

INTERSTATE COMPACTS

VOLUME IV

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FLOOD CONTROL IN THE BASIN OF THE REPUBLICAN RIVER

Extracts from

Hearing

Before The

Committee on Irrigation and Reclamation

United States Senate

Seventy-Eighth Congress

First Session

On

S. 649

A Bill to Promote Flood Control in the Basin of the
Republican River, and for other Purposes

March 31, 1943

Committee on Irrigation and Reclamation

John H. Bankhead, Alabama, Chairman

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John H. Overton, Louisiana
Carl A. Hatch, New Mexico
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John Thomas, Idaho
Hugh A. Butler, Nebraska
Eugene D. Millikin, Colorado
William Langer, North Dakota

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FLOOD CONTROL IN THE BASIN OF THE REPUBLICAN RIVER

Wednesday, March 31, 1943

United States Senate,
Senate Committee on Irrigation and Reclamation,
Washington, D. C.

The committee met pursuant to call at 10:30 a.m. in room 101 Senate Office Building, Senator Pat McCarran (acting chairman) presiding.

Present: Senators McCarran, Overton, Thomas, Butler, Millikin, and Langer.

Also present: Senators Reed and Wherry, Representative Curtis (Nebraska) and Representative Hill (Colorado).

Senator McCarran. The committee will come to order. Senator Bankhead telephoned me late this morning and asked me if I would pinch-hit for him here as chairman of the committee.

I understand that there is before the committee for consideration this morning S. 649, a bill to promote flood control in the basin of the Republican River, and for other purposes.

(S. 649 is as follows:)

* * * * *

Senator Reed. This is not the first time that this Republican River compact has been before the Congress, including the Senate.

Senator Adams, of Colorado, who was chairman of this committee, died while it was still before the committee. The bone of contention resulted from an amendment in the Senate in a way which was not satisfactory, and the President's veto arose over the insistence of the Federal Government on retaining a clause which stated that "nothing herein shall be construed to affect the control of the Federal Government"--I am not purporting to give this in exact language, but I will state the thought--"and the jurisdiction of the Federal Government over the waters of the Republican River, navigable or otherwise."

Now Senator O'Mahoney, of Wyoming, and Senator Johnson, of Colorado, and myself, vigorously objected to that phrase and we struck it out, that is to say, the Senate struck it out after an all-afternoon discussion.

Senator Butler. Let me say, Senator, I do not think there is anything in this compact today that will in any way arouse your objection on that point.

Senator Reed. The only objection, the only criticism I have got is to section 3 on page 16.

Senator Butler. It is coming out.

Senator Reed. All right.

As a State matter we refuse to acknowledge that the Government of the United States is entitled to take control of waters, except of navigable streams.

Senator Butler. Senator, we have an agenda here whereby we will get up to these amendments in very short order.

Senator Reed. I have got just as many pressing engagements as you members have.

I would like to state my objection. I have talked it over with Senator Millikin, Senator Butler, and Senator Johnson, and we are all agreed on it.

Here the Federal Government hedges back by retaining the right to alter, amend, or repeal the provisions of this act.

Senator Butler. That is coming out.

Senator Reed. Section 3 reads:

The right to alter, amend, or repeal the provisions of this act is hereby expressly reserved.

I am not for it. If you take that out, that is all we want.

Senator Butler. That is coming out.

Mr. Chairman, in view of the short time that we will try and make the record on this bill, I am not going to make many remarks. I would like to insert a statement on the topography of the Republican River Valley into the record.

(The statement referred to is as follows:)

TOPOGRAPHY OF THE REPUBLICAN RIVER-KANSAS RIVER BASIN

The area drained by the Republican River and its tributaries in eastern Colorado, northwestern Kansas and southern Nebraska is a part of the Great Plains and has for its characteristic topography smooth, flat surfaces traversed by broad, shallow valleys. In portions of the basin, particularly near Haigler, Nebraska, cross drainage cutting deeply into the underlying rock has produced deep canyons bordered by precipitous walls. Trail Canyon, 4 miles east of Haigler, has a fall of 300 feet in less than 2 miles. The northwestern part of the basin embraces a small portion of the vast sandhill area of western Nebraska, which is a region of rounded sand dunes and sand ridges. Owing to the light rainfall in the upper part of the basin, the boundaries of that part are poorly defined. The general altitude decreases from 5,500 feet at the western edge to 1,500 feet at the Nebraska-Kansas line.

The Arikaree River, which rises near Limon, Colo., and throughout much of its course is an intermittent stream, united with the North Fork of the Republican River at Haigler, Nebr., to form the Republican River. From this junction the Republican flows eastward to Benkelman, where it is joined by the South Fork. Its course is then generally eastward across southern Nebraska to a point 4 miles east of Superior where it crosses the State line and continues in a southeasterly direction to Junction City, Kans. At Junction City, the Smoky Hill River from the west, unites with the Republican River to form the Kansas River, which flows in a general easterly direction 136.8 valley miles to the Missouri River at Kansas City.

The entire Republican-Kansas River Valley is well provided with tributary streams, and numerous tributaries join the main river, both from the north and from the south. Many of these tributaries are comparatively short, with a total fall of 200 to 300 feet, so that storm run-off is delivered quickly from them to the main stream.

The Republican River flows through a valley which, throughout most of its course, has a width of 2 to 3 miles with bordering uplands rising 100 to 200 feet above the valley floor. The main valley and those of its principal tributaries are bordered by a definite system of terraces.

* * * * *

Senator Butler. Then in order to get the program started here very promptly, I will say we are meeting as the result of Public Law 696, S. 2604, that was proposed by Senator Norris and was passed by the Senate last June.

In other words, the Compact Commission of Colorado, Kansas, and Nebraska--they are all represented here today, including the representative of the United States--Mr. Parker--filed a report that was acted upon favorably by the legislatures of the three States.

Now, it comes back to Congress for approval through this bill, S. 649, and a similar bill presented in the House by Congressman Curtis provides for it in the House. That is all we are meeting here for today, to approve the compact bill.

The following Federal agencies have been notified of this hearing to be held today on S. 649--and I think most, if not all, have filed a report and may want to give further verbal statements today: Mr. Glenn L. Parker, representative of the United States, who participated in compact negotiations; Department of the Interior, John C. Page, Commissioner of Reclamation Bureau; Office of Chief of Engineers, United States Army; Department of Agriculture; National Resources Planning Board; Federal Power Commission; and Bureau of the Budget.

Senator McCarran. May I ask you a question there?

Senator Butler. Yes.

Senator McCarran. Did the legislatures of the respective States approve the compact without modification in any way?

Senator Butler. They did not change a comma, nor dot an "i."

Senator McCarran. All right.

Senator Butler. The compact then came down here. Congressman Curtis and I employed the services of the Legislative Reference Bureau in clothing the compact with the wording that precedes and follows the compact.

I will assume all the responsibility for myself, if Congressman Curtis does not care to.

So the section 3 that my good friend Senator Reed objects to was not put in there by anybody representing the Federal Government, it was put in there by the Legislative Reference Bureau as a customary clause.

In some compacts it is put on, and it is not put on in some compacts.

It is immaterial.

After we had presented this bill, the members of the Compact Commission were contacted and they made a few suggestions as to amendments.

They suggest a different title to the one that is on the bill. The suggested change of the title is perfectly agreeable to us.

* * * * *

Then the one that was objected to by Senator Reed, the last two lines of the bill, section 3. Strike out "Sec. 3. The right to alter, amend, or repeal the provisions of this act is hereby expressly reserved."

Senator McCarran. In other words, the controversy that arose the last time on the floor has been eliminated, the question of the allocation of the waters to the respective States.

Senator Millikin. All the States have agreed completely on the allocation of the waters of the basin. There is no question at all on that feature of it, Senator.

Senator McCarran. Is there anything in the bill that attempts to give jurisdiction over the waters of the river for other than navigable purposes?

Senator Millikin. No. The intention has been to draw a bill that would meet the objections of the President's veto, and at the same time to preserve the rights of the States.

Senator McCarran. I do not need to tell you, Senator Millikin, that the arid and semiarid States are exceedingly jealous of the ownership and control of the waters of natural streams.

Senator Millikin. Yes.

Senator Langer. Are there any other amendments?

Senator Butler. That is all.

* * * * *

Statement of Glenn L. Parker, Representative of the
United States Republican River Compact Negotiations.

Senator McCarran. State your name and your official position, if any, for the record, if you please.

Mr. Parker. My name is Glenn L. Parker, Chief Hydraulic Engineer, Geological Survey.

I was designated by the President, in a letter of September 15, 1942, to be the representative of the United States in the Republican River compact negotiations as provided by the act of Congress approved August 4, 1942. I presume the committee would like to know a little of my background and whatever limitations I may have in respect to acting in that capacity.

I have been closely associated with the investigation of water resources for about 34 years, being employed by the United States Geological Survey. I am an engineer, not a lawyer. A great many of the problems that were met in arriving at this proposed compact, have to do with legal technicalities. In answering questions I would not like to be held strictly accountable for legal technicalities. During the course of the negotiations, however, I became fairly familiar with the legal problem through discussion of it with the legal representatives of the Departments of Interior and War and with the legal representative of the Federal Power Commission.

Senator Butler has here a map which shows the location of the area. It covers a drainage area of about 25,000 square miles in northeastern Colorado, northwestern Kansas, and southwestern Nebraska.

The precipitation over that area increases from west to east. At the western edge of the basin the average annual precipitation is about 18 inches, and in the eastern part of it it is about 28 inches. At least a considerable part of the area is in the semiarid belt, and for that reason, irrigation is an important consideration in any proposed compact.

I believe the committee would be interested in the purposes of this proposed compact. I will read them as stated in my report, which has been cleared through the Budget Bureau, so that I have permission to present it to this committee.

The major purposes of the proposed compact, as stated therein, are to provide for the most efficient use of the waters of the Republican River Basin, for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

The basis of the allocation of the waters of the Republican River Basin is beneficial consumptive use, a term that is well known throughout the West. Perhaps greater emphasis is placed on it in this compact than others, but it has been the principal objective upon which some other compacts have been framed. The Colorado River compact is an example, although you will find little mention in that compact of beneficial constructive use; yet it was a basis for the division of water--and if I am wrong I hope Judge Stone will correct me.

Beneficial consumptive use is defined in the proposed compact to be that use by which the water supply of the basin is consumed through the activities of man.

In arriving at the amount of water to be allocated among the States, the State commissioners determined what is called in the compact, the "virgin water supply," which is defined in the proposed compact to be the water supply within the basin undepleted by the activities of man.

It might be well to record in your hearings that this compact is not intended to be a precedent. The physical and other conditions peculiar to the Republican River Basin constitute the basis of the currently proposed compact, which specifically provide that its general basis and conditions are not conceded by the States or by the United States to be a precedent with respect to any other interstate stream.

Senator Butler and your acting chairman have referred to previous legislation framed about a former proposed compact which was covered by bills introduced in both the House and Senate. Interpretive amendments were considered and placed in at least one of those bills, but finally eliminated, and the compact formerly proposed was accepted by Congress in the form in which it was agreed upon, by the three States a little over 2 years ago.

The compact formerly proposed was vetoed by the President for reasons explained in his veto message of April 2, 1942. The declaration that the Republican River and its tributaries are not navigable in article I of the compact formerly proposed, appears to have been the primary basis of the veto. Quite understandably that declaration was interpreted by the President and his advisers as an attempt to withdraw the jurisdiction of the United States over the waters of the Republican River Basin for the purposes of navigation.

In the veto message of the President, however, he indicated approval in principle of a suitable compact for the apportionment of the waters of the Republican River among the three States, to permit irrigation and related uses, and for joint Federal-State action in the effective use of the water, and for the control of destructive floods.

I can report to you gentlemen that the President's indicated approval of that principle was given very careful consideration during the negotiations.

It would be well to record the names of the State commissioners. Mr. M. C. Hinderlider served for Colorado, Mr. George S. Knapp served for Kansas, and Mr. Wardner G. Scott served for Nebraska.

