

Arizona. Colorado River Commission, Apr. 6, 1927-Feb. 3, 1929.  
Report.

Eighth Legislature  
Fourth Special Session

IN THE SENATE

Senate  
Document No. 1

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# FIRST REPORT OF THE COLORADO RIVER COMMISSION OF ARIZONA

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Read in the Senate October 27, 1927,  
and Ordered to Be Inserted in the Journal.

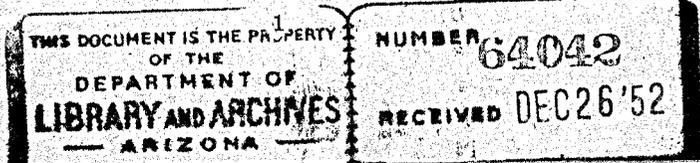
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TO THE SENATE AND HOUSE OF REPRESENTATIVES,  
EIGHTH LEGISLATURE, STATE OF ARIZONA:

The Colorado River Commission of Arizona, which will hereinafter be referred to as the Commission, was created under and by the authority of Substitute House Bill No. 15 (Chapter 37), of the Regular Session of the Eighth Legislature, approved March 7, 1927, "for the purpose of encouraging and promoting the development of the Colorado River, and of protecting the rights and interests of the State of Arizona in said river and its tributaries." No time was fixed by law for the submission of reports to the Legislature, but in order that the Legislature may be fully advised of the activities of the Commission, and particularly in view of the fact that important events, bearing upon the purpose for which the Commission was created, have transpired, and other and still more important events are likely soon to occur, it is deemed advisable to present a report at this time.

## THE COMMISSION

The Act creating the Commission provided that it should be



composed of eight members, the Governor and three members to be appointed by him; the President of the Senate and one member to be appointed by him from among the membership of the Senate, and the Speaker of the House and one member to be appointed by him from among the membership of the House. Pursuant to the requirements of this provision the Governor, the President of the Senate and the Speaker of the House met in the Governor's office on Wednesday, April 6, 1927, and proceeded to the organization of the Commission.

The Governor announced the appointment of H. S. McCluskey and Thomas Maddock, of Phoenix, and Senator T. S. Kimball of Thatcher. The President of the Senate announced the appointment of Senator A. H. Favour, of Prescott. The Speaker of the House announced the appointment of Representative M. F. Murphy, of Globe. Organization of the Commission was completed by the unanimous selection of Governor Geo. W. P. Hunt as chairman and Mulford Winsor, President of the Senate, as secretary. Offices were established in the offices and committee rooms of the Senate, and placed under the charge of the secretary.

## GENERAL ACTIVITIES

Some twenty-odd formal meetings of the Commission have been held; conferences have been had with representatives of all of the States of the Colorado River Basin; visits have been paid by the Commissioners to the capitals of the several States and to other cities in pursuance of the purposes for which the Commission was created; trips have been made to different points of interest on the Colorado River; investigation by technical experts have been authorized and reports secured, and surveys, examinations and engineering investigations have been and are being made, to the end that Arizona may have all necessary information with which to support the policy of the comprehensive and economical development of the Colorado river.

## ATTITUDE OF THE COMMISSION

The attitude of the Commissioners toward the responsibility by them assumed was expressed in a public statement which the secretary was authorized, at the first meeting of the Commission, to give to the press, as follows:

"A preliminary discussion of general policies and methods of procedure was indulged in. The members of the Commission found themselves in satisfactory accord, and united upon the policy of working in unison for the welfare of the State of Arizona.

"Essential facts will be agreed upon as the basis for dis-

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cussions, and differences of opinion arising from their consideration will be ironed out in the meetings of the Commission, in order that the Commission, acting as a unit and presenting a solid front for the protection of the State's interest and the promotion of the Colorado's development, may typify a united people."

## ARIZONA PLATFORM

As a preliminary enunciation of fundamental principles which should guide the efforts of the Commission, the following platform was adopted at an early meeting:

"1. The development of the Colorado River should be predicated upon a comprehensive plan by means of which the river's destructive floods may be curbed, and which ultimately will insure the utilization of all of the river's flow for irrigation or domestic uses and every foot of the river's fall for the creation of hydro-electric power.

