

(PRELIMINARY DRAFT)

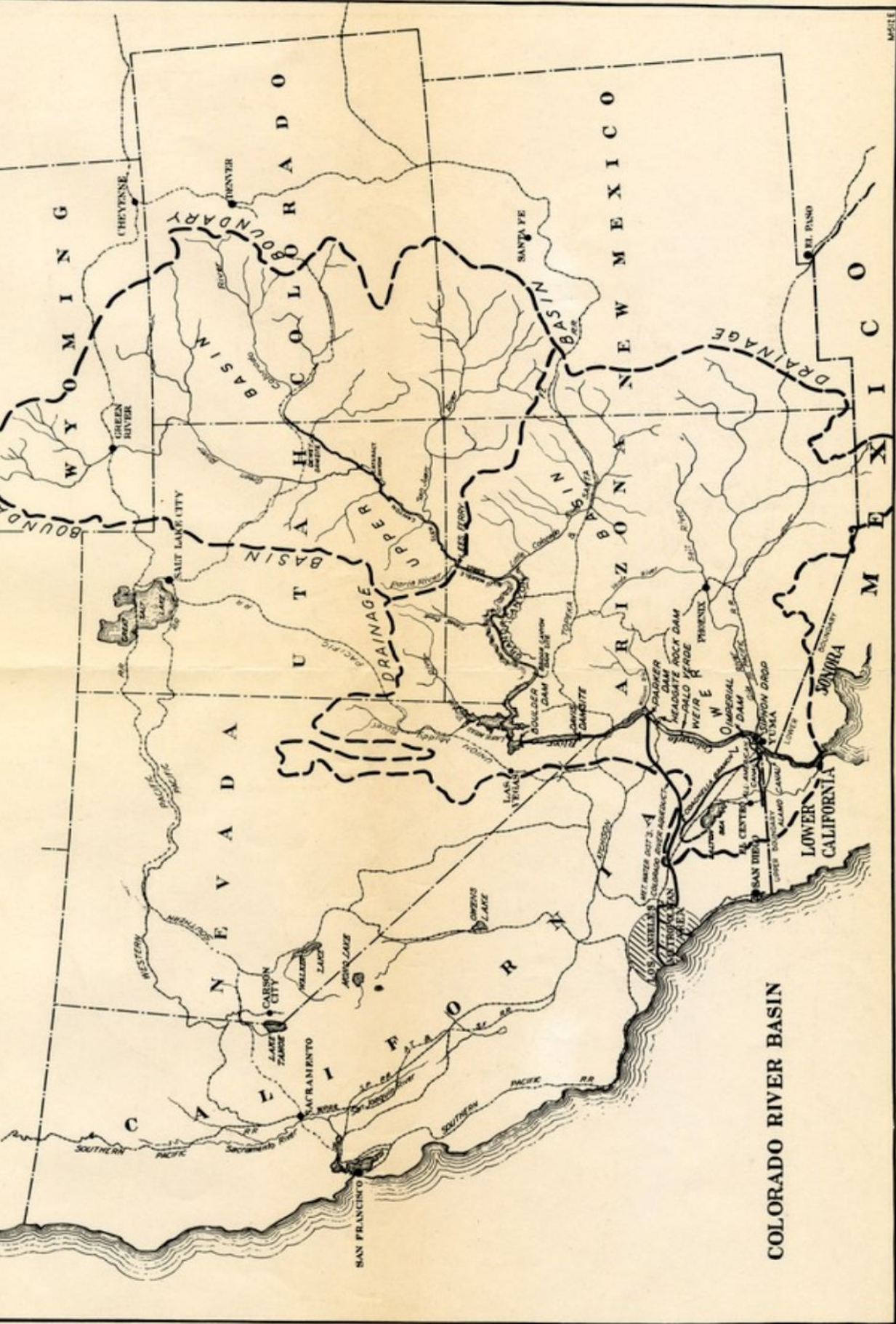
STATEMENT ON BEHALF OF CALIFORNIA
SUMMARIZING SOME OF THE REASONS FOR
OPPOSITION TO PROPOSED TREATY
WITH MEXICO
RELATING TO THE COLORADO RIVER

FOREWORD

This statement is not written in a spirit of animosity toward Mexico. The people of the Pacific Southwest have for generations lived and dealt with the Mexican people as neighbors. It is the purpose of this statement to defend water and property rights vested in communities of the Southwest under contracts solemnly executed by the United States, and to show the proposed impairment of those contract rights. Unwarranted generosity to Mexico, at the expense of American communities, is neither just to the latter, nor conducive to harmony among the peoples on both sides of the border.