As a preliminary step toward negotiating a new form of compact, it was

necessary to prepare a draft, and in preparing it the former draft of a compact, which had been discussed in Congress was taken as a basis, but changes, deletions, and additions were made to eliminate, insofar as practicable at that stage, the objections to the original contract which had been advanced by Federal agencies, during the time that the legislation concerning the former draft had been in progress in the Congress. As an example, the so-called paramountcy clause was framed in the following language, as recommended by the Federal Power Commission in its letter of October 18, 1941, to Hon. Compton I. White, chairman of the House Committee on Irrigation and Reclamation.

I will read that recommended clause which was proposed as a substitute for the nonnavigable clause in article I of the formerly proposed compact:

The use of the waters of the Republican River and tributaries thereof within the basin, as hereinabove defined, for "beneficial consumptive use," as hereinbelow defined, shall constitute paramount use and any other use shall be subservient thereto.

At the time the preliminary draft was prepared, I understood that the quoted language was acceptable to the Federal Power Commission. Likewise recommendations made in the report of the Interior Department to the same House committee on October 21, 1941, were incorporated in the preliminary draft. Those recommendations had been prepared for the purpose of removing ambiguities and clarifying provisions which might have been construed so as to limit or to impair Federal rights and powers unduly, and to subject certain Federal property to State taxation and to State legislative control.

The allocations made in the former draft of compact were adhered to, and they remain the same in the compact which is before the Congress now and which you are discussing today. One purpose of preparing this preliminary draft was to get the opinion of representatives of the Federal agencies concerned as a basis of negotiations at a meeting to be held in Denver early in December. Suggestions were received from the Departments of Agriculture, Interior, and War, and by the Federal Power Commission.

The first meeting of the compact commission convened in Denver December 2, 1942. Those present, in addition to the three State commissioners and the representative of the United States, were legal advisers of the State commissioners, and representatives of the Departments of Agriculture, Interior, and War.

All suggestions made by the representatives of the Federal agencies were given careful attention, and particularly thorough consideration was given to the Federal Power Commission's desire presented in a letter to me of November 30, 1942, to have the paramountcy clause eliminated from the preliminary draft. The State commissioners were very much disturbed about the desire of the Federal Power Commission to eliminate that clause, because they felt that the effectiveness of the proposed compact required specific assurance by the Federal Government that the allocations of the water and the rights established thereunder would be recognized. After much discussion, the State commissioners were unanimous in the opinion that an adequate compact could not be consummated by the States without providing, in some manner, for allocating the water according to the principle of beneficial consumption use, and for protecting the right of such use when once established.

The negotiations at the Denver meeting were completed on December 3, and a new draft known thereafter as the Denver draft was agreed upon. The draft included the paramountcy clause but was free of most of the other objections previously directed against provisions of, or omissions from, the compact formerly proposed.

The preliminary draft had been circulated among the Federal agencies concerned; so was the Denver draft. Those agencies were asked to inform me whether they approved the provisions in the Denver draft; and if not, to provide me with whatever suggestions as to changes might seem pertinent, so that such changes could be given consideration preferably in Washington before the next meeting, which was scheduled to be in Lincoln on December 29. Some of the agencies did provide suggestions which were threshed out among their representatives and some headway made toward determining wherein the Federal interests lay.

The Lincoln meeting convened on December 29, 1942, and legal advisers of the State commissioners and Federal representatives of the Departments of Agriculture, Interior, and War were present. In addition, upon my request, an observer detailed by the National Resources Planning Board was present.

After preliminaries, the first order of new business was presentation of a substitute draft recommended by the Federal Power Commission. That draft made no reference to beneficial consumptive use, or to the paramountcy concept which had been prominent features in all previous drafts, nor did it attempt in any way to meet the problems of possible conflict between Federal and State interests.

At that stage of the meeting a recess was taken, during which separate caucuses of Federal and State representatives were held to discuss the practicability of accepting the Federal Power Commission draft.

The consensus among the Federal representatives was that, although some features of the Federal Power Commission draft might not be entirely satisfactory to individual agencies in carrying out their present and prospective responsibilities in the Republican River Basin, those agencies would probably not be warranted in objecting to that draft if it were acceptable to the States.

Upon reconvening, the State commissioners and their advisers discussed extensively the points at variance between the Denver draft and the one proposed by the Federal Power Commission.

Eventually, however, the State commissioners voted to reject the Federal Power Commission draft. Thereafter, suggestions made by representatives of the other Federal agencies were reviewed, discussed, and worked into a final draft. The paramountcy clause is not included in the final draft, but another means of composing and correlating Federal and State interests was devised.

Senator McCarran. What did you say was not incorporated?

Mr. Parker. The so-called paramountcy clause.

Senator McCarran. Oh, yes.

Mr. Parker. At that meeting an agreement was reached and representatives of the States signed a draft of a compact to be submitted to their legislatures, and it was signed by me as having participated as a representative of the United States.

Following that action, the final draft was submitted to all of the Federal agencies concerned with water in the Republican River Basin.

A formula for composing Federal and State interests was devised at the Lincoln meeting. The major difficulty faced in the negotiations was to provide some sort of means, which within constitutional limitations and within the limitations that the President had indicated he would approve, might be acceptable to the States.

An essential objective of the formula was to assure the States, and those establishing water rights for irrigation and domestic use under the laws of the States, that Federal programs and projects undertaken in accordance with Federal jurisdiction would take into account the best and most economical use of the water for multiple purposes and would recognize established uses for irrigation and domestic purposes as property rights.

How this objective could be obtained through a compact without encroaching upon or impairing Federal jurisdiction was not easy of solution. The device finally accepted by the States appears in the provisions of article XI. I believe you are familiar with those. If you are not, I will be glad to read them.

Senator McCarran. Your whole report will go into the record and that will be a part of it.

Mr. Parker. I was expecting you would want to do that, yes.

The propriety of legislation by Congress of the kind proposed, is, I believe, in conformity with procedures heretofore employed by Congress, when it has imposed certain limitations on the Federal Power Commission, which provide:

That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein.

Of somewhat the same character are the provisions of the act of June 17, 1902, governing the Department of the Interior in its reclamation activities.

I quote from that act:

That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream

or the waters thereof: * * *

In my opinion, unusual care was taken in drafting the provisions of article XI, to avoid seeking the enactment of Federal legislation that could be construed as withdrawing Federal jurisdiction over the waters of the basin, or that would require onerous procedures by Federal agencies in their present or prospective operations affecting the waters of the basin.

I have a statement in my report about the position in which the irrigation farmer finds himself. I believe it would be worth while to read this to you.

Some of the principles embodied in the proposed compact are aptly illustrated by the case of the irrigation farmer, who must, of necessity, consumptively use water. It evaporates into the air and it is transpired by vegetation. Accordingly, he cannot irrigate the land by diversion of water from an interstate stream without depleting the natural water supply and thereby affecting the regimen of that stream to some extent. In addition to a considerable monetary investment, he also has to invest his own life and energy as well as that of his family in establishing an irrigation farm.

A good many of you who live in western States know of many serious crises that have arisen to make the irrigation farmer lose everything. In other words, his money, his life, and the welfare of his family are at stake. For that reason, it is inconceivable that the Federal Government should exercise any right which would divest the irrigation farmer of water after he had once put it to beneficial use, without just compensation for damages sustained. Furthermore, he must depend upon State laws, State regulations, and State court decrees to establish and to protect his water right; those laws, regulations, and decrees have been evolved throughout a long period of years largely by cut-and-dry methods. They cannot be set aside precipitately without disastrous consequences.

The legislative procedure set forth in article XI would give assurance to the irrigation farmer, and to the State as well, that rights to use water from an interstate stream, which he has acquired under State law, will be recognized.

I would like to tell the committee here that the relationships of the State commissioners and their advisers to the Federal representative and representatives detailed to attend the meetings by the several Government agencies concerned, were very highly appreciated, I think, by the State commissioners, and I know they were from my point of view.

The Federal and State representatives were, at all times, courteous and considerate, even when widely divergent views were expressed.

The willingness to weigh suggestions carefully, whether made by Federal or State participants, was highly commendable.

Now, the proposed compact, as you know, has been ratified by the States. I believe that it does not infringe upon the rights of the United States, or its agencies, and that it affords the best means of assuring the most advantageous use and control of the water resources in the Republican River Basin for multiple purposes.

Senator Butler. The statement that you just made, Mr. Parker, almost answers the question that I had in mind.

Your presentation has been very interesting, and if you had not told us, to begin with, that you were not a lawyer, I would put you down as a first-class lawyer. I would like, as a layman, to ask you a question directly, and that is if, in your opinion, the Federal rights are not in every way protected by the compact that is proposed?

Mr. Parker. In my opinion, they are, Senator Butler.

Senator Butler. That is the answer I wanted.

Senator Millikin. Mr. Parker, you are personally familiar with that whole basin?

Mr. Parker. Yes, sir.

Senator Millikin. You have been over it?

Mr. Parker. Yes, sir.

Senator Butler. You are also familiar with the few proposed changes, I call them, in the bill--maybe I should call them amendments--changing the title, and the other minor changes that have been suggested here?

Mr. Parker. Yes, sir.

There was just one minor suggestion, I do not think it is at all important. But, I intended to stress the desire on the part of everyone participating in these negotiations to work out a compact which would provide for the best use of the waters for multiple purposes. Although it would not be at all essential to put language for that purpose in the title, such language might be appropriate.

Senator Wherry. May I ask a question, Mr. Chairman?

Senator McCarran. Yes, Senator.

Senator Wherry. As I understand your interpretation of this act, it will protect the irrigation farmer from being divested of any water rights that he will get under this proposed compact when he starts up an irrigation farm, and continues to operate; is that right?

Mr. Parker. Once he has established that right under State law, I believe the provisions in article XI of the proposed compact and section 2 of the pending bill would protect him.

Senator Wherry. It would not be taken away by the Federal Government?

Mr. Parker. The provisions of article XI and that section 2 should protect his interest, and will presumably result in the payment of any damages sustained.

Senator McCarran. Are there any other questions?

Thank you very much, Mr. Parker. I think there should go in, in connection with Mr. Parker's statement, the act of Congress under which he was appointed a representative of the Government of the United States. (The act referred to is as follows:)

(Public Law 696--77th Congress)

(Chapter 545--2d Session)

(S. 2604)

AN ACT Granting the consent of Congress to the States of Colorado, Kansas, and Nebraska to negotiate and enter into a compact for the division of the waters of the Republican River

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That consent of Congress is hereby given to the States of Colorado, Kansas, and Nebraska to negotiate and enter into a compact not later than June 1, 1945, providing for an equitable division and apportionment among the said States of the waters of the Republican River and all of its tributaries above its junction with the Smoky Hill River in Kansas, upon condition that one suitable person, who shall be appointed by the President of the United States, shall participate in said negotiations as the representative of the United States and shall make report to Congress of the proceedings and of any compact entered into: PROVIDED, That any such compact shall not be binding or obligatory upon any of the parties thereto unless and until the same shall have been ratified by the legislatures of each of said States and approved by the Congress of the United States.

SEC. 2. * * *

Approved, August 4, 1942.

Senator McCarran. By the way, you are regularly employed in a department of the Government, are you not?

Mr. Parker. Yes; by the United States Geological Survey, as chief hydraulic engineer.

Senator McCarran. And you have been during all this time serving in this capacity?

Mr. Parker. For 34 years.

Senator McCarran. Thank you very much.

(The report to the Congress submitted by Mr. Parker is as follows:)

PROPOSED REPUBLICAN RIVER COMPACT REPORT AND RECOMMENDATION

(By the representative of the United States, Republican River Compact Negotiations)

AUTHORIZATION AND RECOMMENDATION

Pursuant to an act of Congress, approved August 4, 1942 (56 Stat. 736), the President appointed me as representative of the United States to participate in negotiations which have resulted in the currently proposed compact to allocate the waters of the Republican River Basin among the States of Colorado, Kansas, and Nebraska. Commissioners acting in behalf of those States agreed upon provisions in the proposed compact, at Lincoln, Nebr., on December 31, 1942. Subsequently, it was ratified by appropriate legislative procedures in each of the three States. I recommend that the Congress of the United States act favorably upon the proposed compact, copy of which is attached.

