April 5, 1944

Honorable Cordell Hull,
Secretary of State,
Department of State,
Washington, D. C.

Dear Mr. Secretary:

As attorney for the Arizona Colorado River Commission, and on behalf of the State of Arizona, Governor Sidney P. Osborn, and the Arizona Colorado River Commission, I desire to assure you of our profound appreciation of the careful, painstaking and conscientious approach and work of Mr. Hackworth, Mr. Lawson, Mr. Duggan, Mr. McGurk, Dr. Timm, Mr. Tipton and Mr. Clayton in the studies made by them of the Colorado River, and in the able manner in which they have so successfully negotiated the treaty between the United States and Mexico, which was signed February 3, 1944, relating to the utilization of waters of certain rivers, including the Colorado River.

In our opinion the treaty, in so far as it relates to Colorado River water, is a most excellent settlement for the United States and we congratulate the men named above, and the Department upon the great success crowning their efforts, and we believe that the treaty should be ratified.

We base our conclusion that the treaty should be ratified solely on the Colorado River provisions of the treaty. In other words, if the treaty contained nothing except the Colorado River provisions, it still should be ratified in the sole interest of the users of water of that river within the boundaries of the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Arizona's reasons for urging ratification of the treaty should be made clear.

Treaty of Guadalupe Hidalgo and Gadsden Treaty

Prior to and at the time of the Gadsden Purchase, the Colorado River was considered to be valuable only in

so far as it was navigable. Consequently each treaty contained provisions thought to assure free and open navigation and the preservation of navigable channels through Mexico from the Gulf of California to the upper international boundary, the California boundary. No provision was made for diversion of water from the river for irrigation in either country, and indeed there was very little, if any, irrigation anywhere in the Colorado River Basin in either country.

Growth of Irrigation

As time passed the west was settled and in each of the States of the Colorado River Basin in the United States, and in Mexico, thriving communities and civilizations have been established, wholly dependent upon diversion of Colorado River water and resulting irrigation and the continued existence and future growth of each is wholly dependent upon the extent to which Colorado River water may be diverted and consumed for irrigation purposes in the future.

This development has been made without any international agreement, or treaty on the important and valuable international river and without either country insisting upon the maintenance of navigability in the border regions of the river envisioned in the treaty of Guadalupe Hidalgo and the Gadsden treaty, apparently for the reason that both Mexico and the United States recognized that the best interests of the peoples concerned were promoted by diversion and irrigation, rather than by maintenance of the river as a navigable stream.

Definition of Rights Essential

Development has now reached a point at which it is essential that all interested people know with reasonable certainty the ultimate limits and respective rights to divert and use water of the Colorado River, so that existing developments may be made secure and so that sound plans may be made for the utilization of additional water of the river to which they, and each of them, are authoritatively entitled and limited.

As between the Upper Basin and the Lower Basin in the United States, rights have been agreed upon and settled by the Colorado River Compact; as between the States in the Lower Basin rights have been substantially settled by the Boulder Canyon Project Act, the California Limitation Act and by the Nevada and Arizona contracts with the United States.

The States of the Upper Basin have not yet, as among themselves, allocated the use of water reserved to them collectively as the Upper Basin by the Colorado River Compact, apparently for the reason that their development has been slower than that of the Lower Basin, and to this time no conflict between them has developed because their uses do not interfere with each other, and perhaps, because it seems doubtful that they can ever use the quantity of water reserved to them by the Colorado River Compact.

However, uncertainty as to the ultimate and maximum Mexican right of use of the waters of the Colorado River affects the Basin States. The Colorado River Compact provides, and the Basin States and the United States are bound by it, that the Mexican demand which it contemplates will be established by agreement between the United States and Mexico, shall be supplied from water unapportioned by the Colorado River Compact, and in case such unapportioned and surplus water should be insufficient, that each Basin from its apportioned share shall supply one-half of the resulting deficiency.

Under her limitation California may use one-half of the waters unapportioned by the Colorado River Compact. Under her contract Arizona likewise may use one-half of the unapportioned water subject to reductions for use in Nevada and those portions of Utah and New Mexico which are in the Lower Basin.

