DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Sacramento, Calif., December 21, 1939.

MR. FRANK W. CLARK,
Chairman, State Water Project Authority,
Public Works Building, Sacramento, Calif.

DEAR MR. CLARK: Reference is made to your letter dated May 1, 1939, relative to adjudication of the water rights on the Sacramento and San Joaquin Rivers in connection with the Central Valley project, and to office letter of May 6, 1939, relative thereto.

In the intervening time, since the receipt of your letter, a canvass of the water rights situation in the Sacramento River and its tributaries, in relation to the Central Valley project and other projects in which the Bureau is interested, has led to the conclusion that there is no need at the present time for the proposed adjudication affecting the rights of the United States. Accordingly, we are unwilling to recommend institution of such proceedings.

In any event, if it were considered advisable to institute proceedings, it is doubtful that this Department or the Attorney General would be willing to submit substantial rights of the United States, as a party plaintiff, to State tribunals for adjudication. This would be contrary to the general practice of the Government of having its water rights adjudicated in Federal courts.

On the other hand, it would require an act of Congress to permit the United States to be made a party defendant in such a State proceeding, and, in view of the general practice stated above, Congress might not consider with favor enactment of such legislation, particularly if the interested Government agencies should report unfavorably on it.

Very truly yours,

WALKER R. YOUNG,
Supervising Engineer.

EXHIBIT NO. 9

STATE OF CALIFORNIA,
DEPARTMENT OF PUBLIC WORKS,
Sacramento, October 27, 1951.

HON. CLAIR ENGLE,
Member of Congress, Second District, Sacramento, Calif.

DEAR MR. ENGLE: This refers to and acknowledges your letter of October 5, 1951, received in this office on October 15, in which you request information concerning suggestions by this division that the water rights of the Central Valley project on the Sacramento River be adjudicated. There are enclosed for your information, in this connection, copies of the following:

1. May 1, 1939: Frank W. Clark, chairman, water project authority of the State of California, to Walker R. Young, supervising engineer, United States Bureau of Reclamation.
2. May 6, 1939: Walker R. Young to Frank W. Clark, acknowledging letter of May 1, 1939.
3. July 25, 1939: Harold Conkling, deputy State engineer, to E. B. Debler, chief hydraulic engineer, United States Bureau of Reclamation.
4. July 29, 1939: Memorandum, Spencer L. Baird, district counsel, United States Bureau of Reclamation, to E. B. Debler.
5. August 4, 1939: E. B. Debler to Harold Conkling, transmitting Mr. Baird's memorandum of July 29.
6. December 21, 1939: Walker R. Young to Frank W. Clark, in reply to letter of May 1, 1939.
7. November 10, 1942: State Engineer Edward Hyatt to Dr. Harlan H. Barrows, director, Central Valley project studies.
8. November 14, 1942: Dr. Harland H. Barrows to State engineer.
9. November 18, 1942: Edward Hyatt, executive officer, Water Project Authority of the State of California, by A. D. Edmonston, acting secretary, to Dr. Harlan H. Barrows, director, Central Valley project studies.
10. November 30, 1942: Dr. Harlan H. Barrows to John C. Page, Commissioner, United States Bureau of Reclamation.
11. December 14, 1942: A. D. Edmonston, acting secretary, Water Project Authority of the State of California, to Dr. Harlan H. Barrows, director, Central Valley project studies, transmitting memorandum dated December 10, 1942, by Henry Holsinger, associate attorney of the division of water resources.
12. December 10, 1942: Memorandum by Henry Holsinger entitled "Necessity for Comprehensive Adjudication of Water Rights on the Sacramento and San Joaquin Rivers in Aid of the Central Valley Project."
13. March 10, 1943: Commissioner of Reclamation John C. Page, to Edward Hyatt, executive officer, water project authority.

Very truly yours,

A. D. EDMONSTON, *State Engineer.*

WATER PROJECT AUTHORITY OF THE
STATE OF CALIFORNIA,
Sacramento, May 1, 1939.

Mr. WALKER R. YOUNG,
Supervising Engineer,
United States Bureau of Reclamation,
Sacramento, Calif.

DEAR MR. YOUNG: There has been brought to my attention by Edward Hyatt, State engineer, the matter of adjudication of the water rights on the Sacramento and San Joaquin Rivers in connection with the Central Valley project. Mr. Hyatt informs me that he has discussed this matter with you briefly and informally several times and more recently with John C. Page, Commissioner of Reclamation on his last visit to California, and that Mr. Page was to discuss the desirability and advisability of initiating such an adjudication with legal counsel of the Bureau of Reclamation and Department of the Interior.

I concur in the opinion of the State engineer that a judicial determination of existing water rights on the Sacramento and San Joaquin Rivers is necessary in order to operate the Central Valley project efficiently and successfully and such determination should be effected before the project is placed in operation.

If the Bureau of Reclamation deems it desirable that such an adjudication of water rights be initiated in whole or in part, the question at once arises as to whether the procedure should be through the Federal or State courts. In case the latter method were followed, State legislation may be required. The legislature is now in session and will normally not meet again until 1941. Therefore, if any State legislation along this line is desired, action should be taken at once. I shall be pleased to have your advice on this subject at an early date.

Very sincerely yours,

FRANK W. CLARK, *Chairman.*

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Sacramento, Calif., May 6, 1939.

Mr. FRANK W. CLARK,
Chairman, Water Project Authority of the State of California,
Sacramento, Calif.

DEAR MR. CLARK: This will acknowledge the receipt of your letter of May 1, 1939, regarding a judicial determination of existing water rights on the Sacramento and San Joaquin Rivers.

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It is noted that you forwarded a copy of your letter to Commissioner Page who, no doubt, will advise you direct in the near future with respect to the matters presented.

Very truly yours,

WALKER R. YOUNG,
Supervising Engineer.

STATE OF CALIFORNIA,
DEPARTMENT OF PUBLIC WORKS,
DIVISION OF WATER RESOURCES,
Sacramento, July 25, 1939.

Mr. E. B. DEBLER,
Chief Hydraulic Engineer,
United States Bureau of Reclamation, Denver, Colo.

DEAR DEB: Some months ago when you were in Sacramento you mentioned a situation on one of the streams in eastern Oregon where the Bureau has a reservoir above irrigated lands having old water rights and where it is necessary to transport the stored water downstream past these old diverters to lands below. As I remember it, you stated that the State of Oregon was able to adjudicate the old rights by the statutory procedure of the State and in the State courts in spite of the fact that the Bureau had water rights on the stream.

It is my understanding that where Federal rights are involved the adjudication must be in the Federal courts and I am wondering by what arrangement the stream was adjudicated in this case and shall appreciate it if you will advise me as to the situation.

With kind regards, I am

Sincerely yours,

HAROLD CONKLING,
Deputy State Engineer.

DENVER, COLO., *July 29, 1939.*

Memorandum for Mr. Debler.

Subject: Inquiry of Harold Conkling as to whether or not water rights of the United States are submitted to jurisdiction other than that of Federal courts.

1. Mr. Tebow gave me the attached note with the letter to you from Mr. Harold Conkling under date of July 25, inquiring with respect to the adjudication of the rights of the Federal Government in the State courts.