LOCALITY INVOLVED

The drainage basin involved in the proposed compact comprises an area of 24,960 square miles in northeastern Colorado, northwestern Kansas, and southwestern Nebraska, which is naturally drained by the Republican River, and tributaries, above Junction City, Kans. The annual precipitation varies from about 18 inches in the western part of the area to about 28 inches in the eastern part.

PURPOSES

The major purposes of the proposed compact, as stated therein, are to provide for the most efficient use of the waters of the Republican River Basin for multiple purposes; to provide for an equitable division of such waters; to remove all causes, present and future, which might lead to controversies; to promote interstate comity; to recognize that the most efficient utilization of the waters within the basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of water and the control of destructive floods.

BASIS OF ALLOCATION

Allocation, to the signatory States, of the waters of the Republican River Basin is based upon the principle of "beneficial consumptive use," which is defined in the proposed compact "to be that use by which the water supply of the basin is consumed through the activities of man, and shall include water consumed by evaporation from any reservoir, canal, ditch, or irrigated area." The specific allocations which are made to each State are derived from the computed annual virgin water supply, which is defined in the compact "to be the water supply within the basin undepleted by the activities of man."

NOT INTENDED TO BE PRECEDENT

The physical and other conditions peculiar to the Republican River Basin constitute the basis of the currently proposed compact, which specifically provides that its general basis and conditions are not conceded by the States or by the United States to be a precedent with respect to any other interstate stream.

COMPACT FORMERLY PROPOSED

In order that the problems and difficulties involved in the negotiation of the currently proposed compact may be better understood, the legislative course of a former one is briefly reviewed herein.

Colorado, Kansas, and Nebraska, through duly designated commissioners, negotiated a compact for allocating the waters of the Republican River on March 19, 1941, and the three respective States ratified it shortly thereafter by appropriate legislation. The States had not had prior congressional consent to negotiate a compact and no representative of the United States participated in the negotiations.

Identical bills seeking to give congressional consent to the compact formerly proposed were introduced in the Seventy-seventh Congress, as H. R. 4647, H. R. 5945, and S. 1361. H. R. 5945 was reported favorably by the House Committee on Irrigation and Reclamation on November 5, 1941 (H. Rept. No. 1380), including several interpretative amendments submitted by the Interior Department and the Federal Power Commission. Subsequently, S. 1361 was reported favorably by the Senate Committee on Irrigation and Reclamation on November 21, 1941 (S. Rept. No. 841), without amendments. H. R. 5945 was passed by the House on December 1, 1941, as reported. That bill was brought up for consideration in the Senate and passed after amendments adopted by the House had been stricken therefrom. Conferees reported favorably on the Senate version of the bill and their reports were accepted by the House and Senate, but it was vetoed by the President, for reasons explained in his veto message of April 2, 1942.

The declaration that the Republican River and its tributaries are not navigable, in article I of the compact formerly proposed, appears to have been the primary basis of the veto. Quite understandably, that declaration was interpreted by the President and his advisers as an attempt "to withdraw the jurisdiction of the United States over the waters of the Republican Basin for purposes of navigation." In the veto message, the President indicated approval, in principle, of a suitable compact for the apportionment of the waters of Republican River among the three States to permit irrigation and related uses, and for joint Federal-State action in the effective use of the water and for the control of destructive floods.

The act approved August 4, 1942 (56 Stat. 736) granted to the three States the consent of Congress to the negotiation of a new compact, upon condition that the President appoint a person to participate in the negotiations as the representative of the United States and to make a report to Congress of the proceedings and of any compact entered into. The

President appointed me to be the representative of the United States by his letter of September 15, 1942.

STATE COMMISSIONERS

The following commissioners acted in behalf of their States in the negotiation of a new compact: M. C. Hinderlider, for Colorado; George S. Knapp, for Kansas; Wardner G. Scott, for Nebraska.

PRELIMINARY ARRANGEMENTS FOR NEGOTIATIONS

As a first step toward the ensuing negotiations, a preliminary draft of a compact was prepared. The compact which had been previously proposed formed the basis of the draft, but changes, deletions or additions were made to eliminate, insofar as practicable at that stage, the objections to the original compact which had been advanced by Federal agencies in their reports to Congress on H. R. 4647, H. R. 5945, and S. 1361 to the committees in Congress. For example, the much-disputed declaration of nonnavigability in article I of the former draft was replaced by the so-called paramountcy clause, framed in the following language, recommended by the Federal Power Commission in its letter of October 18, 1941, to Hon. Compton I. White, chairman of the House Committee on Irrigation and Reclamation:

"The use of the waters of the Republican River and tributaries thereof within the basin, as hereinabove defined, for 'beneficial consumptive use,' as hereinbelow defined, shall constitute paramount use and any other use shall be subservient thereto."

At the time the preliminary draft was prepared, I understand that the quoted language was acceptable to the Federal Power Commission. Likewise, recommendations, made in the report of the Interior Department to the same House committee on October 21, 1941, were incorporated in the preliminary draft. The latter recommendations had been prepared for the purpose of removing ambiguities, and clarifying provisions which might have been construed so as to limit or to impair Federal rights and powers unduly, and to subject certain Federal property to State taxation and to State legislative control.

No changes were made in the allocation of water, which is the same in the proposed compact now before Congress as in the compact formerly proposed.

The preliminary draft was forwarded by separate letters to representatives of the Department of Agriculture, Federal Power Commission, Department of the Interior, and the War Department, on November 4 and 5, 1942, accompanied by my request that the provisions in it be reviewed to ascertain whether they protected Federal interests, and that I be advised either of the agency's approval or of changes desired. Those letters also indicated that it would be desirable for each Federal agency to send an adviser to attend the first meeting of the Republican River compact commission which had tentatively been scheduled to be held in Denver early in December.

THE DENVER MEETING

When the compact commission convened at Denver on December 2, 1942, those present, in addition to the three State commissioners and the representative of the United States, were legal advisers of the commissioners and representatives of the Departments of Agriculture, Interior, and War.

All suggestions made by representatives of Federal agencies were given careful attention by the Commission. Particularly thorough consideration was given to the Federal Power Commission's desire, presented in letter to me of November 30, 1942, to have the "paramountcy clause" eliminated. The State commissioners were greatly disturbed by this desire of the Federal Power Commission because they felt that the effectiveness of the proposed compact required some specific assurance by the Federal Government that the allocation of the water and the rights established thereunder would be recognized. After much discussion the State commissioners were unanimous in the opinion that an adequate compact could not be consummated by the States without providing in some manner for allocating the water according to the principle of beneficial consumptive use and for protecting the right of such use when once established.

The negotiations at the Denver meeting were completed on December 3 after agreement had been reached on another draft which thereafter was referred to as the "Denver draft." That draft included the paramountcy clause but was free of most of the other objections previously directed against provisions of, or omissions from the compact formerly proposed. It also contained other provisions intended to correlate Federal and State interests, without impairing the underlying Federal jurisdiction.

The Denver draft was transmitted within a week after the Denver meeting to representatives of the Federal Power Commission and the Departments of Agriculture, Interior, and War, with the request that suggestions, comments, or desired amendments be furnished to me as promptly as possible so that they might be canvassed and analyzed prior to the second meeting of the commission which had been scheduled at Lincoln, Nebr., on December 29, 1942. I also discussed that draft informally with representatives of the National Resources Planning Board. The foregoing Federal agencies were asked to have representatives at the Lincoln meeting for the purpose of protecting their interests and collaborating with the compact commission in working out a final draft that would be satisfactory to all concerned.

THE LINCOLN MEETING

The second meeting of the Republican River compact commission convened at Lincoln December 29, 1942. Legal advisers to the State commissioners and Federal representatives of the Departments of Agriculture, Interior, and War were present. In addition, upon my request, an observer, detailed by the National Resources Planning Board, was present.

After preliminaries, the first order of new business was presentation of a substitute draft recommended by the Federal Power Commission. That draft made no reference to beneficial consumptive use or to the paramountcy

concept which had been prominent features of all previous drafts; nor did it attempt in any way to meet the problems of meeting possible conflicts between Federal and State interests. At that stage of the meeting a recess was taken, during which separate caucuses of Federal and State representatives were held to discuss the practicability of accepting the Federal Power Commission draft.

The consensus among Federal representatives was that, although some features of the Federal Power Commission draft might not be entirely satisfactory to individual agencies in carrying out their present and prospective responsibilities in the Republican River Basin, those agencies would probably not be warranted in objecting to that draft if it were acceptable to the States.

Upon reconvening, the State commissioners and their advisers discussed extensively the points at variance between the Denver draft and the one proposed by the Federal Power Commission. Eventually, however, the State commissioners voted to reject the Federal Power Commission draft. Thereafter, suggestions made by representatives of other Federal agencies were reviewed, discussed, and worked into a final draft. The paramountcy clause is not included in the final draft but another means of composing and correlating Federal and States interests was devised.

A copy of the proposed compact, agreed upon and signed at Lincoln on December 31, 1942, was transmitted by me to the Departments of Agriculture, Interior, and War, the Federal Power Commission, and the National Resources Planning Board on several dates prior to January 20, 1943.

FORMULA FOR COMPOSING FEDERAL AND STATE INTERESTS

The President, in his veto message, indicated that he approved the principle of apportioning the waters of the Republican Basin and that he would be glad to approve a bill which, in assenting to the compact, would specifically reserve to the United States all of the rights and responsibilities which it now has in the use and control of the waters of the basin.

The major difficulty faced in the compact negotiations was to devise a suitable legislative formula, to meet the States' water problems, within constitutional limitations and within the limitations that the President had indicated he would approve. An essential objective of the formula was to assure the States, and those establishing water rights for irrigation and domestic use under the laws of the States, that Federal programs and projects undertaken in accordance with Federal jurisdiction would take into account the best and most economical use of the waters for multiple purposes, and would recognize established uses for irrigation and domestic purposes as property rights.

How this objective could be obtained through a compact without encroaching on, or impairing, Federal jurisdiction, was not easy of solution. The device finally accepted by the States appears in the provisions of Article XI, of the proposed compact, which provides that the compact shall become effective only if Congress, in granting its consent to the compact,

encountered, it seems that it would be a serious matter for us to retard, or to have a compact which would bring about the necessity of retarding, irrigation development until some time in the future a Federal agency determined whether or not these waters were needed for navigation or some other purpose. If that were done, it is a question whether we could ever safely go ahead with irrigation from rivers, such as the Republican River, which are tributaries to larger rivers that lower down may be navigable. Of course, as I have said before, in the Republican Basin we are dealing with a little stream that ordinarily would not float a good-sized buffalo chip.

Subsection (c) provides:

The United States, or those acting by or under its authority, will recognize any established use, for domestic and irrigation purposes, of the waters allocated by this compact which may be impaired by the exercise of Federal jurisdiction in, over, and to such waters: PROVIDED, That such use is being exercised beneficially, is valid under the laws of the appropriate State and in conformity with this compact at the time of the impairment thereof, and was validly initiated under State law prior to the initiation or authorization of the Federal program or project which causes such impairment.

The effect of that provision, gentlemen, is to recognize in these appropriations for irrigation and domestic purposes a property right; and if future exercise of the Federal jurisdiction impairs that right, then there shall be compensation or other equivalent adjustment. I think that because of the economy of the entire West and in the interest of supporting the farmers who have made their investments and the communities which have grown up through irrigation that provision is necessary.