In the use of surplus or unapportioned water, however, both California and Arizona are directly subject to the possibility of the use of all the surplus in Mexico, and as to the use of surplus or waters unapportioned by the Colorado River Compact to be used within their respective boundaries, California and Arizona are in exactly the same position.

Arizona is vitally interested in having the apportionment to Mexico held to as small a quantity as possible, and at the same time in securing an agreement by treaty with Mexico.

Agreement Necessary

Arizona believes that an agreement is necessary at the earliest possible date because on this matter time now runs against the interest of the Colorado River Basin States, including California, in so far as use of water within her and their boundaries is concerned.

Mexico has approximately 1,200,000 acres of land which it is physically feasible to irrigate with water from the Colorado River, and upon which land, if fully developed, there would be diverted and used 5 million to 6 million acre-feet of the water of the river per year.

Mexico has been increasing her use rapidly. In 1943 she used in excess of 1,800,000 acre-feet of the water of the river. Prior to the regulation of the river by Boulder Dam, Mexico had used approximately 750,000 acre-feet of water per year. Some engineers are of the opinion that without regulation by Boulder Dam, Mexico's use could have approached but probably could not have exceeded 2 million acre-feet of water per year. All are agreed that with the river regulated by Boulder Dam, it is possible for her to increase her use to 5 or 6 million acre-feet per year.

We believe that Arizona can put to beneficial use all the water which it is legally possible for her to get from the river, including one-half of the surplus and consequently that each acre irrigated in Mexico means that one-half acre in Arizona and one-half acre in California will remain desert forever. Our development is limited by the quantity of water available to us. Arizona and California each has more good land than the water available for use within their respective boundaries will irrigate.

The quantities of water of the Colorado River going out of the United States into Mexico, including the water used in Mexico and the water passing through Mexico to the Gulf of California, for the years shown, have been as follows:

Year	Acre-feet
1920	20,349.200
21	18,674.300
22	16,320.000
23	17,207.700
24	10,610.800
1925	11,671.000
26	11,469.800
27	16,339.900
28	12,090.900
29	16,758.800
1930	9,783.300

Year	Acre-feet	
1931	4,350.400	
32	13,806.000	
33	7,871.900	
34	2,486.500)	
1935	3,963.300)	
36	3,228.300)	Lake Mead
37	3,618.700(	above Boulder
38	3,768.900(	Dam filling
39	6,369.200)	
1940	5,218.200)	
41	12,891.900	
42	11,748.900	
43	10,667.200	

(Compiled by Don C. Scott, Engineer for Arizona Colorado River Commission. Records of U.S.G.S. Papers, U.S. B. R. International Boundary Commission and Imperial Irrigation District.)

Since Boulder Dam was built Mexico has increased her use of the water of the river by more than 1 million acre-feet per year, and the development in Mexico has been rapid and without an agreement being reached, we believe the development in Mexico would be accelerated until the use of 5 million or 6 million acre-feet of water per year was reached.

We anticipate that the flow into and through Mexico will not be diminished below 5 million to 6 million acre-feet per year for more than twenty years and that it will not be reduced to the 1,500,000 acre-feet per year apportioned by the treaty to Mexico for at least 100 years, or until ultimate and full development has been reached in the United States by the diversion and consumptive use of every drop of the water of the Colorado River

Unless some all-time limit is placed upon Mexico's claim of right to the use of the water of the river, it would be possible, and in our judgment probable, for her to use 5 million to 6 million acre-feet per year, establish that use, build a civilization upon it and at her choice carry her claim to the right to the continued use of the water that she had at the time put to use, to arbitration under the terms of the Inter-American Treaty of Arbitration ratified in 1935, in which event under the terms of that treaty, in our judgment she would have a very good chance of being awarded water and the continued

flow of water to her far in excess of the 1,500,000 acre-feet provided by the treaty, and any such award would be binding upon her United States, and all of us in the United States, forever.

We, therefore, believe that under the proposed treaty the Colorado River Basin States have their potential and probable obligation to Mexico reduced from 5 million or 6 million acre-feet of water per year to 1,500,000 acre-feet of water per year, for under the terms of the treaty Mexico forever foregoes any claim in excess of 1,500,000 acre-feet per year, no matter if she might temporarily use water in excess of that amount.