2. Doubtless Mr. Conkling's understanding arises from the fact that with very few exceptions, rights of the United States are not submitted to the jurisdiction of State courts, but are tried in the Federal courts. However, the United States may, if it chooses, submit its

right to the jurisdiction of the State courts, and has done so, particularly with respect to its water rights, in numerous cases, one of which you mentioned being that of *In re Waters of the Umatilla River* which was initiated by the United States through Judge King and Oliver P. Morton under the provisions of the Oregon Water Code of 1909 (L. C. L. par. 6635 et seq.). This case is reported in 168 Pacific 922.

3. There are numerous instances where the United States has submitted its water rights to the jurisdiction of the State courts for the purpose of having a State court decree, after the adjudication was initiated by some other party. Among such cases are those now pending in the Colorado State courts involving the water rights of the Uncompahgre, Grand Valley, and the Colorado-Big Thompson projects. These adjudication proceedings were instituted by other water users, and the United States as a coclaimant with the water users organization under repayment contract with the United States, filed its statement of claim of water rights for the respective project in the State court having jurisdiction.

4. In one instance to my knowledge, the United States has petitioned and been permitted to intervene in a water adjudication suit pending in the State court. The case mentioned is *Pioneer Irrigation District* v. *American Ditch Association*, in which the United States intervened to adjudicate water rights of the Boise project, and this case is reported in 1 Pacific (2d) 196.

5. As you doubtless recall, there is a case where the United States was drawn into a State adjudication suit against its will. This is the case in which the Foster decree was entered, involving the waters of the Lower Snake River Valley, and in which the rights of the Minidoka project were adjudicated. The United States unwittingly got into this case by petitioning for removal of an action commenced in an Idaho State court to the Federal court, and having the Federal court remand the action to the State court. This decree involving the water rights of the Lower Snake River Valley was coordinated with entirely independent decree, or the Rexburg decree in the Upper Snake River Valley by a case brought a few years ago in the Federal court in which was entered what is called the Woodville Canal Co. decree. I believe this case is a reported one in the Federal Reporter System, but I do not, at the present time, have the citation. If you need it, I will try to run it down.

6. In my opinion, it is not necessary that the United States submit its water rights to a State adjudication proceeding but can permit the State adjudication to proceed to decree, and later protect its rights in the Federal courts if any rights claimed under the State decree should interfere with any rights of the Federal Government, and it is also my opinion that such procedure is the more satisfactory from the standpoint of the United States, except in rare cases where the United States is asking for a junior right, as in the case of the three Colorado projects. The outcome of the *Pioneer Irrigation District* v. *American Ditch Association* confirms my opinion where the rights of the United States, and those of private water users and ditch companies, are of a highly controversial relationship.

SPENCER L. BAIRD.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE CHIEF ENGINEER,
BUREAU OF RECLAMATION,
Denver, Colo., August 4, 1939.

MR. HAROLD CONKLING,
Deputy State Engineer, Sacramento, Calif.

DEAR MR. CONKLING: Your letter of July 25, 1939, was referred to our district counsel here in Denver and I am including his memorandum on the subject. I am not sure that he definitely answers the last sentence of your letter, in which you state that it is your understanding that, where Federal rights are involved, adjudication must be in the Federal courts. It is my understanding that a categorical answer to your words would have to be a statement that the Federal rights can be adjudicated in non-Federal courts only with the consent of the Government. I am, however, not so sure that that will be the situation in the near future. There seems to be a trend toward a position that rights initiated under State laws, as provided for in the original reclamation law, are matters in which the State retains jurisdiction.

I shall appreciate return of Mr. Baird's memorandum.

Very truly yours,

E. B. DEBLER,
Hydraulic Engineer.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Sacramento, Calif., December 21, 1939.

MR. FRANK W. CLARK,
Chairman, State Water Project Authority,
Sacramento, Calif.

DEAR MR. CLARK: Reference is made to your letter dated May 1, 1939, relative to adjudication of the water rights on the Sacramento and San Joaquin Rivers in connection with the Central Valley project, and to office letter of May 6, 1939, relative thereto.

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In the intervening time, since the receipt of your letter, a canvass of the water-rights situation in the Sacramento River and its tributaries, in relation to the Central Valley project and other projects in which the Bureau is interested, has led to the conclusion that there is no need at the present time for the proposed adjudication affecting the rights of the United States. Accordingly, we are unwilling to recommend institution of such proceedings.

In any event, if it were considered advisable to institute proceedings, it is doubtful that this Department or the Attorney General would be willing to submit substantial rights of the United States, as a party plaintiff, to State tribunals for adjudication. This would be contrary to the general practice of the Government of having its water rights adjudicated in Federal courts.

On the other hand, it would require an act of Congress to permit the United States to be made a party defendant in such a State proceeding, and, in view of the general practice stated above, Congress might not consider with favor enactment of such legislation, particularly if the interested Government agencies should report unfavorably on it.

Very truly yours,

WALKER R. YOUNG,
Supervising Engineer.

STATE OF CALIFORNIA,
DEPARTMENT OF PUBLIC WORKS,
DIVISION OF WATER RESOURCES,
Sacramento, November 10, 1942.

DR. HARLAN H. BARROWS,
Director, Central Valley Project Studies,
University of Chicago, Chicago, Ill.

DEAR DR. BARROWS: * * * I am wondering about the inclusion of the water rights problem, which was discussed briefly while you were here. It is my recollection that you stated this would be considered further by you and Mr. Lineweaver, and perhaps discussed with Mr. Page. However, as no notes were taken I am not clear as to how this was left. We feel that there is a definite problem here, well worthy of study. * * *

Very truly yours,

EDWARD HYATT, *State Engineer.*

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DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
DEPARTMENT OF GEOGRAPHY,
University of Chicago, November 14, 1942.

MR. EDWARD HYATT,
Division of Water Resources,
Department of Public Works,
Sacramento, Calif.

DEAR MR. HYATT: I have your airmail letter of November 10. * * * Please send me, by return air mail if possible, a definite statement of the "water rights problem" as it lies in your mind, a statement, if practicable, in the form of one or more precise questions to be answered. Like you, I took no notes during our conference, and my memory is not clear on the subject. Mr. Lineweaver took notes but apparently has since overlooked the matter, as I had done.

Sincerely yours,

HARLAN H. BARROWS,
Director, Central Valley Project Studies.

WATER PROJECT AUTHORITY OF THE STATE OF CALIFORNIA

Sacramento, November 18, 1942.

DR. HARLAN H. BARROWS,
Director, Central Valley Project Studies,
Department of Geography,
University of Chicago, Chicago, Ill.

DEAR DR. BARROWS: In response to the request contained in your letter dated November 14, 1942, relative to water-rights problems in connection with the Central Valley project, the following problems are submitted and recommended for inclusion in the study by your committee:

"XV. ADJUDICATION OF WATER RIGHTS

"Problem No. 25. Is there necessity for a comprehensive adjudication of rights to the use of water on streams the natural regimen of which will be altered by operation of the project?

"Problem No. 26. If there is need for such comprehensive adjudication, can the same be accomplished under existing law, and, if not, what enabling legislation is necessary?"

