Report of the Committee on Rivers and Har­
bors Appropriation Bill, Report No. 1826, 55th Cong.,

40
Refer to Kerwin, p. 107.
bill was rescued just before the adjournment of the Fifty-fifth Congress.

In the public domain many choice water power sites existed that did not come under either the act of 1890 or 1899. These dealt exclusively with navigable streams. It now seemed necessary to secure rights-of-way for transmission lines where the power sites were on streams outside the public lands and forests. Laws in 1891 and 1895 had authorized the Secretary of the Interior to grant rights-of-way through the public domain for ditches, canals, and reservoirs for the purposes of irrigation.41 An act of 1896 empowered the Secretary "to permit the use of a right of way . . . not exceeding 40 acres upon public lands and forest reservations . . . for the purposes of generating, manufacturing, or distributing electric power."42 On May 11, 1898, his power was further extended by an authorization to include power development in connection with irrigation.43

By the beginning of the twentieth century many valuable water power sites on public lands had already gone to patent without federal attention to their peculiar value.

41 XXV Stat., 1095. XXVIII Stat., 635.

42 XXIX Stat., 120.

43 XXX Stat., 404.
But in 1901 congress delegated broad authority to the Secretary of the Interior to permit use of rights-of-way across public lands and other reservations for electrical plants, poles, and lines for the generation and distribution of electrical power, and for dams and reservoirs used to promote irrigation or to supply water. The permit still might be revoked by the Secretary of the Interior at his discretion. The 1901 measure passed the House and Senate without debate, and remained intact until 1911 when a section was added authorizing the issue of permits for rights-of-way not to exceed fifty years.

Language and terminology of federal water legislation evolving in the first hundred years of the country's life were broad and presumptive. The Secretary of the Interior had to grant permits under very general regulations and apply them to specific and varied projects. The government tried to use antiquated statutes for new problems encountered by the expanding republic, while water problems reached considerable dimensions. In the first decade of the new century, under the leadership of Theodore Roosevelt,

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44 XXXI Stat. , 790.

45 Consult John Ise, United States Forest Policy (New Haven: Yale University Press, 1920), p. 267. This work is perhaps the most important single volume history of forest policy in the United States.
a definite plan for waterway development was presented, two commissions were created to study water resources, and great public interest in the question of inland waterways was stimulated.⁴⁶ A new era dawned for natural resources and their conservation.

⁴⁶ See Pross, p. 120.
CHAPTER II

GROWTH AND DEMAND FOR WATER POWER REGULATION:
1900-1905

The streams which form the superb system of inland waterways in the United States have played a predominant role in the history of the country, especially before the advent of the railroad. But with the rise of railway competition, water transportation rapidly declined to a second rate system. This tremendous decline was not quickly accepted by the entire public as evidence that water transportation was inferior. In fact, a large group of American people firmly believed that if the waterways were improved through a rehabilitation program, a comprehensive national waterway transportation system could be developed.¹ In the years after 1895 a new enthusiasm arose for such a program. Communities envisaged almost unlimited possibilities for

¹ The main arguments in support of rehabilitation of the inland waterways were: (1) it was believed that water transportation was cheaper than railroad transportation; (2) it was felt the rehabilitation of waterways could provide effective regulation of railway rates; and (3) it was held that the railways needed relief from an excessive volume of traffic. Refer to H. G. Moulton, et al. The American Transportation Problem (Washington: The Brookings Institution, 1933), pp. 434-437.
local economic growth which cheaper and better transportation could create.\(^2\) Merchants, manufacturers, shippers, and a variety of local and regional interests merged to demand their equal share of the wealth that would result from waterway rehabilitation.\(^3\)

Paralleling this rise of public interest in water transportation were scores of technological advances in the development and use of electric power. The application of electricity to industrial and domestic purposes and the vast improvement of electric power transmission now made it feasible to develop power at hydroelectric dams to be distributed via transmission lines to localities a hundred or more miles from the source. Moreover, modern engineering continued to revolutionize the methods and machinery whereby flowing streams could be harnessed to serve mankind.\(^4\) These

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\(^2\) See Pross, p. 139.


\(^4\) Consult Charles W. Baker, "The Necessity for State or Federal Regulation of Water Power Development," The Annals of the American Academy of Political and Social Science, Vol. XXXIII, No. 3 (May, 1909), 100. Baker was the Editor-in-Chief of the periodical "Engineering News" at the time of this article. Hereafter references to this particular volume of the "Annals of the American Academy of Political and Social Science" will be cited as Annals.
resources came into national importance and "water power, once strictly local, . . . [was] thus suddenly . . . brought within the sweep of large economic forces."\(^5\)

Use of electrical power increased greatly after the turn of the century, and between 1905 and 1907, of the 23 million horsepower of mechanical energy used in the United States 15 per cent was produced by water. Economic forces tended toward concentration of ownership in the water power field. The demand for this type power varied between various sections and seasons, and the hydroelectric industry realized in a very short time that by joining several companies and sharing the same transmission lines, a better utilization of power would be attained, while at the same time cutting costs.\(^6\) Hydroelectric concerns began seeking possible mergers, and a number of large corporations resulted.

Before the turn of the century hydroelectric companies "were grabbing water-power sites wherever they


could find them, sometimes for present use, often to hold them for future development, and not seldom merely to keep them out of the hands of somebody else.\(^7\) Permits for water power sites were almost given away by the Department of the Interior on a "first-come first-served" basis, with a minimum of questioning. As the states controlled the water, the federal government was unable to dispose of these resources, and power companies found less and less difficulty in acquiring titles to prospective water power projects due to the generosity of both state and national government.\(^8\)

The obvious importance of these titles at that time and in the future came to be understood in the early part of Roosevelt's first administration. Various federal officials such as James R. Garfield, son of the late president, and Gifford Pinchot,\(^9\) began agitation for the application of

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\(^7\)Gifford Pinchot, *Breaking New Ground* (New York: Harcourt, Brace & Company, 1947), p. 327. This work is Mr. Pinchot's autobiography and a recording of his active role in the conservation crusade. It is especially critical of those who worked both for and against the subject.

\(^8\) See M. N. McGeary, *Gifford Pinchot: Forester-Politician* (Princeton: Princeton University Press, 1960), pp. 73-74. McGeary's research has resulted in a scholarly treatment of his subject and is a valuable contribution to the field of historical study, even though at times undue praise is heaped upon Pinchot at the expense of the contributions of a host of other conservationists.

\(^9\)James R. Garfield had been a member of the Civil Service Commission and director of the Bureau of Corporations. In March, 1907, he became Secretary of the Interior.
brakes on the "immemorial custom" of giving away for nothing the water powers on navigable streams, in the national forests, or on the public domain.\textsuperscript{10}

In curbing the "give-away" program, President Roosevelt discovered a host of extremely able and often over-enthusiastic assistants in F. H. Newell, George H. Maxwell, and Francis G. Newlands. These three men became involved in the program of irrigating the arid lands of the West. Their main objectives were obtained by the Reclamation Act of 1902.\textsuperscript{11} They were joined in their efforts by federal forestry official Gifford Pinchot, and his aides

Gifford Pinchot entered the national scene after studying forestry in the United States and Europe, and became an important figure in Roosevelt's "Tennis Cabinet" and perhaps the predominant leader of the conservation cause. "From the beginning of Roosevelt's administration, Pinchot's ideas became Roosevelt's ideas, as far as the public domain was concerned." (Peffer, p. 64).

\textsuperscript{10} Consult H. J. Howland, Theodore Roosevelt and His Times (New Haven: Yale University Press, 1921), p. 144. Chapter IX of this work is devoted to "Reclamation and Conservation," and is found on pp. 130-149.

\textsuperscript{11} Act of June 17, 1902. XXXII Stat., 388. "The 1902 Act established the Reclamation Fund with moneys derived from the sale of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. This Fund is to be used for irrigation works in those States, to which Texas was later added. . . . The Act also provides for withdrawal of public lands from entry for construction of irrigation works." Water Commission Report, pp. 183-184; also see Chapter III, "Irrigation," in Arthur B. Darling (ed.), The Public Papers of Francis G. Newlands (Boston: Houghton Mifflin Company, 1932), I, 50-87.
George Woodruff and Overton W. Price. To this group were added W. J. McGee and Marshall O. Leighton, both of whom took the lead in waterway development. This body of men formed the very core of what came to be known as the Theodore Roosevelt conservation movement and which "not only sustained the Forest and Reclamation Services, but pushed on toward the reclamation of rivers for navigation and other uses..." 

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12 F. H. Newell, an 1885 graduate of Massachusetts Institute of Technology, became assistant hydraulic engineer of the U. S. Geological Survey. In 1890 he was promoted to Chief Hydrographer where he became "one of the architects of water policy and of the entire conservation movement." (Hays, p. 7). George Maxwell, a water law specialist from California gave active support to forestry and to irrigation programs. Appropriately called the "Father of the Reclamation Service," Francis G. Newlands began his activities as a representative from Nevada before the turn of the century and called for federal aid for irrigation. George Woodruff served as an aid to Pinchot in the Forest Service until 1906, and then became Assistant Attorney General in the Department of the Interior. Pinchot's other aid, Overton Price, acted as legal advisor and supporter until both "were fired by President Taft in 1910." (McGeary, p. 47). W. J. McGee, who refused to employ periods after his initials, was a self-educated anthropologist and geologist who became a crucial promoter and the chief theorist of the conservation movement. "Almost daily he presented new ideas to Roosevelt, Pinchot, and Garfield; he drew up presidential letters and messages, formulated policies, and organized conferences." (Hays, p. 102). Marshall Leighton, the last of this partial list of conservationists, came on the scene with the Inland Waterways Commission in 1907 and served as Chief Hydrographer of the Geological Survey.

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Water power sites being constructed for purposes of hydroelectricity in navigable waterways were among the many problems encountered in the struggle to preserve and better utilize America's natural resources. By the River and Harbors Act of 1899 it had become illegal to dam navigable streams without a license from congress. These licenses, or permits, were issued by special congressional acts requiring normal legislative processes. When issued, the licenses often "gave away enormously valuable power sites forever and for nothing--without a charge and without a time limit."\(^{14}\) The earliest sign of a change in this policy took place on March 3, 1903, when President Roosevelt vetoed the Muscle Shoals bill which would have established a water power development at the site today of the Tennessee Valley Authority.\(^{15}\)

A group of Alabama businessmen had formed the Muscle Shoals Power Company as early as 1897. During the following year General Joseph Wheeler, who had served in the House of Representatives for Alabama in every session of congress


\(^{15}\) A recent study of this transition is Judson King, *The Conservation Fight from Theodore Roosevelt to the Tennessee Valley Authority* (Washington: Public Affairs Press, 1959). Chapters I-III of this publication are especially worthwhile for their detailed discussion of the relationship between the early program of Theodore Roosevelt and the later Tennessee Valley Authority.
since 1881 except for the 48th Congress, introduced a bill (H. R. 9335) to authorize the Muscle Shoals company to construct canals and powerhouses in the Tennessee River. This measure was required because the Rivers and Harbors Act of 1890 had prohibited the construction of dams in navigable streams without special permission from congress and approval of the Secretary of War. Representative John H. Bankhead assumed responsibility for the bill after Wheeler's departure for military service in the Spanish-American War. The measure was referred to the Rivers and Harbors Committee of which Theodore E. Burton, Republican of Ohio, was chairman. Burton's committee reported the bill favorably, but recommended that it be amended "by striking out, in lines 9 and 10, the words 'that are and always have been unsuitable and unused for the purposes of navigation,' because . . .:"

. . . we regard such an expression of opinion as out of place in a bill of this kind: and second, by adding after line 5, page 2, the words "and the Secretary of War is authorized and directed to fix reasonable charges for use of said power." We regard it as proper that compensation should be made for the privileges granted.  

16 This action took place in 1898, one year before the Rivers and Harbors Act of 1899 had passed.  

17 See King, pp. 2-3.  

18 Congressional Record, 55th Cong., 3d Sess., 1898, Vol. XXXII, Part 2, 1410. Future references to the Congressional Record will be cited as Cong. Rec.
The alterations included in these amendments centered on the problem of federal and state jurisdiction. Initial terminology in lines 9 and 10 would have practically ended federal control over the navigable rivers due to the supposition that navigable waters would not include portions of rivers which contained falls and rapids preventing the passage of vessels. Authorizing the Secretary of War "to fix reasonable charges for use of said power" was a clear-cut assumption of national power. These amendments were adopted fully five years before Roosevelt's first water power veto, and three years prior to his endorsement of the conservation principles. Bankhead apparently accepted the changes only because it was necessary to do so if the bill was to pass. It progressed through the Senate with only minor modifications and the Muscle Shoals measure was signed by President McKinley on March 3, 1899.19

In spite of this initial setback, William Richardson, who had succeeded General Wheeler as representative from the 8th Congressional District of Alabama, the site of Muscle Shoals, introduced a bill (H. R. 14051) in 1902, authorizing N. F. Thompson and associates to erect a dam and to construct a power station at that position. Senator John T. Morgan of Alabama introduced a counterpart. The House measure passed

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19 Refer to King, pp. 2-3.
on June 3, 1902, with an amendment which provided for charges for the power privilege; but the Senate measure failed. In the next session, on February 18, 1903, the Senate passed the Richardson bill and amendment without debate.

