REASONS

FOR ARIZONA'S OPPOSITION

TO THE

SWING-JOHNSON BILL

AND

SANTA FE COMPACT

BY

THOMAS MADDOCK

WITH TENTATIVE TRI-STATE COMPACT
SUBMITTED TO CALIFORNIA AND NEVADA
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REASONS

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There is no dispute among the states as to the necessity for flood control, drought prevention and silt elimination for the Imperial Valley in California. All of the other six states in the Colorado basin have repeatedly shown their willingness to contribute their storage facilities to relieve California of the expense of these items. But each of the six states resents the subterfuge of California masking her desires to secure a monopoly of the water and power of the Colorado River behind her claims for relief from flood, drought, and silt.

I doubt if any engineer would seriously contend that a flood invasion into the Imperial Valley would endanger life. It did not the last time the river returned to the old dry Alamo channel. Arguments regarding silt, drought, flood and loss of life are therefore not pertinent.

The question at issue is the division among the states of the benefits to come with the storage of water and the production of power.

It is contended that Arizona was wrong in being the only state to refuse to sign the Santa Fe Compact. As Arizona would be hurt by signing that compact she is justified in her refusal regardless of the fact that she was for awhile alone in her refusal.

There is more land adjacent to the Colorado River than water with which to irrigate it. Some land must be desert forever. Unrestrained economic irrigation development would occur probably first in Mexico, then in California, Arizona and lastly Nevada and the four upper basin states of Colorado, New Mexico, Utah and Wyoming.

The Santa Fe Compact provides no restraint on Mexico development and is considered by many authorities to indirectly give her water by restricting for forty years the amount that may be used in the United States.

The Santa Fe Compact allotted a definite amount of water to the upper basin states and nature has nearly divided it for them by the river tributaries. Their allotment is large, probably beyond the needs of the states, and they have an equal competitive chance to secure it. If the pact were signed they would not have to worry about competing in development with Mexico, California or Arizona.

The Santa Fe Compact depends upon the law of prior appropriations to divide the water in the lower basin. Between two and three million acres can be irrigated from the main Colorado in the lower basin after the upper basin demands are satisfied. Arizona has prior appropriations for about two hundred eighty thousand acres of this including over a hundred thousand acres in Indian reservation.

California is now using about one-quarter of the ultimate supply of the lower basin and cannot increase this amount without storage in other states, but California has filings over thirty years old on more water than was awarded the **three** lower basin states by the Santa Fe Compact. California has the population and the wealth to perfect her appropriations and take the water.

This means that Arizona with forty-three per cent of the Colorado area as against two per cent for California and with a thirty per cent contribution of the water of the river against practically none from California, would secure less than fourteen per cent of the lower basin water of the main Colorado River. The Santa Fe Compact therefore constituted an unfair division of the water in the lower basin which Arizona could not accept.

After two Arizona legislatures had refused to approve the Santa Fe Compact, California offered to divide with Arizona, first on a three to one basis, and then on a two to one basis, reserving the larger portion for herself. Despite the difference in water contribution, Arizona offered to share the main Colorado equally with California after the state of Nevada was given the water she requested. The difference between the Arizona and California proposals is about one million five hundred thousand acre feet or enough to irrigate three hundred thirty-three thousand acres in California or five hundred thousand acres in Arizona, which, because of return flow, has a higher duty.

California's claim for water for domestic purposes is not justified. Los Angeles is using about two hundred thousand acre feet of water per year for domestic purposes and seventy thousand for irrigation in the adjacent San Fernando Valley. The report of the state engineer of California shows over eight hundred thousand acre feet available at Mono Lake and Owens River where most of her present supply is secured. The water available for Los Angeles in California is sufficient for five times her present population. In order to justify the demands she is making for Colorado River water her population would have to be twelve times what it is at present. This would mean a city the combined size of New York, Chicago, Philadelphia, Detroit, Cleveland, St. Louis, Baltimore and Boston. This seems unreasonable.

An equal division with Arizona of the main Colorado would give California water for practically double the amount of land she irrigates from the Colorado at present and also provide a reasonable amount for her coast cities.