"2. Such a plan should contemplate and guarantee the use of all of the stored waters of the Colorado River on United States soil or for the use and benefit of American cities and towns, and if any rights to waters of the Colorado River shall hereafter be accorded to the Republic of Mexico, by treaty or otherwise, such rights should relate only to the unregulated normal flow of the main stream, and in amount not in excess of that which has been applied to beneficial use in that country.

"3. The right of the Colorado River States, as of all of the so-called "appropriation" states of the arid west, as enunciated in their water laws and recognized in the Federal Reclamation Act and the Federal Water Power Act, to control the appropriation, use and distribution of the waters within their respective borders, should not be impaired nor modified except with the consent and approval of such States.

"4. In whatever agreement may be reached respecting a division of the waters of the Colorado River, or of that portion of such waters available to the States of the Lower Basin, Arizona should be assured such amount as may be necessary to reclaim her arid lands which may be ascertained and determined, by competent investigation, to be susceptible of practical reclamation from the Colorado River.

"5. The States of the Lower Basin should have the right respectively, to consume for beneficial purposes, such of the water in the tributary streams flowing in their several States as can be put to use prior to the water entering the main channel of the Colorado River.

"6. The fall of the Colorado River within Arizona's boundaries, susceptible of utilization for the creation of vast stores of hydro-electric power, is a natural resource, and the right of Arizona to derive an equitable revenue from this resource should be recognized."

## BASIC POINTS TO REGULATE NEGOTIATIONS

Anticipating discussions with representatives of the Colorado River Basin States, looking to an amicable understanding with respect to Colorado River problems, seven basic points for the regulation of such negotiations were agreed upon:

1. That Arizona will accept the Colorado River Compact, as agreed upon at Santa Fe, New Mexico, if and when the same is amended or supplemented to make definite and certain the provisions essential to the protection of Arizona's rights and requirements.

2. That it is imperative that before regulation of the Colorado River is undertaken, Mexico be notified that this country reserves for use in the United States water made available by storage within the United States, and if possible an agreement should be had with that country.

3. That any compact dividing the waters of the Colorado River and its tributaries shall not impair the rights of the States, under their respective water laws, to control the appropriation of water within their boundaries which is allocated to them.

4. That the waters of the tributary streams of the Colorado River below Lee's Ferry be reserved to the States in which they are located.

5. That the waters of the main Colorado River over and above the allocation of the 7,500,000-acre feet to the Upper Basin States and any unused portion of the water allocated to the Upper Basin, shall be legally available to the Lower Basin States of Arizona, California and Nevada on the following basis of division:

A. To Nevada 300,000 acre feet.

B. The remainder, after such deductions as may be made to care for Mexican lands which may be made by treaty, shall be divided equally between California and Arizona, each State to decide the site for the storage and diversion of waters allocated to it.

6. That the right of the States to secure revenue from and to control the development of hydro-electric power within or upon their boundaries be recognized.

7. That encouragement will be given, subject to the above conditions, to either private or public development of the Colorado River at any site or sites harmonizing with a comprehensive plan for the maximum development of the river's irrigational and power resources.

The principles embodied in both of the declarations agreed upon as above have at all times been substantially adhered to by Arizona's representatives.

## VISITS TO OTHER STATES

During the month of April members of the Commission visited the California Legislature and conferred with the Governor of that State. The visit was well intentioned, but no tangible results were gained.

Later the Commission visited the capitals of New Mexico, Colorado, Utah and Wyoming, and conferred with the chief executives and numerous interested officials and citizens of such States. During this visit the suggestion of a conference of the Colorado River Basin States was advanced by Arizona's representatives, with the result that a call for a conference, to convene in Denver, Colorado, on August 22, was issued by the Governors of Colorado, Utah, New Mexico and Wyoming and the Governors of Arizona, California and Nevada, together with their Colorado River Commissioners and members of Congress, were invited to attend the conference.