The questions as stated by no means reveal either the fundamental basis of the essential problem or the necessity for a solution thereof, but it is impossible to make a statement adequately covering the subject within the limits of a letter of reasonable length. For present purposes it might suffice to state that there are intimately involved many interrelated considerations of State, National, and local con-

cern. A memorandum analyzing the subject matter is under preparation and will be forwarded to you upon its completion.

For your information, there are enclosed copy of letter dated May 1, 1939, from Frank W. Clark, chairman of the water project authority, to Walker R. Young, construction engineer, United States Bureau of Reclamation, and the reply from Mr. Young dated December 21, 1939.

Sincerely yours,

EDWARD HYATT, *Executive Officer.*
By A. D. EDMONSTON, *Acting Secretary.*

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

DEPARTMENT OF GEOGRAPHY, UNIVERSITY OF CHICAGO,
November 30, 1942.

Commissioner JOHN C. PAGE,
Bureau of Reclamation, Washington, D. C.

DEAR MR. PAGE: You have received a copy of a letter to me, dated November 18, 1942, from Mr. Edward Hyatt, executive officer of the California Water Project Authority, in which he proposes that a study relating to the adjudication of water rights be added to the Central Valley project studies. He has formulated two questions for the purpose in view. They might well be combined, I think, as a single problem.

I recommend that copies of Mr. Hyatt's letter and the correspondence attached thereto be submitted to the members of the guiding committee through Chairman Bashore for their comments and recommendations. It seems to me that Mr. Hyatt's proposal calls for careful consideration.

Sincerely yours,

HARLAN H. BARROWS,
Director, Central Valley Project Studies.

WATER PROJECT AUTHORITY,
December 14, 1942.

DR. HARLAN H. BARROWS,
Director, Central Valley Project Studies,
Department of Geography, University of Chicago,
Chicago, Ill.

DEAR DR. BARROWS: Transmitted herewith are two copies of a memorandum dated December 10, 1942, by Henry Holsinger, associate attorney of the Division of Water Resources, entitled "Necessity for Comprehensive Adjudication of Water Rights on the Sacramento and San Joaquin Rivers in Aid of the Central Valley Project."

Sincerely yours,

A. D. EDMONSTON,
Acting Secretary.

NECESSITY FOR COMPREHENSIVE ADJUDICATION OF WATER RIGHTS ON THE SACRAMENTO AND SAN JOAQUIN RIVERS IN AID OF THE CENTRAL VALLEY PROJECT

(By Henry Holsinger)

The following is responsive to letter under date of November 18, 1942, by the executive officer of the water project authority directed to Dr. Harlan H. Barrows, Director, Central Valley Project Studies. In that letter two problems are submitted and recommended for inclusion in the program of studies in relation to the Central Valley project.

"Problem No. 25. Is there necessity for a comprehensive adjudication of rights to the use of water on streams the natural regimen of which will be altered by operation of the project?

"Problem No. 26. If there is need for such comprehensive adjudication, can the same be accomplished under existing law, and, if not, what enabling legislation is necessary?"

The letter states in part as follows: "A memorandum analyzing the subject matter is under preparation and will be forwarded to you upon its completion." It is, therefore, the purpose hereof to present the promised analysis.

It is inherent in plans for the Central Valley project that, although in the San Joaquin Valley there is the greatest need of additional water supplies, there is therein no feasible source from which they may be developed, while within the Sacramento Valley portion of the Great Central Valley there is a very substantial excess of water potentially available over and above all reasonable prospective demands therefor, and it is one of the primary objectives of the project to develop and conserve this excess within the Sacramento Valley, and by the necessary means to make the same available within the southern portion where lies the need. Concisely stated, it is the purpose to store and restrain destructive floods within the Sacramento Valley and to make the excess over and above existing needs available for use within the San Joaquin Valley. By so doing evidently, a dual objective will be accomplished in that destructive floods will be restrained and large additional supplies made available for irrigation and other beneficial uses.

Never in the history of the State has there been an instance where a water-conservation project was put in operation which involved such violent and extensive changes in the regimen of any stream.

This project directly involves California's two greatest river systems. The history of California is largely a history of rights to the use of water and that history is one of continuous conflict and the resolution thereof. At first this was largely by fists, shovels, and firearms. Later and even more frequently by contests in the courts. This latter phase is not yet completed. The enormous expense of litigation over water rights has often been deplored, involving, as is almost invariably the case, time-consuming, expensive, and all too frequently fruitless litigation; fruitless because decrees rendered were piecemeal and for that reason unenforceable, and because other interests on the stream, although intimately involved were not made parties or because of technical defects in pleadings and lack of cross pleadings raising issues among coparties, plaintiff, or defendant.

It would be pleasant to anticipate that all such difficulties and conflicts are now at an end and that this vast project, notwithstanding its radical alterations of stream regimen, will be peaceably accepted by those affected thereby without controversy, without objection, and without resorting to litigation. However, attention to realities should convince any reasonable mind that any such anticipation is utopian and not reasonably possible of fulfillment. An attempt will be made to set forth in brief compass some of the principal reasons leading to that conclusion.

Although the triumvirate in interest, the Nation, the State, and the water user, are deeply concerned with all phases of the project, respecting benefits to be derived from project operation, some are peculiarly of national concern, among which are those affording increased flood control, national security, and improvement of navigation. It is expressly on the latter basis that Federal authorization to construct and operate the project is securely anchored. However, the act authorizing the project as a lawful Federal activity provides that construction, operation, and maintenance of project works and repayment contracts shall be governed by the Federal reclamation law. Section 8 of the original Reclamation Act of 1902 (now codified as 43 U. S. C. A., sec. 383) then provided, and remains to date substantively unchanged:

> "Nothing in this chapter shall be construed as affecting or intended to affect or 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 in any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this chapter, shall proceed in conformity with such laws * * *."

The acquisition of water rights and their definition and enforcement are therefore governed by the law of the State, and this principle is applicable to the United States in relation to the Central Valley project.

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For the purposes of the following consideration, it will be convenient to make segregation of the vast territorial area of the project into the portions relating to the watersheds of the San Joaquin and the Sacramento Rivers, respectively. These will hereinafter be referred to therefore as San Joaquin Division and Sacramento Division. Consonant with the quoted section of the Federal reclamation law, the United States has; from the beginning of its activities relating to the project, proceeded with a broad program of acquisition of water rights considered vital to successful operation of the project.

This program, in many respects, has differed vitally respecting these two broad divisions of the project. For example, in the San Joaquin division, the United States has acquired by expenditure of large sums of money the right to use the major part of the usual, recurrent flow of the San Joaquin River at Friant. This program with respect to the San Joaquin division again is divisible, in relation to the character of water rights involved, into three broad classes. The first of these comprises water rights formerly inhering in vast tracts of inferior lands designated as grasslands, the principal use whereof has been for the purpose of pasturing stock. It is inherent in the plan that these inferior lands will be retired from production, so far as the use of water thereon is concerned. The second class of rights acquired comprises certain waters heretofore reserved through legislative act, for purposes of development of the State water plan of which the Central Valley project is a part. These rights were acquired directly from the State, or rather from its agencies authorized to act in connection therewith, and were so acquired, without pecuniary compensation passing from the Federal Government to the State. The third class comprises those rights to the use of water from the San Joaquin River which are now devoted to the intensive cultivation of irrigated areas. The water formerly utilized upon these lands will be stored in the Friant Reservoir and diverted for project purposes largely entirely outside of the former watershed. In substitution and in exchange for this water, will be supplied to these producing areas an equivalent supply from the Sacramento River. Classes 1 and 3 comprise rights to the use of water, many of which are among the earliest in priority in the State. The United States stands largely in the position of holding for the benefit of the future beneficiaries of the project, all three of these classes of water rights.