When it is remembered that California now has about six million acres under irrigation against six hundred thousand in Arizona and will ultimately have about fifteen million acres against two million in Arizona and that she has about nine million potential horse power in that state against four and one-half million in Arizona, it is difficult to understand why the federal government should take the natural resources of Arizona and give them to California either directly or indirectly.

California not only demands the lion's share of a river that belongs the least to her but she demands cheap Arizona power to lift the water on to her land that cannot be reached by gravity and she also demands this power be delivered to her so cheaply that she can outstrip all manufacturing competitors in the United States.

Each horse power unit of electrical energy used creates about two thousand dollars' of taxable property. If Arizona and Nevada had the same provision which Maine recently had in her constitution they could selfishly insist that their power be used to create wealth within their own borders. They are not doing so. Arizona and Nevada are permitting this potential wealth to go to southern California and are not suggesting the way California shall tax this wealth to provide revenue for public purposes.

Each horse power unit created in Arizona and Nevada will be worth between two and three hundred dollars. These states should possess the same right to tax the wholesale power product as California will have to tax wealth

where this power is retailed. They should have a right to tax power investments the same as other property is taxed in Arizona and Nevada.

California is trying to have the Colorado River nationalized in order that power plants constructed on it may escape taxation in Arizona and Nevada, knowing that this taxation will be reflected in her power bills.

One moment California argues that the Boulder Canyon project will cost the United States nothing as the cost is amply secured and will be repaid with interest. The next they argue that Arizona and Nevada are trying to tax a government investment. The people of Arizona and Nevada know that if the government builds a dam, say at the Boulder site, that within a short time would come a demand for a re-regulating reservoir, say at Bull Head, in order to increase the Boulder power. Then more power dams would be built as they were needed until the whole river development would be under federal control and beyond state taxation. They know that the three and one-half million people of California would have a greater political influence than four hundred fifty thousand in Arizona and Nevada and would secure their demands at Washington. The west which first used the Initiative, Referendum and Recall has been sophistocated by Mr. Fall and Mr. Daugherty. Now they would rather trust their own officials whom they can elect and replace than federal appointees. Today the west is seeking less rather than more federal supervision.

Arizona is not trying to solve the old question of private versus public ownership as an incident to the Colorado problem. Arizona is not asking for federal funds to develop the Colorado River. Private capital is willing to make the necessary investment subject to taxation which would pay part of the cost of state and county government. Arizona is not opposing the use of federal funds but believes that if the government desires to again go into the power business on a large scale similar to Muscle Shoals, then the states should receive from the sale of power an amount equal to what they would get from taxing private investment.

Arizona is asking for no more and no less than they would receive from taxation. Whether this is called royalty or some other name does not change the proposed policy. A block of free power which could be sold for the equivalent of a tax is one alternative that has been suggested.

The proposal of a tri-state supplemental agreement to the Santa Fe Compact was made by Arizona over four years ago. For two years California refused to even discuss the matter. Intermittent negotiations have been in progress between the three states of the lower basin during the last fourteen months. But during all of this time California has been trying to avoid a division of the water and power in a tri-state agreement, by passing the Swing-Johnson bill.

Arizona has been responsible for little of the long waste of time involved. Two weeks were used in answering the California proposal of December 1st, 1925. Two weeks more in January, 1927, were used by the Arizona legislature in authorizing a new commission. Also in August of 1926, just prior to the election primary, the Arizona conferees avoided a committee meeting which might have injected politics into this question. The rest of the lost time is properly chargeable to California, as Nevada has always been ready to confer.

California, with her citizens in the president's cabinet and in responsible positions in the reclamation service, and with her wonderful chambers of commerce and publicity organizations, at the beginning of this controversy undoubtedly impressed the outside world that Arizona's position was unfair. As people study the question, however, and apply the same condition to their own state, they point out no fundamental error in Arizona's position or show where they would assume a different attitude if placed in a similar position.

Briefly, Arizona is demanding but two things: first, the same protection for her future water needs that the upper basin states are given in the Santa Fe Compact, and second: the right to tax power investments the same as other

property. There are many reasons why the Swing-Johnson Bill is particularly objectionable. Some of them are as follows:

1. The bill would create a storage reservoir which would automatically increase the river's low water flow, permitting Mexico to increase her irrigated acreage beyond the 300,000 physical and contractural limitation existing at present without notifying Mexico that her moral claims to water shall not extend to that which is created by storage within the United States.