COLORADO RIVER BOARD OF CALIFORNIA

Dated March 20, 1944.



COLORADO RIVER BASIN

To store, regulate and deliver this water, as ordered by Mexico, free of charge to Mexico;

To extend to Mexico the benefits of Boulder Dam, in flat contravention of the Project Act;

To create in Mexico a first right on the Colorado River to which all American rights must yield in event of conflict;

To deny water to American communities, in cycles of dry years, such as have occurred and will recur, in order to supply Mexican lands;

To impair the ability of the United States to perform its outstanding contracts with its own citizens;

To deprive American citizens of vested rights without compensation and without due process;

To deprive American communities of the benefits of works built and owned by them, for the advantage of Mexico;

To authorize construction of works in Mexico which would endanger and damage lands within the United States.

* * * * *

The following statement outlines, in brief, the physical and legal facts. It is submitted in the belief that, if these facts are known, the Senate of the United States will preserve the good faith of the United States, and will protect the vested contract rights of American citizens, by declining to ratify the proposed treaty.

I. PHYSICAL FACTS.

1. The Colorado River is a major continental stream draining one-thirteenth of the land area of the United States.

2. Its basin in the United States comprises 242,000 square miles; in Mexico, 2,000 square miles.

3. Its basin is divided into an Upper Basin (Wyoming, Colorado, New Mexico and Utah) and a Lower Basin (Arizona, Nevada and California).

4. All of its water comes from the United States; none from Mexico.

5. Its water supply, available in the future to satisfy all uses in the United States and Mexico below Boulder Dam during extended dry cycles, is estimated by the Bureau of Reclamations at not over $8\frac{1}{2}$ million acre-feet per annum.

6. Its unregulated flow was extremely irregular from year to year and was characterized by an early summer flood season of two to three months, followed by nine to ten months of low flow.

7. There are, in the United States, many natural sites where storage reservoirs have been or can be constructed to capture and conserve flood waters of the river. Mexico has none.

8. There are needs and opportunities for use, within the United States, of all of the water of the Colorado River. Accordingly, any gift of water to Mexico, as a matter of comity, will pro tanto curtail the development of communities in the United States.

II. HISTORICAL USE AND DEVELOPMENT.

1. In the United States, prior to construction of Boulder Dam, development of irrigation and domestic projects, using water from the main stream and many tributaries, proceeded independently in each of the seven states and chiefly under local, public or private agencies. Such uses, before Boulder Dam was built, reached such a great extent that they, together with Mexican uses, consumed the entire low-season flow, and indeed were, in dry years, subject to severe shortages.

2. Mexican uses, prior to Boulder, reached a maximum of 750,000 acre-feet per annum, averaged 600,000 acre-feet over a ten-year period; and in 1932 amounted to only 228,000 acre-feet. All such uses were made possible by irrigation works and protective levees provided by American initiative and capital. The water was even diverted in the United States, through structures built and owned by Americans.

III. COLORADO RIVER COMPACT.

In order to protect existing development in the United States and permit expansion by conservation of flood waters, Boulder Dam was proposed. The Upper Basin states objected, fearing that, by early development, the Lower Basin would appropriate so much water that the Upper Basin would be foreclosed from development. A solution was found in the formulation of the Colorado River Compact, an agreement among the states, in 1922, which apportioned certain water to each basin.