If the compact which was presented to us by the Federal Power Commission, eliminating article XI, were adopted, then we would have merely allocated among the States water which later might have been claimed and taken through the exercise of some Federal jurisdiction. We have embarked upon a new approach, it is true. We do not necessarily create a precedent for other compacts, but we have offered a solution here which, I think is important to the entire West, and will be increasingly so, in order to accomplish correlation of Federal jurisdiction and beneficial consumptive use of water for irrigation and domestic purposes which is regulated and controlled under State laws.

Thank you.

Senator McCarran. Are there any questions?

Senator Butler. Mr. Chairman, before I ask a question, may I request the privilege of my colleague making a short statement? He has got to leave.

Senator McCarran. Senator Wherry.

* * * * *

Senator Butler. I would like to ask Judge Stone if the proposed amendment meets with his approval?

Mr. Stone. Yes; the proposed amendments, it seems to me, are desirable, and certainly would meet the approval of the compact commissioner from Colorado. I have discussed them with him, I have gone over them with Senator Millikin and Senator Johnson. I am sure they are satisfactory.

Senator McCarran. I think the proposed amendments that Judge Stone makes reference to now, should go in the record at this point.

(The amendments referred to are as follows:)

1. Restate the title as follows:

"A BILL To grant the consent of Congress to a compact entered into by the States of Colorado, Kansas, and Nebraska, relating to the waters of the Republican River Basin, to make provisions concerning the exercise of Federal jurisdiction as to those waters, to promote flood control in the basin, and for other purposes."

2. Strike the words "and approval" or "and approved" as the case may be, appearing in line 3, page 1, and lines 6 and 7, page 16.

3. Strike lines 17, 18, and 19, page 14, and insert in lieu the following:

"SEC. 2. (a) In order that the conditions stated in article XI of the compact hereby consented to shall be met and that the compact shall be and continue to be operative, the following provisions are enacted * * *."

4. In lines 4, 7, 8, and 11, page 15, and line 8, page 16, capitalize the initial letter of the word "Basin".

5. Strike section 3 of the bill.

Senator McCarran. Who else, Senator Butler?

Senator Millikin. Mr. Chairman, may I interrupt just a moment?

Senator McCarran. Yes.

Senator Millikin. Congressman William S. Hill, of the Second District of Colorado, which district embraces that part of the Republican River Basin which is in Colorado, has been attending the hearing, but has had to leave on other official business. He has asked me to incorporate in the record an approving statement of what is being done here.

Senator McCarran. All right, thank you.

(The statement of Congressman Hill is as follows:)

Mr. Chairman, this is a very important compact and I am in favor of the Congress ratifying the agreement which now has been approved by the legislatures of the States affected, Colorado, Kansas, and Nebraska.

enacts provisions requiring the United States and its agencies:

(a) When they make beneficial consumptive use of waters in the basin to do so in keeping with the compact allocations.

(b) When undertaking programs or projects that would present or interfere with the full beneficial consumptive use of waters within the basin, first, to consult with various interested agencies, Federal and State.

(c) If they determine that a program or project is to be undertaken, notwithstanding encroachment on certain established uses of water for irrigation and domestic purposes, to recognize those established uses as property.

If the Congress enacts such provisions, the States would have the assurance that they feel it essential.

The propriety of legislation by the Congress of the kind proposed is, I believe, in conformance with procedures heretofore employed by Congress when it has imposed certain limitations on the Federal Power Commission by section 27 of the act of June 10, 1920 (41 Stat. 1063, 1077), which provides:

"That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein."

Of somewhat the same character are the provisions of section 8 of the act of June 17, 1902 (32 Stat. 388), governing the Department of the Interior in its reclamation activities:

"That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: * * *"

In my opinion, unusual care was taken in drafting the provisions of article XI to avoid seeking the enactment of Federal legislation that could be construed as withdrawing Federal jurisdiction over the waters of the basin, or that would require onerous procedures by Federal agencies in their present or prospective operations affecting the waters of the basin.

IRRIGATION FARMER

Some of the principles embodied in the proposed compact are aptly illustrated by the case of the irrigation farmer, who must of necessity

consumptively use water. It evaporates into the air and it is transpired by vegetation. Accordingly, he cannot irrigate land, by diversion of water from an interstate stream, without depleting the natural water supply, and thereby affecting the regimen of that stream to some extent. In addition to a considerable monetary investment, he also has to invest his own life and energy as well as that of his family in establishing an irrigation farm. In other words, his money, his life, and the welfare of his family are at stake. For that reason it is inconceivable that the Federal Government should exercise any right which would divest the irrigation farmer of water after he had once put it to beneficial use, without just compensation for damages sustained. Furthermore, he must depend upon State laws, State regulations, and State court decrees to establish and to protect his water right. Those laws, regulations, and decrees have been evolved throughout a long period of years largely by cut-and-try methods. They cannot be set aside precipitately without disastrous consequences.

The legislative procedure set forth in article XI would give assurance to the irrigation farmer, and to the States as well, that rights to use water from an interstate stream which he has acquired under State law, will be recognized.

GRATIFYING COLLABORATION

Every one who participated in, or served as advisers at, the meetings of the compact commission at Denver and Lincoln had an earnest desire to protect and preserve the interests of the United States in the waters of the Republican River Basin, as provided in article X of the final compact, and at the same time to lay the groundwork for practicable development of the irrigation possibilities of the basin. The Federal and State representatives were at all times courteous and considerate, even when widely divergent views were expressed. The willingness to weigh suggestions carefully, whether made by Federal or State participants, was highly commendable. The whole proceeding at Lincoln, though long and tedious, fully demonstrated that men imbued with a desire to further the joint interests of the United States and the States are able to reach harmonious conclusions by the exercise of patience and tact.

RATIFICATION BY THE STATES

The proposed compact has been ratified by the States of Colorado, Kansas, and Nebraska through action taken by their respective legislatures and Governors.

CONCLUSION

I believe that the newly proposed compact does not infringe upon the rights of the United States or its agencies and that it affords the best means of assuring the best use and control of the water resources in the Republican River Basin for multiple purposes.

Glenn L. Parker
Representative of the United States,
Republican River Compact Negotiations.

March 29, 1943.

Senator McCarran. Who is the next witness?

Senator Butler. Mr. Stone.

Senator McCarran. Judge Stone, we will be glad to hear from you.

Statement of Clifford H. Stone, Director and Secretary
of the Colorado Water Conservation Board

Mr. Stone. Mr. Chairman, my name is Clifford H. Stone. I am director of the Colorado Water Conservation Board, and represent not only that board, but also appear here on behalf of Mr. M. C. Hinderlider, who is the Republican River compact commissioner for the State of Colorado. I have participated as one of the legal advisers to Mr. Hinderlider in these compact negotiations.

During those compact deliberations the Department of the Interior, the Department of Agriculture, and the Corps of Army Engineers were represented. The National Resources Planning Board had an observer at the Lincoln meeting of the commission.

We appreciated their participation. We were disappointed, however, that the Federal Power Commission did not see fit to send a representative to these compact meetings. It was largely because of the questions raised by the Federal Power Commission that misunderstandings were brought about in the case of the former Republican River compact.

We were anxious--speaking of the Federal agencies--as far as possible, to correlate the Federal and State interests.

There, at no time, was any desire on the part of the compact commissioners to disregard the legitimate, well-recognized Federal interests, but there was a desire and a belief that the interest of the State and the Federal Government could, and we believe in this compact, has been correlated.

Mr. Glenn L. Parker, who has just testified here before your committee, was watchful and mindful of the Federal interests, but he at all times, assumed a position of giving due concern to the interest and desires of the States.

As has been stated here, this compact has been ratified by the legislatures of the three signatory States without any reservations or modifications.

Senator McCarran. Have we certified copies of those acts of ratification?

Mr. Stone. I do not know whether they have been certified up here or not.

Senator McCarran. I suggest they might go into the record if they are available.

Senator Butler. They went to the Secretary of State. I have a copy of the letter from the Governor of Nebraska.

Mr. Stone. The fact that this ratification by the States has taken place, speaks for itself. It indicates that in the view of the legislatures of those

three States, the allocations are fair and equitable. It is the view of the States that these allocations and the other provisions of the compact adequately protect the use of the water for irrigation, domestic, and other purposes.

Aside from the terms of the compact, providing for equitable allocation of the waters of this river among the three States, there are other provisions which carry out the purposes of the compact. One outstanding purpose of the compact is to provide for the most efficient and beneficial use of the water of that basin for all purposes, and to provide for protection against destructive floods.

It should be noted that in the early part of the compact, it is specifically stated that this compact and the terms therein expressed, do not constitute a precedent, and that by the ratification, through the State legislatures and approved by the Congress, it shall not be taken as a precedent. The terms of the compact, are made necessary because of the physical conditions which exist in the basin affected. Beneficial consumptive use is the basis and principle upon which the allocations of water are made to the three signatory States. The correlation of the Federal jurisdiction with such beneficial consumptive uses brought about and presented the difficult problem which was encountered in the making of this compact.

Reference has been made here by Mr. Parker, that the paramountcy clause was considered. The consideration of that clause is significant, because it was felt at the beginning that it probably accomplished the purpose of correlation of Federal jurisdiction and beneficial consumptive use. In the former compact which was before this Congress, the States had included a provision that the Republican River and tributaries within the basin, are not navigable, and consumptive uses of water shall constitute paramount use.

The objection at that time, was largely directed to the statement that the waters of the river were not navigable. During the deliberations of the Irrigation and Reclamation Committee in the House, there was given consideration to a statement coming from the Federal Power Commission, that there would be no objection to the statement that the use of the waters of the Republican River and tributaries thereof within the basin for beneficial consumptive use shall constitute paramount use, and any other use shall be subordinated thereto. Before negotiations were undertaken by the State, following the veto of this compact by the President, an effort was made to ascertain whether, if a new compact negotiation were undertaken, there would be objection to that clause on the part of the Federal Power Commission. The State commissioners were advised, as were others from these States, that there would be no such objection. For that reason, it was thought desirable that rather than attempt to compact without first obtaining the authority of the United States Government and having a Federal representative appointed, we should proceed in that way and obtain, if possible, a congressional authorization and the designation of a Federal representative. It was the belief then that all the Federal views could be correlated and worked out during the negotiations. We first encountered objection on the part of the Federal Power Commission to this clause, which we believed, had been recommended by it. However, that clause was contained in the compact, as tentatively drafted in the first meeting at Denver, Colo. Following further objection to that clause, it was eliminated in the Lincoln conference. However, the retention of that principle, in an effort to do away with the objections to

the clause as first proposed, was incorporated in the Lincoln draft. In other words, the present draft adopted at Lincoln, contains reference to beneficial consumptive use as being paramount, but it does not include the clause as objected to, and as it appeared in the Denver draft.

The question was whether the compact shall be limited to, and deal exclusively with, allocations among the States or whether an effort should be made in this compact to foresee claims made under the Federal jurisdiction in the future, which would have the effect of defeating and interfering with the beneficial consumptive use of water by the States. Naturally, these States felt that if their citizens should proceed under this compact, and throughout the years build up benefits by irrigation, those benefits should not be defeated later because of Federal claims which would arise for various uses lower down on the river. For that reason, it seemed constructive and desirable to provide for the highest beneficial use of this water, recognizing at all times that its principal use in the upper basin would be for growing crops and for domestic purposes, and to protect that use in the future.

Therefore, a new approach was made in compact making, and article XI was incorporated in this compact. That article follows a declaration that it is not intended to defeat Federal jurisdiction. In order to correlate that Federal jurisdiction, with these beneficial consumptive uses which we must keep in mind constitute the basis and principle upon which the allocations were made, there should be recognition by Congress of those beneficial uses.

It should be noted here that a question arose as to whether a mere approval by Congress of a compact would effectuate provisions put in the compact for the protection of beneficial consumptive use. It was the conclusion and decision finally that mere approval would not effectuate that purpose--that mere approval would not be sufficient. Therefore, article X provided that, if this compact is approved by the Congress it should be approved by including in the approving legislation certain stipulations or provisions. Article XI provides for the inclusion of such provisions.