## THE DENVER CONFERENCE

The Denver Conference, of which the complete proceedings will later be available, convened on August 22. Its purpose was stated in the call to be the bringing about of an agreement which would result in seven-state ratification of the Colorado River Compact and "permit development of the Colorado River." The Governors of all of the States of the Colorado River Basin were in attendance, together with the Colorado River Commissioners, Interstate Water Commissioners, and various advisors of the respective States. There were also present a number of United States Senators and Representatives in Congress, including Senator Carl Hayden of Arizona. Gov. Geo. H. Dern of Utah acted as presiding officer, with conspicuous ability and fairness. Except for a recess during the first two weeks of September, the Conference was in session from August 22 to October 5. It was fraught with the greatest moment, and its proceedings were of the utmost importance.

Full opportunity was afforded by the Conference for the presentation of Arizona's position and claims, and advantage of the opportunity was taken to the extent of the ability possessed by the members of the Commission.

The main discussions revolved about the questions (1) of a division between the State of Arizona, California and Nevada of the waters of the Colorado River System available to the States of the Lower Division; (2) the limitation to be placed upon the Republic of Mexico as to its right to waters of the Colorado River; (3) the ownership of the States in and to the bed and

banks of navigable streams; their right to control the appropriation, distribution and use of waters within their borders, and to compensation for the use of their land and water employed in federal government projects; (4) the extent of the benefits to accrue to the States in the case of power development in the river by the federal government, and division of such benefit between States whose land and waters are jointly used in any such development.

Briefly it may be said that questions 2 and 3 were resolved, to the extent that they might be resolved by the Conference, to the entire satisfaction of Arizona's representatives and in complete accord with the views by them advanced.

## THE MEXICAN QUESTION

A resolution was adopted by the Conference, declaring adherence of the seven States of the Colorado River Basin to the policy that waters of the Colorado River stored on American soil should be for the benefit of American lands and interests; that Mexico should acquire no right, legal or moral, to the use of such stored waters; requesting the President and the State Department of the United States to act promptly in the matter of effecting a treaty with Mexico which would define and limit that country's rights in and to the waters of the Colorado River, and asking that in the formation of any commission for the purpose of negotiating a treaty the States of the Colorado River Basin be adequately represented.

## STATES RIGHTS

In recognition of the principles embodied in question 3, the "Pittman Resolution," so called from the circumstance that it was introduced and ably championed by Senator Key Pittman of Nevada, was adopted, after many delays and persistent obstruction by the California representatives, with no dissenting vote except of that State.

The resolution is deemed of such importance that it is here set forth in full:

"WHEREAS, it is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by navigable waters within the limits of the several States of the Union belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interests of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States, and whereas

"It is the settled law of this country that subject to the settlement of controversies between them by interstate compact, or decision of the Supreme Court of the United States and subject always to the paramount right of Congress to control the navigation of navigable streams so far as may be necessary for the regulation of commerce with foreign nations and among the States, the exclusive sovereignty over all of the waters within the limits of the several States belongs to the respective States within which they are found, and the sovereignty over waters constituting the boundary between two States is equal in each of such respective States, and whereas:

"It is the sense of this conference that the exercise by the United States Government of the delegated constitutional authority to control navigation for the regulation of interstate and foreign commerce does not confer upon such government the use of waters for any other purposes which are not plainly adapted to that end, and does not divest the States of their sovereignty over such waters for any other public purpose that will not interfere with navigation.

"THEREFORE, BE IT RESOLVED, That it is the sense of this conference of governors and the duly authorized and appointed commissioners of the States of Arizona, California, Colorado, New Mexico, Nevada, Utah and Wyoming, constituting the Colorado River Basin States, assembled at Denver, Colorado, this 23rd day of September, 1927, that:

"The rights of the States under such settled law shall be maintained.

"The States have a legal right to demand and receive compensation for the use of their lands and waters except from the United States for the use of such lands and waters to regulate interstate and foreign commerce.