It is important to note that this bill contained essentially the same proposals and privileges granted to the Muscle Shoals Power Company in 1899; yet on March 3, it received an unexpected veto from President Roosevelt, his first indication that the water power policy he favored differed radically from the policies of his predecessor, William McKinley. The veto message also represented Roosevelt's first endorsement of conservation principles as they applied to water power development. In the veto message the president called attention to the recent developments in the field of electricity which he concluded "... revealed an element of substantial value in streams which the Government is or is not liable to be called upon to improve for the purposes of navigation," and expressed his belief in the practice of utilizing this value to help "defray the cost of the improvement." He also stated that the "entire subject of granting privileges of the kind referred to in this bill should be considered in a comprehensive way."  

\[20\]\textit{Ibid.}, p. 4. 
Roosevelt explained that waterfalls of "great value" were created wherever the government constructed dams or locks for navigational purposes and that "it does not seem right or just" to give-away this "element of local value" to private individuals while "the people of the whole country" are taxed "for the local improvement."

I think it is desirable that the entire subject of granting privileges of this kind referred to in this bill should be considered in a comprehensive way and that a general policy appropriate to the new conditions caused by the advance in electrical science should be adopted under which these valuable rights will not be practically given away. . . .

After the veto message was read in the House of Representatives, Richardson, Alabama's staunch states' right Democrat, denied that the power company of N. F. Thompson and associates would in any way interfere with navigation of the Tennessee River, and bitterly declared that he could not understand why the president had been persuaded to disapprove "a local bill of this character, to which the Chief of Engineers of the United States Army says there is no objection whatever. . . ."

On the other hand, Representative Theodore Burton, by this time beginning to master the complexities of water

22 Ibid.

23 Ibid., 3072.
power development, recognized that certain definite policy changes were in the making. Addressing the House, he said:

Mr. Speaker, I believe that the veto of the President is right; and I do not abandon the hope that the gentleman from Alabama (Mr. Richardson) will himself come to the same conclusion when he has carefully examined this veto message. The message is sufficient in itself, and needs no additional argument from me or from anyone else. It is aimed at a vicious practice, which has been illustrated, not a hundred times, . . . but perhaps ten or twelve times, by legislation enacted by Congress.²⁴

Burton then pointed to two injuries done by this type of legislation: the first being that it gave away a valuable privilege and set a precedent by which the government "barters away for nothing that which is of greater value than the cost of the works themselves," and secondly, that "no one shall enjoy that privilege except he comes here and passes a bill through Congress, thereby throwing the doors wide open for favoritism and monopoly." The bill, however, was sent back to the Committee on Interstate and Foreign Commerce and was killed by a roll call vote of 200 to 64; 80 abstaining from the voting. ²⁵

During these same years the use of water power in the national forests had become a question of importance.

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By an act of May 14, 1896, the Secretary of the Interior was authorized to issue permits for the use of public lands for the generation and distribution of electric power. On May 11, 1898, rights-of-way over public lands for irrigation to be used for water power development subsidiary to irrigation use was permitted. The Rights-of-Way Act of 1901 authorized the Secretary to grant revocable permits at his discretion. This power passed to the Secretary of Agriculture and ultimately from him to the Forest Service by an act of February 1, 1905.

Gifford Pinchot had become head of the Division of Forestry in 1898 and after 1900 of the Bureau of Forestry in the Department of Agriculture, at a time when the administration of forest reserves was under the control of the Department of the Interior. From 1898 to 1905, Pinchot struggled for the transfer of the control of forest reserves from the Department of the Interior where the General Land Office

26 XXIX Stat., 120.

27 XXX Stat., 404.


29 XXXIII Stat., 628.
had assumed regulation of the reserves. Secretary of the Interior Ethan A. Hitchcock supported the idea of the transfer but Commissioner Binger Hermann of the General Land Office opposed it. At least a part of the opposition disappeared in July of 1903 when William A. Richardson succeeded Hermann as chief of the Land Office.  

Pinchot at first depended on Representative John F. Lacey, Republican of Iowa and chairman of the House Public Lands Committee, to direct the transfer bill through congress. It soon became obvious, however, that Lacey was unable to meet the strong opposition of Speaker Cannon and the Eastern Republicans. It was only when Wyoming's Republican representative Frank Mondell, a bitter enemy of the forest reserves, decided to introduce the bill that the transfer began to seem possible. On February 1, 1905, the measure became law.  

The regulation of forest reserves was then solely under the supervision of the Forest Service and Gifford Pinchot, who began to enlarge the national forest program almost immediately. By the year the transfer act had

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30 Consult Hays, pp. 38-44.
31 Ibid.
32 McGeary (p. 61) writes: "After a struggle of almost seven years against great odds, Pinchot now had his
passed, many of the more promising hydroelectric power sites in the forest reservations had already been withdrawn from entry and were no longer available for disposal by grant or sale. Electric companies interested in these projects could, however, obtain leases for power sites elsewhere in the forests. Pinchot was now in charge of granting such privileges to applicants for permits to develop water power in the forest reserves. 33 On May 1, 1906, a drastic policy change occurred. Apparently congress must have been influenced by the new Chief Forester for on that date an act passed granting power sites in Southern California to the Edison Electric Power Company. This act included two important provisions which became more and more controversial in the following years. First, a forty year limitation was placed on the permit; and second, an annual rental was required for the privilege from the company. These same conditions were adopted by the Forest Service "as the basis for all permits for power development," 34 as long as Mr. 

victory. Overnight he was transformed from a man with some foresters but no forests, into a man with 86 million acres of forest land. . . . Related to the transfer were also two name changes. The Bureau of Forestry soon became the United States Forest Service, and the forest reserves acquired the title of 'national forests'."

33 Ibid., p. 75.

Pinchot was in control of the Forest Service, and eventually they formed the core of the Rooseveltian water power policy as relating to such developments in the navigable rivers.35

These new restrictions, however, caused water power companies to make a concerted drive to obtain hydroelectric power site permits in perpetuity. Chief Forester Pinchot realized the injustice of the new system whereby investors in these projects could suddenly find their permits withdrawn, and proposed a new type of grant which would be for a definite period of time, but irrevocable except for cause.36

35 Pinchot writes of the changes which followed: "After the transfer of the National Forests . . . in 1905, some things were done that had never been done before, such as initiating Government control over water-power monopoly in the National Forests, giving preference to the public over commercial corporations in the use of the Forests, and trying to help the small man make a living rather than the big man make a profit. . . . Because it did these things the Forest Service has made enemies. . . ." Gifford Pinchot, The Fight for Conservation (New York: Doubleday, Page & Company, 1910), p. 64. However, there was a tendency for one section of the country to welcome the transfer, because these actions "extensively influenced the acceptance of conservation by the Far West. The change in the emphasis of federal policy was symbolized in the substitution of the title National Forest for the inaccurate name Forest Reserve. Apart from the formal rearrangement of authority over the forests, the change established a large and better trained personnel force in the West. . . . Corrected regulations, conferences between users and federal officers . . . greatly improved the public attitude toward the federal policy." See E. R. Richardson, "The Politics of the Conservation Issue in the Far West, 1896-1913" (unpublished Ph.D. dissertation, University of California (Los Angeles), 1958), pp. 98-99.

36 Refer to McGeary, p. 75.
At first he recommended 99-year permits and actually made this suggestion to Secretary of Agriculture James Wilson. The Secretary, however, believed fifty years was long enough and this is the program which they now began to promote.  

The control of water power development in the National Forests by the Forest Service was the beginning of effective federal water power regulation. Pinchot's reasoning in this respect can easily be appreciated. The lumbermen paid for the timber they cut and removed from the National Forests; the cattlemen paid for grazing permits within the National Forests; "many of these being men of small income," he found it difficult to sympathize with the "power companies, most of which are wealthy and powerful corporations," and could not understand why they "should not pay a fair price for what they get also."  

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37 Pinchot (p. 337) in his autobiography writes: "The Secretary's judgment was better than mine. He cut my suggestion in two, and he was right. I had been too easily convinced by the power people that they needed so much time to recover their investments. Fifty years was long enough."

38 Letter from Gifford Pinchot to F. W. Cuttle, May 5, 1908, as quoted in McGeary, p. 76. "Late in 1906 the Stanislaus Electric Company, for example agreed to pay an annual fixed rental for a site plus 'such reasonable charge for conservation from the beginning of productive operation of the plants as shall be fixed from time to time by the Forester.' The Attorney General eventually sanctioned the new practice and the Supreme Court, when the matter was later referred to it, gave its full approval. Pinchot's victories before the Supreme Court, it may be noted, was unbroken. Ibid., pp. 76-77."
By 1906 the Department of War had also been brought into the administration of water power, but its authority was derived from the department's jurisdiction over the navigable rivers. This was just one of the numerous non-military activities which had been placed under the Chief of the Corps of Engineers. As early as 1866 the problems of rivers and harbors improvements were unquestionably under his supervision.\textsuperscript{39} Between 1881 and 1901 the work had increased steadily as annual expenditures rose from about eight million dollars in 1880 to over eighteen million in 1900.\textsuperscript{40} The increasing size and quantity of projects required closer supervision of plans and estimates.\textsuperscript{41} In 1902 a Board of Engineers for Rivers and Harbors was established to better serve these growing demands.\textsuperscript{42}

The powers of this department were broadened by an act of 1906 when the Chief of the Corps of Engineers and the

\textsuperscript{39}See Pross, p. 54.

\textsuperscript{40}Refer to p. 9 for the 1882 veto message of President Arthur who tried to stop the increasing appropriations for rivers and harbors improvements.

\textsuperscript{41}Consult W. S. Holt, The Office of the Chief of Engineers of the Army: Its Non-Military History, Activities and Organization (Baltimore: The Johns Hopkins Press, 1923), pp. 11-30. This is Volume 27 of Service Monograph series previously cited. Also see Conover, pp. 24-29.

\textsuperscript{42}XXXII Stat., 372.
Secretary of War were placed directly within the water power controversy. Under the various acts regulating the construction of dams prior to 1899, the government maintained the right to control navigable streams by requiring that privately owned structures in these waterways be built according to plans approved by the Department of War. This practice insured against construction of artificial obstructions to free navigation of the affected streams; and the Rivers and Harbors Act of that year absolutely prohibited such navigational impediments without the express consent of congress. This policy, which remained in effect until the passing of the explicit act in 1906, had for the most part encouraged cooperation between the private investor and the federal government; a fact which seems somewhat surprising in view of the turmoil water power created in the second five years of the new century.

The growth of electricity and hydroelectric power became increasingly evident and commercial interest in the development of hydroelectric power plants became more pronounced. By 1905 the government realized the need for new

43 XXXIV Stat., 386.
44 Rome G. Brown, Improvement of Navigable Rivers, an address before the National Rivers and Harbors Congress at the Tenth Annual Convention in Washington, D. C., from December 3-5, 1913, as printed in Senate Document No. 332, 63d Cong., 2d Sess., 1913-1914, pp. 8-9.
legislation to meet these changing conditions. Early in that year a bill (H. R. 19019), sponsored by Representative James R. Mann of Illinois, was introduced in the House during the short session of the Fifty-eighth Congress which met from December 5, 1904, to March 4, 1905. Among other provisions, the bill provided for the approval of plans for projects by the Chief of Engineers and the Secretary of War, the right of the United States to construct locks in the dams at any time, and it released the federal government from any obligation in maintaining navigational facilities while requiring that if any structures were found to interfere with navigation the permittee would remove it at his own expense. On February 28, as William C. Adamson, Representative of Georgia, asked for unanimous consent for consideration of the bill, a full-scale House debate opened. Richardson, who had suffered defeat by the Muscle Shoals veto two years earlier, demanded an explanation of the bill to which Adamson referred. The Georgia representative declared:

The bill . . . seeks to provide for permitting private enterprise to construct dams in navigable streams, streams which afford abundant water power, and yet, on account of their shoals, present such expensive problems to the Government that the Government is either unwilling or unable—and probably will be for a long time—to improve the navigation of these streams; yet, asserting the right to control these streams, the riparian owners are not

45 See Kerwin, p. 110.
permitted to improve the water power if they desired to do so.46

Richardson objected to the passage of the bill, holding to the view that the rights of the states were being invaded and that the severe conditions of the measure would destroy the property rights of riparian owners.47 To this objection Adamson said:

Almost every day and each week somebody is discussing the subject and seeking permission to construct dams for the improvement of water power. We have endeavored so to frame a bill as to combine all the provisions and safeguards usually placed in individual bills and at the same time avoid the labor, trouble, and expense of incorporating all these numerous long provisions in a bill for each separate dam.48

The bill was reported to the House by the Committee on Interstate and Foreign Commerce which issued a majority and a minority report. Pointing to the advantages of the


47 Under the doctrine of riparian rights, "the owner of land contiguous to a stream has certain rights in the flow of the water, solely by virtue of such land ownership. He has the right to take from the stream whatever quantity of water is required for domestic purposes and the watering of domestic animals; and the right to use water therefrom for irrigation purposes, providing such use is reasonable in relation to the needs of all other owners of land riparian to the same source of supply." Milo B. Williams, Water Laws in the United States of America (Washington: Food and Agriculture Organization of the United Nations, 1948), p. 8. Also see Swain, pp. 30-37.

measure, the majority declared that: "If this bill be enacted into law it will only be necessary hereafter, in passing a bill to authorize the construction of a dam, to provide a simple sentence granting authority . . . in accordance with the provisions of this act." In their conclusions, the majority agreed that "some uniform regulations upon the subject" should be adopted, and that the federal government should encourage "the utilization of water power wherever it can be created without injury to navigation."