Respecting the third designated class of rights, the United States, it is true, is not under direct commitment to continue to supply water from the Sacramento River, but in substance that will undoubtedly be the practical effect of the situation. This results from the circum-

stance that development will proceed on the assumption that the water derived from this so-called exchange will be continued. The sudden deprivation of that supply would therefore necessarily destroy that development and result in untold harm if the supply were withdrawn. The United States has therefore assumed the obligation of furnishing from the Sacramento watershed, a supply equivalent in amount to that stored in Friant Dam and now being used for intensive agricultural production in the San Joaquin Valley. If it should eventuate that a sufficient supply could not for any reason be secured from the Sacramento River, the project, and in turn the United States as well as water users within the San Joaquin Valley, would be placed in a disastrous predicament. It is therefore clearly perceived that the stability of the water rights acquired by the United States for the purposes of the San Joaquin Division is largely dependent upon the rights available to the United States for exercise of project purposes from the Sacramento River.

Now on the San Joaquin Division the United States, with respect to all rights to the use of water owned or claimed by others, occupies a highly strategic position. Friant Dam, the major storage point, is situated on the San Joaquin River upstream from all rights whose owners by any reasonable possibility might be brought in conflict with the rights of the United States. Evidently therefore this position of the United States is a highly favorable one, in like manner with the water user at the head of the ditch, an advantage by reason of position and possession. The uppermost user, it is axiomatic in water-right litigation, is in possession of the source of supply and by physical law necessarily the water will become available to the lower users only to the extent he who has control upstream allows it to flow past his point of diversion. The old adage therefore applies that "possession is nine points of the law." This position therefore casts a heavy burden upon the lower users.

With respect to the Sacramento River the United States occupies a far different and not by any means so favorable a position. In the first place, in the Sacramento Valley there are no vast tracts of inferior lands to which a present or future right of use attaches which either are not under cultivation, or which can be economically retired from production, thereby enabling the use of a corresponding supply of water to be applied elsewhere. Nor is it in the Sacramento Division possible to arrange an exchange as it was on the San Joaquin River. The United States does not propose to acquire any existing rights now devoted to beneficial use in the Sacramento Division. It is therefore the intention of the United States to recognize all existing rights to the use of water on Sacramento Valley lands between the Shasta Dam and the combined delta of the Sacramento and San Joaquin Rivers. These existing rights consist of riparian and appropriative

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rights of differing characteristics. For example, water has been and is being used on riparian lands for the intensive production of crops. Also, much riparian acreage is capable of crop production and the owners thereof are entitled to the use of water thereon in the future, but respecting much of the acreage such use has never yet been made. Also there are here appropriative rights many of which have vested by application to beneficial use. Others are inchoate; that is, full development of the intended use has not yet been made. The priorities of these appropriative rights range from a period early in the history of the State, to the present.

In the San Joaquin Division the United States has either directly acquired the record title to many rights of very early priority or has acquired by exchange the right to the use thereof, and collectively these comprise by far the majority of all existing rights to the use of water from the San Joaquin River. Taken in conjunction then, with the circumstance that the point of storage and diversion for purposes of the project of the San Joaquin River, is above the users whose rights might conflict with the United States, there would be little need on the part of the United States for a comprehensive definition of rights to the use of water on the San Joaquin River, were it not due to the complication injected by reason that the stability of all these rights, and particularly of the right of the United States to continue to divert and store San Joaquin River water at Friant, is largely dependent upon a stable and continuing supply being available from the Sacramento River.

It is a vital feature of the project inherent in the plan, to store at or near the head of the Sacramento Valley in the Shasta Dam, the flood waters during the run-off season, release them during the low-water season and thus largely increment the normal flow during the season when the principal consumptive use is customarily made. Storage on the Sacramento River is made above the vast majority of existing users. This, it was noted, gave a strong advantage to the United States on the San Joaquin River. Normally this confers a heavy advantage and this is increased by reason that the party at the head of the ditch is the United States, and on account of the well-known jurisdictional difficulties frequently entailed in securing a judicial definition of its rights. However, this highly advantageous position of the United States on the San Joaquin River, is due entirely to one salient fact inherent in the project plan. This is that diversion is made at the point of storage. Both point of diversion and point of storage are therefore in the possession of the United States and there are no claimants intervening between these points. The diametric opposite is the case on the Sacramento River. If this point of divergence between the situation prevalent on the San Joaquin and the Sacramento Rivers is fully grasped and its vital significance

adequately appreciated, then the basis is soundly laid to duly evaluate the vulnerability of the United States on the two rivers and the necessity for taking adequate remedial measures.

On the Sacramento River it is inherent in the plan that these excess flood waters stored at Shasta Dam will be released at the foot of the dam and will then flow some 300 miles to the delta, and will there be diverted for conveyance to the interior of the San Joaquin Valley in order to discharge the commitment of the United States respecting the exchange of San Joaquin River water for water of the Sacramento River. On the Sacramento Division there are some 300 intervening users between the point of storage and the point of diversion, on and along the Sacramento River and in the vicinity of the delta. Whether, therefore, adequate amounts of water will be available at the point of diversion on the Sacramento River, is largely dependent upon the will of the existing users on the approximately 300-mile intervening course between the point of diversion and the point of storage.

The practically insuperable difficulties attendant upon any attempt to operate the project with the rights of these intervening users, and potential users, undefined and therefore incapable of enforcement or proper limitation, is readily subject to demonstration by a more complete statement of the basic facts relating thereto. Shasta Dam is located in the immediate vicinity of Redding, the county seat of Shasta County, at the head of the Sacramento Valley. From Redding to the city of Sacramento along the river is a distance of 246 miles. An additional distance of 53 miles below, is the confluence of the Sacramento and the San Joaquin Rivers, and 38 miles still lower is the head of San Francisco Bay.

There is in the Sacramento Valley some 162,000 acres onto which water is directly diverted from the Sacramento River. Within the valley there is a far greater area that is irrigable from the river. Along the 246 miles of the river between Redding and Sacramento there are some 266 separate diversions. The maximum monthly diversion, which occurred in July of 1927, was not less than 4,230 cubic feet per second, and the total capacity of the diversion works, consisting mostly of pumps, was (and now is) not less than 8,500 cubic feet per second. Adjoining this same section of the river there are approximately 146,000 acres of land riparian to the river on which water has never been applied. Under State law, a vested right inheres in all riparian lands, irrespective of whether water has or has not been used thereon, to the extent of a reasonable beneficial use under all the facts and circumstances. Such vested right is not lost by a failure to use the water. Also, permits for the appropriation of water have been issued by the State along this same section of the river for nearly 5,000 cubic feet per second. Use under some of these permits has been fully developed and with respect to others is in process of completion. It therefore follows that to an extent these rights are in addition to present actual diversions.