2. The bill confirms the error made at Santa Fe of limiting the consumptive use in the lower basin to 8,500,000 acre feet, which stops further development as there will be more than this amount required for projects now built or under construction when the Gila is considered.

3. The bill by granting unlimited time to the states of the upper basin for their slow development and subsidizing the California development, would force Arizona to bear all the shortage that exists in the entire Colorado River basin between the land which is susceptible of irrigation and the available supply.

4. The bill would compel the sovereign state of Arizona to accept a law not general in character which two of our legislators have refused to ratify.

5. The bill is contrary to the recent decision of the Supreme Court which established the law of prior appropriation and beneficial and economic use (Colorado-Wyoming), as it abrogates it between basins and nullifies it within the lower basin by a subsidy which destroys the equality of opportunity for development by economic competition.

6. The bill pretends to favor ex-service men in securing land, while really advancing the development of a project of which most of the land is in private possession, against other projects which have a greater proportion of land still owned by the federal government. (Sec. 9).

7. The bill seeks to use Liberty Loan laws passed in a war emergency to finance a project unable to secure a national appropriation. (Sec. 2f).

8. The bill uses the natural resources of Arizona and Nevada to develop California, leaving those of Utah, Colorado, New Mexico and Wyoming for the benefit of citizens of those states.

9. The bill endeavors to protect Colorado, New Mexico, Utah and Wyoming in their slow development against the quick development of California and Mexico. If successful it would expose Arizona to increased risk from a common danger. (Sec. 4).

10. The bill compels pumping projects in Arizona and Nevada to pay part of the cost of gravity projects in California.

11. The bill permits the Secretary of Interior to waste water for power production that may be needed for irrigation, and authorizes him to deliver water stored at Boulder under his own rules and regulations regardless of prior appropriation or the claims of the respective states. (Sec. 6).

12. The bill creates a unit of construction which will not be an economic part of complete development as it will be too large after storage is provided in the upper river. (See testimony of Federal Engineers La Rue, Kelly, Merrill, Stabler and Secretaries Weeks, Wallace and even Work.)

13. The bill provides water storage at a place of large evaporation due to low altitude and latitude and provides for irrigating the land which is the greatest possible distance from water origin, thus entailing the maximum evaporation loss in transit.

14. The bill tends to concentrate United States development on below-sea-level lands, in an earthquake country where seismic disturbances may cause the

ocean to reoccupy its former territory to the maximum loss of life and property while good land in Arizona is condemned forever to the desert.

15. The bill artificially stimulates the irrigation of land where the inability to re-use the water results in a fifty per cent loss of it.

16. The bill is equivalent to issuing a license for California to construct a dam partly within the state of Arizona although the federal government has refused to grant licenses to either public or private applicants of the state of Arizona on its own streams.

17. The bill precludes the states of Arizona and Nevada from imposing a tax on wealth created in these states although it taxes power consumers $4.00 per horsepower per year to build an irrigation canal in California and does not prohibit the city of Los Angeles from continuing a tax on power consumers of approximately $25.00 per horsepower per year to enrich the treasury of that city or to absorb the additional benefits from the use of this cheaper Arizona and Nevada power.

18. The bill, while denying Arizona and Nevada the right of taxation, does not prohibit California counties from Taxing transmission lines and aqueducts as they now do those owned by Los Angeles.

19. The bill assists California in adding to its fifteen million potential acres of irrigable land at the expense of Arizona which has less than one-fifth this much.

20. The bill initiates the taking, without compensation, of the water power resources of the state of Arizona to California although the potential nine million horsepower of California is about twice that of Arizona.

21. The bill is discriminatory in authorizing a six state compact to control the water of seven states by providing that California **must** be one of the six consenting states (Sec. 12), and allowing all of the seven Colorado River basin states a veto except Arizona. (Sec. 4.)

22. The bill is discriminatory between states in that it gives the canals and power plants developed in California to the people of that state while retaining title to dams built in Arizona and Nevada by the federal government.