A bitter debate followed in which such House leaders as Mann, Adamson, Richardson, Burton, Hepburn of Iowa, and Gilbert of Kentucky played key roles. Richardson, however, was the natural leader of the opposition. He claimed that the legislation was "too far-reaching" and was too important to be passed at the close of the congress "where proper deliberation and consideration can not possibly be given to it." He pointed to the great increase in the importance of hydroelectricity and electric power in recent years and stoutly warned, "if the bill becomes a law, . . . it will

49 Ibid.

prove an obstruction in the way of improving and developing these powers on navigable rivers."\textsuperscript{51}

During the debate when Representative Gilbert urged retention of a stipulation that a lock or locks to provide for navigation should be constructed in the dams at the expense of the private owners because "a magnificent franchise is given there in perpetuity for the purpose of conducting a private enterprise, and in order to protect that franchise--," Richardson interrupted. The owner of power, the latter declared, was not in anyway concerned with the navigation or navigability of the stream. If the government wanted a lock or locks in the dam, it had the power to construct such navigational aides.\textsuperscript{52}

The debate continued. Hepburn advised that "... [the bill] simply provides that when such authority is hereafter given the condition of this bill shall be observed in the construction of the improvements. It is solely in the interest of saving the time of this House."\textsuperscript{53} As the debate wore on the minority report of the committee, signed by Richardson, was presented. This report adamantly objected


\textsuperscript{52} Ibid.

\textsuperscript{53} Ibid., 3665.
to the measure because it "prescribes such terms and conditions as are calculated to defeat its purposes. . . ." It contended that:

. . . . Under these conditions set forth it is unreasonable to believe that capital will be invested for the promotion of water powers. This bill enacted into law will, in our opinion, obstruct the development of the water powers on our navigable rivers and streams by useless and unnecessary delay.54

The majority report, favoring the bill, stressed the advantages of uniform legislation and the benefit which would be accrued by the government in having private capital develop navigation. On the other hand, the minority report, granting that legislation on water power works was necessary, objected to the bill for various reasons.55 Several significant remarks made by the legislators during the debate

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54 Ibid., 3666. It was soon discovered by the conservation interests and the water power companies that Richardson's pessimism in 1905 was not totally wrong. By 1910 the act which finally emerged on June 21, 1906, had proved a practical failure, and again there arose a demand for dam legislation. Chapters IV and V discuss this problem at length.

55 Three primary objections were: "(1) Citizens should not be denied the use of the water-power of streams simply because they are declared navigable. (2) No plan for development of these water powers will ever be practical unless some provision is made that the parties building a dam shall be reimbursed by the Government whenever the Government sees proper to use the dam so constructed by the individual or corporation. (3) Not a dollar of capital will be invested under the drastic provisions of the bill." See Kerwin, pp. 110-111.
over this measure indicate the increasing attention being given these projects as a result of the growth of electricity and private investors in the field. Adamson had said that almost every day someone was "discussing the subject and seeking permission to construct dams for the improvement of water power." In the minority report Richardson warned that passing the act would make investment hazardous. Pointing to the "wonderful development and improvement in electricity in the last five years" he claimed that "under the bill reported by the majority we do not hazard much when we express our opinion that not a dollar of capital will ever be invested under the drastic provisions of this bill." 

Continuing, Richardson warned:

You can not induce a man, as a practical proposition, to put a million dollars or more into the development of power on a river unless his capital has some protection guaranteed by law. . . . Do you suppose a man is going to put a million dollars . . . into one of these vast and expensive enterprises when the Government has the right to walk up to him, without any notice in the world, repeal his franchise, and take all his work and practically confiscate it? . . . 

The primary conditions of the bill were to insure that power projects would not interfere with navigation.

56 H. Report 4832, pp. 4-5.

No time limit was placed on the grants and the vital question of charges for the privilege, being applied on water power projects in the National Forests, was not mentioned. The bill failed to pass in 1905, however, but was reintroduced as H. R. 8428 by Representative Mann at the next congressional session.

As a result of the activities during the period from 1900 to 1905, both private and national interest were focused on the development of hydroelectric power projects in navigable streams. President Roosevelt's veto of the Muscle Shoals bill in 1903 became a major step in water power legislation, but its significance should not be exaggerated. The veto message apparently excited only those who were more or less directly concerned with that particular development, and it was not until several years later that it became of great importance. At the end of 1905 a bill lay before congress which, it was hoped by all interests, would supply uniform regulations for these developments; just and reasonable to government and investor, and a policy which would encourage investment and growth in the development of hydroelectric dams in the navigable rivers.
CHAPTER III

THE END OF WATER POWER "GIVE-AWAYS":
1906-1909

The bill to regulate the construction of dams in navigable rivers came before the House of Representatives again in December, 1905, and was favorably reported by the Committee on Interstate and Foreign Commerce in January of 1906. The committee again reminded the House that if the measure became law it would be necessary in the future, in authorizing hydroelectric power projects, only to provide a sentence granting the authority to construct the dam in accordance with the provisions of the act, and that uniform regulations would guide each individual case. Further, to guarantee that the government would not purposely impair the rights of investors, the committee added that:

There is little probability of amending or modifying so as to injure property constructed under the provisions of this bill. Only in rare cases of great necessity would it be probable and in such cases there is no doubt that the Government would be prompt and liberal in making compensation.¹

The bill passed the House without opposition on June 4, 1906; the Senate on June 16; and was signed by the president on June 25. In view of the impending battle on water power which was soon to begin, the lack of opposition and discussion is peculiarly interesting. There was evidently no indication of lobbying, press, support, nor fear for the interests of conservation; only the legislative desire to adopt an uniform policy for the increasing number of applications for hydroelectric power project permits to dam navigable rivers. The bill which had precipitated a full-dress debate less than a year before, now passed without hesitation.

Certain provisions of this statute are extremely important to the understanding of the rapidly developing water power controversy. Among them were the approval of plans and specifications of projects by the Chief of Engineers and the Secretary of War; the responsibility for the permittee to construct, maintain, and operate locks and other navigation facilities ordered by the government; and the provision that if any facilities were constructed by

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2 Cong. Rec., 59th Cong., 1st Sess., Vol. XL, Part 8, 1906, 7813 (passing the House of Representatives); Part 9, 8453 (reported from the Senate Committee on Commerce); 8614 (passing the Senate); and 9157 (reported signed by the president).

3 See Kerwin, p. 114.
the government, lands needed for that purpose would be given without charge. The law also stipulated that the United States could construct, maintain, and operate locks in the dam at any time and could remove the privileges granted by the act if the company failed to comply with any of the provisions. Although no time limit was placed on the duration of the grant, construction of the project had to begin within one year and be completed within three years of the authorization. Further, the act could be repealed by congress at any time.4

The provisions of the dam act "seemed designed to serve the passive purpose of preventing obstruction by the dam, rather than affirmatively promoting nonpower uses."5 Congress had succeeded in broadening its power over the construction of hydroelectric dams in the navigable waters of the United States, but at the same time the legislative measure discouraged water power development. Companies could not proceed with construction until both the Secretary of War and the Chief of Engineers approved the location and plan. Federal officers were authorized to impose such conditions and stipulations as they deemed "necessary to

4 XXXIV Stat., 386. Also see Appendix A, pp. 112-114 for a copy of the 1906 law.

protect the present and future interests of the United States." The General Dam Act of June 21, 1906, was a feeble but important step forward in water resource law.

Under this statute Roosevelt signed some twenty-five special acts authorizing the erection of dams by private parties. During the winter of 1907-1908, he became convinced that no more bills of this nature should be signed unless they expressly provided for financial return to the government, the regulation of rates, and the repossession of the dam in cases where the companies violated the terms of the grant. Earlier measures contained no such stipulations. Chief among the reasons for the president's change of attitude was the conservation crusade which gained momentum during this period.

As sponsored by Theodore Roosevelt this program was designed not only to preserve the public domain, but to strengthen the whole nation. At the heart of his policies which applied toward hydroelectric power developments was a clear attempt to resist uncontrolled exploitation of power

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6 Charles E. Wright, "The Scope of State and Federal Legislation Concerning the Use of Waters," Annals, Vol. XXXIII, No. 3 (May, 1909), 91. At the time of this article Mr. Wright was serving as assistant attorney to the Secretary of the Interior.

7 See Hays, p. 115.
sites and to reserve control for the federal government. These were also directed toward the conservation of irreplaceable resources and the development of water power. Conservation activities were carried out not primarily for private enterprise, but for the benefit of the people as a whole. During the last half of Roosevelt's second administration conservation became a national movement. The


9 Refer to Ise, p. 150. There are scores of interpretations explaining the rise of this movement. Hays (p. 2) attributes it to a scientific movement whose "role in history arises from the implications of science and technology in modern society. Conservation leaders sprang from such fields as hydrology, forestry, agrostology, geology, and anthropology." J. Leonard Bates, "Fulfilling American Democracy: the Conservation Movement, 1907–1921," Mississippi Valley Historical Review, Vol. XLIV, No. 1 (June, 1957), 30–31, sees the movement as "both a product of and a stimulant to the larger, so-called Progressive Movement. . . . The organized conservationists were concerned more with economic justice and democracy in the handling of resources than with mere prevention of waste." H. F. Pringle, Theodore Roosevelt: A Biography (New York: Harcourt, Brace & Company, 1931), p. 430, believes that Roosevelt's "passionate interest" in conservation can be attributed to "his campaign against the malefactors of great wealth." Other scholars point to the fear of exhaustion of the natural resources which swept the country during the first decade of the twentieth century. For an interesting study of the variety of causes refer to Henry Jarrett (ed.), Perspectives on Conservation: Essays on America's Natural Resources (Baltimore: The Johns Hopkins Press, 1958).

National Conservation Commission reported that: "The policy of conservation is perhaps the most typical example of the general policies which this Government has made peculiarly its own during the opening years of the present century."\footnote{11}

It was only natural, however, that the ever-increasing drive to obtain maximum benefits from the natural resources on land and water would draw condemnation from various sectional and private interests. This agitation and rebuttal of the program gave the conservationists no alternative but to carry their message to the American public. An opportunity for such action came with the creation of the Inland Waterways Commission early in 1907.\footnote{12}

\footnote{11}NCC Report, p. 3. In 1945 a committee headed by Louis Pelzer reported that a need existed for historical studies in this field and that the "invitation to historians of the conservation movement is urgent. If not a crusader himself, the historian cannot close his mind to a procession moving to conserve for other and later citizens." See "Projects in American History and Culture," Mississippi Valley Historical Review, Vol. XXXI, No. 4 (March, 1945), 508. Since 1945 many scholarly works have been devoted to conservation, many of which have previously been cited in this paper. Also consult D. C. Coyle, Conservation: An American Story of Conflict and Accomplishment (New Brunswick: Rutgers University Press, 1957); L. C. Hunter, Steamboats on the Western Rivers (Cambridge: Harvard University Press, 1949); and the fifth and sixth volumes of E. E. Morison et al. (eds.) The Letters of Theodore Roosevelt (Cambridge: Harvard University Press, 1952).

\footnote{12}John L. Mathews, writing on "The Future of Our Navigable Waters," Atlantic Monthly, Vol. C (December, 1907), 721, noticed that there were "many indications, apparent even to the eye of the careless watcher, that we are coming to a critical period in the conduct of our public
Agitation for waterway improvement in the late 1800's resulted in ambitious demands after the turn of the century. Businessmen who had taken only a slight interest in forestry and soil preservation now found on phase of river development in which they were interested—the improvement of inland navigation. Many of these men were almost literally at war with railroad companies over high rates and regional discrimination. They came en masse from Chicago and St. Louis with grandiose proposals such as the construction of a waterway from Boston to the Rio Grande by way of a trans-Florida canal, and a channel from Chicago to the Gulf of Mexico by the Illinois and Mississippi Rivers, navigable by ocean-going vessels. These were schemes proposed by serious men. The appointment by President Roosevelt of a national waterways commission "would be water on their wheels," and the administration proceeded in directing this interest to fit its broader concepts of conservation.

works in general, and of that part which relates to river and harbor improvement in particular."

13 See King, p. 13.

14 Refer to Hays, pp. 95-98, for a discussion of these activities and those of the Lakes-to-the-Gulf Deep Waterway Association, especially active at this time.

On March 14, 1907, the president signed the letter creating the Inland Waterways Commission, declaring that it was not possible "to properly frame so large a plan as this for the control of our rivers without taking account of the orderly development of other natural resources." To the new organization he appointed Representative Theodore E. Burton, Senators F. G. Newlands and William Warner, Chief of the Corps of Engineers Brigadier-General Alexander Mackenzie, W J McGee, F. H. Newell, Gifford Pinchot, John H. Bankhead, and Herbert Knox Smith of the Bureau of Corporations.