Below the city of Sacramento along the river, and along former river channels which receive flow from the river, there is an irrigated area of some 139,000 acres. In addition, in the combined delta of the Sacramento and San Joaquin, there are some 336,000 acres of irrigated land which are dependent in part upon the flow of the Sacramento River. The number of diversions for irrigation in the delta is not known with accuracy. However, along a section of the river 27 miles below Sacramento, there are believed to be approximately 50 separate diversions.

From the foregoing may be derived some conception as to that which might be designated as the normal actual draft upon the river, as well as the magnitude of the potential increase in such draft which might well be made if the river flow commensurate therewith were available. It is axiomatic that disputes and conflicts over water rights seldom if ever arise during years of adequate flow. It is in the critical years of low water flow, however, that disputes and conflicts are inevitable unless adequate precautions have been taken in advance. It will therefore be highly illuminating in view of the prospective radical changes on the Sacramento River which will result from project operation, to contrast with the foregoing data Sacramento River flows which have occurred in the typical low flow seasons of 1924, 1931, and 1934. During these years the discharge at a point (Red Bluff) 60 miles below Shasta Dam averaged between 2,900 and 2,600 cubic feet per second during July and August, which are the months of maximum demand, and during certain periods fell below 2,500 cubic feet per second, and at the city of Sacramento, immediately above the delta, the average flow during the same period was as low as 320 cubic per second, and in one 10-day period, due to tidal influence, the flow was reversed so that the river at Sacramento was flowing upstream instead of downstream.

The forgoing data with respect to the flow in the vicinity of the head of the Sacramento Valley may therefore be contrasted with the 4,230 cubic feet per second of diversions above Sacramento, the approximately 5,000 cubic feet per second under permit, the total diversion capacity of 8,500 cubic feet per second, and, in addition, the potential use of riparian lands not now using water but nevertheless entitled thereto. Also, the data respecting flow at the city of Sacramento is in contrast with the draft of the 139,000 acres of irrigated lands along the river below Sacramento dependent thereon, as well as the 336,000 acres of delta lands to some extent dependent thereon. There are, it is true, at times substantial increments to the flow of the Sacramento River above the delta from various tributaries. This,

naturally, decreases the draft upon the Sacramento River proper, but such increments by no means can make up the deficit during such critical periods as here referred to. Further, the fact of such increments merely multiplies the necessity for exact ascertainment and enforcement of each and every right upon the river.

There is in the foregoing data a demonstration it is a practical certainty that during future critical periods of deficient natural flows on the Sacramento River between Shasta Dam and the delta, that is, between the point of storage and the point of diversion on the Sacramento division of the project area, the lawful draft alone, to say nothing of possible overdrafts, will be far in excess of the normal flow. If the deficiency is to be supplied from project storage, the intervening users should compensate the United States therefor, but in the absence of ascertainment and enforcement of all rights on the river, that will be unattainable. In turn, flows anticipated to arrive at the delta for diversion southward, and for which purpose it is proposed to release corresponding flows at Shasta Dam, will not arrive at their destination. The result will be disruption of operating schedules and far-reaching deleterious effects over the entire project area.

In substantial degree existing rights to the use of water on the San Joaquin River have been litigated but not in such manner that each might be enforced against the other. On the Sacramento and in the delta, however, comparatively very few rights have been litigated at all, and only a small proportion of these rights on both rivers are of record anywhere. In such a situation it is evident that in view of such forthcoming radical changes in the natural regimen of stream flow, in order to foreclose endless conflict, misunderstanding, and a multiplicity of litigation, it is necessary that preceding an attempt to actually make such changes in the natural stream flows, all rights, both vested and inchoate, should be carefully and scientifically defined so that each and every right might be subject to as exact ascertainment as possible and that each might be justly enforced as against all others. If this is not accomplished, the result will necessarily be uncertainty, doubt, and conflict.

Evidently such uncertainty and doubt will redound to the disadvantage of all three parties in interest; the Nation, the State, and the water users. It is universally recognized throughout the irrigation West that certainty of water titles is highly desirable, and it naturally flows therefrom that uncertainty in titles to this highest form of property is in strong derogation of the public interest and welfare, and as such will adversely affect this "triumvirate" of parties in interest. However, that derogation will not affect all these parties in interest with equal force as will now be demonstrated.

There are on the San Joaquin River no intervening claimants or users between point of storage and point of diversion, while on the Sacramento River the point of storage and the point of diversion instead of coinciding are some 300 miles apart with very numerous intervening claimants and users. If it be conceded that both point of storage and point of diversion on the Sacramento River are also in possession of the United States, nevertheless, by reason of the gap between them, what is on the San Joaquin River highly favorable to the United States is on the Sacramento highly unfavorable.

This is necessarily so for, in order that possession of point of storage and point of diversion might in like manner with the San Joaquin be elements of strength, the United States needs must be in possession also of both banks of the Sacramento River for the 300 miles intervening between Shasta Dam and the delta. Under California law, the riparian (or bank) owner on nonnavigable water owns to the thread of the stream—on navigable water above tidewater to low-water mark and below tidewater, to high-water mark (civil order, sec. 830). Irrespective of the right, if any, of such riparian owner to the use of the water, he unquestionably has the right of possession to the stated limits and such possession may not be invaded even by the United States without payment of adequate compensation.

The possession by the United States, therefore, of the points of storage and diversion with respect to the Sacramento River will enable the United States to divert and use only such portion of the water which arrives at the point of diversion. Meanwhile, through its intervening course, the water in the river, normal flow and flow released from storage at Shasta Dam, it must be remembered, retains no distinctive coloring. Therefore, whether the United States will receive at the point of diversion the quantities of water to which it is justly entitled is necessarily dependent in large measure upon the will of the intervening users. That is to say, it is dependent upon the degree to which the rights of those intervening users are defined with exactitude, as well as the extent to which those users voluntarily confine themselves thereto. In the existing condition of human nature it may be confidently predicted that those intervening users, finding an abnormal increment in the stream, will each for himself define and exercise their rights in their own favor with substantially elasticity.

In order, therefore, that the United States may receive a just division of normal and artificial flow, made a common supply by the United States, the rights of the intervening users among themselves, and as against the rights of the United States, must be defined, and that definition must be enforced. It is also now apparent that the absence of definition and enforcement, particularly on the Sacramento River, will operate very strongly against the United States. In lesser degree, this lack will also operate to the disadvantage of

each intervening user in his relation to all others. In the absence of a comprehensive definition, interminable conflicts, disputes, and litigation will necessarily ensue.

We have now noted one aspect of strength of the present position of the United States on the San Joaquin River, and its corresponding weakness on the Sacramento. However, on the San Joaquin the position of the United States not only has elements of strength but also points of vulnerability. The rights of the United States to fully use the water of the San Joaquin is dependent upon its fulfillment of its commitment respecting the exchange of water, as has been noted. The moment it fails to discharge that commitment it must cease the storage of water on the San Joaquin River commensurate with the rights of all other parties to the exchange. As a corollary thereto, the obligation of the United States to supply water from Friant Dam will fall into default. The ability, therefore, of the United States to discharge its obligations under the exchange, and to utilize the water of the San Joaquin River for project purposes, is dependent upon its ability to continuously divert adequate quantities of water at the delta, which are largely derived from the Sacramento River. Its ability to do that in turn, we have seen, is dependent upon a definition and enforcement of rights to the use of water on the Sacramento River and the delta. If the United States fails for any reason to receive the water to which it is entitled at the delta, it must fail to discharge its commitments with respect to the San Joaquin division.