Also, our engineers assure us that assuming that every drop of the water of the Colorado River were diverted in the United States and completely consumed, in so far as possible, there would still arrive in the border regions of the river 800,000 to 1,250,000 acre-feet per year of return flow or waste water at such a low elevation we could not divert it in the United States, and that under the terms of the proposed treaty the United States will get credit for it upon the 1,500,000 acre-feet per year maximum and minimum obligation of the treaty.

So, as we see it, under the proposed treaty, when the ultimate development has been reached in the United States, it will be necessary for the United States to deliver from primary flow or storage to Mexico not more than 700,000 acre-feet of water per year and probably not more than 250,000 acre-feet of water per year.

In our judgment this is an excellent settlement and inures to the benefit of all persons using water from the Colorado River within the boundaries of the United States, and we see no reasonable prospect or hope of ever reducing Mexico's rights below the quantity fixed in the proposed treaty, but on the contrary we believe that unless this treaty is ratified, the amount of water which Mexico ultimately would be entitled to have delivered to her would be much greater and in the meantime the uncertainty as to the quantity of her ultimate right would be a powerful deterrent and brake on the development in the United States and particularly Arizona.

Arizona has recently executed a contract with the United States for the delivery of water for use in Arizona and has ratified the Colorado River Compact. The

quantity of water deliverable for use in Arizona under the Compact and the contract cannot be determined with reasonable certainty until the ultimate Mexican right is determined. If Mexico's ultimate right is limited to 1,500,000 acre-feet as provided in the treaty, then it is possible for our engineers to calculate with reasonable certainty the quantity of water deliverable for use in Arizona under the contract and the Compact. It is necessary that we plan large and expensive works and structures to utilize the water to which we are entitled for the benefit of Arizona and the United States, and before these structures can be designed and built, it is necessary that our engineers be able to calculate with reasonable certainty the quantity of water which will flow through the works and structures to lands in Arizona.

California's Position

It seems to us for the foregoing reasons that if California were protecting solely rights to the consumptive use of water within her boundaries, she would, with Arizona and the other Basin States, advocate ratification of the proposed treaty, for as to use of water within her boundaries she is in exactly the same position as we are.

It is to her interests to have the extent of the Mexican burden definitely fixed and limited, in so far as use of water within her boundaries is concerned. The position taken by the official spokesmen for California may be influenced by the circumstances that some California financial interests have plans and prospects for money profit out of delivery of water to Mexico, and the development of Mexican land.

The facts are obscure and have not to our knowledge ever been frankly stated by California, and have not been established by absolute documentary proof and are, therefore, in part, matter for deduction and opinion. Perhaps your department, if it should be so inclined, could ascertain the truth concerning plans and prospects of profit to California financial interests out of delivery of water to Mexico, and the development of Mexican land with that water, although in our opinion, based upon the foregoing reasoning, such interests should not defeat the ratification of the proposed treaty, and are immaterial to a consideration of the proposed treaty.

Our duty and the duty of the State Department and of the United States Senate, in so far as the proposed

treaty is concerned, is to protect the domestic interests within the boundaries of the United States and the right to the consumptive use of the water of the Colorado River within the boundaries of the United States, and to secure that right by treaty with Mexico, reserving to the United States the right to the use of as large a quantity of water of the river as possible within the United States, in order to promote our domestic economy and welfare, and it seems to us the proposed treaty accomplishes that purpose.

We believe that the California Development Company forty or fifty years ago undertook the development of the Imperial Valley in California and also all lands adjacent to and south of that valley in Mexico at approximately the same time, and substantially as a part of the same project; that a separate corporation was formed under Mexican law, as required by Mexican law, for the operations in Mexico, but that the beneficial ownership of the Mexican operating company and of the lands in Mexico, it was proposed to develop, was in certain California financiers including Mr. Chandler of the Los Angeles Times and Mr. Hearst of the Hearst publications.