I should like to go over briefly those provisions. It seems to me that they constitute the formula for composing what might be considered to be differences between beneficial consumptive use which is regulated under State laws, and Federal jurisdiction.

I should also like to remark that it is not the desire, nor was it the purpose, of the State commissioners, nor of the States through ratification, to dictate to Congress that such legislation should be adopted; but in order to accomplish the purpose attempted in this compact, it was believed that it was necessary for the States to indicate that if this compact is approved, it should be approved by the inclusion of these stipulations or provisions in the approving legislation. Accordingly, article XI provides that the compact shall become operative when ratified by the legislatures of each of the States, and when consented to by the Congress of the United States by legislation providing, among other things:

- (a) Any beneficial consumptive uses by the United States or those acting by or under its authority, within a State of the waters allocated

by this compact, shall be made within the allocations hereinabove made for use in that State and shall be taken into account in determining the extent of use within that State.

The effect of that provision is, if Federal agencies construct, let us say, a reclamation project, or any other project through Federal financing, those Federal agencies shall recognize these compact water allocations, and in those projects provide for the use of water in accordance with the terms of this compact. If that provision were not included, gentlemen, there would be a question whether Federal agencies would be compelled to respect these compact allocations of water.

There is also a question of whether mere congressional approval of the compact would affect that purpose and, therefore, the necessity of this definite and positive legislative provision.

Subsection (b) might be termed the substitute of the so-called paramountcy clause, and it is offered as a reasonable substitute, taking into consideration what we believe to be legitimate objections to the paramountcy clause as formerly considered.

It provides:

The United States or those acting by or under its authority, in the exercise of rights or powers arising from whatever jurisdiction the United States has in, over, and to the waters of the basin, shall recognize, to the extent consistent with the best utilization of the waters, for multiple purposes, that beneficial consumptive use of the waters within the basin is of paramount importance to the development of the basin.

Anyone familiar with irrigation in the West will recognize that this is a fact. It is a fact in every part of the arid West; and it is a fact which we must recognize if we are to sustain the economy of, and continue irrigation development in, the West. Any exercise of Federal jurisdiction which defeats this purpose of beneficial consumptive use, we believe in the end will defeat and seriously limit continued agricultural development in these arid States.

This provision also provides:

and no exercise of such power--

That is, the Federal jurisdiction--

or right thereby that would interfere with the full beneficial consumptive use of the waters within the basin shall be made except upon a determination, giving due consideration to the objectives of this compact, and after consultation with all interested Federal agencies and the State officials charged with the administration of this compact, that such exercise is in the interest of the best utilization of such waters for multiple purposes.

To my mind, no principle is more important than that we should obtain the highest beneficial use of those waters, and in thinking of the problems here

The major purpose of this compact is to provide for the most efficient use of the waters of the Republican River Basin.

This water has been allocated between the three States. It is believed that the compact equitably apportions the average available water supply of this basin in such a manner and in such amounts as will protect all existing uses, and that the available water supply, when regulated by storage works, will adequately meet future requirements for domestic irrigation, industrial and recreational purposes.

This compact, by its recognition and correlation of the inherent rights of the signatory States and the Federal Government, provides a sound and constructive basis for the regulation, control, and the most beneficial uses of the waters of the basin.

Senator Butler. I do not know that there is anybody here representing Mr. Knapp, the Kansas member of the compact commission.

Congressman Carlson spoke to me before he was called back to the House. I would like to have permission to bring that over a little later, and incorporate it in the record at this point.

Senator McCarran. That is his statement?

Senator Butler. The statement from the Kansas member of the compact commission.

(The statement referred to is as follows:)

Statement of Representative Frank Carlson of Kansas

Mr. Chairman and members of the Irrigation and Reclamation Committee of the Senate, I appreciate very much the privilege of appearing before your committee in behalf of S. 649. S. 649 is a companion bill of H. R. 1679, introduced by Congressman Curtis, of Nebraska, giving congressional consent to the water compact between the States of Colorado, Nebraska, and Kansas. The compact has recently been ratified by the legislatures of the three States, the Kansas Legislature by a vote of 96 to 0 in the House and 34 to 0 in the Senate.

I am advised by Mr. George S. Knapp, chief engineer of the division of water resources for the State of Kansas, who was one of the compact commissioners, that this compact was drawn with the cooperation of Mr. Glenn L. Parker, a representative of the United States working with the Commission. Mr. Parker has signed a statement which is appended to the compact and in which he reports favorably the work of the commissioners.

Last year I introduced H. R. 5945, which was approved by the House and Senate. It was vetoed by the President of the United States on April 2, 1942. He stated in his veto message of that date:

"While I find it necessary to withhold my approval of the legislation in its present form, I would be glad to approve a bill which, in assenting

to the compact, specifically reserves to the United States all of the rights and responsibilities which it now has in the use and control of the waters of the basin."

The new compact, which has been ratified by the State legislatures, has been drawn with the express purpose of meeting the objections in the Presidential veto. It is my sincere hope that the Senate committee will report favorably on the same. The Great Plains area is badly in need of retaining the water that falls in that area. The States have reached an agreement on an equitable distribution of this water, and I am positive the early enactment of this legislation with the amendments which have been suggested will speed the day when the States and Federal Government can cooperate in working out a water-control program.

With your permission I would like to include a copy of a letter written by George S. Knapp, chief engineer, division of water resources of Kansas, written Hon. Payne H. Ratner, Governor of Kansas, on January 7, 1943.

Kansas State Board of Agriculture
Topeka, Kans., January 7, 1943.

Hon. Payne H. Ratner,
Governor of Kansas, State House, Topeka, Kans.

Dear Governor Ratner: I have the honor to report that a compact between the States of Colorado, Kansas, and Nebraska providing for the equitable division and apportionment of the waters of the Republican River Basin was completed at Lincoln, Nebr., on the 31st day of December 1942. Mr. Glenn L. Parker, representative of the United States upon the commission, has signed a statement appended to the compact stating that he proposes to report favorably thereon to the Congress of the United States.

A compact covering the same matter was signed at Denver, Colo., on March 19, 1941. Thereafter it was ratified by the legislatures of the three States. Later an act approving the compact passed both Houses of Congress but was vetoed by the President.

In his veto message the President stated that while he approved of the purpose of the compact as a means of making the necessary apportionment of the waters of the basin, the compact was unsatisfactory in that it sought to withdraw the jurisdiction of the United States over the waters of the Republican River Basin for purposes of navigation; it appeared to restrict the authority of the United States to construct irrigation works, and would unduly limit the exercise of the established national interests in such development. He stated further that he would be glad to approve a bill which, in assenting to the compact, specifically reserved to the United States all of the rights and responsibilities which it has in the use and control of the waters of the basin.

Subsequently the Congress enacted legislation giving consent to the three States to negotiate a new compact upon the condition that a person, to be appointed by the President of the United States, should participate

with the States as the representative of the United States. In conformity with that authority, the President appointed Mr. Glenn L. Parker, chief hydraulic engineer, United States Geological Survey, as the representative of the United States.

In redrafting the compact the principal purpose has been to rewrite it to the extent deemed necessary to meet the objections voiced by the President in his veto message. No change has been made in the apportionment of the water between the three States. There has been some change in arrangement of subject matter and in phraseology. Specifically, the changes are these;

(1) The declaration in article I of the original compact, that the Republican River and tributaries thereto are not navigable has been eliminated from the new article I.

(2) Article II, containing a definition of terms, has been enlarged by the inclusion of additional definitions and by the transfer of some of the material in the earlier article I.

(3) In the new compact articles III and IV have been transposed but with no change in the amounts of water apportioned to each of the States.

(4) Article V, recognizing a decree of the Federal court affecting the States of Colorado and Nebraska, is identical in both drafts.

(5) Articles VI, VII, and VIII, while reworded, cover the same subject matter. The changes in phraseology are made only for the purpose of clarification.

(6) There is an addition to article IX of the new draft. The purpose of this is to authorize the United States Geological Survey to collaborate with the officials of the States in the collection, correlation, and publication of water facts necessary for the administration of the compact.

(7) The material in the original article X has been transferred to the latter part of the new article I. The new article X is designed to meet certain of the President's objections to the original compact.

(8) The new article XI, in addition to retaining the essential portions of the original article XI, contains new material also calculated to meet the President's objections and to embody suggestions of certain of the Federal departments.

(9) All of the new material in articles X and XI was prepared by the Federal representative after consultation with various Federal departments and agencies, and was adopted by the compact commissioners after thorough discussion and after some changes intended to safeguard also the rights of the States and of the water users in the States.

This compact has been executed in quadruplicate originals, one of which is to be deposited by the Federal representative in the archives of the Department of State of the United States, and the other three of which are to

be forwarded to the Governors of each of the three States by their respective commissioners.

I transmit herewith the Kansas copy of the compact. I trust that the compact will receive your favorable consideration and urge that it be transmitted to the forthcoming session of the legislature for ratification.

Respectfully submitted.

George S. Knapp, Chief Engineer.

Senator Butler. Then Wardner G. Scott, is the next member of the Commission for Nebraska. He is present.

Senator McCarran. Mr. Scott.

Statement of Wardner G. Scott, Compact Commissioner,
Representing Nebraska

Senator McCarran. State your name and official position.

Mr. Scott. Wardner G. Scott. I am compact commissioner for Nebraska, Republican River Compact, State Engineer, and head of the Department of Roads and Irrigation, State of Nebraska.

This matter has been very ably and fairly covered by Mr. Parker and by Judge Stone. I believe article I of the compact sets forth in concise and clear language the objectives of the compact commission in attempting to formulate this compact.

It states that the major purpose of the compact is to provide for the most efficient use of the waters of the Republican River Basin; to provide for an equitable division of such waters; to recognize that the most efficient utilization of the waters within the Basin is for beneficial consumptive use; and to promote joint action by the States and the United States in the efficient use of such water.

The first duty, of course, of the commissioners, the first concern was the determination of the water supply.

After assembling such data an attempt was made to equitably distribute that water between the States on the basis of beneficial use. We believe with the data available, we have made a fair and reasonable determination of the water supply of the basin, and also an equitable division of that water supply between the States.

The commissioners at all times were aware of the fact that there were many diversified interests and that not only should the certain rights of the States be protected as between themselves, but that rights as between the States and the Federal Government should be set forth clearly.

It was the intention--and I believe I speak the opinion of the three commissioners--that every interest or right of anyone who might at the present, or

in the future, have an interest in the beneficial use of the waters of the Republican River Basin, be looked after.

I wish to urge that the committee report this bill out, and we, in Nebraska, are very anxious that this compact be ratified by the Congress, so that an orderly planning and development and utilization of the waters of the basin can be had in the near future.

I think that is all. Thank you.

Senator McCarran. Any questions?

Senator Butler. Mr. Scott, what is your opinion about the proposed amendments?

Mr. Scott. I believe the amendments are proper and satisfactory, as far as my personal opinion of them is concerned.

* * * * *

Statement of Floyd O. Hagie, Secretary-Manager
of the National Reclamation Association

Mr. Hagie. Mr. Chairman, my name is Floyd O. Hagie. I am secretary-manager of the National Reclamation Association.

For the benefit of the record, gentlemen, I think it might be said that the National Reclamation Association rather truly represents all of the irrigation, reclamation, and water conservation interests of the 17 arid and semiarid States of the West.

Because of the costly litigation and the delay in development that has taken place among the Western States in the past, through failure to have interstate compacts on the division and use of water among States; and because of the conflict of opinion among Federal agencies, and as between the Federal Government and the States, with reference to water rights, the National Reclamation Association has a great interest in this particular compact. This compact I think, perhaps more successfully than any other compact, successfully meets the latter of those two issues. Of course this is not the last conflict over control and use of water among the Western States.

I think this committee has before it, or has had referred to it, a bill to grant to the States of the Missouri River Basin the right to negotiate a compact to determine control and use of that stream. There again the States affected are looking toward a compact as a means of settling important issues which can be successfully settled in no other way.