There is a further vital distinction between the position of the United States on the San Joaquin River, and that on the Sacramento River. Reference to this distinction has heretofore been made, but the significance thereof has not been duly emphasized. There are, practically speaking, no rights on the San Joaquin River superior in right or earlier in priority to those the United States has acquired the right to utilize. On the Sacramento River, considered broadly, the diametric opposite is the case. It is axiomatic in water law that in order for free use to be made of a junior right the senior right must be adequately defined. Definition and enforcement of all rights on the Sacramento River is therefore necessary to free use and enjoyment by the United States of its acquired rights on the Sacramento River. The reason for this exists in the circumstance that the rights which the United States has acquired or proposes to acquire on the Sacramento River are all of relatively inferior priority.

All the foregoing may be summarized to the effect that, before the United States can safely proceed with full assurance of orderly and successful operation of the project, an effective ceiling must be placed on all rights which are superior in right or earlier in priority to the acquired rights of the United States. In other words, before the United States can safely proceed with assurance of successful operation of the project, a comprehensive definition and enforcement must be secured with respect to all rights on both rivers which will be affected by operation of the project.

The interdependence of rights on the San Joaquin with those on the Sacramento has been demonstrated. But there are further reasons for this inter-relationship. The United States proposes to sell rights to the use of water to be made available by the project. Such rights are necessarily in and to the use of water over and above that necessary to supply existing rights. Therefore, before the United States can enter into a contract to grant any such right, it must know definitely what it has to grant. Likewise the purchaser in entering into any such contract will necessarily make a definite financial commitment to pay for the right acquired. Prior to making any such commitment, such purchaser as a good businessman will need to know definitely the extent of the right he is acquiring. Unless a comprehensive adjudication on both streams has been made prior to the execution of any such contract, everything in respect hereto will be conjectural, nothing definite being known in advance. If assumptions are made, someone must take the risk of the accuracy thereof. Certainly the extensive outlays necessary to finance developments dependent on a continuous supply of water cannot reasonably be made on an uncertain "if, as, and when" basis.

In order to bring this point home, let us take a concrete illustration. Assume the United States proposes to contract for the furnishing of a water supply to a landowner for irrigation in the San Joaquin Valley. The source of this water is more or less directly or indirectly the Sacramento River. Under existing law, it cannot be questioned that the main body of the Federal reclamation law is applicable to operations of the United States with respect to the Central Valley project. It is a fundamental provision of the reclamation law that the right to the use of water acquired thereunder shall be appurtenant to the land irrigated. (See *Ickes* v. *Fox*, 300 U. S. 82, 57 S. Ct. 412.) However, the right of the United States to deliver that water to that land is subject to numerous conditions. Without attempting to enumerate all, it without question is subject to all existing rights on the Sacramento River whatever they may be. It is also subject to the existing commitment of the United States respecting the exchange of water in the San Joaquin division. Elaborate determinations have been made concerning the amounts required to fulfill these and other conditions, and doubtless they will be remade, possibly more than once prior to operation of the project, but in the final analysis they consist wholly and entirely in assumptions. There is not and cannot be anything conclusive concerning them unless and until they are re-

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duced to contract or decree. Any and all investigations are evidentiary merely. There is nothing conclusive about them. The same is true concerning such decrees as have been rendered with respect to such rights. These decrees are piecemeal and inconclusive due to the limited number of parties involved, as well as the circumstance they collectively are incapable of enforcement. Not only should each and every existing water right on both these streams be accurately known and located, but also there should be placed thereon an effective "ceiling" or limitation upon the right of exercise thereof prior to operation of the project.

It has in fact long been widely recognized that full adjustment of water rights should precede not only project operation but also project construction. This is referred to repeatedly throughout the report on Federal reclamation to the Secretary of the Interior under date of December 1, 1934, by John W. Haw and F. E. Schmitt. At page 10, it is said: "Now that competent planning bodies are in existence or are being formed it is timely to consider making the undertaking of a project contingent on the previous preparation of a comprehensive plan for the basin concerned, including full adjustment of water rights and such reservation of unappropriated rights as will permit execution of the plan." On page 108 the following appears: "For practical success, of course, a complete adjustment of water claims would have to be reached and agreed upon by the several interests concerned," and on page 111 the following is stated as properly a condition precedent to Federal cooperation in reclamation of arid land: "That all water claims be adjusted and rights clarified before construction is undertaken, and the residual rights be reserved for the use of the public." Finally, there is included as an integral part of the general summary and conclusions at page 131, the following: "To quiet conflicts over water rights, reduce litigation and render wasteful competition for water appropriation unnecessary, it is desirable that full adjustment of water rights for the basin concerned be required before a project is undertaken, and that the water-control board or boards concerned appropriate or withdraw for use in the public interest all remaining waters."

It may now be taken as established that prior to project operation it is necessary that all rights on both the Sacramento and San Joaquin Rivers and their tributaries, which will be directly affected by project operation, must be comprehensively defined so as to be capable of just enforcement. The next point for consideration then is how this necessary objective may be consummated. The most expeditious and economical means in every way advantageous to all parties concerned of securing such definition is evidently by negotiations leading to a written agreement. However, in practice, this method is rarely possible except where the parties are few, and not by any means always possible even then. In a situation such as here presented where the necessary parties in interest may be numbered by the hundreds, such method holds no reasonable prospect of success. The sole remaining recourse is litigation.

Suits for the determination and adjudication of water rights are equitable in nature and are closely akin to actions to quiet title. As such, they are peculiarly subject to the principles and practice of courts of equity. Nevertheless, such suits are widely recognized as of a nature apart—as by nature wholly or quasi sui generis. There is, therefore, judicial recognition that litigation over water rights and the governing procedure justifies a separate classification. Doubtless due to the supreme law of necessity, on account of the peculiar nature of the subject matter, rights in and to flowing water, distinctive rules and principles governing such suits have from time to time been formulated. Some of these are universally recognized while many are not.

Over a long course of years the courts have labored to adapt their ordinary processes to the difficult problem of the rendition of a decree involving water rights which would define each and every right involved and enable the enforcement of the decree as against each and every other right. This result is absolutely necessary and if not attained the time, effort, and expense involved, which frequently entails the expenditure of millions in money and many years in time for a single suit, the whole will be, and in the past frequently has been almost barren of results. Thus all too frequently one water decree merely lays the basis for another. When another conflict arises, it must be wholly relitigated from the beginning. This necessarily follows from the principle widely applied that decision of the issues in one case is not binding on parties vitally interested, but not represented, nor is such a decree even binding on coparties as among themselves, unless the issues have been adequately presented among them by formal cross pleadings. There are a few decisions in some jurisdictions which established water suits as an exception to this rule but unfortunately this exception is not universally recognized, and where recognized is not always followed.

