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## Re: Colorado River Waters and the Santa Fe Compact

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lication of the session laws, and then be confronted with a statute completely revising procedure made immediately effective by these devices.

A recent conspicuous example is the "Act concerning real property and to render titles to real property and to interests and estates therein, more safe, secure and marketable". This act contains many admirable provisions and no objection is made to its substance, but it is submitted that it was not, as stated, necessary for the

immediate preservation of the public peace, health and safety, nor was there any great emergency.

The legislative reference office cannot be a complete panacea, but if the director appointed be a lawyer of character, experience, independence, capacity for hard and careful labor, and above all possessed of proper ideals and enthusiasm for his work, and not a mere lame-duck who needs a job, he can be of great aid to the public and the bar.

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## *Re: Colorado River Waters and the Santa Fe Compact*

BY FRED S. CALDWELL, ESQ., OF THE DENVER BAR

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**W**ILL the Santa Fe Compact, if ultimately confirmed by the seven states and Congress, divest said states of their present sovereign power to grant appropriations of water for use in the generation of electrical power and vest that governmental function in the federal government exclusively?

The Compact does not undertake to define the term "agricultural use", evidently upon the theory that it is so well understood as to make definition unnecessary. But "domestic use" is defined to—

"include the use of water for household, stock, municipal, milling, industrial and other like purposes, *but shall exclude the generation of electrical power.*"

And following this is a provision (Art. III, (e)) imposing an express inhibition upon all the seven states in these words:

"The States of the Upper Division *shall not withhold water*, and the States of the Lower Division *shall*

*not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.*"

Although this inhibition is expressed negatively its obvious meaning is this: The states shall not have the right to withhold or require the delivery of water for "the generation of electrical power."

But, although the states cannot withhold or require the delivery of water for "the generation of electrical power", it is contemplated and intended that the water shall be used for such power purposes. Art. IV. (b) expressly provides that:

"Subject to the provisions of this Compact, water of the Colorado River System may be impounded and used for the generation of electrical power", subservient only to the "dominant uses for agricultural and domestic purposes."

Now to "impound and use" said water for the generation of electrical power necessarily constitutes the

*withholding* and *requiring* of the water for that purpose, and this the states cannot do because they have expressly divested themselves of all right to "*withhold*" or "*require the delivery of water*" except for "domestic and agricultural uses", which uses are expressly defined by the Compact to exclude the use of the water for "the generation of electrical power".

Under these circumstances it would seem that a permit from the State of Colorado, or from any of the other six states, would be a very insecure and uncertain foundation upon which to base an appropriation of water for use in "the generation of electrical power". Obviously, if under the express terms of the Compact the states have no right to *withhold or require water* for the generation of electrical power they cannot by issuing a permit to appropriate confer upon the appropriator any such right.

If the foregoing reasoning is correct it follows that by the final adoption and approval of the Santa Fe Compact the states would divest themselves of their present sovereign right to control by grant, subject only to the indirect limitation that the navigability of that part of the stream which is in fact navigable must not be impaired, the use of the water of the Colorado river system for the generation of electrical power. And such sovereign right to control the use of said waters for the generation of electrical power would thereafter be vested in the Federal Government exclusively.

Of course the question here raised, viz., the right of the states under the Santa Fe Compact to grant and control the use of the waters of the Colorado river system for the generation of electrical power, is not involved in such water power as may be developed by direct diversion from the flow of the stream without any storage reservoir for *withholding* purposes; but the Government surveys and reports show that

the possibility for such power development is very small, so small in fact as to be insignificant. But by making use of storage reservoirs so designed as to develop to the maximum the agricultural uses of said waters, the Government investigators estimate that three power sites in northwestern Colorado can be made to generate continuously, the year around, 122,400 "Brake Horse Power" of electrical current; and that nine power sites in Utah can be made to generate 396,960 B. H. P. of hydro-electrical power. These figures do not include any of the hydro-electrical power now developed, but refer exclusively to undeveloped power sites. And it is estimated that five power sites in Arizona will produce 1,746,750 B. H. P. But the flow of the Colorado river system is not sufficient to supply all these power sites. And if the Santa Fe Compact is confirmed and made operative Colorado and Utah will have nothing whatever to say about the development of their hydro-electrical power sites, but must content themselves with whatever they are able to get thru the grace of Congress and the Federal Power Commission.

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### *Playing Favorites*

A Scotchman, not feeling so well as usual, called on his family doctor, who looked him over and gave him some pills to be taken at bedtime. Whisky was also prescribed for his stomach's sake, a small glass to be taken after each meal.

Four lays later Sandy again called on the doctor, stating he was feeling no better.

"Have you taken the medicine exactly as I instructed?" the doctor inquired.

"Weel, doctor," replied the patient, "I may be a wee bit behint wi' the pills, but I'm six weeks ahead wi' the whusky."—*Boston Post*.