The commission investigated the causes of the decline in river navigation and examined proposals of methods to reinvigorate and enlarge that traffic. It was charged with the task of studying the problems and presenting a comprehensive plan for improving and controlling the river systems of the United States taking into consideration floods, swamps, irrigation, forests, navigation, and water power development. Several inspection trips on the inland waterways gave the commission the opportunity to publicize its work and to stimulate public enthusiasm for waterway improvement. On May 21, aboard the steamer Mississippi, "it was decided--subject to approval by the President--to hold a

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conference or convention in Washington . . . to discuss the conservation of the Nation's resources."^17

During the winter of 1907-1908 the Inland Waterways Commission Conference Committee, guided by what Pinchot called "the laboring oar" of W J McGee, prepared the syllabus for the coming assembly. The primary purpose and responsibility of this committee during these months was to place conservation before the American public. Invited to the conference which met in May of 1908 were all the governors of the states and territories, members of the cabinet, Supreme Court, and congress, representatives of national organizations and distinguished scientists and administrators, among whom were railroad magnate James J. Hill, labor leader John Mitchell, Andrew Carnegie, and William Jennings Bryan.19

Before the Conference of Governors convened, however, the Inland Waterways Commission had completed its preliminary report which the president forwarded to congress


19Governors' Proceedings, "Roster of Conference" is located on pp. xix-xxxI.
on February 16, 1908. The report contained many of the ideas which were subsequently initiated during the last year of Roosevelt's administration. Among its recommendations was the improvement of facilities for water transportation with water power development being coordinated in order to supply revenue to extend navigation. A federal charge or fee for the privilege of developing hydroelectric power in the navigable streams became extremely controversial in 1908 and 1909, and in fact until the passing of the Federal Water Power Act in 1920. Nevertheless, the president referred to the commission's report as being "thorough, conservative, sane, and just:"

If the report errs at all it is by over-conservatism. . . . The National Government must play the leading part in securing the largest possible use of our waterways; other agencies can assist and should assist, but the work is essentially national in its scope.20

Roosevelt also used this opportunity to call attention to the numerous attempts by power corporations to obtain legislation with as little governmental regulation as possible, enabling the companies "to take possession in perpetuity of national forest lands for the purposes of their business, where and as they please, wholly without compensation to the public," and warned:

20 IWG Report, pp. iii-iv.
the effect of granting such privileges, taken together with rights already acquired under State laws, would be to give away properties of enormous value. Through lack of foresight we have formed the habit of granting without compensation extremely valuable rights amounting to monopolies on navigable streams and on the public domain.21

Many of the principles which were urged upon congress in this report became fundamental considerations in the Act of 1920. Although congress did not succeed for twelve years these considerations were incorporated in the veto messages of the Rainy River bill of 1908 and the James River measure in 1909. It is to these two veto messages that the water power controversy owes its origin.

The Governors' Conference on the conservation of natural resources met from May 13-15, 1908, and formally placed before the American people a program of action. From this point the movement became national in scope. Three weeks after the conference adjourned Roosevelt appointed the National Conservation Commission, the agency which made the first survey of the natural resources of the nation.22 The Conference of Governors bore additional fruit in the

21 Ibid., p. v.

22 Hays (p. 140) writes: "To the public the great inventory [of natural resources] was not only the culmination of the conservation idea, but the singular and triumphant work of the Governors' Conference. And the National Conservation Commission gave far more unified support to the administration's policies than did the governors."
subsequent meeting of the Inter-American Conservation Conference and a proposed world-wide conservation congress which was to be held in Europe.

Although the conference was unsuccessful in applying the "big stick" to persuade congress that public opinion demanded the Rooseveltian conservation program be boldly carried forward, it was not altogether futile. The president eventually regarded conservation "as the greatest act of his administration," and this conference played an instrumental role in that crusade. 24

In the meantime, Francis G. Newlands of Nevada had introduced a bill in the Senate calling for the creation of a special "inland waterway fund, to be used in the examination and survey for the development of the inland waterways of the country," and to set aside $50 million for that purpose. 25 The measure met with a cool reception in that legislative body where it was referred to a committee, then


24 It is interesting to see Pringle's opinion in his volume on Roosevelt (p. 485): "Its first meeting, and its last, was held at Washington in May, 1908. . . . Little was accomplished. The House of Governors, amid rumblings of resentment, adjourned sine die on May 15, 1908." Professor Ise (p. 152), on the other hand, refers to the conference as "one of the most notable conventions ever held in this country."

to a subcommittee, and finally to the Secretary of War and the Inland Waterways Commission for their opinions. Secretary of War William Howard Taft submitted a favorable report on the bill only under pressure from his superior who had written:

Senator Newlands' bill in reference to the Waterways Commission will doubtless be sent to the War Department for a report. In the regular routine this would go to General Mackenzie. This is undesirable. The bill should not go to any of the engineers. It represents in a general sense the policy of the Commission, which policy is mine, but which policy is not the one approved by General Mackenzie and the engineers.26

Congress adjourned on May 30, 1908, without making appropriations for the continuation of the Inland Waterways Commission. It was inexpedient for the president to continue the commission without congressional authorization. A National Waterways Commission composed of six representatives and five senators was later created, but so far as the conservationists were concerned, the latter organization was quite unsatisfactory. The work of the National Waterways

26 Roosevelt to Taft, February 29, 1908, as quoted in Morison, VI, 956. General Mackenzie had submitted a supplementary report on the Inland Waterways Commission in which he disagreed with the other members of the commission. Mackenzie stated: "I believe a recommendation for so radical a departure in the methods of planning and executing the improvement of waterways as that proposed is at least premature. . . . I have grave fear that the scheme of operations recommended in connection with the proposed permanent commission would be found to be impracticable." IWC Report, p. 31.
was directed to the solution of similar problems but with a different outlook than manifested by the former commission, and eventually the legislative group tried to thwart enthusiasm for further river transportation development.  

Apart from the conservation movement, it is difficult to ascertain the causes of Roosevelt's change of heart toward the approval of certain types of water power measures; namely, those concessions which were given in perpetuity and without a charge for the privilege. The provisions which the president outlined in his letter forwarding the report of the waterways commission had not been incorporated into the special acts to that time. In fact, as late as March 4, 1907, congress granted the right to construct a dam across the Coosa River in Alabama to the Alabama Power Company, in return for the necessary electric power to operate the lock in the navigation dam. This law was granted in perpetuity and signed apparently without question by the chief executive.  

It seems logical that Gifford Pinchot influenced Roosevelt because at this time the forester had begun charging fees and setting time limits on water power grants within the forest reserves.  

During the Sixtieth Congress  

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28 Consult Kerwin, p. 123.  
29 Refer to Hays, pp. 115-116.
various friends of the power interests in congress had succeeded in pushing through several perpetual and virtually unregulated grants. In the spring of 1908, however, the president determined to call a halt on such measures.

In March of that year, Roosevelt reminded the Secretary of War and the chairmen of the House Committee on Interstate and Foreign Commerce and the Senate Committee of Commerce that "numerous bills granting water rights in conformity with the General Dam Act of June 21, 1906, have been introduced during the present session of Congress," and some had already passed. He warned that:

While the General Act authorizes the limitation and retention of water rights in the public interest, and would seem to warrant making a reasonable charge for the benefits conferred, those bills which have come to my attention do not seem to guard the public interests adequately in these respects. . . . Accordingly I have decided to sign no bills hereafter which do not provide specifically for the right to fix and make a charge and for a definite limitation in time of the rights conferred. 30

Within the month Roosevelt received an opportunity to put into practice his new policy. This occasion came

30 Roosevelt to Taft, William P. Frye, and Theodore E. Burton, March 16-18, 1908, as quoted in Morison, VI, 975. "Following his advice in deed as well as word, Roosevelt vetoed two measures . . . which contravened the principles defined in the above letter. His veto messages insisted that Congress grant power privileges only in accordance with a carefully constructed, long-range policy which would ensure maximum public benefits and prevent monopolistic hydro-electric combinations." Morison, VI, 975-976n.
in the veto of the Rainy River bill in which the president would declare that such grants should provide for compensation which could be adjusted in the future so as to secure control in the interest of the public, and that the permit should be granted for a limited term.31

In April congress passed a bill extending the time of construction of the dam to the Rainy River Improvement Company, an organization formed in 1898 under the laws of the state of Minnesota. The first grant to construct such a work had been authorized by the act of May 4, 1898,32 and contained a time limit for commencement of the work at one year; for completion, three. An act of May 4, 1900,33 authorized the extension of time for commencement to three years; completion of the work in five. Future statutes of June 28, 1902, and February 25, 1905,34 extended completion time to July 1, 1908. For more than ten years, the company had held the privilege of construction and had showed little evidence of making any progress toward completion. In January of 1908 when Representative James Adam Bede of

31 Baker, Annals, p. 105.
32 XXX Stat., 398.
33 XXXI Stat., 167.
34 XXXII Stat., 485; and XXXIII Stat., 814.
Minnesota introduced a bill which would extend the time to July 1, 1912, it was brought under the General Dam Act of 1906.35

Chief of Engineers Mackenzie approved the measure extending the bill for the fourth time with only minor changes, claiming that:

It is understood that the dam is now under construction and that operations are being so conducted as to in no way interfere with navigation interests. I see no objection, therefore, to favorable consideration of the proposition set forth in the bill.36

From the outset everyone assumed the bill would pass with little difficulty. It excited no significant discussion in the House or in the Senate where it passed with only a few minor amendments. On April 6, 1908, the chief executive received the measure. Astonished at the number of extensions already granted to the Rainy River company and at the apparent lack of progress of the firm, Roosevelt vetoed the bill on April 13, clearly defining the conservation principles and establishing a new era in water power legislation.

35 See Kerwin, p. 115.

Pointing to the fact that the permit had already been held for a decade without taking advantage of the power privilege, the president stated that he did not believe national resources "should be granted and held in an undeveloped condition" for any reason. He noticed then that the General Dam Act, "though representing an advance, yet leaves uncertain much that should be definitely expressed in each act permitting the construction of dams under this statute." A time limit was one of the outstanding omissions; another being the imposition of a charge "to protect the present and future interests of the United States." On the current policy he said:

The present policy pursued in making these grants is unwise in giving away the property of the people in the flowing waters to individuals or organizations practically unknown, and granting in perpetuity these valuable privileges in advance of the formulation of definite plans as to their use.37

The president then called for a unified plan for multiple-purpose development of the inland waterways,38 and asserted that the waterways were the natural wealth and


38 The increasing urge to derive maximum benefits from natural resources in this period brought more attention to the possibility of multiple-purpose projects. Earlier developments were often designed for a single need and
heritage of the people. Asking for a definite policy he recommended that some designated official have the duty of approving future plans in order to guarantee the maximum development of navigation. There should be: (1) a limited time within which plans must be developed and projects executed; (2) provision for annulling grants if conditions were not followed; (3) assurance of full development of navigation and power; (4) a fee to be adjustable in the future in order to secure control in the public interest; and (5) a time limit on the duration of the grant. The new stringent policy which Roosevelt had outlined was virtually the same as that introduced by Gifford Pinchot into the regulation of water power developments in the Forest Service.39

The Rainy River bill and veto message were referred to the House Committee on Interstate and Foreign Commerce on the motion of Representative James R. Mann of Illinois. During committee hearings, however, the administration discovered it had not been adequately informed of all the facts related possibilities overlooked. It had now become widely accepted that irrigation, flood control, navigation, water power, and other developments were associated. If a dam could harness water for power it might also aid navigation by deepening the channel, while at the same time providing water for irrigation. The multiple-purpose movement is discussed in Water Commission Report, p. 259; and Hays, pp. 100-105.

39 See Smith, pp. 48-49.
on the Rainy River project at the time of the veto. Although Secretary of the Interior James R. Garfield explained that the company had spent over $750,000 on partial construction of the dam, it was only after the administration learned of an agreement between the Rainy River company and the Secretary of War that it recommended congress pass the bill over the veto. In the agreement the company accepted a time limit and charge for the privilege, the removal of obstacles to navigation without expense to the government, and to abide by any law or modification thereafter laid down.

The shock of the veto remained fresh in the minds of congress and the utility interests, however, when on January 15, 1909, Roosevelt vetoed a similar measure authorizing William H. Standish to construct a power dam on the James River in Stone County, Missouri.


41 Kerwin (pp. 120-121) writes that the Dominion Parliament and the Parliament of Ontario had granted rights to an associate company to do the Canadian portion of the work since the Rainy River was an international stream, bordering Minnesota and Canada. Considerable time and capital had been expended to get the railroads to come to the place of construction. The 1907 financial panic also caused considerable delay. The trials of the "Job of water-power" found no sympathy in the White House, however, until the company reached the above mentioned agreement with the Secretary of War.
The James River bill was introduced into the House of Representatives by Joseph J. Russell of Missouri in February of 1908 where it became H. R. 17707. The measure was turned over to the Committee on Interstate and Foreign Commerce which reported it with amendments recommended by the Chief of Engineers on March 17. Of primary importance was the provision that the Secretary of War would at all times control the use of the water. The bill passed the House on March 18, subject to the stipulations of the General Dam Act, and was sent to the Senate.

The Senate Committee on Commerce submitted its report on April 30, containing a copy of the letter Roosevelt had sent his Secretary of War and the respective congressional committees in March, as well as the reply of the Department of War to that letter, in which Taft noted the president had declared he would sign no more bills of that type unless such measures provided for compensation to the United States for the use of water other than for navigation. The Secretary of War had then stated:

This is a new departure from the policy heretofore pursued . . . and in view of this fact it becomes important to inquire whether the Government has the right to require compensation for the use of

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water in such streams for purposes other than navigation.\textsuperscript{43}

Drawing attention to numerous cases in which the federal government had indicated that it had no power to levy such charges, the Senate committee declared:

"An act authorizing the construction of a dam is . . . a mere revocable license or privilege, and if a tax can be imposed on such a privilege it must be general and uniform throughout the United States. It must apply to all dams and water powers on navigable streams throughout the entire country. . . . For reasons above given the committee report the bill without the amendment recommended by the War Department.\textsuperscript{44}"

The Senate passed the bill at the beginning of the next session on January 4, 1909. Eleven days later Roosevelt submitted his veto message which more firmly established the gospel of conservation.\textsuperscript{45} In this message the president indicated the duty of congress to protect the rights of the public in undeveloped water power and the

\textsuperscript{43}Congress, Senate, Report of Committee on Commerce to H. R. 17707, the James River Bill, Report No. 585, 60th Cong., 1st Sess., 1907-1908, p. 2.