IV. BOULDER CANYON PROJECT ACT.

In 1928 Congress adopted the Act for construction of Boulder Dam and the All-American Canal. The Act approved the Colorado River Compact. However, Section 1 provides that the waters conserved by Boulder Dam shall be for "beneficial use exclusively within the United States." (The extension of the benefits of Boulder storage to Mexico would flatly violate the principle of the Act, namely, that the only permissible grant of water to Mexico must be measured by Mexico's use from natural flow.) Section 1 also authorized construction of a power plant at Boulder Dam. Section 5 of the Project Act authorized the Secretary of the Interior to contract for the delivery of stored water and prohibited use of stored water without such contract. Section 4(b) prohibited construction of the dam until the Secretary should have procured executed water and power contracts which would assure repayment to the United States of the cost of the dam and power plant.

V. BOULDER DAM CONTRACTS.

1. California Contracts. The Secretary of the Interior executed, with public and private agencies in Southern California, contracts for water and power which the Attorney General of the United States held sufficient to guarantee repayment of the cost of the dam and power plant. (Without these contracts, the dam could not have been built. Act, Sec. 4(b).) These contracts were made by the California agencies in good faith and in reliance upon

the good faith of the United States in observing the requirement of Section 1 of the Project Act that the stored water be used exclusively in the United States. These agencies, and others, in reliance upon their contracts, have expended and obligated themselves to expend, for construction of works and facilities for the use of Boulder Dam water and power, more than half a billion dollars. The California contracts obligate the United States to deliver for domestic and irrigation uses, 5,362,000 acre-feet per annum.

2. Arizona and Nevada Contracts. The Secretary of the Interior has also executed contracts with the State of Nevada for 300,000 acre-feet per annum and with the State of Arizona for 2,800,000 acre-feet per annum.

VI. THE ALL-AMERICAN CANAL.

1. Beside authorizing Boulder Dam, Section 1 of the Boulder Canyon Project Act authorized construction of a diversion dam across the Colorado River, now known as Imperial Dam and a main canal "located entirely within the United States," to carry water to an area of one million acres in the Imperial and Coachella Valleys in California. This All-American Canal was, by the terms of the Act, dedicated to the beneficial use of the waters conserved by Boulder Dam "exclusively within the United States".

2. Section 4(b) of the Act required that before construction of the canal should commence, the Secretary of the Interior must procure executed contracts which would insure repayment of the entire cost of the canal.

3. Section 7 of the Act grants to the agencies which contract to pay for the canal the power privileges on the canal. There are a number of important powerdrops on the canal. One of the largest, known as Pilot Knob, is located on the bank of the Colorado and so situated that water may be discharged from the power plant directly back into the river.

4. The Secretary of the Interior has executed, with Imperial Irrigation District, Coachella Valley County Water District and the City of San Diego, contracts wherein the United States agreed to construct Imperial Dam and the All-American Canal. The three public agencies agreed to pay to the Government the entire construction cost. The contracts provide that on completion of the works Imperial Irrigation District shall assume operation and maintenance of them. They also provide that all of the power possibilities on the canal shall belong to the three agencies and that the net proceeds from power development shall be theirs, to be paid on contractual debt to the United States until it is retired and thereafter to belong to the agencies. The Imperial Irrigation District contract provides, specially that there shall be built for that agency, and it shall pay for, additional canal capacity for 3,000 second-feet of water from the dam to Pilot Knob, for power generation by the District at the Pilot Knob plant. The three agencies agreed to pay for 2,000 second-feet of capacity in the canal from the dam to Syphon Drop, to carry water, free of cost, for the Yuma Project of the Bureau of Reclamation in Arizona. The three agencies

also agreed to pay a sum of \$1,600,000 to the United States on account of the cost of Laguna Dam, originally built in 1908 for the Yuma Project, but now considered a necessary appurtenance of Imperial Dam.

VII. THE MEXICAN TREATY.

By proposed treaty the United States is obligated with reference to the Colorado River:

1. To allot to Mexico a guaranteed annual minimum of 1,500,000 acre-feet of the surface flow of the river, to be increased, when water is available unused in the United States, to 1,700,000.