"The State or States upon whose land a dam and reservoir is built by the United States Government, or whose waters are used in connection with a dam built by the United States government to generate hydro-electric energy are entitled to the preferred right to acquire the hydro-electric energy so generated or to acquire the use of such dam and reservoir for the generation of hydro-electric energy, upon undertaking to pay to the United States Government the charges that may be made for such hydro-electric energy or for the use of such dam and reservoir to amortize the government investment, together with interest thereon, or in lieu thereof agree upon any other method of compensation for the use of their waters."

## DIVISION OF WATER

No final determination was arrived at with respect to a division of water, but much progress was made in that direction and there was a closer approach to bringing the claims of California and Arizona into accord than heretofore. This question was very much simplified by concessions, on the part of the Governors and Commissioners representing the Upper Division

States, of the theory that all of the water physically available in the Lower Basin, whether allocated or not, might be appropriated and used, in the Lower Basin, without prejudice to the rights of the States of the Upper Basin. This theory was regarded by Arizona's representatives as of vital importance, since without it there would not be sufficient water to supply the obvious needs of the States of the Lower Basin, and therefore no solid foundation upon which to predicate an agreement.

## THE CALIFORNIA PROPOSAL

California's representatives first proposed that the division of water be left to a board of engineers composed of a representative of each of the seven States and two representing the federal government. The futility of this plan of procedure was easily shown. California then offered the proposal that after first giving to each State an amount of water sufficient to take care of present vested rights, and 300,000 acre-feet to Nevada, the main stream then be divided equally between California and Arizona, and that Arizona's tributaries, to the extent that they can be utilized by diversion from such tributaries before their waters enter the main channel, be given to Arizona. Discussion disclosed that a division of the waters of the main channel, after deducting present vested rights, and particularly as such rights are claimed by California, would be preponderantly in California's favor. It also developed that Arizona's tributaries would be expected to bear the bulk of the Mexican burden if any water is given to that country by treaty.

## ARIZONA'S PROPOSAL

Arizona's representatives proposed an equal division of the waters of the main channel, between the States of California and Arizona, after the allocation of 300,000 acre-feet to Nevada, and the retention for Arizona's use of the waters of her tributaries, the Mexican burden to be supplied out of the main stream if any water is given to that country by treaty.

Nevada, whose rights were conceded both by Arizona and California, took little or no part in the discussion of water division.

## PROPOSAL OF UPPER DIVISION GOVERNORS

After listening to the presentation of the views of Arizona's and California's representatives, and a period of negotiation conducted in executive sessions, the governors of the Upper Division

submitted to the Conference a proposal to allocate to Nevada 300,000 acre-feet; to California 4,200,000 acre-feet; to Arizona 3,000,000 acre-feet; all other water flowing in the main channel to be divided equally between Arizona and California, and Arizona's tributaries to be given to Arizona. It was not altogether clear, in this proposal, where the Mexican burden would fall.

After careful consideration, not only of the question of water division but as well of all phases of the practical situation, Arizona's representatives presented an acceptance of the Governor's proposal, qualifying it with language which made it clear that Arizona's tributaries would be immune from the burden of supplying water to Mexico. California's representatives rejected the Governors' proposal, demanding a definite allocation of not less than 4,600,000 acre-feet of water and in effect placing the major portion of the Mexican burden upon Arizona's tributary waters.

At the time the Conference recessed on October 5, this status of the proceedings, so far as it related to the division of water, was not altered.

## POWER BENEFITS

No determination was arrived at regarding question 4, including the extent of the benefits to accrue to the States in the case of power development on the river by the federal government, and division of such benefits between States whose lands and waters are jointly used in any such development. Substantial accord was reached between the States of Arizona and Nevada, but California rejected the theory of the right of States to a revenue from power developed within their borders by the federal government. One California representative offered a proposal that, although the principle could not be recognized, California would agree to the payment of four-tenths of a mill per kilowatt hour, to be divided between Arizona and Nevada in the event of a power development on the boundary of these two States, and to continue until completion of amortization payments to the government, after which the benefits from the creation of power should be divided equally between Arizona, Nevada and California. This suggestion was not concurred in by the other California representatives.