The National Reclamation Association, at its last annual meeting in Denver, Col., passed a resolution on this subject and I think it might be well if this resolution were read here, because I believe the language of the resolution might indicate to you how seriously the people interested in the water resources of the West are considering the very issues that are before your committee today.

With your permission, I will read this resolution for both the benefit of the committee and the record.

Senator McCarran. You may read it.

Mr. Hagie. I shall read it, not only because of what it says on these two subjects, but because you will get some other implications that will be evident as I proceed.

This resolution is known as Resolution No. 10, adopted October 16, 1942, by the National Reclamation Association, at Denver, Colo.

Senator Butler. 1942?

Mr. Hagie. Yes, sir; 1942.

(The resolution referred to is as follows;)

Whereas Federal and federally authorized projects for the use and control of water should not subordinate or impair the other water uses or rights, whether State, municipal, or private, in the States having such projects but should be treated on the same basis; and

Whereas where two or more States are on the same stream or body of water, each State is justly entitled for itself and its people to an equitable division or apportionment of the use of the water constituting the common source of supply, as, in suits between States, has been held by the Supreme Court of the United States; and

Whereas the foregoing principles of water use, in accordance with State laws and as between States are applicable not only to the States of the West maintaining the appropriation system of water law but as well to the States of the East where the riparian system of water law is in effect; and

Whereas State laws do not obstruct but permit and favor the functioning of Federal and federally authorized water projects: Now therefore be it

RESOLVED, That Federal legislation hereafter enacted should contain, and Federal legislation already enacted should be amended to contain, provisions to the effect:

(a) That the water uses connected with such projects should be, as to their legal incidents, in accordance with the law of the State containing the project, or if points of water diversion or impact are situated in more than one State, then according to the law of the particular State containing such point or points of water diversion, or impact, and according to any applicable interstate compact.

(b) That, in case of more than one State upon the same stream or body of water, such water uses in a State containing the project should be without prejudice to the right of the other State or States to an equitable division or apportionment of the water uses of the common supply whether the project for the use of the water is Federal or federally authorized or is

a State, municipal, or private undertaking; and be it further

RESOLVED, That the officers of this association are directed to call the attention of the States of the East to their common interest with the States of the West in respect to the legal relationships between the States and the Federal Government and between State and State, and they are directed to invoke support by the States of the East of the foregoing principles relating to water use; and be it further

RESOLVED, That the officers of this association are hereby directed to take all necessary steps, including appearances before committees of the Congress, interviews with Members of the Congress and officers of the executive branch of the Government, securing the introduction of bills and any other proper means, to give effect to the foregoing program of this association, and the secretary-manager of the association is directed to send copies of this resolution to the President of the United States, to all Members of Congress, to the Secretaries of War and Interior and Agriculture, to the Chief of Army Engineers, to the Commissioner of Reclamation, and to the Governor of each State.

I think the West is aware today, more than it ever has been before, of these conflicting interests, and I believe that the thing you are doing today, in the consideration and probable approval of this compact, constitutes not only the best, but the only, answer to the question that is before us, a very serious question, as our people in the West know.

Thank you.

Senator McCarran. Thank you very much, Mr. Hagie.

Are there any other questions?

Senator Millikin. No.

Senator Butler. Mr. Page?

Senator McCarran. Mr. Page, of the Interior Department.

Statement of John C. Page, Commissioner,
Bureau of Reclamation

Mr. Page. I have only one or two random statements to make.

My name is John C. Page. I am Commissioner of the Bureau of Reclamation.

The first statement is that I am hopeful that this compact may receive the consent of the Congress, because it is a step in the direction which I had felt for a long time necessary and desirable for the development of the West.

Through my own experience with the Bureau of Reclamation, I have seen many occurrences where litigation has been long continued without beneficial results. If this compact method can eliminate the litigation of the kind aptly illustrated

by Mr. Ryan, in talking about the litigation on the North Platte in which two or three States are involved, I would think that a remarkable forward step had been made. The probable cost of that particular suit to the United States has been, at least--oh, I would guess, a half a million dollars, and the States have had very measurable drains in the same way. I therefore, want to impress upon the committee that the statement made by the Secretary of the Interior, in his report on this bill, is a combination of ideas which, I think, represents the thinking of all of us, who are trying to help develop the West.

Thank you, Mr. Chairman.

Senator McCarran. Are there any questions?

Senator Butler. The statement or report from the Department of the Interior, I presume, should go in here at this point.

Senator McCarran. I think it should go into the record right at this place.

Thank you very much, Mr. Page.

Mr. Page. Thank you.

(The report from the Secretary of the Interior is as follows:)

Department of the Interior,
Washington, March 30, 1943.

Hon. J. H. Bankhead,
Chairman Committee on Irrigation and Reclamation.
United States Senate.

My Dear Senator Bankhead: Further reference is made to your letter of February 15 concerning S. 649, a bill relating to the proposed Republican River compact.

In my letter of February 24, I stated that I proposed to report favorably on S. 649 without suggestion of amendment. I do recommend enactment of this bill, although a further review of it leads me to suggest some minor amendments.

First, I believe that a more comprehensive and informative title would be useful. The following is suggested in lieu of the present short title:

"A BILL To grant the consent of Congress to a compact entered into by the States of Colorado, Kansas, and Nebraska relating to the waters of the Republican River Basin, to make provision concerning the exercise of Federal jurisdiction as to these waters, to promote flood control in the basin, and for other purposes."

Secondly, it is suggested that the words "and approval" or "and approved" as the case may be, appearing in line 3, page 1; lines 18 and 19,

page 14; and lines 6 and 7, page 16 be stricken. These words appear to be unnecessary and not strictly in keeping with the constitutional provisions relating to the making of interstate compacts. That provision speaks only of consent by Congress, not consent and approval (Constitution art. I, sec. 10, clause 3). That provision, it is noted, seems to have been in the minds of the Compact Commissioners in drafting the compact, for article XI dealing with the Federal legislation speaks only of consent by the Congress.

Thirdly, it is suggested that the prefacing language in section 2 (a) of the bill (lines 17, 18, and 19, page 14) might be rephrased as follows:

"In order that the conditions stated in article XI of the compact hereby consented to shall be met and that the compact shall be and continue to be operative, the following provisions are enacted * * *."

Finally, for consistency between the bill and the compact, it is suggested that the initial letter of the word "basin" be capitalized where it appears in lines 4, 7, 8, and 11 of page 15 and in line 8 of page 16.

None of the foregoing four suggestions are matters of substance so far as the bill is concerned, and they do not affect the compact in any particular. They are made only in the interest of greater clarity and accuracy in the statement of the bill and its title.

This department has considerable interest in the Republican River Basin and in the problems presented in connection with the full development of its water resources. For that reason, I take this occasion to review some of the history of the efforts of the States of Colorado, Kansas, and Nebraska to negotiate a compact and to make clear the attitude of this department with respect to past efforts and the compact now under consideration.

Many Western States have come to a realization that difficult interstate water problems can be solved more satisfactorily through compacts, than by protracted and expensive litigation. These States have also taken the position, in recent years, in the case of streams which may be the subject of Federal jurisdiction under the commerce clause of the Constitution, that it is necessary, in addition to compacting among themselves, that they should know how water projects dependent on rights established under State law would be affected by the exercise of that Federal jurisdiction. Their position, as I understand it, is this: It is not feasible for them or those acting under their laws to undertake costly irrigation and related projects in interstate streams as to which the Federal Government may have such jurisdiction, unless there is reasonable assurance at the time such projects are undertaken that the water rights required therefor will be given consideration by the Federal Government in the event the latter should subsequently exercise its jurisdiction in a manner that would encroach on those water rights. Many of these States happen also to embrace arable though arid lands comprising the drainage basins of streams which are tributary to navigable rivers coursing through more humid regions of the Nation. These States are concerned lest the undertaking of projects on the navigable reaches of such rivers prevent the fullest economic use of the waters arising within their boundaries in the development of these

arid lands.

In river basins such as that of the Republican River, the State and local interests undoubtedly have a real basis for concern as to how the development of the basin through the consumptive use of water therein will be affected by the exercise of Federal jurisdiction over those waters. This department is also concerned about that problem and believes contrary to the view heretofore expressed by some Federal agencies, that the Federal Government can and should work out some legislative device to assist the States in their solution.

In the case of the Republican River Basin, the states first sought to solve the problem by including in a proposed compact, a declaration that the Republican River was not navigable. This draft of compact was prepared in 1941 without Federal participation.

Apart from the troublesome point as to navigability, there were several objections to the compact by this department. We sought to work out with the States interpretive amendments to the then pending legislation. But the legislation, after much debate centering around the jurisdictional point as to navigation, was passed without any amendments. The President felt obliged on April 2, 1942, to veto it, chiefly because of the jurisdictional point, but in doing so he expressly recognized the desirability of a compact being made if a mutually satisfactory basis could be found.

I think that there was justification for the original veto. I also believe, however, that, considering the physical facts as to the water supply of the Republican River Basin, and its prospect of development, the formula subsequently devised by the States with respect to possible conflicts between certain rights to the use of water established under State law, on the one hand, and the exercise of Federal jurisdiction on the other, is reasonable. It strikes me as being one also that both the compacting States and the Federal Government will find adapted to the fostering of the fullest economic development of the water resources of the Republican River Basin.

With respect to these possible conflicts in keeping with the requirements of article XI of the compact, that formula is proposed to be made operative principally through the provisions of section 2(a) (2) and 2 (a) (3) of the bill now before you.

I understand that, operating under such provisions, no Federal agency would be precluded from exercising to the full under appropriate existing or future Federal legislation whatever jurisdiction the Federal Government may have as to the waters of the basin, on the condition that if such exercise would interfere with the full and complete consumptive use of the waters in the basin that agency shall first consult with other interested agencies and shall then determine that, in its judgment, the exercise is consistent with the best use of such waters. Such provisions, however, would require the Federal Government to recognize certain established uses of water for domestic and irrigation purposes, if such uses are impaired by any Federal program or project undertaken in the exercise of such Federal

jurisdiction. Recognition would be by way of money compensation or some other equivalent adjustment.

The effect of these requirements is to leave unimpaired the underlying Federal jurisdiction, but also to meet the problems that concern the States both as to the status of certain established rights as against the exercise of Federal jurisdiction and as to the undertaking of projects under that jurisdiction, that might prevent the full consumptive use of the waters in the basin. From the viewpoint of this department and for the Federal Government as a whole, I see no objection to these requirements as applied to the Republican River Basin. On the contrary, they should be conducive to the highest and most useful employment of the waters in that basin.

In my letter of February 24 attention was directed to the provisions of article I of the compact stating that the compact should not be taken as establishing any general principle as to other interstate streams. My principal concern were the formula in its present form to be applied to interstate streams with sizable hydroelectric-power developments or prospects, would be that the last clause of section 2 (a) (2) of the bill might be construed as governing every exercise of the Federal regulatory power over power uses. I think, however, that the clause was not intended to and would not support so sweeping a construction. I understand it to be applicable in cases where the exercise of Federal jurisdiction would interfere with or prevent "full beneficial consumptive use" of waters within the basin, such as by requiring or providing for the use of water outside the basin. I do not understand the clause to mean that existing regulatory jurisdiction could be exercised in any case, as to a use for hydroelectric production within the basin only after the consultation and determination provided for in section 2 (a) (2), for the exercise of such regulatory jurisdiction of itself would not "interfere with the full beneficial consumptive use of the waters within the basin."

It happens that in the case of the Republican River Basin prospects for the development of power are of no great moment, so that the remote possibility of a construction of section 2 (a) (2) along the lines suggested is not important. I call attention to the point, however, so that the possible ambiguity can be removed by some rephrasing of the provision should the Congress wish to apply a similar formula to an interstate stream where the production of hydroelectric power would be of considerable importance. I would suppose, of course, that the application of such a formula to other streams would depend on the particular circumstances of the case, and that those circumstances would determine the manner of its statement.