2. To deliver until 1980, 500,000 (and thereafter 375,000) acre-feet of the guaranteed 1,500,000 through the All-American Canal and the remaining 1,000,000 (or 1,250,000, after 1980) in the bed of the river, at the boundary. This water is all to be delivered according to certain schedules, but practically as and when ordered by Mexico.

3. To give Mexico a share of the net revenues of the Pilot Knob power plant on the All-American Canal.

4. To construct, operate and maintain, at its own cost, the Davis Dam, which will be used, in part, to regulate the comparatively equal monthly discharges from the Boulder power plant so as to meet the unequal monthly needs of Mexico.

5. To permit Mexico to build a permanent diversion dam at any point below the California-Mexico boundary ("Upper boundary"). This Mexico is forbidden by present treaties to do.

6. To construct or acquire, and operate and maintain, all works needed to deliver water to Mexico.

VIII. SUMMARY OF WATER SUPPLY AND REQUIRED USES.

The total water supply is subject to alternating wet and dry cycles of from 7 to 11 years. It is estimated by the Bureau of Reclamation upon studies of stream-flow over a 44-year period, that the average outflow from Boulder Dam, in the future, during critical dry cycles extending over ten or more years, will be 8,500,000 acre-feet per year. The supply and draft thereon is estimated as follows:

<u>Supply</u>	<u>Acre-feet</u>
Outflow from Boulder Dam - - - - -	8,500,000
Reservoir and other river losses below Boulder Dam - -	<u>600,000</u>
Available for use - - - - -	7,900,000
 <u>Requirements</u>	
Nevada Contract - - - - -	300,000
California Contracts - - - - -	5,362,000
Arizona Contract - - - - -	2,800,000
Proposed Mexican Treaty - - - - -	<u>1,500,000</u>
Total - - - - -	9,962,000
Available Supply - - - - -	7,900,000
Requirements - - - - -	<u>9,962,000</u>
Overdraft - - - - -	2,062,000

It is thus demonstrated that any guarantee of water to Mexico must invade the commitments made by the United States to its own projects.

IX. INTERNATIONAL LAW ACCORDS MEXICO NO RIGHT TO ANY COLORADO RIVER WATER.

1. The rule of international law, as practiced by the United States, has often been declared by the highest responsible

authorities of the United States. Attorney General Judson Harmon, in 1895, ruled in a formal opinion to the State Department that the lower nation on an international river (in that case, Mexico) has no legal right to the continuance of any flow of the river from the upper nation. Any other rule, he declared, would give the lower nation a servitude or easement within the territory of the upper, inconsistent with the exclusive sovereignty of the latter within its borders. (21 Ops. Atty. General 274)

2. Elihu Root, Secretary of State, in 1905, in dealing with Mexico, affirmed the same principle. (House Doc. No. 359, 71st Cong., 2d Sess., page 402.)

3. Alvey A. Adee, Acting Secretary of State, also in dealing with Mexico in 1905, reached the same conclusion. (House Doc. No. 359, supra, page 398.)

4. In 1929 and 1930, a Treaty Commission appointed under Acts of May 13, 1924 and March 3, 1927 studied this problem exhaustively in the course of extended treaty negotiations with Mexico on the allocation of the Colorado River. In its report the American Section of the commission, which was composed of outstanding men, emphatically adhered to the decisions of Harmon, Root and Adee. (House Doc. No. 359, supra, pages 8, 9, 65.)

5. Mexico herself has urged this same principle. The American Section of the above mentioned Treaty Commission asked that Mexico concede to the United States a right to water to serve existing American uses on the lower Rio Grande. (On this river about 70%

of the water comes from Mexico; on the Colorado all the water comes from the United States.) Mexico replied:

" . . . Mexico cannot admit a limitation on the future development of its tributaries to consolidate and even increase the present uses made in the United States. The acceptance of views of the American section would mean for Mexico to renounce to the development to which the Mexican side is entitled. And Mexico would also be required under such views, to renounce to the development of its own tributaries." (House Doc. No. 359, supra, page 75.)