## ARIZONA'S FINAL STATEMENT

Before the Conference recessed on October 5, the Arizona Commission presented the following statement for the record:

"To the Governors of the  
States of the Upper Division,  
Colorado River Basin:

"Gentlemen:

"The lawful representatives of the State of Arizona, members of the Colorado River Commission of said State, and their advisors, in attendance upon the conference called by you and convened at the City of Denver, Colorado, on July 22, 1927, deeply regret that the full purpose of the conference, to bring about an agreement which would result in complete ratification by seven States of the Colorado River Compact, and solution of the Colorado River problem, has not been effected.

"Such agreement not having been reached, we desire at this time to state concretely Arizona's position, as taken by her representatives at this conference and disclosed by the record, in a sincere and earnest effort to accomplish the purposes thereof.

"We hold that Arizona possesses the land and the natural facilities to economically utilize within her borders a very large proportion, if not all, of the waters of the Colorado River System available for irrigational use in the Lower Basin; that as a matter of justice, right and equity, if the law of prior appropriation is to be superseded by a compact, she is entitled to the undisturbed, undisputed and unlimited use, to the extent that such use is feasible, of the waters of her tributary streams, just as the State of California is entitled to and has the use of the water of her streams, and that she is equally entitled to at least one-half of the flow of the main stream of the Colorado River available for use in the States of the Lower Division, after due allowance is made for the practical irrigational requirements of the State of Nevada. Nevertheless, for the purpose of effecting an agreement at this time, and out of consideration for the untiring efforts of the Governors of the States of the Upper Division to bring about such an agreement, and in deference to their judgment as to what under the circumstances would be fair and reasonable, we have accepted, with certain interpretations of language relating to the immunization of Arizona's tributaries against depletion for the benefit of Mexico, the proposal of the Governors of the States of the Upper Division submitted on September 19, 1927, which said proposal, so interpreted, would allocate to the State of California 4,200,000 acre-feet of water per annum; to Arizona 3,000,000 acre-feet and the right to the use of such of the waters of her tributaries as may be diverted therefrom for beneficial use, and would divide the unallocated flow of the river, available for the use of the Lower Division States, equally between Arizona and California.

We hold with the Nevada resolution presented to this conference by United States Senator Key Pittman, and concurred in by the Governors and representatives of all of the States of the Colorado River Basin except California, that "the States have a legal right to demand and receive compensation for the use of their lands and waters \* \*, used in connection with a dam built by the United States Government to generate hydro-electric energy \* \*." In pursuance of that

right we respectfully insist that Arizona is entitled to compensation for such of her lands and waters as may be used in any development by the United States Government for the generation of hydro-electric power at any point on the Colorado River within Arizona or on the boundary between Arizona and another State. We have agreed—indeed, proposed—that such compensation or revenue should be limited to the amount the State would derive were the development taxable, by the usual processes, under State law.

In the specific case of a development in which the waters and the lands of the States of Arizona and Nevada would be involved, but a much greater proportion of the fall of the river, necessary for the generation of hydro-electric power, lies in the former State, we believe that an equitable and fair method of division of revenue would be upon the basis of fall in the respective States. We realize, however, the importance of a method which would be uniform in all of the States of the Colorado River Basin, and have agreed upon the recommendation of the Governors of the States of the Upper Division and upon the condition that this method shall be accepted by the other States whose borders join Arizona, to an equal division of the benefits to be derived from any hydro-electric development between the States of Arizona and Nevada. Also, we have repeated the suggestion and again propose, that the compensation or revenue to the States from such development should be at least the equivalent of the amount the States would derive in taxation levied under the authority of their own laws. As a measure of arriving at such revenue we have proposed that the payment to the States shall be a minimum of one mill per kilowatt hour of power or power privileges sold or leased. For the details of this proposal reference is made to the "Memoranda of Arizona's views with respect to an agreement between the States of Arizona, California and Nevada," which is appended hereto and made a part hereof. One mill per kilowatt hour divided as above is the equivalent of \$3.28 per annual horse power to each State.