Lands in both countries were served by the Alamo canal which runs from the river through Mexico and until the construction of the All American canal, delivered water to the Imperial Valley in California; that subsequently the Imperial Irrigation District of California took over the operating corporations both in California and in Mexico, and that the operating corporation in Mexico is now a subsidiary of and wholly owned by the Imperial Irrigation District

We believe that the Imperial Irrigation District plans to divert through the All American canal and deliver for irrigation in Mexico 3,000 cubic feet per second of the water of the Colorado River, roughly 2,200,000 acre-feet of water per year, through the planned Pilot Knob power plant; that by this means it hopes to secure revenue from the power developed at Pilot Knob by such Mexican water and from the sale of water or water service to interests in Mexico, and from the continued operation of the Mexican subsidiary corporation, and also to secure profit for the

Chandler interests through irrigation of Mexican lands with water of the Colorado River.

We believe that this has been the plan of certain of the California spokesmen since the initiation of the project by the Chandler interests.

We believe that it was contemplated that the Boulder Canyon Project Act would permit such diversion without its being charged against the California limitation.

We believe that only last year, in April and in May, 1943, the Imperial Irrigation District of California through its representatives endeavored to secure from the Department of the Interior a contract to deliver to them for delivery to Mexico the 3000 cubic feet per second of the water of the Colorado River.

We believe that in order to appear consistent in representation of basically opposed interests, those supplying water to Mexico and those consumptively using water in California, they have rationalized themselves into taking the position that the proposed treaty is too generous to Mexico; that it guarantees to Mexico too much water, whereas, it appears to us that it forever limits the quantity of water to which Mexico can establish any right, far below the quantity of water which they, themselves plan to deliver to Mexico.

We believe that under their plan Mexico would get approximately 2,200,000 acre-feet through their deliveries to Mexico through the All American canal and Pilot Knob power plant or waste-way, plus approximately 1 million acre-feet of return flow in the border reaches of the river, plus an additional 4 to 5 million acre-feet excess, at least until such excess should be diverted and consumptively used in the United States.

We in Arizona cannot believe, as California's spokesmen apparently believe, that the United States can be expected to permit California interests to furnish such water to Mexico and permit Mexico to build a civilization upon it under a contract or permissive right, and then later take it away from Mexico in repudiation and abrogation of the Inter-American Treaty of Arbitration and in violation of all principles of equity, water law and fair dealing between users of water of which we have any knowledge.

We believe that it is essential that an all-time

limit to Mexico's use be now fixed and under the provisions of the proposed treaty, which we believe fair to Mexico in that they permit a reasonable development in Mexico and which we believe fair to the United States, in fact very beneficial to the United States, in that they assure to the United States development with water of the river in excess of that which would be thinkable without the treaty, Mexico binds herself to forever forego claim of right based upon the plans and diversions to Mexico which certain Californians hope to carry out.

As we understand it their property rights in Mexico are not affected by the proposed treaty. Whatever in Mexico they now own, they will still own when the treaty becomes effective. Of course we assume they bought the land in Mexico anticipating profit from its irrigation and development, which under the treaty will be very greatly limited, but so far as we know, they were not encouraged in that purchase, or in making their plans, by the United States, or by any of the Basin States, and we are under no obligation to them on account of that purchase and that plan.

We must protect the United States and the use of water in the United states and cannot be diverted or deterred by the fact that some Californians may not reap the profit, at the expense of the United States, which they anticipated.

As to any property rights which will be acquired by the United States in order to carry out its obligations under the treaty, we very properly assume that adequate and fair compensation will be paid to the Imperial Irrigation District, either in reduction of its obligation to the United States, or otherwise, so in our view those Californians planning to profit from greater diversions to Mexico than will be permitted by the treaty, are not and will not be hurt in any legitimate interest, and those Californians consumptively using water in California will be greatly benefitted by the establishment of the limit on Mexican use in exactly the same manner as users in Arizona and the other Colorado River Basin States, whose official spokesmen, we understand, are in favor of the ratification of the treaty.

All of the California contracts were made subsequent to and subject to the terms of the Colorado River Compact, which contemplates a treaty between the United States and Mexico apportioning the water of the river,

and their contracts are not firm contracts. The United States agrees to deliver water in California only if it is available for use in California under the terms of the Colorado River Compact and the Boulder Canyon Project Act.