6. Careful investigation has disclosed no instance in which any responsible American diplomat has ever suggested that Mexico has any legal right to the use of any water of the Colorado River.

7. Any claim by Mexico to Colorado River water must, therefore, depend upon comity, not on international law.

X. INTERNATIONAL COMITY DOES NOT REQUIRE NOR JUSTIFY ANY ALLOTMENT TO MEXICO EXCEEDING HER USE OF WATER BEFORE CONSTRUCTION OF BOULDER DAM.

1. Before construction of Boulder Dam, Mexico was able to use from the Colorado a maximum in any one year of 750,000 acre-feet; a yearly average of 600,000 for the ten years of her greatest use; and a minimum (1932) of 228,000. This was all she could get from an unregulated river. The low flow of the river frequently furnished her less than the average. Hence she could neither expand her development nor even depend on being able to harvest crops nourished by as much as the average amount of water she received. She had no storage sites in the flat delta; and therefore could not capture any of the wild flood water which wasted in the Gulf. The floods, more-

over, limited her agriculture by devastating great portions of the delta and menacing the rest of it. She maintained a relatively permanent agriculture on a part of the delta, made possible only because American agencies had constructed in her territory extensive levee works, almost all at the expense of American farmers.

2. There are many sites on the Colorado River in the United States where great storage dams can be built. The construction of such reservoirs to salvage vast quantities of flood water has been planned for several generations. Examples of such dams which have now been constructed are, Green Mountain, Boulder and Parker dams on the main stream, and Roosevelt, Bartlett and Coolidge dams on the Salt, Verde and Gila, tributaries. It has never been conceived, prior to the present negotiations, that the United States was under any obligation in equity, good conscience or international comity, to share with a foreign nation the benefits of such works, built at the cost of the United States, in her territory, to conserve a natural resource solely available to her. On the contrary the American Section of the 1930 Treaty Commission emphatically declared that no such obligation existed and that an allowance to Mexico of the maximum amount she had theretofore used, 750,000 acre-feet, was "just and generous". (House Doc. No. 359, Supra, page 9.) Comity, or the principle of fair and friendly dealing with a neighbor, does not require the United States to divide with Mexico water resources which nature has made available to the United States and not to Mexico; any more than it requires Mexico to divide with the United States,

free of cost, her great natural resources, such as oil and silver.

3. It was for these very reasons, explicitly stated during the final Senate debates on the Boulder Canyon Project Act, that the Congress determined that Mexico should not have the benefits of the flood water salvaged by Boulder Dam, and that the stored waters should be used "exclusively within the United States". That language was put into Section 1 of the Act, not by accident, but with the firm and vigorously expressed intention of protecting the rights of the United States and of the seven states of the Colorado River Basin and of serving notice on Mexico and on the world that Mexico should never be entitled to share in the water conserved by Boulder Dam. (Vol. 70, Cong. Record 70th Cong., 2nd Sess., Part 1, pages 337, 338, 593.)

XI. ANALYSIS OF AMOUNT OF WATER CONCEDED TO MEXICO.

The treaty purports to allot to Mexico 1,500,000 acre-feet per annum. This is not a ceiling. It is a guaranteed minimum. In addition, though it is not disclosed in the treaty, Mexico will receive and may use the following water:

1. Return flows from American projects which seep underground and first appear in the river at points below the lower boundary (Arizona-Mexico boundary, 20 miles below the California-Mexico, or upper boundary).

2. Drainage from the Gila project in Arizona which seeps underground into Sonora and does not return to the river, but is available to Mexico by pumping.

3. Flood discharges from the Gila River or the Colorado, too great to be conserved in the United States. These floods will periodically recharge the large underground storage basin known to exist in the Mexican delta and will remain there available for pumping to supplement the water delivered by the United States.

4. Discharges from Boulder Dam, which exceed required uses in the United States and Mexico. Such discharges will necessarily occur in cycles of wet years. They cannot be used in the United States, but can be used in Mexico, since they can be "firmed up" during dry cycles by pumping from underground water resources of the Mexican delta.