"The representatives of Arizona came to this conference earnestly desiring an equitable agreement between the States and committed to the policy of exerting every reasonable effort to that end. Whatever disappointment we may have suffered by reason of the attitude of the representatives of the State of California, such still is our desire and our policy."

#### RECESS TO NOVEMBER 7

On October 5, a recess was taken to November 7. At the present time, however, a movement is on foot for conferences on power between representatives of the States of California, Nevada and Arizona, and a short postponement of the general conference is considered likely.

The Commission hopes that through the medium of earnest negotiations an agreement may be reached which will fully protect the rights of Arizona and of all the States of the Colorado River Basin, and result in the development of the river.

In the event that such an agreement cannot be reached at this time, all the power the Commission can exert will be brought to bear to secure recognition of this State's rights in any legislation bearing upon the subject which may be enacted by Congress. Failing that, and as a last resort only, recourse will be had to the courts.

Respectfully submitted,

COLORADO RIVER COMMISSION OF ARIZONA.

GEO. W. P. HUNT, Chairman

MULFORD WINSOR, Secretary

APPENDIX A.

EIGHTH LEGISLATURE  
FOURTH SPECIAL SESSION  
STATE OF ARIZONA.

SENATE CONCURRENT RESOLUTION NO. 1

Adopted in Senate November 1, 1927;

Adopted in House November 2, 1927, and  
filed in the office of the Secretary of State.

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Introduced by Mr. Donnelly of Pima County.

WHEREAS, the Colorado River Commission of Arizona was created by Act of the Eighth Legislature (Chapter 37, Session Laws, Regular Session), approved March 7, 1927, "for the purpose of encouraging and promoting the development of the Colorado River, and of protecting the rights and interests of the State of Arizona in said river and its tributaries"; and,

WHEREAS, on April 6, 1927, the said Commission met and duly organized, and from and after said date has functioned in accordance with law; and

WHEREAS, the task assigned to said Commission is of the greatest proportions and its fulfillment fraught with vital importance to the State of Arizona; and

WHEREAS, the difficulties by which the said Commission is confronted, in the performance of the duties assigned it, are extremely difficult if not indeed almost impossible, by reason of the great political power and influence exercised by the State of California, and the facilities possessed by said State for the dissemination of propaganda and the extreme activity with which, during the past several years it has disseminated propaganda in favor of legislation in Congress inimical to Arizona's interests and violative of the sacred rights of the States of the American Union; and

WHEREAS, it is the belief of this Legislature that the members of said Commission have labored loyally, faithfully and untiringly in the interest of Arizona, and in the face of the great obstacles and difficulties referred to have achieved remarkable success, if not as yet in the bringing about of an agreement which will facilitate the development of the Colorado River, at least in the correction of much of the misunderstanding which has prevailed with respect to Arizona's attitude, in the enlistment of powerful support.

for Arizona's contentions and in the creation of widespread sympathy for Arizona's just claims; now therefore

BE IT RESOLVED, by the Senate of the Eighth Legislature, the House concurring, that it is the sense of this body that the Colorado River Commission of Arizona, and its several members, are entitled to the warmest congratulations and commendation for the ability, the energy, and the loyalty they have displayed in the performance of their duties; and be it further

RESOLVED, that the Legislature of Arizona hereby heartily endorses the work which thus far has been performed by the said Commission, and expresses the utmost faith and confidence that the Commission's further labors will be marked by similar courage, fidelity and skill, and that Arizona's rights and interests, and the rights of all of the States of the Union as they are affected by the questions involved in the development of the Colorado River, will be effectually defended and protected; and be it further

RESOLVED, that the Legislature of Arizona hereby calls upon all loyal citizens of Arizona to strongly support and second the efforts of the said Colorado River Commission of Arizona, to the end that the world may be shown that in this conflict, in which rights most sacred to the American people are at stake, they are a united people.