23. The bill attempts to validate a contract for unlimited water for the Imperial Valley which California cannot secure if limited to the utilization of her own natural resources.

24. This bill which gives California the hydro-electric power of the small state of Arizona is directly opposed to the recommendation of the commission, which recently reporting on the Great Lakes to St. Lawrence River, suggested that the water power rights of the great state of New York be recognized in the treaty between the United States and Canada.

25. The bill presuming federal ownership of rivers is directly opposed to the attitude of New York, New Jersey and Pennsylvania, whose commissioners on January 13, 1927, assumed complete ownership of the Delaware river and divided it accordingly.

26. The bill will result in endless litigation as it probably violates the United States constitution.

The tenth amendment provides that powers not delegated to the United States by the Constitution were reserved to the states. The nation had to go to the states for authority to handle prohibition, income taxation and suffrage. In this bill the nation would usurp the state's right to the water and power of its rivers without any specific constitutional authority permitting such action.

Article 1, section 8, paragraph 1 says taxes shall be uniform. The bill

taxes Arizona and Nevada resources to pay for California development.

Article 1, section 8, paragraph 2, gives congress power to borrow money on credit of the United States, not on water power development as the bill provides.

Article 1, section 8, paragraph 17, permits congress to declare war, provide for docks, arsenals and other buildings limited to the consent of the state's legislature to purchase the necessary land. It does not authorize the building of dams, canals, etc., by the federal government without the consent of the states. Such consent heretofore has been considered necessary.

TENTATIVE TRI-STATE COMPACT SUBMITTED BY ARIZONA FEBRUARY 7, 1927

ARTICLE I.

It is recognized by the parties hereto that the unregulated normal flow of the Colorado River is insufficient to irrigate properly the lands already under cultivation by irrigation from the waters of said river; that the benefits within the United States of the flood waters of said river belong wholly to the citizens of the respective states; that without disparagement of the treaty making power of the United States government, the states party hereto and the Congress of the United States, in consenting to this agreement, shall be understood as declaring: That it is their purpose and intention to utilize, within the borders of such states, all of the waters of the normal flow of the Colorado River heretofore appropriated and put to beneficial use in accordance with the laws of the states in which the same are being put to beneficial us, and all of the flood waters of the Colorado River capable of being utilized within the borders of the United States for any purpose by the construction of storage dams within the United States; and that all persons shall take notice that they cannot acquire any moral or equitable claim to the waters of the Colorado River temporarily made available for use by the regulatory effect of any dam or dams constructed in pursuance of this agreement, as it is the intention of the parties hereto to eventually put to beneficial use within the signatory states all of such water. Any declaration or inference contained in or drawn from any instrument, agreement or compact, signed prior to this agreement, which is inconsistent herewith, is hereby withdrawn.

ARTICLE II.

The states of Arizona, California and Nevada hereby agree that the water of the Colorado River and its tributaries in such states shall be divided, allotted and appropriated as follows:

(a) All of the water of the tributaries of the Colorado River which flows into said river below Lee Ferry, Arizona, are hereby allotted and appropriated exclusively in perpetuity in the states in which such tributaries are located and may be stored in and diverted from said tributaries for use in said states.

(b) There is hereby allotted and appropriated in the State of Nevada for use in said state, that portion of the total amount of the water of the main Colorado, measured at the point of diversion from said river, which can be beneficially used for agricultural and domestic purposes, not exceeding 300,000 acre feet per annum. There is hereby allotted and appropriated for agricultural and domestic use to each of the states of Arizona and California from the remainder of the water available, one-half of the water of the main Colorado River.

(c) The flow of the river shall be measured at each point of diversion

and the proportion allotted to each state shall be computed as the proportion of the amount diverted for use in such state bears to the total flow of the river at such point.

(d) The States of Arizona, California and Nevada hereby agree to limit and control future appropriations and beneficial use of water in said respective states to such an amount and in such manner as will insure that present perfected rights in each said state will be fully protected and supplied out of water hereby allotted to said state.

ARTICLE III.

The following rules shall apply to the use and storage of water under this agreement.