One other point concerning the proposed compact should be noted. It may be recalled that this department considered it necessary to raise several objections to the draft of compact negotiated by the States in 1941. None of these objections are now present, since they are adequately met by the saving provisions of article X relating to various Federal interests.

The Director of the Bureau of the Budget advises that this report would not be in conflict with the program of the President.

Sincerely yours,

Harold L. Ickes,
Secretary of the Interior.

Senator McCarran. Are any representatives here from the Army Engineers who care to be heard?

Statement of Joseph W. Kimball, Legal Branch
Army Engineers

Mr. Kimball. I am Joseph W. Kimball, from the legal branch of the Army Engineers. I think there is nothing I need add for the War Department.

Senator McCarran. Generally speaking, I take it, we might consider that your approbation of that which has been said?

Mr. Kimball. The War Department has not taken a position favoring article XI of the compact, but we take the position that we have no objection to it. It will not interfere with our projects. We are not endorsing it, and not recommending it.

Senator McCarran. Thank you very much.

Senator Butler. The report of the War Department, I suppose, may go in the record at this point?

Senator McCarran. Yes; it may go in the record at this point.

(The report referred to is as follows:)

War Department,
Washington, D. C., March 30, 1943.

Hon. John H. Bankhead,
Chairman, Committee on Irrigation and Reclamation,
United States Senate, Washington, D. C.

Dear Senator Bankhead: I refer to your letter of February 20, 1943, requesting a report on Senate bill No. 649, to promote flood control in the basin of the Republican River, and for other purposes.

It is proposed by the bill to grant the consent of Congress to a compact or agreement entered into by the States of Colorado, Kansas, and Nebraska, with respect to the waters of the Republican River Basin.

The compact which is recited in the bill provides for a division of the waters within the basin and for their efficient utilization by the States for beneficial consumptive use.

The term "beneficial consumptive use" is defined to be that use by which the water supply of the basin is consumed through the activities of man, including that lost by evaporation from constructed reservoirs, canals, ditches, and irrigated areas. From this definition and related provisions, it seems clear that utilization of the waters of the basin primarily for

the irrigation of agricultural lands is the major purpose of the compact.

There is no record of any use of the Republican River for commercial navigation, and no survey of the river with a view to navigation regulation or improvement has ever been made by the Department or authorized by Congress. Surveys for flood control have been authorized, however, and in the Flood Control Act of 1941 Congress expressly adopted a project for the construction of a reservoir at a site on the river in Harlan County, Nebr., recommended by the Chief of Engineers in a report printed in House Document No. 852, Seventy-sixth Congress, and also authorized such other supplemental flood-control works as the Chief of Engineers and the Secretary of War may deem advisable. Work on this project has not been started, and owing to conditions created by the War emergency, is not likely to be begun in the near future. The prosecution of this and similar projects for the control of floods which Congress may hereafter sanction is the only Federal interest committed to the War Department that would be affected by the compact.

Articles X and XI of the compact directly relate to the exercise of Federal rights in the waters of the river and its tributaries, and, if approved by Congress, the right to prosecute flood-control projects would be subject thereto. Article X provides, among other things, that nothing in the compact shall be deemed to impair or affect any rights, powers, or jurisdiction of the United States in and to the waters of the basin, nor its capacity to acquire rights in and to the use of said waters. This amounts to a substantial reservation to the United States of its existing rights in the river and its tributaries and in itself is satisfactory and adequate. It is qualified however, by the provisions of article XI which impose certain restrictions on the exercise by the United States of its rights and powers, and make the express consent of Congress to these restrictions a condition precedent to the compact's becoming operative. It is deemed proper to point out that in its form and substance article XI is unusual in instruments of this kind, and to suggest that the question of the expediency of such an innovation merits the special attention of the committee.

Upon careful consideration of the compact in its entirety the War Department is of the opinion that its approval by Congress would not cause any serious interference with the prosecution of the presently authorized flood-control project, or with the carrying out of any project which Congress may hereafter authorize. From the standpoint of the Federal interests committed to its charge the Department sees no objection to the enactment of the bill, S. 649.

The Bureau of the Budget advises there is no objection to the submission of this report.

Sincerely yours,

Henry L. Stimson,
Secretary of War.

Senator McCarran. The Department of Agriculture, Mr. Phillips.

Statement of George R. Phillips, Office of Land Use
Coordination, Department of Agriculture

Mr. Phillips. My name is George R. Phillips. I am of the office of Land Use Coordination, Department of Agriculture. I do not have much to add, Mr. Chairman, to the report of the Department favoring the compact, and the enactment of the proposed legislation.

Senator McCarran. That report is here?

Mr. Phillips. It is before the committee, I believe; yes.

Senator McCarran. That will also be put in the record at this point.

Senator Butler. I request that the following letter from E. H. Wiecking, land-use coordinator, Department of Agriculture, be inserted in the record at this time:

Department of Agriculture,
Washington, March 12, 1943.

Hon. Hugh Butler,
United States Senate.

Dear Senator Butler: I have your letter of February 27 with the attached copy of a letter to Commissioner John C. Page of the same date.

A report on the upper Republican River Basin in the States of Nebraska, Colorado, and Kansas was prepared for guidance of Department activities under the water facilities program about a year and a half ago. This report contained rather comprehensive information on the upper Republican Basin with regard to its water and land resources and agricultural developments to date and potentialities for the future. In general, information on the basin was divided into reports on various segments, or subareas, of it.

In the report on the portion of the basin in which I gather you are most interested, that designated as the western section of the main stem of the Republican River between Benkleman in Dundy County, and the eastern line of Gosper and Furnas Counties, it was brought out that soils there, as in other parts of the basin, are very fertile. In the subarea referred to, they belong to the Chestnut and Chernozem soil groups. Within this subarea the rainfall averages about 19 inches in the western portion and nearly 23 inches in the eastern portion, and 2,396 square miles contribute to surface discharge. The mean annual discharge is 52,800 acre-feet. In addition to that originating within this segment, some other water is available from upstream discharge so that a total of 80,600 acre-feet of water could be available for use in this area under the water facilities plan for the basin as a whole. Within the subarea there are 56,653 acres of first-grade irrigable land. The report recommends that the available water supply be utilized for the irrigation of 43,094 acres of this land since

there is not sufficient water to properly irrigate all of it.

If available waters of the Republican are developed so they can be applied to the available land in the manner suggested, they would undoubtedly result in a greatly increased production of agricultural crops and livestock products within the area. The average yield of corn in the State of Nebraska as a whole for the period 1930-39 was 14.6 bushels per acre per year. In 1940 it was 17 bushels, and in 1941 it was 23.5. Under irrigation Republican bottom lands have been reported in some cases to yield 75 bushels or better.

Increased quantities of feed to supply the winter needs of livestock grazed during the summer on adjacent uplands should add further to the volume of meat produced in the basin as a whole and would provide an assured supply of feed in the event of serious drought.

Other crops, such as dry beans, needed in increased quantities to supply war food needs could be produced in greater quantities within the area if irrigation water were developed.

Sincerely,

E. H. Wiecking, Land Use Coordinator.

Department of Agriculture,
Washington, D. C., March 30, 1943

Hon. J. H. Bankhead,
Chairman, Committee on Irrigation and Reclamation,
United States Senate.

Dear Senator Bankhead: I appreciate your February 19 invitation to comment on S. 649, a bill to promote flood control in the basin of the Republican River and for other purposes.

The compact has not yet been ratified by the legislatures of all participating States, but we are glad to comment tentatively upon it in order that you may have our views available pending ratification by the States.

This bill would give the consent and approval of Congress to the compact (authorized by Public Law, 696, 77th Cong., 56 Stat. 736) signed by the commissioners for the States of Colorado, Kansas, and Nebraska on December 31, 1942, after ratification by the legislatures of these States.

It would also provide (a) that any beneficial consumptive uses by the United States within a State, of the waters allocated by the compact, shall be made within the allocations made for use in that State and shall be taken into account in determining the extent of use within that State; (b) that the United States in the exercise of its rights or powers shall recognize, to the extent consistent with the best multiple use of the

waters, that beneficial consumptive use of the waters within the basin is of paramount importance to the development of the basin and that no exercise of such rights or powers that would interfere with the full beneficial consumptive use of the waters within the basin shall be made except on a determination that such exercise is in the interest of the best utilization of such waters for multiple purposes; and (c) that the United States will recognize any properly established use, for domestic and irrigation purposes, which may be impaired by exercise of any Federal jurisdiction.

Development of this compact has been under consideration for a number of years. At the invitation of the representative of the United States this Department has had a representative at meetings of the commissioners to prepare and consider the compact. We have felt that highest beneficial use should form the basis for use of the waters of the Republican River Basin.

The compact appears to set forth a reasonable and practical means of accomplishing this. Agriculture is the principal industry within the basin. Irrigation of considerable acreages is desirable to assure a stable feed crop for the livestock produced on upland portions of the basin and to produce some cash crops.

This Department recommends passage of the bill.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely,

Grover B. Hill, Assistant Secretary.

Mr. Phillips. This Department has felt that the highest beneficial use--beneficial consumptive use--of water should form the basis for the use of the waters of the Republican River Basin. The compact sets forth a reasonable and practical basis for accomplishing this. Agriculture is the principal industry in the upper part of the basin, and irrigation of considerable acreages is desirable to assure a stable feed crop for the livestock produced on the upland portions of the basin, and to produce various cash crops.

In other words, this type of legislation should help make possible the type of development in the basin to which it is suited.

The Department recommends the passage of the bill.

Senator McCarran. Thank you very much.

Mr. J. W. Dixon, of the National Resources Planning Board.

Statement of J. W. Dixon, Chief, Water Resources Section,
National Resources Planning Board

Mr. Dixon. My name is J. W. Dixon. I am Chief of the Water Resources

Section of the National Resources Planning Board.

Gentlemen, our office has followed the development of the proposed interstate compact between the States of Colorado, Nebraska, and Kansas for allocation of the waters of the Republican River Basin above the mouth of the Smoky Hill River since its inception. We have done so because of our interest in and responsibility for the coordination of practical plans and projects affecting the use of or the control of waters and for their development with other resources.

When I speak of "our office" I speak of the Water Resources Section of the National Resources Planning Board as differentiated from the members of that Board. While the Board, as such, has not had an opportunity to consider the proposed Republican River compact, the water resources Section has given much consideration to the subject of interstate compacts, including this particular compact.

Less than a year ago we completed an analysis of all of the interstate water compacts, 1785 to 1941 and prepared an analytical table indicating their natures, purposes, and composition. Recognizing that such compacts historically have played an important part in the amicable settlement of interstate controversies, and recognizing that they have not always been as successful in their accomplishments as was originally hoped and desired, our objective was to determine which elements were most likely to lead to their success, to provide a practical yardstick by which the likelihood of success of a proposed compact could be measured in advance. In fact, one of the main causes of our initiating that and related analyses was the rough path along which the earlier Republican River compact struggled. I am pleased to note the very real progress made by the States and by the Federal Government in the progressive changes incorporated into the presently proposed compact for the Republican River Basin.

At the request of the representative for the United States, Mr. Glenn L. Parker, the director of the National Resources Planning Board arranged for Dean F. M. Dawson, our water consultant, to attend the meeting of the Commissioners, which was held in Lincoln, Nebr., on December 29 and 30, 1942. We were subsequently pleased to learn that Dean Dawson had made a contribution toward the basic requirement for further amicable development of the basin; that is, agreement among the States, on a basis which is compatible with the interests of the Federal Government. In his opinion, as in mine, the proposed compact represents a notable result of collaboration between the legal and engineering minds of the State and Federal Governments.

It is my understanding that the proposed compact reflects (a) agreement upon facts; (b) agreement upon allocation of waters; and, in my opinion, it reflects also the integrity of the officials involved. In the interest of comity and progress, the Federal and State interests have correlated their concerns in various rights. As a part of that process, the States desire that the Federal Government realize and recognize this by enacting into the law the provisions of section 2 of the bill.