All of California's development has been made in contemplation of the delivery of water to Mexico by the United States and their attempt to charge that the United States in ratifying the treaty with Mexico would be guilty of any breach of faith with them, is entirely unfounded, but on the contrary they contracted with this very situation in mind.

I have just read the statement dated March 20, 1944, issued by the Colorado River Board of California on behalf of California, summarizing some of the reasons for objection to the proposed treaty with Mexico, relating to the Colorado River.

It is attempted in the statement to over-simplify the situation and the statement is full of erroneous and misleading statements of fact and of law and of untenable conclusions. I do not propose at this time to undertake to answer it in detail, because it would unduly lengthen this statement of Arizona's position, but it should suffice to call attention to the fact that they claim that California had guaranteed the cost of Boulder Dam and built Boulder Dam, whereas as is well known the entire cost of Boulder Dam was borne by the United States. California interests have contracted to purchase power there generated and also to pay for storage and delivery of a relatively small quantity of water, but they only pay for such power as they receive and for such water as they receive, and if none is delivered they make no payment, and what they get is at a very favorable rate to them, so they have not guaranteed in the sense they state, any payment of the cost of the Boulder Dam.

They also neglect to state that all of their contracts are subject to the Colorado River Compact and the Boulder Canyon Project Act, both of which contemplate a treaty with Mexico. They also fail to state in any clarity their plans for the delivery of water to Mexico, although there is enough in their statement to indicate that they have such plans in mind.

They also adopt a very misleading summary of water supply and required uses which it seems to us is in a very

real sense a very great argument in favor of the ratification of the treaty, for if they believe their figures, as set forth, that with a Mexican use of 1,500,000 acre-feet there would be an overdraft of 2,063,000 acre-feet, it follows that with a Mexican use of 5 million acre-feet there would be an overdraft of 5,562,000 acre-feet. In other words, their table makes it clear that the Mexican use should be held as low as possible. However, we do not by any means agree with their figures.

When it comes to predicting the ultimate conditions on the river, engineers do not always agree, but according to the best estimates we have been able to obtain, assuming that the Upper Basin States use 7,500,000 acre-feet reserved to them, in full, there will be enough water in the river to supply California's contracts for 3(a) water, amounting to 4,400,000 acre-feet; Nevada's contract for 300,000 acre-feet; Arizona's contract for 2,800,000 acre-feet; the proposed Mexican treaty for 1,500,000 acre-feet; and in addition thereto there will be left in the river 2,013,000 acre-feet of surplus water unapportioned by the Compact, one-half of which, or 1,006,500 acre-feet, can be used in California and a like amount used in Arizona, and if, as seems to us probable, the Upper Basin States do not use more than 5 million acre-feet of their apportionment, there would be an additional 2,500,000 acre-feet of surplus water in the lower basin, one-half of which could be used in California and one-half in Arizona.

In our opinion the treaty not only is consistent with good faith on the part of the United States to its own people, but indeed is a very great service to them because it secures for them greater opportunity than could be obtained otherwise.

We were somewhat concerned about the question of whether or not any damage would be done to the Yuma, Imperial and Coachella Valley, but our engineers have investigated that possibility and we have the assurance of Mr. Lawson and Mr. Ainsworth and of the Bureau of Reclamation and of our own engineers that there will be no damage to Yuma, Imperial or Coachella Valley when works are built, and in them we have entire confidence.

The proposed treaty takes away no vested right to the beneficial consumptive use of water anywhere in the United States. It does provide that the United States

shall take title to works necessary to carry out its obligations under the treaty and we have a right to presume that fair and adequate compensation will be paid to the owners of those works.

We are, therefore, firmly of the opinion that it is to the interests of the United States, and particularly of the States of the Colorado River Basin and the users of water within the boundaries of each of the Colorado River Basin States, that the treaty be ratified.

I have no objection to your using this letter, or any part of it, in any way you may desire.

Assuring you of my high regard, I am

Yours truly,

CHAS. A. CARSON

Attorney for Arizona Colorado
River Commission