(a) The use of water for irrigation and domestic purposes allotted in Article II hereof shall be superior to any right of storage for power purposes or navigation and any of said states may divert from the river the water allotted to it at any point on the river, provided that if any state shall take any water so allotted to it out of the main channel of the Colorado River at a higher elevation than the highest elevation of the bed of said river in said state, the works constructed for such purposes shall not interfere with a beneficial development of the fall of the river in any state other than the state taking out water at such higher elevation, and the state or states taking out water at such higher elevation shall fully compensate the other states affected thereby for the loss of power caused thereby in such states.

(b) The prior construction of any dam or reservoir shall not give any prior or superior right to such dam or reservoir to the flow of the river for the benefit of such dam or reservoir for power purposes, but the rights of all dams and reservoirs constructed under this agreement shall be on an equality, for power purposes, regardless of the date of construction thereof.

(c) Yearly and seasonal stored water shall be held at as high elevation on the river as practicable in order to reduce evaporation losses and provide regulation for power as well as for irrigation, domestic and flood control purposes.

(d) Re-regulation storage for seasonal and daily variations in demand shall be located as close to the land to be irrigated as practicable and water for irrigation and domestic purposes shall be supplied first from the nearest reservoir above the point of diversion of such water.

ARTICLE IV.

The territory of no state shall be entered upon for the purpose of constructing or maintaining works utilizing the water of the Colorado River except with the consent, and subject to the laws, of such state, but each of the states hereby agree to grant all necessary permits, licenses, sites and rights of way over lands, that may be required to carry out the provisions of Article III and VI hereof.

ARTICLE V.

The United States recognizes the necessity for flood protection and development of the Colorado River and hereby agrees to grant the necessary sites, rights of way and licenses over public lands for the construction and operation or works for the control and utilization of the Colorado River for flood protection, irrigation and domestic uses of water and the construction of dams for power purposes in pursuance of the provisions of this agreement.

ARTICLE VI.

Each of the states party hereto, and the United States, recognize the acute necessity for flood and drought protection for lands now in cultivation

by irrigation from the waters of the Colorado River and hereby pledge their good faith to grant the necessary permits, licenses and sites for such construction, also rights of way to any district or agency that may be created in pursuance of the terms of this agreement for the immediate construction of a reservoir in the main channel of the Colorado River at such point as may be determined upon by the federal government, if it be a government project, or by the majority of the states party to this agreement, if by some other agency. Such permits, licenses, sites and rights of way shall include those necessary for the construction of the dam and reservoir and appurtenant works including hydro-electric power plants and transmission lines; provided, that no dam or other works shall be built in the bed of the Colorado River at any point in the river which when constructed will back up the water of the river so as to limit or interfere with the construction of a dam heretofore selected by any other states for the diversion of water for irrigation or domestic purposes in that state.

ARTICLE VII.

(a) It is expressly agreed and understood that the signatory states in this compact, and their political subdivisions, shall possess the right to derive revenue for public purposes from power developed within their territory or on their boundary.

Such revenue may be derived by any manner or kind of taxation in each state as may be imposed by such state under its constitution and laws but whatever kind or manner of taxes are imposed the total revenue derived from such taxation in any state shall be limited to the amount that would be derived from a property tax, at the rate levied by such state or taxing districts, therein upon other like or similar property within the state, upon the property employed or used in the production of such power on the same basis of valuation used by such state or taxing district in taxing other like or similar property therein. The value of the right to utilize natural resources for the production of power including damsites, reservoir sites, the water and the fall thereof, in the production of said power may be considered as property used in the production of said power and included in the valuation upon which the limitation of such tax is based.

In order that the benefits of the development of the Colorado River may distributed among the respective states as if said development were made by private capital the United States agrees that if it shall undertake the construction of any federal project or projects on the main Colorado River wholly or partly within any of the states party hereto, it will make provision in the sale or lease of power or power privileges from such project or projects for payment to the respective states of the same amount of revenue from the power produced by such federal project or projects as such states would derive under this agreement, if such federal project or projects had been constructed by private capital.

