

Treaties - U.S. & Mexico, 1944

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A STATEMENT

by the

SIX STATES COMMITTEE

— **Arizona, Colorado, New Mexico,
Texas, Utah, and Wyoming**

Supporting Ratification

of the

Proposed Treaty

Between the

United States

and

Mexico

**With Respect to the Waters of the
Colorado River, Tijuana River,
and the Rio Grande**

August 29, 1944

**COLORADO WATER CONSERVATION BOARD
State Office Building
DENVER, COLORADO**

3278.400

Foreword

The purpose of this Statement is to present, in as concise form as possible, results of a careful investigation of the facts and conditions which make it advisable for the United States Senate to ratify the United States-Mexican treaty respecting the Colorado and Tijuana Rivers, and the Rio Grande. It represents the thinking and the convictions of the representatives of six interested states.

A Statement

The undersigned Committee, representing six of the states most vitally concerned with the water treaty with Mexico, signed at Washington on February 3, 1944, and now pending before the United States Senate for its advice and consent to ratification, unreservedly endorses the treaty and urges its ratification. Briefly stated, the reasons why these six states are supporting the treaty are as follows:

Colorado River

1. The allocation of 1,500,000 acre feet of water annually to Mexico is fair and equitable to both countries.

a. It is in accordance with treaty precedents, including treaties to which the United States is a party. The numerous international water treaties among the civilized nations of the world are based primarily upon the recognition of existing uses and in most cases provision is made for expansion in both the upper and lower states within the limits of the existing water supply. In 1943 Mexico used in excess of 1,800,000 acre feet of water. The present treaty guarantees her only 1,500,000 acre feet per year, subject to reduction in times of extraordinary drought. [Far from permitting any expansion of uses in Mexico, therefore, if the remaining supply is ultimately entirely used in the United States, present Mexican uses will have to be curtailed.] In the meantime, of the estimated average annual undepleted runoff of something over 18,000,000 acre feet of the Colorado River System at the boundary, about

7,000,000 acre feet annually is now being, and for many years to come will be, wasted into the Gulf of California. It will be many years to come before this supply can be entirely used in the United States.

b. It has been suggested by some who oppose the treaty that Mexico should be compelled to accept a maximum of 750,000 acre feet per year. This attitude completely ignores all international obligations and equities between sovereign nations. They point to the offer of the old International Water Commission in 1929 in support of their stand. This offer was rejected by Mexico, whose representatives adhered to a demand of 3,600,000 acre feet per year. Furthermore, the present treaty allocation does not compare unfavorably with the 1929 offer. That offer, which was conditioned upon the building of the Boulder Dam, was for 750,000 acre feet of firm water to be delivered according to schedule at the point of actual use, thus involving the delivery of additional quantities of water to compensate for all operational losses. In addition to this, return and other excess flows in the United States could be used by Mexico as they were available. On the other hand, the present allocations, because of the stipulations of the treaty governing the Mexican schedules of delivery, assure credit to the United States of practically all return and other excess flows originating in this country under conditions of ultimate development within the United States many years hence. [It is estimated that these return flows, not susceptible of beneficial use within the United States, will amount to 900,000 acre feet per year or more, thus limiting the draft on upstream or firm water to not more than 600,000 acre feet per year. This represents about three percent of the annual average runoff of the Colorado River System. In this respect, then, the present treaty provision is more favorable to the United States than the 1929 offer to Mexico.]

2. It is vitally important in the interest of a sound, secure, and firm development in both countries that the equitable rights of both countries in the waters of the Colorado River be finally and definitely defined.

3. One of the arguments advanced by the California interests in opposition to the treaty is that Mexico contributes no part of the runoff of the Colorado River. The same is equally true of California. It is highly significant that the states supporting the treaty are the states which furnish that runoff.

4. The treaty provisions with respect to the Colorado River were arrived at after months of negotiation. The Department of State was assisted in the negotiations by competent engineers of long experience in these matters. Prior to the negotiations, the Department of State consulted freely with the Committee of Sixteen representing the seven Colorado River Basin States and the power interests, and the treaty provisions finally arrived at were well within the limits recommended by five of the states, California alone opposing. [In many respects the terms of the treaty are more favorable to the United States and the states directly affected than that formula.]

5. The treaty contains a provision to the effect that in times of extraordinary drought the deliveries to Mexico will be curtailed in the same proportion as uses within the United States. This clause was patterned after one in the treaty with Mexico of 1906 providing for the equitable distribution of the waters of the Rio Grande above Fort Quitman, Texas, which clause has always worked well in practice.

6. The opponents of the treaty dwell continuously upon the fact that the Boulder Canyon Project Act provides specifically that Boulder Dam is to be devoted solely to uses within the United States, the implication being that Mexico

is by the terms of the Act prohibited from making any use of benefits which may accrue to it through that construction. Because of the physical situation, Mexico unavoidably does receive benefits from the operation of Boulder Dam in controlling floods and equalizing flows. It is perfectly apparent that if, as is the fact, the risk of damaging floods in Mexico is diminished by the building of Boulder Dam, further development in that country will be and has been undertaken, supplied by the large quantities of water now flowing entirely to waste. It is highly essential, therefore, that under ultimate conditions, limitations imposed by the treaty upon Mexico should be set up at this time.