\textsuperscript{44}Ibid., p. 9. For the list of cases used in the committee report see pages 3-8 of this source. The Chief of Engineers, in order to meet the requirements of the president's letter, suggested amending the James River bill to read that the Chief of Engineers and the Secretary of War could "impose conditions and stipulations fixing such limitation of time for the privilege hereby permitted and such charge or charges for the same as they may deem necessary to protect the present or future interests of the United States." Ibid., p. 3.

\textsuperscript{45}See Kerwin, p. 121.
rise of water power monopolies. Granting that the policy was what Taft referred to as "a new departure," Roosevelt argued that:

The fact that the proposed policy is new is in itself no sufficient argument against its adoption. As we are met with new conditions of industry seriously affecting the public welfare, we should not hesitate to adopt measures for the protection of the public merely because those measures are new. When the public welfare is involved, Congress should resolve any reasonable doubt as to its legislative power in favor of the people and against the seekers for a special privilege.46

The president believed the national government had the power to grant licenses and make charges and was even more firmly convinced that it was the responsibility of the government to exercise that power. "The people of the country," Roosevelt declared, "are threatened by a monopoly far more powerful, because in far closer touch with their domestic and industrial life, than anything known to our experience."47 A single generation, according to the


president, would witness the exhaustion of oil and gas and such a rise in the price of coal that would make "the price of electrically transmitted water power a controlling factor in transportation, in manufacturing, and in household lighting and heating." He reasoned:

To give away, without conditions, this, one of the greatest of our resources, would be an act of folly. If we are guilty of it, our children will be forced to pay an annual return upon a capitalization based upon the highest prices which "the traffic will bear."\(^{48}\)

Strengthening the stand taken in his veto of the Rainy River bill and detailing his opinion of executive power, Roosevelt stoutly refused to sign bills "granting privileges of this character" which did not contain the conditions he had so explicitly required. To this he added:

I consider myself bound, as far as exercise of my executive power will allow, to do for the people, in prevention of monopoly of their resources, what I believe they would do for themselves if they were in a position to act. Accordingly I shall insist upon the conditions mentioned above not only in acts which I sign, but also in passing upon plans for use of water power presented to the executive department for action.\(^{49}\)

Commissioner Herbert Knox Smith of the Bureau of Corporations had prepared a letter for the president which

\(^{48}\)Ibid.

\(^{49}\)H. Doc. 1350, p. 9.
accompanied the veto message. This letter drew attention to the growing importance of water power and dealt chiefly with the concentration of control of water power sites into the hands of a comparatively few interests. Smith's letter added emphasis to the stand taken by Mr. Roosevelt.

The president seemed cognizant of the importance of his action on the James River bill. In a letter to Elbert Baldwin he wrote: 'I have your letter of the 5th about the Census bill. I do not think this is my most important veto. I think my veto of that waterpower bill was even more important.' The message vetoing the bill came near the close of his second administration. It apparently received almost unanimous approval in the public press, but water power interests now lined-up in bitter opposition. Friends

50 The work of the Bureau of Corporations received special mention in Roosevelt's autobiography (p. 457) where he referred to the bureau's work as "striking." "In addition to bringing the concentration of water-power control first prominently to public attention, through material furnished in my veto of the James River Bill," declared Roosevelt, "the work of the Bureau showed that ten great interests and their allies held nearly sixty per cent of the developed water power of the United States." For the complete letter from Commissioner Smith see H. Doc. 1350, pp. 10-16.

51 Roosevelt to Elbert Francis Baldwin, February 6, 1909, as quoted in Morison, VI, 1506. On January 14, 1909, the president had written to his son Kermit declaring: "Congress of course feels that I will never again have to be reckoned with and that it is safe to be ugly with me. Accordingly, in one way I am not having an easy time, and I shall have additional fights over certain veto messages I shall send." Morison, VI, 1475-1476.
of the water power companies in congress denied the right of the public to share in any part of the profits that were accrued from these natural resources by the imposition of licenses and other severely regulatory provisions.\(^{52}\) Three years had passed since the 1906 act regulating the construction of dams in navigable waterways had been signed by Roosevelt, and the administration had been unable to solve the water power controversy.

The conservation movement, of which hydroelectric development was just one small section, was one of the outstanding contributions of Theodore Roosevelt. His actions from the passing of the General Dam Act of 1906 to the end of his term were aimed at preserving the natural resources of the country for the whole people; not solely for the large corporations. Unfortunately, some of his policies tended to retard development, especially in the field of hydroelectricity. Whether or not Roosevelt realized this, it certainly was not his intention to restrain American growth and prosperity. Mr. Roosevelt loved a strong United States. In 1908 as soon as the administration learned that the Rainy River company had agreed to accept the regulations it had laid down, congress was asked to pass the bill over the veto. Near the end of his term as president,

\(^{52}\) Refer to Baker, *Annals*, pp. 105-106.
when the James River group fought against accepting these same regulations, their measure was promptly vetoed and congress was boldly reminded of its obligation to protect the rights of the public in undeveloped water power and in guarding against water power monopolies. The framework for water power regulation had clearly been laid. The question now was would Taft be willing, and if willing, able, to carry these policies forward?
CHAPTER IV

THE CONTROVERSY OVER WATER POWER REGULATION:
1905-1910

The activities in the development of hydroelectric projects in navigable rivers including the passage of the dam act and two significant water power vetoes were a prelude to bitter controversy during these years. By the General Dam Act of June 21, 1906, the Chief of Engineers and the Secretary of War were granted power to control the construction of dams for hydroelectric power in navigable streams. Part of the conflict began over the problems caused by the increase in hydroelectric projects and the growth of water power monopolies. The Corps of Engineers, now fully involved in the water power scene, became one of the centers of friction. The Corps did not have a reputation for holding an imaginative view of water resource development. In fact, having as its chief purpose the protection of navigation, it displayed a tendency to think of almost all waterway work in terms of transportation.¹

¹ Hays (p. 8) states that the Corps of Engineers "referred to water power, irrigation, and drainage as secondary to navigation; it did not propose studies or plans for the development of all possible uses of water."
Roosevelt and his advisors who sponsored the crusade for the conservation of natural resources and against the growth of corporate wealth collided with Secretary of War Taft and the Corps of Engineers, who disagreed with the new power policy being put into practice by the administration. The two groups failed to reach a satisfactory agreement over the interpretation of the General Dam Act which stated that in approving plans and specifications the Secretary of War and Chief of Engineers could "impose any condition and stipulation that they deem necessary to protect the present and future interests of the United States."\(^2\) The administration held that this provision authorized the government to make a reasonable charge for the valuable rights it granted. The Corps, supported by Taft, however, refused to accept this definition. In their opinion the constitution granted congress power to regulate dams for the purpose of navigation only. Although the president was unsuccessful in changing their opinions, he was able to prevent them from creating too much interference with the administration's policy by demanding that the Secretary of War obtain Pinchot's advice before rendering opinions on water power bills. On June 15, 1908, Roosevelt further demanded that Taft submit each new plan for

\(^2\) See Section 1, General Dam Act, June 21, 1906.
hydroelectric projects to the Attorney-General for the Department of the Interior, George Woodruff, Pinchot's personal friend and associate. ³

The levying of a charge for the privilege granted by congress became the most controversial principle in the impending battle. Pinchot had established such a policy in 1905 after the transfer of the Forest Service, and had continually warned the president of the necessity for a similar program of protection on the public lands and wherever water power interests threatened. The Chief Forester showed little sympathy for these corporations, and cautioned the conservationists by warning that: "The water-power men are trying to get away with the public property in perpetuity. . . . You cannot compromise with a thief who is trying to take your watch." ⁴ By 1908 Roosevelt had come around to the same opinion and decided that he would sign no further bills which granted such rights unless they specifically provided for a fee and a time limitation. ⁵

³ Consult Hays, pp. 115-119.

⁴ Pinchot to F. H. Newell, undated letter, as quoted in McGeary, p. 77.

⁵ McGeary (p. 78) claims that: "Both Roosevelt and Pinchot were indispensable to the establishment of a policy of protecting the public interest in granting the use of dam sites for power development. There needed to be a Forest Service with an aggressive and dedicated director to try
In his special message to Congress on March 25, 1908, the president stressed the policy of making a reasonable charge and a time limit, and reiterated the stand taken in the recent Rainy River veto by explaining that none of the bills which had been recently introduced gave to the government the right to make such a charge for the valuable privileges granted, "in spite of the fact that these water power privileges are equivalent to many thousands of acres of the best coal lands for their production of power." Roosevelt warned Congress that:

I shall be obliged hereafter, in accordance with the policy stated in a recent message, to veto any water power bill which does not provide for a time limit and for the right of the President or of the secretary concerned to fix and collect such a charge as he may find to be just and reasonable in each case.

In this controversy the power of the federal government over navigation and navigable waters as a portion of its power to regulate interstate and foreign commerce was not challenged; but its right to lay down charges or fees, the new ideas. And there needed to be a sympathetic and strong President to offer the necessary support in high places to get the program started. Without both of these ingredients there would have been no program."

time limits and other regulations was disputed. The arguments from each side grew heated over the issue as they tried skillfully to justify their own particular demands. Water power companies wanted the government to keep hands-off, while the conservationists adamantly demanded the tightening of government regulations.

A memorandum of the Solicitor-General of May 11, 1908, included in the James River veto, stated that the United States government was "legitimately exercising the power over interstate commerce . . . and is imposing proper—that is, not only just, but legal—terms, conditions, and reservations. . . ." It showed the relationship between the power and its application and referred to the arrangement as "germane even when water power is developed and a charge made for it, because:"

. . . while that or some other use of the water outside navigation use is the primary or the sole object of the licensee and the navigation use is only incidental to that use, so far as the licensee is concerned, that other use from the standpoint of the Government and the people at large is always and only incidental to the improvement and protection of navigation and that use. . . . 7

In this manner the actions of the administration were justified and declared constitutional. 8

7 H. Doc. 1350, pp. 20-25.
8 Ibid.
Proponents of the no-charge, no-time limit policy also had their own particular rationalizations and many of them were announced by former conservation leaders. Marshall O. Leighton, ex-Chief Hydrographer of the Geological Survey made his plea for the hydroelectric industry in 1910. According to Leighton the industry was still in its "experimental stages."

Any project of the hydro-electric industry is [therefore] profitable or unprofitable according as the expense of development and maintenance and the demand and supply are favorable or otherwise. The industry is subject to the same exigencies as are other industries, and, except in a few cases . . . it bears no resemblance to Aladdin's lamp as a revenue producer.9

Formerly a staunch conservationist, Leighton had returned to private business as a consulting engineer, and he may have found it expedient to alter many of his former opinions. The hydroelectric industry, he now warned, would be more sensitive "to ill-advised and oppressive legislation" than other industries and the burden would have to fall "more directly on the ultimate consumer. Any hydroelectric project requires special consideration during the early years of its development." The former hydrographer clearly


10 Ibid.
proposed that charges and time limits be forgotten and hydroelectric interests return to the virtually unrestricted development they had enjoyed prior to the 1906 statute.

George Swain who was thoroughly acquainted with the water power situation took a similar stand. He claimed that at least some degree of monopolistic control was highly desirable in this young industry to assist in the development of water powers so that the public would be assured their natural resources would not remain unused. Swain maintained that:

From the point of view of conservation alone, it would seem unquestionably better for the public that water powers should be developed and the power sold even at or above the price of steam power, rather than that they should not be developed at all; for every horse power derived from falling water conserves so many tons of coal annually.¹¹

The rise of the controversy over the threat of monopolies at this time naturally aided the conservation leaders in their struggle for the right to impose charges and time limits on hydroelectric concerns. The president's letter transmitting the report of the National Conservation Commission stressed as "especially important" the guarding of the people against the "upgrowth of monopoly and to insure to them a fair share in the benefits which will

¹¹ Swain, p. 99.
follow the development of this great asset..." As early as 1907, probably due to the conservation movement which was gaining impetus in that year, Senator Newlands pointed to this danger in an address before the National Irrigation Congress. Newlands reminded his listeners that: "Precautions must be taken to save this great water power from the control of trusts and monopolies, and legislation must direct its use in the interest of the entire people." 

Increased attention to this problem was stimulated by the report of Herbert Knox Smith which accompanied Roosevelt's James River veto in 1909. Smith held that the concentration of water power control had occurred mainly within the previous five years, and that 33 per cent of the energy produced by that method was controlled by a small group of interests. These and the smaller companies sought terms of their grants to hydroelectric projects and sites in perpetuity and without a charge. The conservation

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12 NGC Report, p. 6.

13 Hibbard (p. 475) pinpoints the importance of the conservation crusade and the corporations conflict in this manner: "One motive actuating the conservation movement was the belief that it furnished an effective means of preventing to a great extent the further development of monopoly."