Further, in the ordinary course of a water suit pursuant to the conventional processes, there is no means of assessing any portion of the expense to the taxpayers of the State generally although many intangible benefits undoubtedly accrue to them as a result of enforcement of an adequate comprehensive adjudication. As has been noted, the State as representative of the whole people, has a very vital interest in settling, defining, and enforcing rights to the use of water. When that is accomplished, particularly on a major stream system, a very substantial increment is made to peaceful processes and a distinct contribution is thereby afforded to the general welfare in its

broadest sense. However, such apportionment is impossible in the ordinary processes of the courts, and no assessment whatever could be made of any portion of the cost to the general public. In the California statutory adjudication procedure strict recognition is given to this defect in the usual process. In the administrative process of enforcement of the decree one-half the cost is borne by the State, and by it passed on to the taxpayers.

The ordinary processes of courts of equity, therefore, evaluated for the purposes of settling, defining, and enforcing water titles have been found inadequate. Throughout the western irrigation States this is almost universally recognized and in response to the demand, statutory adaptations of the usual and ordinary, that is, the conventional processes of equity courts, have been enacted. These differ in methods of approach only. With respect to all the objective is the same, to so mold the historic remedies afforded by courts of equity, as to supply an expeditious, relatively inexpensive, orderly and peaceful means of securing an equitable distribution of water to the parties entitled thereto.

In a case involving many hundreds of parties, as would an adjudication of water rights on the Sacramento and San Joaquin Rivers, for illustration, to formally put in issue each and every right as against each and every other right, would under the historic process require such an astronomical number of cross pleadings that no one would or could be expected to read them. Under the California statutory adjudication procedure, the interlocking claims of the parties automatically are put in issue as against each and every other right involved. The decree which follows is therefore completely comprehensive. There is thereby established a basis for the complete and just enforcement of the resulting decree, and the assurance of water distribution to the parties entitled thereto.

Further, an administrative determination is first made by a State officer with a highly specialized staff, which serves to promptly settle and define the noncontroversial rights. The true issues are thus winnowed out, developed and presented by the means of filing of exceptions to this administrative determination, and if the contesting parties are dissatisfied with the final solution by the administrative agency, these remaining issues, which are usually quite narrow and few in number, are presented to the court and may be quickly disposed of with a minimum of time, effort, and expense.

When the entire process is concluded and any and all parties so desiring have had their "day in court," and have been fully heard, a decree, comprehensive in the broadest sense of the term, is entered, meticulously defining each and every right involved as against each and very other right. Thereafter, if desired by the parties, a procedure may be invoked whereby the State police power is brought to

bear in order that distribution in strict accord with the decree may be continuously enforced.

For present purposes it presumably is unnecessary and would extend the present consideration beyond reasonable length to describe the statutory processes in further detail. It will therefore suffice to state that the statutory procedure is modeled closely upon that of Oregon. In *Pacific Live Stock Co.* v. *Lewis* (214 U. S. 440, 36 S. Ct. 637, 60 L. Ed. 1084), an appeal from a decree affirmed by the Supreme Court of Oregon, was taken to the Supreme Court of the United States. A decree was rendered pursuant to the Oregon water code, which in all essential respects is identical with the California statutory adjudication procedure. Before the Supreme Court of the United States, the Oregon procedure was subjected to a searching attack, but the decree was affirmed on all grounds. The decision contains an excellent detailed review of the essential provisions of the statutory adjudication procedure which is highly commended. The Court strongly contrasts the statutory proceeding with that under the usual equity procedure, saying that "the proceeding * * * although in some respects resembling" suits under the ordinary procedure "is essentially different from them." The opinion continues:

> They are merely private suits brought to restrain alleged encroachments upon the plaintiff's water right, and, while requiring an ascertainment of the rights of the parties in the waters of the river, as between themselves, it is certain that they do not require any other or further determination respecting those waters. Unlike them, the proceeding in question is a quasi-public proceeding, set in motion by a public agency of the State. All claimants are required to appear and prove their claims; no one can refuse without forfeiting his claim, and all have the same relation to the proceeding. It is intended to be universal and to result in a complete ascertainment of all existing rights, to the end, first, that the waters may be distributed, under public supervision, among the lawful claimants according to their respective rights without needless waste or controversy; second, that the rights of all may be evidenced by appropriate certificates and public records, always readily accessible, and may not be dependent upon the testimony of witnesses with its recognized infirmities and uncertainties; and, third, that the amounts of surplus or unclaimed water, if any, may be ascertained and rendered available to intending appropriators.

Referring to a situation resembling that to which this proceeding is addressed, the Supreme Court of Maine said in *Warren* v. *Westbrook Mfg. Co.* (88 Me. 58, 66, 35 L. R. A. 388, 51 Am.

St. Rep. 372, 33 Atl. 664): "To make the water power of economic value, the rights to its use, and the division of its use, according to those rights, should be determined in advance. This prior determination is evidently essential to the peaceful and profitable use by the different parties having rights in a common power. To leave them in their uncertainty—to leave one to encroach upon the other—to leave each to use as much as he can, and leave the other to sue at law after the injury—is to leave the whole subject matter to possible waste and destruction." In considering the purpose of the State in authorizing the proceeding, the Supreme Court of Oregon said *In re Willow Creek* (74 Or. 592, 613, 617, 144 Pac. 505: "To accelerate the development of the State, to promote peace and good order, to minimize the danger of vexatious controversies wherein the shovel was often used as an instrument of warfare, and to provide a convenient way for the adjustment and recording of the rights of the various claimants to the use of the water of a stream or other source of supply at a reasonable expense, the State enacted the law of 1909, thereby to a limited extent calling into requisition its police power * * *." The district court, when making the remanding order, said: "The water is the res or subject matter of the controversy. It is to be divided among the several claimants according to their respective rights. Each claimant is therefore directly and vitally interested, not only in establishing the validity and extent of his own claim, but in having determined all of the other claims" (199 Fed. 502). And that court further said that what was intended was to secure in an economical and practical way a determination of the rights of the various claimants to the use of the waters of the stream, "and thus (to) avoid the uncertainty as to water titles and the long and vexatious controversies concerning the same which have heretofore greatly retarded the material development of the State." In such a proceeding the rights of the several claimants are so closely related that the presence of all is essential to the accomplishment of its purposes, and it hardly needs statement that these cannot be attained by mere private suits in which only a few of the claimants are present, for only their rights as between themselves could be determined. As against other claimants and the public the determination would amount to nothing * * *.

These statements by the Supreme Court of the United States are peculiarly applicable to the situation prevailing on the Sacramento River, and strongly support every point made herein for necessity for resort to the California statutory-adjudication procedure. That procedure has been upheld in all respects in *Bray* v. *Superior Court* (92 Cal. App. 428, 268 Pac. 374, 1081), and in *Wood* v. *Pendola* (1 Cal. 2d 435, 35 P. (2d) 526).

The next point which must necessarily be determined is whether in such a comprehensive adjudication it would be imperative to include the rights of the United States. Such rights are divisible for present purposes into two broad categories, those which repose in trust for the ultimate benefit of beneficiaries of the project, and those which the United States is entitled to exercise by authority of its sovereign capacity. The first class concerns those rights which the United States has acquired for project purposes, the second concerns those which it is entitled to exercise in its governmental capacity. By way of illustration, in the latter class is its power to aid and improve navigation. Included in the first class are those whereby additional water supplies will be made available to those having need thereof.