If in the opinion of any of the signatory states the taxes imposed by any other state upon a project constructed by the federal government or a project constructed on the boundary of two or more states are excessive, such state or states shall have the right to appeal to a board of equalization for an adjustment of the valuation limiting such taxation. The Colorado Control Commission shall constitute such board of equalization. In case of appeal, the decision of this board shall be final and binding, subject only to appeal to the federal courts.

No revenue shall be received by or paid to any state on account of taxation of a power project except to the extent the project shall have been completed and placed in operation.

ARTICLE VIII.

Any state in which reservoir sites exist in the Colorado River or its tributaries, directly or through any district or agency created in pursuance of and hereafter authorized by the laws of said state, may build dams, hydro-electric power plants and appurtenant works in such state and operate or lease the same. Where the reservoir is situated in two or more states, such dams, power plants and appurtenant works may be built, operated or leased jointly by the two or more states, or by any district or agency that may be created in pursuance of the laws of such states. Such state or states may sell or lease the power produced by such dams or power plants. The cost of the construction of all such development works shall be borne by the respective states, districts or agencies created in pursuance of the laws of such states.

ARTICLE IX.

Where development works are constructed in two or more states, the entire hydro-electric plant, including dams, reservoirs, power houses and appurtenant works shall be considered a unit in all matters relating to the financing of construction, the operation lease and taxation, regardless of the location of the power plants with reference to state boundaries. All power and revenue from the sale or lease of power or valuation of such power or works for the purpose of taxation of such power, shall be divided among the states in direct proportion to the present amount of fall which the river makes in each state between the dam and the elevation of the bed of the stream reached by the back water when the reservoir is filled. Where the river forms the boundary between the states, each state shall be allotted one-half of the fall which occurs in the present river bed on such joint boundary for the purpose of computing the relative proportions allotted to each state.

ARTICLE X.

(a) The use of power developed by such dams and works shall never vest in perpetuity in any private person or corporation, but the states and citizens of states in which such power is developed shall have preferred rights in its use whenever the need for it may arise; provided, that leases for the use of power for terms not exceeding fifty (50) years may be made by any such state or any district or agency hereafter created in pursuance of law when approved in such manner as may be provided by the laws of such state in which the power sites are situated.

(b) Power developed by projects located on the borders of two or more states may be constructed in perpetuity to political subdivisions of states provided that there shall be reserved to each of the states in which the project is located, an amount equal to twenty per cent of the power developed.

ARTICLE XI.

In the construction and operation of all dams and power plants for the utilization of the waters of the Colorado River, undertaken in pursuance of the terms of this agreement, the following rules shall apply:

Every dam constructed on the Colorado River shall be a unit in a comprehensive plan which will insure the maximum water for domestic and irrigation use and for the development of the maximum amount of power.

Where dams and power plants are located wholly in one state, the laws of that state shall govern such construction and operation. Where such dams and power plants are located in more than one state, the states affected shall agree upon the plans and rules and regulations for such construction and operation and upon the agency to be adopted for such joint construction and operation; provided that in the event two states are affected and they shall be unable to agree upon any such matter, the Colorado River Control Commission shall decide the question.

ARTICLE XII.

In the event the United States shall undertake the construction, financing and operation of any development on the Colorado River, for flood control, irrigation or power purposes, and requires the repayment of funds advanced for such purposes, such repayment to the government shall be made in accordance with the United States Reclamation Act and amendments thereto.

Operation and administration of the same shall be under the direction of the Colorado River Control Commission.

After all obligations to the government have been met, the entire benefits shall become the property of the state or states in which it is located.

ARTICLE XIII.

For the administration of the provisions of this compact, there shall be constituted a commission to be known as the Colorado River Control Commission, consisting of three members, one to be designated by each of the three signatory states.

Each state shall choose and fix the terms of office and salary of the members representing it.

The commission shall be allowed their necessary traveling expenses incurred in performing the duties of their office.

The commission shall have the authority to employ such assistants as may be necessary to carry out their duties.

The cost of administration shall be included in the cost of operation of the project or projects.

In case the commission is unable unanimously to agree in regard to policy or procedure, they shall call to their assistance such official of Utah and New Mexico as is charged with the engineering duties in connection with the administering of the water resources of these states. These, with said commission, shall constitute a board which shall by majority vote decide the questions in dispute.