14 For Newlands' address before the National Irrigation Congress in Sacramento, dated September 3, 1907, see Darling, II, 189-190.
issue and the new regulations laid down by Roosevelt in the last two years of his administration prevented this group from enjoying the virtually unrestricted advance they had formerly relished. The conservation idea stressed the citizens' right and duty "to protect themselves against the uncontrolled monopoly of the natural resources." This principle was acclaimed as a "thoroughly democratic" concept by those who believed in it, but the application of this form of democracy left the investors in water power corporations somewhat dismayed.

Water power interests united in self-defense in this controversy and declared their belief in the no-charge, no-time limit ideas in emphatic tones. Representatives of these interests moved to the nation's capital where they made their presence known at almost every pertinent gathering. Apparently, congress and the administration were pressured by both the groups demanding water power development and those who believed this form of governmental regulation was unconstitutional. No doubt many of these


17 Kerwin (pp. 153-154) writes that "... the Senators and Representatives who fought the fight of the water-power interests most consistently were from the South and the far West. The South had valuable power to develop
interests felt Roosevelt and Pinchot had over-stepped their bounds and taken drastic strides forward at their own discretion. The act of 1906 had not provided for as rapid development as would have been possible without such a restrictive measure, and in the eyes of water power interests, development had practically stopped.

In its streams, and wanted that power developed quickly. And dear to the hearts of the Southerner has ever been the rights of the sovereign states. The power interests played up this idea, and the Southern Congressmen used it with no little force in congressional debate. [Western congressmen objected because] large portions of the public domain were in the western states. To the Westerner these lands were held out of use because of the doctrines of the growing movement for conservation. To these groups were added Congressmen from the East and Middle West, friends of the corporations and big business who were anxious for development on easy terms to the power companies because of private investment or because of a conscientious and sincere belief in the current stories of the persecuted power man and the unconstitutionality of government regulation."

18. In his discussion dealing primarily with the administration of forest reserves, Ise (p. 175) summarizes a major ground of water power dissatisfaction, and his comments are applicable outside as well as within the forests. "Not only did Roosevelt and Pinchot enforce the laws vigorously, but they often did things which no law required --went beyond the mandatory provisions of the law, where it was necessary to protect the public interests. They did not hang back, after the fashion of ordinary government bureaus, and wait for Congress to give specific orders; but vigorously took the initiative whenever conditions demanded action."

19. See Kerwin, pp. 135-155. It is important to remember that even though hydroelectric development moved forward at a much slower pace after the passage of the General Dam Act of 1906, it was certainly not, as these interests would have the public believe, at a standstill.
Opinions differed as to whether or not the General Dam Act authorized the imposition of a charge, but both sides realized new legislation was desperately needed. So long as the president refused to approve bills authorizing the construction of power developments unless they contained a charge and time limit, little progress was possible in the navigable streams. The House Committee on Interstate and Foreign Commerce had for some time been preparing a new dam act, but on February 27, 1909, committee chairman Frederick C. Stevens of Minnesota reported that no bill would be forthcoming at that time because the end of the session was near, caution had to be taken to protect the public and private interests, conflicting rights of national and state governments needed to be considered, and the respective powers of the national government, states, and individual owners had to be defined.  

There may, however, have been other reasons why this new legislation was not presented at this time. Already it had become clear that the incoming president would oppose charges and time limits for water power privileges. It was less than a month until Taft's inauguration, and his stand had been made understandably plain three years

earlier when he wrote to the president of the Merchants' Association of New York on January 27, 1906:

Certain powers in respect to the navigable waters of the United States are vested in Congress by the commerce clauses of the Constitution; and a very limited delegation of the powers so conferred has been vested by Congress in the Secretary of War. . . . [The] power to determine whether certain waters are or are not navigable is vested in the courts and in Congress and is not ordinarily a matter for executive determination, . . .21

This indication of what the new president's policies would be, apparently served to give power interests hope in the future. The authority of the Secretary of War to regulate streams rested upon the constitutional question as to whether or not a river was navigable. If the Secretary did not have such powers, the General Dam Act of 1906, granting him broad and extensive jurisdiction, was of no practical value. If this was the case, water power development aspirants could look forward to more lenient regulations under the new administration. One thing was certain: Roosevelt had not changed the principles which were set forth in his reply to J. Adam Bede, Representative of Minnesota, dated May 7, 1908:

In my judgment it is not a case as to whether the Constitution authorizes the actions, but as to

whether the National Government does or does not 
choose to take the position that, as a grant of this 
kind is an exclusive and therefore a monopolistic 
grant, it is fair that the holder as a condition of 
the enjoyment, should give just compensation to the 
public at large. . . . It seems to me unwise for 
Congress to take any other position.22

President Roosevelt, however, did not have an 
opportunity to prepare a formal answer to Stevens' comments 
before leaving office on March 4, 1909. The popularity he 
enjoyed during the seven and one half years of his administra-
tion was evidently higher than any Republican president 
since Abraham Lincoln. Nevertheless, his own party had begun 
to divide into two separate groups: a conservative majority, 
and a rapidly growing progressive minority.23 Roosevelt was 
successful in holding the Republican party together but Taft 
proved unable to keep it from breaking apart. William Howard 
Taft had been selected by Roosevelt because the latter 
wanted to see his progressive policies carried forward. The 
conservation crusade had been launched with virtually every 
political device and had become one of these progressive 
policies. The process of carrying this program to its 
"ultimate objective" was no simple task, and the new

XLIII, Part 4, 3410.

23 See G. E. Mowry, The Era of Theodore Roosevelt; 
president found himself lacking the "methods of arbitrary leadership" which Roosevelt had so firmly applied.\(^{24}\)

Taft had left the Philippines to join Roosevelt's cabinet as Secretary of War in 1903. The two men worked well together even though on various occasions their opinions differed. As the Secretary continued to earn his superior's respect he began to share many of the actual burdens of the presidency and to many Americans became "pro-tem president" of the United States.\(^{25}\) In 1908 Taft only reluctantly endorsed Roosevelt's changes on water power regulation. When he became president in March, 1909, he initiated certain policies which differed radically from those of his predecessor. Shortly after his inauguration, however, conservationists began to feel they no longer could depend on the leader in the White House to pursue their natural resource policies, and formed two organizations to carry forward the conservation program,

\(^{24}\) Consult Robbins (pp. 364-365) who writes: "Unfortunately, Taft was to reap the whirlwind which Roosevelt had sown. . . . Although Roosevelt had blazed the trail, the process of carrying the conservation movement to its ultimate objective—that of embracing all of the nation's remaining natural resources—was not an easy task. Roosevelt had not effectively quieted the opposition. . . ."

fight opposition to the movement, and guide the public opinion.²⁶

The National Conservation Association was the first of these two organizations. It was created in 1909, and enlisted as its first president the head of Harvard University, Charles W. Eliot, who was succeeded in 1910 by Gifford Pinchot. The former Chief Forester directed the association until the Federal Water Power Act was passed in 1920 and the group disbanded. A second organization took the form of the National Conservation Congress in August, 1909, with B. N. Baker, a Maryland progressive, as its president.²⁷

A jurist at heart, President Taft required that any power he applied must be clearly and precisely stated by the constitution or in legislative acts, if indeed not already upheld by the courts. As president-elect he had found it expedient to ask congress to continue financial assistance to the National Conservation Commission; but he did not renew this request after his inauguration. In August, 1909, Taft was given an opportunity to clarify his water power policy when a bill passed congress authorizing

²⁶Refer to McGeary, p. 198.

²⁷Consult King, p. 27.
J. L. Hankinson, N. B. Dial, and others, to construct, maintain, and operate a dam across the Savannah River in South Carolina. The measure had been introduced and debated in the House in accordance with the provisions of the General Dam Act of 1906. Representative Mann sought to have the bill passed and addressed the House:

I understand after talking with the present President (Mr. Taft) that he is inclined to think --not to state it more strongly--that Congress is not entitled in granting permits for the construction of a dam to charge for that right upon the theory that the Government is the owner of anything, and probably--I say probably--if a dam bill like this were passed it would not be vetoed by the President.28

Mann was right. The new president signed the Savannah River bill into law even though it contained the very provisions which caused the former president to veto the Rainy River and James River bills.

At least for the moment, Taft's policy had been clearly indicated, but the question as to whether the United States government could make a charge for the use of water power privileges on navigable streams was yet to be answered. On July 13, 1909, however, George W. Wickersham, Taft's Attorney-General, declared:

It would seem perfectly clear from this Act [General Dam Act of 1906] that the stipulations

and conditions which may be imposed by the Chief of Engineers and the Secretary of War are those which relate to navigation of the stream and the regulation of commerce therein; and I am clearly of opinion that Congress did not by this act mean to authorize those officials to require as a condition to the license the payment of a sum or sums by way of compensation for the privilege granted, although they may undoubtedly require such payments or assumptions of expenses as are necessary or proper to insure the navigability of the stream. . . . But in my opinion they are not authorized to require payment by way of compensation as for a franchise or privilege granted by such license. 29

This opinion was handed down in reference to an application made by Badger Hydro-Electric Company for a permit to construct a dam in the Wisconsin River near Prairie du Sac, and it prompted Congress to pass a new General Dam Act which became law on June 23, 1910. 30

Roosevelt had urged revision of the 1906 statute and expressed the need for such legislation by refusing to approve bills not establishing federal jurisdiction and the levying of charges for use of the navigable streams. Toward the end of his administration Congress refused to heed his request, though a House committee had made efforts toward drafting such a measure. On April 11, 1910, a bill


30 See Hays, p. 165; also Van Hise, Conservation of Natural Resources, pp. 147-148.
was reported by Representative Mann which would amend the law of 1906, and became known as the General Dam Act of 1910;\textsuperscript{31} the last general water power legislation prior to the act in 1920.\textsuperscript{32}

The controversy over water power regulation was not one which excited broad public response, but the special interests were deeply aroused in the water power problems, just as other special interests were concerned in tariff or railroad reforms. Groups affected by the controversy over hydroelectricity apparently realized Roosevelt would remain adamant in his insistence on policies requiring a time limit and a fee for the privilege of constructing a water power dam in a navigable stream. Nevertheless, the power companies continued their struggle against the Rooseveltian policies to the very end of his administration, and caused this problem to be one of the earliest major conflicts with which the new president had to cope. Taft's policies as

\begin{quote}
\textsuperscript{31} Kerwin (pp. 129-130) writes of the 1910 act: "This was indeed a compromise measure—so compromised that it was ineffective. It struck in all directions. It provided charges and it did not; it provided regulation and it did not. . . . Although more stringent than the Act of 1906, it was not an improvement over that act."
\end{quote}

\begin{quote}
\end{quote}
they were understood while he was president-elect led to "wishful thinking" on the part of the power interests, and they looked forward with pleasure to the following four years. Many of their hopes came true until Taft, in need of conservationist support for his renomination in 1912, began to review the record of his administration on water policy and the conservation of natural resources.
CHAPTER V

THE FAILURE OF WATER POWER LEGISLATION
1910-1913

The General Dam Act of 1910 limited the grants of rights to fifty years and reserved the power to revoke a grant at any time. Charges could be collected to reimburse the United States for expenses of investigations or for restoring the navigability of streams, but no provision was made for the collection of charges for the privilege of constructing hydroelectric power dams in navigable waterways.¹ The act was definitely more stringent than its 1906 forerunner but was actually little improved over that statute.² Among the changes were:

First. Bringing within the provisions of this act all streams under the control of the United States, embracing those upon which dams were erected pursuant to the authority given to the Secretary of War in . . . [an act] approved March 3, 1899.

Second. That the Secretary of War and Chief of Engineers shall consider a comprehensive plan for the improvement of the waterway and have authority to designate the location, so as to best conform to

¹ XXXVI Stat., 593. Also see Appendix B, pp. 115-119 for a copy of the 1910 law.

the requirements of such waterway.

Third. The Secretary of War and Chief of Engineers is given authority to fix or arrange for a charge for the privilege granted as shall reimburse the United States for any actual or contingent expense which may be incurred in connection with the project.

Fourth. The Secretary of War and Chief of Engineers are directed to collect charges for the privileges granted to dams which receive direct benefit on account of the ownership and maintenance by the United States of storage reservoirs, forested water-sheds, or lands located at the headwaters of navigable streams for the improvement of navigation.

Fifth. In section 4 this bill extends the right of the United States to secure any of these dams for a public use and paying for the same as now provided by law in case of other public improvements, and that authority to maintain such dam is terminable at the end of fifty years, when the whole matter must again come before Congress for its direction.

The dam act of 1910 was an administration measure and was prepared in consultation with President Taft and his advisors, but like its predecessor, this statute only partially fulfilled the expectations of those concerned. Indeed, by the provisions stated above it clearly was not satisfactory to the two opposite groups; those demanding strict, protective measures, and those wanted fewer restrictions.