We recognize that this is a new legislative practice in the field of interstate water compacts, and that it was adopted in this case, among other reasons

because of the differences among the laws of the States concerned.

It has certain merits, particularly in the Republican River Basin, for it provides a means whereby the Congress and the President, in acting upon a compact, may be apprised clearly of the fact that, while a compact is actually an agreement among States, there are reciprocal responsibilities between those States and the Federal Government. The degree of proposed reciprocity for the Republican River is set forth clearly in section 2.

May I refer particularly to one item which I feel has been lacking in many interstate water compacts in the past, and which has led, in several cases, to the failure of those compacts. The item may be put into question form:

Should provision be made in compacts for reconsideration of specific provisions of articles, so as to permit their revision when desirable, due to changed conditions?

I am strongly of the opinion that some such provision should be incorporated in practically every compact. It will permit the compact to be adjusted by mutual agreement when the conditions and objectives which existed, or were thought to exist at the time the compact was drawn, have ceased to control the desires of the interest which are concerned. Without such a provision, a compact which may otherwise be good today may become an obstacle to further progress in the matter of a few decades, due to changing needs of the people or changing uses of the basin.

A notable provision of this character appears in article XIII of the Rio Grande compact which provides for periodic review of any provisions of that compact that are not substantive in character and which do not affect the basic principles upon which the compact is founded.

Article XI (b) and section 2 (a) (2) of the proposed Republican River compact are of this general character, insofar as the relation of the Federal Government to the States is concerned.

It is my opinion that the proposed Republican River compact represents progress in the technique of settling interstate water controversies by collaborative methods, thus avoiding the usual alternative of costly court proceedings which often require many years to culminate, and too often freeze rather than resolve some obstacle to ultimate best development. While the proposed compact may not contain some provisions which history would indicate are desirable, it does contain the most important of them, and is a practical instrument growing out of painstaking effort toward agreement.

In the interest of translating that progress from the paper stage to tangible development of the basin, the proposed compact should be acted upon favorably.

May I add that, due to the lateness of our knowledge, that this hearing was going to be held, it has been impossible for our Board to consider the proposed compact itself, and therefore, I speak only for the Water Resources Section.

Senator McCarran. Are there any questions?

Senator Millikin. No,

Senator McCarran. Thank you very much.

The Federal Power Commission. Is there anyone here representing the Federal Power Commission?

Senator Butler. They have a report in, Mr. Chairman.

Senator McCarran. There are two reports, a minority report, and a majority report; is that right?

Senator Butler. Yes; they both should appear in the record at this point.

Senator McCarran. Very well, they will be inserted in the record at this point.

(The reports referred to are as follows;)

Federal Power Commission,
Washington, D. C., February 27, 1943.

Hon. John H. Bankhead,
Chairman, Committee on Irrigation and Reclamation,
United States Senate, Washington, D. C.

Dear Chairman Bankhead: In accordance with your request, the Commission has examined S. 649, embodying the Republican River compact, and submits the following report.

We are in full accord with the basic purposes of the compact and heartily approve those sections of the bill which are in conformity with the act of Congress (Public Law 696, 77th Cong. 2d sess.) granting congressional consent to the States of Colorado, Kansas, and Nebraska to enter into a compact "providing for an equitable division and apportionment among the said States of the waters of the Republican River * * *." In fact, the Commission is keenly aware of the importance of water in the arid region of the West. It has issued no licenses and does not contemplate the issuance of any for power development in this area that would interfere with the laws of the respective States relating to the control, appropriations, use or distribution of water used in irrigation or for municipal or other uses.

The first 10 articles of the compact, which provide adequately for the equitable division and apportionment of these waters, are in substantial conformity with the enabling act and with the views expressed by the President in his message of April 2, 1942, vetoing H. R. 5945, in which the former Republican River compact was embodied. Such articles would seem to furnish the signatory States all the authority required to fully accomplish an equitable division and apportionment of water without impairment of the rights and responsibilities of the United States.

The provisions in article X if embodied in the enabling legislation

without the limitations imposed by article XI, would fully protect the sovereignty, rights, and interests of the United States and appear to satisfy the President's requirement that the legislation specifically reserve to the United States "all of the rights and responsibilities which it now has in the use and control of the waters of the basin."

Article XI of the compact, however, appears not merely to go unnecessarily beyond the provisions of the congressional consent but also to undermine the broad provisions of article X by restricting substantially the rights and interests of the Federal Government. This article would seem also to be objectionable from a legislative standpoint in that it encroaches upon the field of Federal legislative authority and seeks to dictate to Congress precise provisions upon which it is required to give approval.

Moreover, the language of paragraph (b) of article XI not only inhibits the United States from freely pursuing its jurisdictional powers but is confusing as to the method to be pursued in making a determination. There is left in doubt not only the matter of procedure but the extent of the influence that any objection may have upon the Federal authority.

Paragraph (c) of such article leaves open vital questions concerning impairment, determination of beneficial use and validity of action under the State law, and appears to open up the probability of years of litigation which would no doubt interfere with any program of the Congress for the development of the whole region and the fuller utilization of the waters of the basin.

Furthermore, the enactment of S. 649 in the form proposed would be contrary to the past action of Congress with respect to similar legislation. Heretofore Congress invariably has inserted in legislation ratifying compacts a provision that nothing in the compact should be deemed to impair or in any manner affect any right or jurisdiction of the United States.

In this regard your attention is directed to the following:

Interstate Sanitation District; Tri-State Compact (49 Stat. 932, 938, August 27, 1935; Delaware River Joint Toll Bridge Commission (49 Stat. 1051, 1058, August 30, 1935); Rio Grande Compact (53 Stat. 785, 792, May 31, 1939); Ohio River Drainage Basin Compact (54 Stat. 752, 756, July 11, 1940); Potomac Valley Conservancy District (54 Stat. 748, 751, July 11, 1940).

This commission would favor approval of a compact limited to the provisions contained in the first 10 articles of the proposed compact which would then be in substantial conformity with the clear intent of Congress, as expressed in the consenting legislation, as well as the views of the President, as set forth in his veto message.

Such a compact would unquestionably provide for "an equitable division and allocation among the said States of the waters of the Republican River" and afford a sound basis for the full development of the river basin, in conformity with the laws of the signatory States applying the use of the waters for domestic and irrigation purposes.

The commission therefore respectfully recommends that consideration be given to amendment of S. 649 to--

(1) Provide that congressional approval is limited to the first 10 articles of the compact;

(2) Eliminate section 2 in its present form and substitute substantially the language of article X of the proposed compact.

We believe that the above changes would safeguard the interests of the United States and would permit the States to proceed with their intrastate water uses with the full approval of the Federal Government.

In order to expedite the transmittal of this letter, it has not been cleared through the Bureau of the Budget. We are not, therefore, advised whether or not it is in accord with the program of the President.

Respectfully submitted,

Leland Olds, Chairman

Federal Power Commission,
Washington, March 30, 1943.

Hon. J. H. Bankhead,
Chairman, Committee on Irrigation and Reclamation,
United States Senate, Washington, D. C.

Dear Senator Bankhead: Thank you for your letter of March 27, 1943, advising of the meeting of the Senate Committee on Irrigation and Reclamation on March 31 to consider S. 649, and inviting the Commission, if it wishes to do so, to send a representative.

In response to your request of February 18 for its views on the matter, the Commission felt that, while it had the greatest sympathy with the major purposes of the Republican River Compact, it should bring to the attention of Congress certain provisions which appeared to be unnecessary and inconsistent with the Federal authority. We did so in our letter of February 27 addressed to you. We feel that the letter makes our position clear and that further presentation to the committee in the matter is unnecessary.

Sincerely yours,

_____, Chairman.

Federal Power Commission,
Washington, February 27, 1943.

Hon. Compton I. White,
Chairman, Committee on Irrigation and Reclamation,
United States House of Representatives,
Washington, D. C.

Dear Sir: Inasmuch as I am not in full accord with the views of the majority of the Federal Power Commission, set forth in their memorandum in response to your request for a report on H. R. 1679, I take this means of presenting my view.

The President in his veto message on H. R. 5945 of April 2, 1942, stated:

"While I find it necessary to withhold my approval of the legislation in its present form, I would be glad to approve a bill which, in assenting to the compact, specifically reserves to the United States all of the rights and responsibilities which it now has in the use and control of the waters of the basin."

In my opinion, H. R. 1679 meets the President's objections by the clear language of article X that--

"Nothing in this compact shall be deemed--

"(a) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority in, over, and to the waters of the basin; nor to impair or affect the capacity of the United States, or those acting by or under its authority, to acquire rights in and to the use of waters of the basin;"

and further that it does not contain the objectional provision of H. R. 5945:

"The Republican River and tributaries thereof within the basin as hereinabove defined, are not navigable, * * *"

I am in full accord with the purposes of the bill granting congressional consent to the States of Colorado, Kansas, and Nebraska to enter into a compact "providing for an equitable division and apportionment among the said States of the waters of the Republican River." It recognizes the vested rights of the citizens of the respective States but in language different from section 27 of the Federal Power Act, reading as follows:

"That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein."

Being a native of the State of Wyoming I have a comprehensive understanding of the problems of the water users of the arid States, and I

believe the proposed legislation is necessary and desirable in the public interest.

Yours very truly,

Claude L. Draper, Commissioner

cc: Senator Hugh A. Butler.
Representative Carl T. Curtis.

Senator McCarran. Now, Senator Reed has made a statement. If Senator Capper wishes to make a statement in writing, it will be inserted in the record.

Senator Millikin, do you wish to say anything more?

Senator Millikin. No. Thank you, Senator.

Senator McCarran. Congressman Curtis, do you care to make a statement now?

Senator Butler. I might say Congressman Curtis has been pioneering over in the House on this type of legislation for several terms and is here as an interested spectator today. We are hoping that his presence here will help move it along, in the House committee.

Statement of Hon. Carl T. Curtis, United States
Representative from Nebraska

Mr. Curtis. Mr. Chairman, I am not going to take but a moment here. I do urge the passage of this bill, and those amendments that have been suggested I think should be adopted. I have a companion bill now pending in the House.

Senator McCarran. Has that been amended accordingly?

Mr. Curtis. It is expected to be; yes.

I am in accord with all of those amendments, and I urge their acceptance. This compact, and its ratification by Congress, or Congress consenting to it, means a great deal to the district I represent.

I might say that the States have ratified, the Division of Water has ratified the proposition of how this water should be divided, twice. I think the compact commissioners have done a very good job. I want to comment favorably upon the work and appearance of Parker and Mr. Scott, as well as those two compact commissioners who are not present.

It will save us a great deal of money, both to the three States involved, and the Federal Government, if this compact is approved.

Senator McCarran. Do you think the saving of money might be necessary some time in the future?

Mr. Curtis. I think so, yes. I believe so.

I might add that the greater portion of the Republican River Valley is in

my district. I am interested in seeing that it is developed and the right be protected of every individual from one end of the valley to the other, and I am interested in the concern of all of these communities from out in the west end to the east end. Incidentally, most of this water is allocated to Nebraska and will be used in my district.

I certainly hope it will be approved.

Senator McCarran. Thank you, Congressman.

Now, as regards the amendments, Senator Butler, are you satisfied with the amendments, with their text and language at the present time?

Senator Butler. Senator Langer moved, before he left, the adoption of the amendment.

Senator McCarran. I know.

Senator Butler. I am favorable to all the amendments that I have proposed, which have been gone over very carefully with those who wrote the compact in the first place.

Senator McCarran. If there is no objection, the amendments offered by Senator Butler, including the amendment to the title of the bill, will be adopted, and they are adopted.

Is there anyone here now who would like to be heard on the bill, or any phase of it? If not, we are very grateful to you for your attendance here and for your comments and advice in the matter. Without objection the bill as amended will be approved and adopted by this committee. Senator Butler will make the report.

If there is nothing else to come before the committee we will stand adjourned.

(Whereupon at 1:30 the committee adjourned.)