The treaty makes no provision for the use of Boulder Dam for the delivery of water to Mexico, but instead provides for the construction of Davis Dam for that specific purpose, among others. The treaty will not involve any releases from Boulder Dam in excess of those already required for the generation of hydroelectric energy. Davis Dam is already authorized for construction, and until stopped by war necessity, the construction was in progress. Davis Dam will be built whether the treaty is ratified or not, and the repayment of its cost has already been assured from interests and uses which have nothing to do with the consumptive use of water below it in either country.

7. In the formulation of the Colorado River Compact, which has been ratified by all seven of the Colorado River Basin States and approved by Congress, it was anticipated that the United States would at some time by treaty allocate to Mexico a certain portion of the waters of the Colorado River. In agreeing to the terms of Article III (c) of this compact, the signatory states voluntarily assumed the performance of this obligation when incurred and provided the means of discharging it.

Rio Grande

1. As for the Rio Grande below Fort Quitman, the treaty in effect divides the waters about equally between the two countries.

2. More important than this, the treaty provides for the building of storage reservoirs which will control floods, and by impounding the flood waters will make available for beneficial use in both countries an average of approximately 4,000,000 acre feet of water annually which now is wasting unused into the Gulf of Mexico at times in the form of damaging and disastrous floods. By making use of this flood water, not only are existing uses in both countries amply protected and flood damages practically eliminated but a substantial expansion of uses in both countries will be permitted. International storage is the only practicable solution of this problem of recurring floods and droughts in the lower Rio Grande Valley, and it goes without saying that no such international storage is possible without a treaty.

Tijuana River

1. While the water supply of the Tijuana River is limited, it is important to communities both in California and Mexico. The treaty permits of the orderly development and equitable distribution of the waters of this stream by storage, conservation and flood control.

Jurisdiction of the Commission

Certain of the few opponents of the treaty, who come principally from a single state, casting about for some grounds to discredit the treaty, have raised the specter of a violation of states' rights, and paint the International

Boundary and Water Commission as an autocratic and dictatorial body possessing vast and unlimited powers. The truth is that the general administration of the treaty is confided to the International Boundary Commission created under the treaty of 1889 with Mexico, which ever since that date has been exercising powers and jurisdiction along the Mexican boundary similar in all respects to those imposed upon it by the present treaty. Never have any charges been leveled against that Commission that it acted arbitrarily or in violation of the trust imposed upon it. The best evidence of this is the fact that while it was originally set up as a temporary body, it was made permanent by the Convention of 1900. This Commission has carried to a successful conclusion many enterprises of prime local, national and international importance along the Mexican boundary. The treaty simply extends this jurisdiction to supervision over the treaty provisions. It is quite apparent that the discharge of international functions and obligations must be in the hands of an international agency, and not left to local interests.

In fact, the powers of the Commission and its National Sections are narrowly circumscribed. In the first place they are confined to the discharge of purely international functions along the Mexican boundary, and its jurisdiction over works is confined to those on or along the boundary which are concerned exclusively with the discharge of treaty functions. There is left to the interior agencies of the government the control and operation of those interior facilities which are to be used only in part for the performance of treaty functions. By the express terms of the treaty the two governments exercise an absolute veto power over the decisions of the Commission. Certain works necessary for the execution of the treaty are specifically provided for,

such as the international dams on the Rio Grande and Davis Dam on the Colorado. The Commission is authorized to investigate and recommend the construction of other works, such as flood control works on the Colorado below Imperial Dam, but no such works can be built without the joint agreement of the two governments. As far as states' rights are concerned, there is not a line in the treaty that remotely hints at any invasion of the rights of the various states to handle their own water matters within their own borders. On the Rio Grande, for instance, the sole function of the Commission is to impound the waters and determine the share of water so impounded belonging to each of the countries. The distribution of the waters belonging to the United States within the State of Texas is solely a matter to be decided by the duly constituted state authorities under state law. Since the United States is not obligated to deliver any certain quantity of water from the tributaries of the Rio Grande within the United States, it is purely a matter of local and state concern whether those waters are to be used on the tributaries or allowed to flow into the main stream to be used on the riparian lands below. On the Colorado River the division of the waters has already been effected by compact among the basin states. That Compact makes specific provision for an allocation of waters to Mexico and the terms of that Compact remain unimpaired. In short, this treaty is concerned solely with international matters, leaving to the local and state authorities and to other Federal agencies the powers, jurisdictions and prerogatives which they now enjoy.

In conclusion, we are firmly of the opinion that this treaty is fair and equitable to both countries and that its ratification is in the interest of the United States as a whole as well as in the real and permanent interest of the eight

states most vitally concerned. This treaty has been negotiated from the standpoint of our enlightened self-interest as well as with a due regard to our solemn international obligation. It should be kept in mind that full consideration of all phases of the question of ratification will be given by the Senate Foreign Relations Committee.

The six states, including five of the Colorado River Basin States, which have caused this treaty to be carefully studied, have been motivated by a full sense of patriotic responsibility to themselves and the nation as a whole in arriving at the conclusion on impartial evidence, that the treaty merits the support of all who are interested in the development of our water resources.

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