Before the bill was passed Representative Stevens declared that the federal government had the right to

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secure the dams for public use and that the authority to maintain the projects was terminable at the end of fifty years, "when the whole matter must again come before Congress for its direction." On June 18, after the measure had passed the House, Stevens stated that "it is believed that the provisions of that act (1910) completely safeguard the interests of the Government." 5

Another significant change in the water power situation that took place under the Taft administration was the appointment of certain cabinet members. In March of 1911 Taft's Secretary of the Interior, Richard A. Ballinger resigned, having been the center of conflict during the Ballinger-Pinchot affair. 6 To the vacated

4 Ibid.


6 The Ballinger-Pinchot affair developed when the Secretary of the Interior removed Louis R. Glavis, a Roosevelt conservationist, from his post in the department. Glavis raised charges via the press that the Secretary had favored the Guggenheim mining interests in their efforts to obtain coal lands in Alaska. Pinchot, siding with Glavis, sought the aid of Roosevelt in settling the dispute. The controversy became a primary political issue and added greatly to the rift between Taft and the former president, and led to the removal of Pinchot from his office. Most scholarly studies on the history of the public domain contain information on this subject.
position Taft appointed a well-known conservationist, Walter L. Fisher. Two months later, partly as an attempt to mollify some of the friends of conservation who were threatening to oppose his 1912 renomination, the president appointed Henry L. Stimson as his Secretary of War to replace Jacob Dickinson who had resigned "to give more attention to his private affairs." Stimson informed Taft's private secretary, Charles D. Hilles, that he remained loyal to Roosevelt and sympathetic to the cause begun by Gifford Pinchot and the others, but would consult several people before making his decision whether to accept the cabinet appointment: one of the people he consulted was Theodore Roosevelt. Receiving Roosevelt's approval, Stimson became Secretary of War under Taft, but continued to admire Roosevelt and his ideas.

Shortly after Stimson had become Secretary of War, Herbert Knox Smith published his report on Water-Power


Development in the United States. Part II of the Commissioner of the Bureau of Corporations report dealt with the concentration and control of ownership and pointed out that ten major power companies controlled a large portion of the water power in the United States. This paper pleaded for action to protect the public from the rapidly advancing movement toward concentration. It claimed that in the previous ten years water power resources had come into national importance as a result of technological advances in the transmission of this power. Electricity from a single source could now be transmitted and "reach a marketing area of at least 100,000 square miles. Water power, once strictly local," the report continued, "has thus suddenly been brought within the sweep of large economic forces." Smith declared that his investigation revealed there was:

1. An increasing concentration of the control of water powers by certain large interests.
2. Extensive relationship between water-power interests, public-service companies (street railway, lighting, and power concerns), and banks.
3. The need of developing our water powers as promptly and completely as practicable. Use of water power means conservation of fuel.
4. The need for a definite public policy with respect to water powers. The effective means of applying such policy is through the control of the power site. It can not be applied through fixing the price of water power independently of fuel power.¹⁰

¹⁰ Bu. of Corp. Report, p. xv.
The publication of this study on March 14, 1912, stirred great interest throughout the country. It revealed that ten commercial groups controlled a large part of the potential and developed water power in the United States, and called for a definite public policy with respect to water power development. The need for a "definite policy" was still a conscious theme in 1912; five years after President Roosevelt had made a similar plea when creating the Inland Waterways Commission. Much water had passed over the dams between 1907 and 1912, but the struggle for a definite water power policy was not over. Taft had been unable to form an acceptable policy although his policies differed from those of his predecessor. Now that Stimson was Secretary of War, Taft's actions though not his opinions were about to be changed because the Secretary held certain convictions of his own on the water power program.

Secretary Stimson reasoned that the federal government could constitutionally levy a rental for water power developed at private dams in navigable streams, because these fixtures aided navigation, and the government clearly could promote navigation. Taft and the Corps of Engineers already had agreed that the government could make charges for public dams to improve navigation, but felt that it

11 See Kerwin, p. 152.
could not levy fees on private dams. Stimson now argued that their policy had overlooked the relationship between water power and navigation and proposed that by joining the two, benefits would be created which separate construction had found impossible to provide. Even though the act of 1910 did not grant the power to impose a fee by administrative action, the Secretary tried to obtain legislation providing for such charges. Taft did not agree with these views, but a dramatic attempt by the water power industry forced the president to play his hand in the summer of 1912.12

In July of that year while congress was involved in a heated struggle over tariff legislation, a House omnibus-type bill on hydroelectric projects was reported by the Committee on Interstate and Foreign Commerce. Seventeen of these projects had been combined into a single bill in an ambitious effort to obtain the necessary support from congressional representatives of various sections and committees. The bill contained no provision for charges; and no provision for government regulation. It encompassed one-fifth as many dams as congress had authorized in 125 years; yet no hearings were held nor investigations made by the committee. A long and bitter fight ensued. On July 20, 12

12 Consult Hays, pp. 119-120.
one of the projects from the bill was introduced in the Senate by Bankhead, now a representative to that body, requesting authorization to construct a dam across the Coosa River in Alabama. After considerable debate the measure passed congress but was returned to the Senate on August 24, 1912, without the president's signature, with the veto message appended.  

Taft's veto of the Coosa River measure was every bit as great a shock to congress as Roosevelt's veto of the Rainy River project four years earlier. His reason for vetoing the bill because it failed to provide for charges was a complete reversal of his former policy. This decision seemed entirely inconsistent with the attitude Taft had shown during the four years of his administration. Evidence indicates that he acted on this measure in the interest of party harmony; and there is little doubt of the influence of Stimson and the need for the support of conservationists in the coming election which played an instrumental part in his decision. The Coosa River bill did not pass over the president's veto. 

13 For a detailed discussion of the Omnibus and Coosa River bills see Kerwin, pp. 131-142.

14 Bankhead asked President Taft why he had chosen to veto the bill. Taft merely replied, "Senator, I have a Bull Moose Secretary of War; he insists upon this veto along the
From 1909 to 1913 the subject of water power continued to be discussed at virtually every session of congress. Committee reports and floor debates were centered on the legal and economic aspects of water power. Various bills had successfully passed each, but not both, of the congressional bodies but none became law. Secretary Stimson continued his efforts, working closely with several private power firms in an attempt to fashion permits for specific projects which would include rentals. If he could be successful in this effort, a precedent would be set. The opportunity arrived in February, 1913, when the Connecticut River Company, owned by Stone and Webster, agreed to accept a fifty-year permit with annual charges levied by the Secretary of War for the privilege of developing water power. For a time it seemed the conservationists were close to a victory in the battle they had waged for almost a decade.

.lines of a veto message that I have authorized him to write.  

15 Refer to Conover, p. 55.

16 "Stimson worked closely with private power firms, especially the Stone and Webster company, to devise a permit for a specific project, including rentals, which private and public groups could then jointly back in Congress. Such a measure would serve as a precedent for general legislation." See Hays, p. 120.
The Connecticut River bill was reported from the Senate Committee on Commerce on January 20, 1913. Senator Burton of Ohio presented the majority report which favored the imposition of charges, and he exhibited a letter approving the principle of tolls that had been written by Secretary of War Stimson. The minority report pointed to various legal and economic reasons why the bill should not pass. The chief topic of debate, however, was the constitutional right of congress to levy charges and other water power regulations. Power interests made every effort to amend or defeat the bill in the realization that it would definitely become the precedent for which Stimson had labored. Leading the opposition was Senator Bankhead who offered an amendment removing the provisions for tolls. The bill passed the Senate where many of its original sponsors voted against it, and went to the House Committee on Interstate and Foreign Commerce where it expired when the session adjourned two weeks later.


18 "Opposition to the measure, however, was not entirely on constitutional grounds. Senator Cummins of Iowa opposed the bill for not providing enough safeguards for the Government in the recapture clause, and Senator Borah [of Idaho] opposed the measure for not being extensive enough." See Kerwin, pp. 158-161.
The water power struggle had become hopelessly dead-
locked by the spring of 1913. Although Roosevelt's
policies had been largely implemented, the question of per-
petual and free grants continued. This stalemate, which
existed for the next seven years, all but stopped water
power development on the navigable rivers. Water power
policy in the field of hydroelectric development had actually
progressed very little since the turn of the century. The
General Dam Acts of 1906 and 1910 fell far short of the
goals they were supposed to achieve. All developments of
hydroelectricity during this period had to be made under
the provisions of these acts, and although they succeeded in
forming uniform regulations, it was no easy task to interest
potential investors in projects which would be brought under
such strict terms as these laws provided. No major

19 Consult Hays, p. 121.

20 Swain (pp. 92-93) states: "The great stumbling-
block . . . is the General Dam Act, under which all develop-
ments in navigable streams must be made, and which provides
for a franchise revocable at any time upon payment of com-
pensation, with a fixed tenure not exceeding fifty years
and with no provision for renewal or payment at the ex-
piration of the term. It also provides for the construc-
tion of locks and the granting of land for approaches to
them, for free power for operating them, and for lighting
the Government grounds. . . . [It] is necessary in each
case for water-power projects to secure a special act of
the Congress authorizing the work, subject to all the pro-
visions of that Act, with such other requirements as may be
insisted upon in each case. Every project, therefore, has
developments were made under either of these statutes.\textsuperscript{21}

The possibility of the grantee being required to undertake navigational improvements of unknown cost at some time in the future; the failure to provide for the disposition of properties or extensions of grants on their termination; and the right to alter or repeal any grant without recourse on the part of the grantee or liability on the United States made financing of projects almost impossible.\textsuperscript{22}

The dam acts came at a time when the public interest in hydroelectric power projects on navigable rivers was confined to the preservation and protection of navigation. Congressional consent to these measures was given with the

to be threshed out on the floor of Congress. . . . Moreover, a corporation developing a water power, is not only subject to Federal regulation, but also to State regulation, and these two may not be in harmony. The result is that comparatively few developments have taken place."

\textsuperscript{21}\textit{FPC Report}, p. 49.

\textsuperscript{22}H. J. Pierce, \textit{Federal Water-Power Regulation}, in Senate Document No. 468, 64th Cong., 1st Sess., 1915-1916, pp. 3-4, claims: "The sole reason why our water powers are held back from development is because Congress has failed to provide suitable legislation permitting their development. . . . Since the act was passed in 1910 [Pierce wrote this in 1916], Congress has only authorized the building of 13 dams. Eleven of these water powers remain undeveloped because money could not be obtained, under the provisions of the act, for their development. The financing of the other two was only made possible because they were adjuncts to existing systems. No authorization of Congress to build dams under the present navigable-stream law has been made since 1911, one year after the act was passed."
problem of navigation as the major consideration. Agitators were quick to demonstrate the inadequacy of the existing laws, but they were not nearly as prompt in producing any satisfactory substitute. The act of 1910 made amendments which "were more or less vague, and it is difficult to discover in the amendment any superiority over the original act." 23

23 Testimony of Secretary of War Lindley M. Garrison, in Hearings Before the House Interstate and Foreign Commerce Committee on the question of amendment of general dam legislation, January 26, 1916, p. 6.
CHAPTER VI

SUMMARY AND CONCLUSIONS

Prior to 1900 the regulation of water power development was directed primarily towards the protection and improvement of navigation, which until the latter part of the nineteenth century, when railroads penetrated all the major areas of the United States, had served as the chief mode of transportation, and the government labored to prohibit interference with this traffic. By the 1890's, however, the rapid progress of the railway systems had ruined the commercial advantages of water transportation. Within the river regions there arose in response to high railroad rates a demand for the improvement of navigable facilities, at the same time that water power interests began seeking prospective sites for the construction of hydroelectric projects in these streams. It was not until the end of the century that the groups demanding the improvement of their river systems realized that by employing a multiple-purpose plan they could have cheaper and better transportation, hydroelectricity to run their industries and light their cities, and other commercial advantages. To these desirable goals the West added another: the irrigation of
the arid lands from water stored behind power dams. No region of the country dared to miss the opportunity of improving their water resources.

From 1901 to 1913, the Republican administrations of Theodore Roosevelt and William Howard Taft directed the policies of the federal government. Biographers of these leaders have often over-emphasized the differences between them. To be sure, differences were obvious and numerous, but in several fundamental respects they were of the same breed. Neither president disturbed the essential structure of the existing system of government; yet, both caused important changes in the details within that structure. This is apparent in the attack on the growth of giant corporations and the exploiters of the natural resources. Both men were sincerely interested in order and efficiency in national affairs, and their policies were directed toward these ends.¹

Although the conservation movement, part of their program, attained maturity under "the Democratic Roosevelt" in the 1930's, it at least reached adolescence in the earlier period. The conservation crusade was a statesmanlike, nonpartisan cause which drew support from scientists as well as politicians. Nevertheless, it was definitely

Republican in origin, led by Pinchot and his mentor, Theodore Roosevelt. Other conservationists came from both of the major parties, such as Senator Francis G. Newlands, Democrat of Nevada and "Father of the Reclamation Act."
The majority of these men understood the need for strong federal leadership to direct and give impetus to their program. 2

During these years the idea that the chief executive was the steward of the public welfare was formulated by George Woodruff, a law officer in the Forest Service. His concept of stewardship was applied to the water power program. Originally, water powers in the navigable streams, public lands, and national forests "were given away for nothing, and substantially without question, to whoever asked for them." 3 Under this new principle, however, Roosevelt demanded that private interests pay for the privilege of constructing projects in the navigable rivers which were a part of the nation's natural resources; and flatly refused to sign measures into law which granted these permits in perpetuity. "Equality of opportunity,

2"These men were proud of their work," writes Bates (p. 32), "many of them almost fanatically devoted to Roosevelt. They did not easily dissociate the Republican party or the 'Republican Roosevelt,' who had first given them their chance, from the body of their accomplishments."

3Roosevelt, pp. 441-443.
a square deal for every man, [and] the protection of the citizens against the great concentrations of capital . . ." were central themes in the conservation plea.\(^4\)

Until the enactment of the General Dam Act of 1906, grants for the construction of hydroelectric projects in navigable waterways were perpetual in their terms and without major restrictions other than those which pertained to the protection of navigation. The 1903 veto of the Muscle Shoals bill was the first attempt by Roosevelt to apply the principles, which later became a part of the conservation movement, to the water power problem, and to call a halt on the "give-away" policy. This action clearly indicated an acknowledgement of the problems resulting from the rapid increase of such projects in the navigable streams,\(^5\) and evidently had some influence on the origination of uniform legislation which came in the act of June 21, 1906.