While the foregoing quantities cannot be precisely estimated now, it is plain that they will be substantial and are not taken into account nor charged to Mexico in the treaty.

XII. THE TREATY WOULD NOT BE CONSISTENT WITH THE GOOD FAITH WHICH THE UNITED STATES OWES, AND HAS ALWAYS OBSERVED, TOWARD ITS OWN PEOPLE.

1. California communities accepted the good faith of the United States as being beyond question. When the legislative branch of Government adopted the Boulder Canyon Project Act and the Executive approved it, the California communities accepted the national policy to be as therein declared. That policy was that the flood waters conserved by Boulder Dam should be used "exclusively within the United States". The corollary was that in any future treaty Mexico could not be granted more than the water she was able to put to beneficial use from the natural, unregulated flow of the river.

2. Acting in reliance upon the express words of the Congress, the State of California, by act of its Legislature, ratified the Colorado River Compact and thereby accepted grave burdens and responsibilities. In addition, California adopted the limitation act which was imposed on her by Section 4(a) of the Project Act. Thereby she subjected herself and her citizens to a harsh and perpetual limitation of the amount of Colorado River water which could ever be used within her boundaries. This limitation barely provides for supplying the known projects in California which were contemplated by the Project Act and forever barred the development of other feasible projects in California. By these acts California, in the legal phrase, "changed her position to her detriment" and became entitled, in good morals as well as law, to depend upon the scrupulous adherence by the United States to the law which limits the use of the water conserved by Boulder Dam "exclusively within the United States". Had those words not been the keystone of the Act, California would not have ratified the compact nor adopted the limitation act.

3. Furthermore, acting in reliance on the express words of the Congress, the California communities changed their position to their detriment and by solemn contracts pledged themselves and their resources to repay the entire cost of Boulder Dam and the All-American Canal. Without their guarantee, the dam and canal would never have been built. By the contracts, the United States pledged itself to deliver to the California communities the quantities of

water and power specified therein. This pledge was solidly founded on the policy declared in the Project Act.

4. Relying upon the law and contracts executed under the law, the California communities have committed themselves to the expenditure of over half a billion dollars, for the construction of works with which to utilize Boulder water and power. These obligations are:

Boulder Dam and Power Plant	\$125,000,000
Metropolitan Aqueduct	274,000,000
All-American Canal	78,000,000
San Diego Aqueduct	16,000,000
Power transmission lines of the City of Los Angeles and private power companies	<u>56,000,000</u>
Total	\$549,000,000

Of the foregoing, more than four hundred million dollars have now been actually expended and are represented by bonds and contracts to repay.

5. Additional hundreds of millions, aggregating at least another half billion dollars, have been expended or committed for the construction of great industries, homes, shops and other public and private facilities, all of which are dependent on the good faith of the United States in performing its contracts for water and power.

6. Contracts and commitments made by the Secretary of the Interior to furnish water to the States of Nevada and Arizona have led to large commitments and expenditures by and in those states.

7. Now the Executive Department reports to the Senate a treaty with Mexico which, if ratified, would mean:

a. That the United States would repudiate its contracts with its own communities and states.

b. That the United States would do this knowingly, since its own engineers estimate the water supply of the Colorado River to be less than the total of the water-delivery obligations created by the American contracts and those which would exist under the proposed Mexican treaty.

c. That, since there is not water enough to go around, thousands of fertile American acres would be doomed to remain forever barren desert and the growth of existing communities would be curtailed.

d. That, insofar as the treaty would grant water conserved by Boulder Dam to Mexico, would grant Mexico the use of the All-American Canal and would grant Mexico a share of the power revenues at Pilot Knob, which belong to the California agencies to which the Project Act grants the power privileges at Pilot Knob, it would be in flat contravention of the Boulder Canyon Project Act. That act is a constitutional statute, under which property rights have now vested in the California water and power contractors and in the states of Arizona and Nevada. The treaty provides neither due process nor compensation. It is therefore unconstitutional.

e. That the economy of the American Southwest has been geared in many ways to the successful and continued operation

of the several Boulder Dam water and power projects on which vast expenditures and commitments have been made. This economy would be disrupted by the proposed treaty and the actual and potential wealth of the entire nation would be lessened.