The first dam act provided for uniform regulation of developments in navigable streams. To the water power interests this law meant restrictions in addition to those enacted by the Rivers and Harbors Act of 1899, but there was no great outburst of anxiety over the passing of the new

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\(^5\) See Appendix C, pp. 120-122, for a list of hydroelectric projects authorized by congress or a state prior to June 10, 1920.
statute. The policy of charging a fee for the water power privilege within the national forests almost coincided with the passing of the 1906 bill and the conservation movement. Gifford Pinchot and perhaps others convinced Roosevelt that a similar policy should be initiated in the navigable rivers. Reaction to this pressure caused the president to veto the Rainy River and James River measures in 1908 and 1909 respectively.

As Roosevelt's Secretary of War, Taft had openly disagreed with the charge and time limit principles, and when he assumed the office of the presidency in 1909 he refused to enforce them. A year later, however, when the amendment to the 1906 law passed, Taft had partially endorsed the idea of a time limit and the 1910 act provided for a 50 year limitation on water power developments. During the latter part of his administration it became politically necessary to endorse both the charge and the time limit regulations and in 1912 Taft confirmed the Rooseveltian principles in the Coosa River bill.

The years from 1900 to 1913 represent a significant advance in United States water power policy. The problem, which had been accentuated by the swift growth of electric power and the demand for this power, was acknowledged and bold efforts were made toward regulating the relatively new development. True, this legislation unintentionally
hindered development by restricting investment under too drastic provisions. But the framework was laid for a more mature policy which developed in 1920, after a seven year period in which constant proposals were made for the amendment of the 1910 dam act. None of these succeeded until the second session of the Sixty-fifth Congress when the proposed legislation "with respect to navigable waters was merged with similar proposals respecting the public lands." The consequential Federal Water Power Act, enacted on June 10, 1920, broke the water power deadlock which had existed for almost twenty years. As soon as the act passed, Pinchot wrote to Philip P. Wells, saying: "I feel like congratulating you on the end of a great piece of work." After two decades of experimentation and struggle, the authority of the federal government to specify the terms under which water power sites could be exploited was clearly established.

6 FPC Report, p. 49.

7 Gifford Pinchot to Philip P. Wells, June 28, 1920, as quoted in McGeary, p. 204.
APPENDIX A

GENERAL DAM ACT OF JUNE 21, 1906

An Act to regulate the construction of dams across navigable waters.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
That when, hereafter, authority is granted by Congress to
any persons to construct and maintain a dam for water power
or other purposes across any of the navigable waters of the
United States, such dams (sic) shall not be built or com-
enced until the plans and specifications for its construc-
tion, together with such drawings of the proposed construc-
tion and such map of the proposed location as may be re-
quired for a full understanding of the subject, have been
submitted to the Secretary of War and Chief of Engineers for
their approval, or until they shall have approved such plans
and specifications and the location of such dams and acces-
sory works; and when the plans for any dam to be constructed
under the provisions of this Act have been approved by the
Chief of Engineers and by the Secretary of War it shall
not be lawful to deviate from such plans either before or
after completion of the structure unless the modification
of such plans has previously been submitted to and received
the approval of the Chief of Engineers and of the Secretary
of War: Provided, That in approving said plans and location
such conditions and stipulations may be imposed as the Chief
of Engineers and the Secretary of War may deem necessary to
protect the present and future interests of the United
States, which may include the conditions that such persons
shall construct, maintain, and operate, without expense to
the United States, in connection with said dam and appurte-
nant works, a lock or locks, booms, sluices, or any other
structures which the Secretary of War and the Chief of
Engineers at any time may deem necessary in the interest of
navigation, in accordance with such plans as they may
approve, and also that whenever Congress shall authorize
the construction of a lock, or other structures for naviga-
tion purposes, in connection with such dam, the person
owning such dam shall convey to the United States, free of
cost, title to such land as may be required for such con-
structions and approaches, and shall grant to the United
States a free use of water power for building and operating
such constructions.
SEC. 2. That the right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built under the provisions of this Act, a suitable lock or locks, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation.

SEC. 3. That the person, company, or corporation building, maintaining, or operating any dam and appurtenant works, under the provisions of this Act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe.

SEC. 4. That all rights acquired under this Act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail to comply with any of the provisions and requirements of the Act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War.

SEC. 5. That any persons who shall fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this Act, and any persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part,
exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this Act, the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches.

SEC. 6. That whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act.

SEC. 7. That the right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this Act, and the United States shall incur to no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions.

SEC. 8. That the word "persons" as used in this Act shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, and associations.

Approved, June 21, 1906.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to regulate the construction of dams across navigable waters," approved June twenty-first, nineteen hundred and six, be, and the same is hereby, amended to read as follows:

SECTION 1. That when authority has been or may hereafter be granted by Congress, either directly or indirectly or by any official or officials of the United States, to any persons, to construct and maintain a dam for water power or other purpose across or in any of the navigable waters of the United States, such dam shall not be built or commenced until the plans and specifications for such dam and all accessory works, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and the Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such dam and accessory works; and when the plans and specifications for any dam to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans or specifications either before or after completion of the structure unless the modification of such plans or specifications has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War: Provided, That in approving the plans, specifications, and location for any dam, such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate, without expense to the United States in connection with any dam and accessory or appurtenant works, a lock or locks, booms,
sluices, or any other structure or structures which the Secretary of War and the Chief of Engineers or Congress at any time may deem necessary in the interests of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction with such dam, the persons owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States free water power or power generated from water power for building and operating such constructions: Provided further, That in acting upon said plans as aforesaid the Chief of Engineers and the Secretary of War shall consider the bearing of said structure upon a comprehensive plan for the improvement of the waterway over which it is to be constructed with a view to the promotion of its navigable quality and for the full development of water power; and, as a part of the conditions and stipulations imposed by them, shall provide for improving and developing navigation, and fix such charge or charges for the privilege granted as may be sufficient to restore conditions with respect to navigability as existing at the time such privilege be granted or reimburse the United States for doing the same, and for such reference to such project, including the cost of any investigations necessary for approval of plans and of such supervision of construction as may be necessary in the interests of the United States: Provided further, That the Chief of Engineers and the Secretary of War are hereby authorized and directed to fix and collect just and proper charge or charges for the privilege granted to all dams authorized and constructed under the provisions of this Act which shall receive any direct benefit from the construction, operation, and maintenance by the United States of storage reservoirs at the head-waters of any navigable streams, or from the acquisition, holding, and maintenance of any forested watershed, or lands located by the United States at the head-waters of any navigable stream, wherever such shall be, for the development, improvement, or preservation of navigation in such streams in which such dams may be constructed.

SEC. 2. That the right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built in accordance with the provisions of this Act, a suitable lock or locks, booms, sluices, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation.

SEC. 3. That the persons constructing, maintaining, or operating any dam or appurtenant or accessory works, in accordance with the provisions of this Act, shall be liable
for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam, or accessory works, subject to the provisions of this Act, shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe, and for failure so to do in any respect to a fine of not less than five hundred dollars, and each month of such failure shall constitute a separate offense and subject such persons to additional penalties therefor.

SEC. 4. That all rights acquired under this Act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail, after receiving reasonable notice thereof, to comply with any of the provisions and requirements of the Act or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War, including the payment into the Treasury of the United States of the charges provided for by section one of this Act: Provided, That Congress may revoke any rights conferred in pursuance of this Act whenever it is necessary for public use, and, in the event of any such revocation by Congress, the United States shall pay the owners of any dam and appurtenant works built under authority of this Act, as full compensation, the reasonable value thereof, exclusive of the value of the authority or franchise granted, such reasonable value to be determined by mutual agreement between the Secretary of War and the said owners, and in case they can not agree, then by proceedings instituted in the United States circuit court for the condemnation of such properties: And provided also, That the authority granted under or in pursuance of the provisions of this Act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, unless sooner revoked as herein provided or Congress shall otherwise direct: Provided, however, That this limitation shall not apply to any corporation or individual heretofore authorized by the United States, or by any State, to construct a dam in or across a navigable waterway, upon which dam expenditures of money have heretofore been made in reliance upon such grant or grants.

SEC. 5. That any persons who shall fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a violation of this Act, and persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month
such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expense may be brought in the name of the United States against such persons and recovery had for such expense in any court of competent jurisdiction. Said provision as to recovery of expense shall not apply wherever the United States has been previously reimbursed for such removal; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or the Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this Act the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches.

SEC. 6. That whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act.

SEC. 7. That the right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions.

SEC. 8. That the word "persons" as used in this Act shall be construed to import both the singular and the
plural, as the case demands, and shall include corporations, companies, and associations. The word "dam" as used in this Act shall be construed to import both the singular and plural, as the case demands.

Approved, June 23, 1910.
## APPENDIX C

### HYDROELECTRIC PROJECTS AUTHORIZED BY CONGRESS OR A STATE PRIOR TO JUNE 10, 1920*

<table>
<thead>
<tr>
<th>Stream</th>
<th>State</th>
<th>Present Permittee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coosa River</td>
<td>Ala.</td>
<td>Alabama Power Co.</td>
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<tr>
<td>Savannah River</td>
<td>Ga.</td>
<td>Georgia Power Co. (leased to Duke Power Co.)</td>
</tr>
<tr>
<td>Tennessee River</td>
<td>Ala.</td>
<td>T. V. A.</td>
</tr>
<tr>
<td>Withlacoochee River</td>
<td>Fla.</td>
<td>Florida Power Corp.</td>
</tr>
<tr>
<td>Columbia River</td>
<td>Wash.</td>
<td>Atomic Energy Commission (leased to Pacific Power &amp; Light Co.)</td>
</tr>
<tr>
<td>Crow Wing River</td>
<td>Minn.</td>
<td>Minnesota Power &amp; Light Co.</td>
</tr>
<tr>
<td>(Pillager)</td>
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</tr>
<tr>
<td>Crow Wing River</td>
<td>Minn.</td>
<td>Minnesota Power &amp; Light Co.</td>
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<tr>
<td>(Sylvan)</td>
<td></td>
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</tr>
<tr>
<td>Crum River</td>
<td>Pa.</td>
<td>-</td>
</tr>
<tr>
<td>Mahoning River</td>
<td>O.</td>
<td>Ohio Edison Co.</td>
</tr>
</tbody>
</table>

*This material has been compiled from a list sent to the author by the Chief of Engineers, U. S. Army, containing the projects for which their records show approval of plans by the Department of War.*
<table>
<thead>
<tr>
<th>Stream</th>
<th>State</th>
<th>Present Permittee</th>
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<tbody>
<tr>
<td>Niobrara</td>
<td>Neb.</td>
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</tr>
<tr>
<td>Rainy River (Kettle Falls)</td>
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<tr>
<td>Rainy River (International Falls)</td>
<td>Minn.</td>
<td>Rainy River Improvement Co. (leased to Minnesota &amp; Ontario Paper Co.)</td>
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<tr>
<td>Red Lake River (Crockston)</td>
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<td>Ottertail Power Co.</td>
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<td>Red Lake River (Thief River Falls)</td>
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<td>City of Thief River Falls</td>
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<tr>
<td>Rock River</td>
<td>Ill.</td>
<td>(heirs of S. S. Davis, firm name Sears Waterpower Co.)</td>
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<tr>
<td>St. Croix River</td>
<td>Me.</td>
<td>St. Croix Water Power Co. and Sprague Falls Manufacturing Co.</td>
</tr>
<tr>
<td>St. Croix River</td>
<td>Wis. and Minn.</td>
<td>Northern States Power Co.</td>
</tr>
<tr>
<td>St. Joseph River (Sturgis)</td>
<td>Mich.</td>
<td>City of Sturgis</td>
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<td>Snake River</td>
<td>Wash.</td>
<td>Burbank Irrigation District No. 4.</td>
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<td>White River</td>
<td>Ind.</td>
<td>Public Service Co. of Indiana</td>
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<td>White River</td>
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<td>Empire District [sic] Electric Co.</td>
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<td>Stream</td>
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<tr>
<td>Wisconsin River</td>
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<td>(Kilbourn)</td>
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<td>Wisconsin River</td>
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<td>(Prairie du Sac)</td>
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<td>Mississippi River</td>
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<tr>
<td>(near Bemidji)</td>
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<td>Mississippi River</td>
<td>Minn.</td>
<td>Northwest Paper Co.</td>
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<td>(near Brainerd)</td>
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<td>Mississippi River</td>
<td>Minn.</td>
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<tr>
<td>(Coon Creek Rapids)</td>
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<td>Mississippi River</td>
<td>Minn.</td>
<td>Blandin Paper Co.</td>
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<tr>
<td>(Grand Rapids)</td>
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<td>Minn.</td>
<td>Minnesota Power &amp; Light Co.</td>
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<tr>
<td>(Little Falls)</td>
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<td>Minn.</td>
<td>St. Regis Paper Co.</td>
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<td>(Sartell)</td>
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<td>(St. Cloud)</td>
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<td>Ia.</td>
<td>Union Electric Co.</td>
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<td>(Keokuk)</td>
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<td>(between Davenport and</td>
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<td>LeClair)</td>
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UNPUBLISHED SOURCES


SECONDARY SOURCES


PERIODICALS