8. Communities of American citizens in the Pacific Southwest will pay the whole cost of Boulder Dam and the All-American Canal. They are entitled to the benefits of the project for which they are paying. The United States has formally and solemnly contracted to deliver those benefits to them. If the United States has the constitutional power to take those benefits from them and give them to a foreign nation, such an act would be oppressive and unjust. No nation has a moral right to treat a large section of its own people unfairly on the ground that it finds it politic to be generous to the people of a neighboring nation.

XIII. THE POWERS OF THE COMMISSION ARE VAST AND NOT SUBJECT TO CONTROL BY THE CONGRESS.

The treaty sets up a perpetual joint commission which is to have tremendous and unusual powers. It is to be a great construction bureau authorized to plan, build and operate many dams on three river-systems; some parts of the program are to commence at once, but the program is to extend and expand indefinitely.

It is to engage in production and disposal of great quantities of electric power and water, without limitation as to cost, rates, fields of service, or use to which revenues shall be put.

The two engineers who are to constitute the Commission are given the extraordinary judicial power to determine the extent of their own jurisdiction and the extent to which the two nations are to be obligated under the treaty.

All customary checks and limitations on such an agency are lacking, save only that the commission must report its decisions for approval or veto to the Government, which for this purpose is specially defined as being the Department of State (Article 2). No plans and cost estimates need ever be submitted to Congress, nor is Congress to be consulted at all. When the Commission has made a decision and the Department of State has approved, Congress must appropriate, or breach the treaty.

The Commission will command and control the water supply of the Colorado River Basin and on its determination of policy will hang far-reaching consequences to industry, agriculture and the economic welfare of millions of American citizens in the regions affected.

XIV. THE TREATY JEOPARDIZES AMERICAN PROJECTS ON THE LOWER COLORADO RIVER.

1. The treaty requires a permanent diversion dam to be built by Mexico below the upper boundary within five years. It admits that such dam will jeopardize existing American communities in the Yuma, Imperial and Coachella Valleys, for it requires Mexico to provide works to protect them from floods and seepage. Competent engineering opinion of the locality holds that adequate protection against these dangers cannot be afforded, hence that the dam would inevitably cause disastrous damage to the three valleys named.

More striking, the treaty authorizes Mexico to build at once, in the United States, a temporary diversion weir across the river, without providing any protection works.

2. The treaty makes no provision for the protection of American public agencies respecting millions which they have invested in flood protection levees and irrigation works in Mexico.

3. No provision is made to protect American projects in California against the discharge from Mexico of waste and drainage waters into Salton Sea, which would greatly damage the American valleys.

XV. CONCLUSION.

The proposed treaty is not transitory or temporary. It is perpetual. Article 28 provides that it shall continue in force until terminated by another treaty. Plainly Mexico will never give it up, unless she could secure one more favorable to her. Once this treaty is ratified, the wrongs done by it can never be undone.

The proposed treaty takes away from states and communities of the Lower Basin water and property to which they have vested rights under contracts authorized by Act of Congress.

The powers granted to the Commission are likewise perpetual, are vast, not subjected to customary checks and limitations and are not subject to the control of the Congress.

The proposed treaty jeopardizes the safety of established American projects by creating a new hazard of flood and seepage damage.

The treaty would guarantee to Mexico twice the maximum amount of water Mexico received prior to the construction of Boulder Dam; twice what she ever could have obtained from the river, except for its regulation by Boulder Dam; twice what the Congress, in the Boulder Canyon Project Act, declared she should have; and twice what the 1930 Treaty Commission declared would be "just and generous" to her. The right so guaranteed to Mexico would be superior to every water right in the Colorado River Basin in the United States.

The United States Senate should not ratify the proposed treaty.

Dated: March 20, 1944.

COLORADO RIVER BOARD OF CALIFORNIA

BY LEWIS A. HAUSER,
Executive Secretary