In *California* v. *Arizona* (298 U. S. 558), the Supreme Court refused to entertain the application of Arizona for a judicial apportionment of the unappropriated water of the Colorado River among Colorado River Basin States on the ground that such apportionment could not be made without an adjudication of the rights of the United States to control navigation and to impound and control and dispose of surplus water in the stream not already appropriated, as any right of Arizona is subordinate to and dependent upon the right of the United States to such water, hence the United States would be an indispensable party to such apportionment proceedings. In like manner here, no effective comprehensive definition of the rights involved can be made and certainly no definition can be made which would be enforceable against all without embracing all rights on the streams including rights of the United States.

The preceding leads inevitably to the conclusion that there is a prime necessity for a comprehensive adjudication of all rights to the use of water the natural regimen of which will be altered by operation of the Central Valley project, and, further, that such adjudication can only be effectively secured and enforced by resort to the California statutory-adjudication procedure. This requires that an unequivocal affirmative must be accorded to the first question herein stated. Consideration will now be given to the second which for convenience may be repeated here:

> "Problem No. 26. If there is need for such comprehensive adjudication, can the same be accomplished under existing law, and, if not, what enabling legislation is necessary?"

Needless to state, there is no strictly Federal procedure at all analogous to this California statute. The essential question therefore is

whether it is possible to include the rights of the United States in a proceeding pursuant to this statute of the State of California. There are numerous instances in reported and unreported decisions, where the United States has submitted its rights in connection with Federal reclamation projects, to adjudication by courts of the States concerned. In at least one instance adjudication of such rights, together with all other rights involved, was initiated in the United States in the Federal district court, and was referred to the State administrative agency, an order of determination was entered in the Federal district court and a decree rendered by the Federal court based thereon. So far as concerns the law of the State, the United States might initiate a comprehensive adjudication pursuant to the California procedure with respect to the Sacramento and San Joaquin Rivers. However, in such case the appropriate Federal officials would thereby submit the rights of the United States to adjudication by State process. In the absence of jurisdictional objection, and in process of the proceedings in usual course, all rights of the United States would be included in the decree. There is at least one example of this having occurred in the current history of the California adjudication procedure.

However, it is a principle which has frequently been applied by the courts that no officer of the Federal Government is authorized to submit any rights or property of the United States to the jurisdiction of any court without authority of an act of Congress. (See *Stanley* v. *Schwalby* (162 U. S. 255, 270), and decisions following.) But, so far as appears, that principle has never been applied where the United States has acquired such rights or property pursuant to the law of the State where it is proposed to adjudicate the same. The principle would appear to be particularly inapplicable where such rights or property were acquired from the State gratuitously, and without compensating benefit other than the prospect of prompt completion and operation of the project. Such is in fact the case with respect to all rights acquired by the United States in relation to the Sacramento division of the project, and is in no small part the case with rights acquired or to be acquired with respect to the San Joaquin division.

Again, it may be questioned that the requisite consent of Congress does not appear. In the Reclamation Project Act of 1939, approved August 4, 1939 (Public, No. 260, 76th Cong., ch. 418, 1st sess.), section 2c provides in part that "The term 'project' shall mean * * * any project constructed or operated and maintained by the Secretary (of the Interior, cf. sec. 2b) through the Bureau of Reclamation for the reclamation for the reclamation of arid lands or other purposes." The Central Valley project is a "project" within this statutory definition. (See sec. 2 of act approved August 26, 1937, 50 Stat. 844, 850.) Section 14 of the Reclamation Project Act of 1939 further provides in part as follows: "The Secretary is further authorized, for the

purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts * * * for the adjustment of water rights, as in his judgment are necessary and in the interests of the United States and the project."

The sole possible point of dispute concerning the materiality of the foregoing provision is whether a stipulation by the Secretary of the Interior filed at the appropriate juncture in a comprehensive adjudication pursuant to the California statutory-adjudication procedure, might be properly considered a "contract for the adjustment of water rights," the balance of the conditions prescribed by the Federal statute being without question amply fulfilled as appears from the foregoing consideration. It is too fundamental for argument that a contract need not be bilateral, and unilateral contracts are too common to require or justify support by citation of authority or even illustration. The sole question therefore is whether such a unilateral contract is acted on by the other party thereto, and whether there is adequate consideration.

Although it is believed the Secretary of the Interior is amply authorized to submit the rights of the United States to adjudication pursuant to the California statutory adjudication procedure, the subject will be briefly explored under the assumption that such is not the case. In such event, naturally it would be necessary to secure authorization by Congress supplying the consent of that body. There is precedent for such course (*State of Indiana* v. *Killigrew*, 117 Fed. 2d 863), was an action on an official bond given by the defendant Killigrew for faithful performance of the duties of clerk of a State court. By Federal law it was the duty of the defendant to collect certain fees in naturalization proceedings, and there was no provision of State law referring thereto. It appears the defendant had failed to properly account to the proper Federal authority for such fees. The defense was that an act of Congress alone could not lawfully impose duties on a State officer. Judgment for defendant was reversed. Here, of course, the case would be much stronger, for if expressly authorized by Federal law, inclusion of Federal water rights in the statutory-adjudication procedure would be valid under both Federal and State law.

It is believed that it has been demonstrated, subject to supplying such detailed analyses and briefs of specific points as may be called for, that a comprehensive adjudication of all rights to the use of water on the Sacramento and San Joaquin Rivers is imperative as preliminary to successful and orderly operation of the Central Valley project, and that such adjudication must include any and all rights of the United States. Some of these, stemming more or less directly from the Federal Constitution, the supreme law of the land,

as is frequently said are "paramount powers." Such rights, it may be, it is impossible to adjudicate in definite terms by limiting exercise thereof to volume and season. If such should eventuate, the sole alternative would be to declare the right according to its true status, without attempting to impose limitations or conditions. In any event, it is not believed possible by any means, or by any recourse, so long as our courts are open, to other than delay or postpone the inevitable result. Eventually, either adequately or inadequately, either as whole or piecemeal, the water rights here considered will of necessity eventually pass through the courts.

It therefore appears there is no insuperable obstacle to the inclusion in a comprehensive adjudication pursuant to the California statutory-adjudication procedure, of all rights to the use of water affected by the Central Valley project and to including therein the rights of the United States. It is believed that these conclusions in answer to the foregoing stated problems are well grounded in fact and that all intermediate conclusions are sound and can be amply supported. Both may readily be demonstrated but it would appear for present purposes the foregoing is ample to justify the inclusion of the stated problems in the agenda for further study.

DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
March 10, 1943.

MR. EDWARD HYATT,
Executive Officer, Water Project Authority,
Sacramento, Calif.

DEAR MR. HYATT: I have thoroughly considered a recommendation by Dr. Barrows for the inclusion of a problem on adjudication of water rights in the Central Valley project studies. In this connection I reviewed your letter of November 18 to Dr. Barrows and Mr. Holsinger's memorandum of December 10 on this subject.

You and I have discussed this subject at various times over a period of years and I believe you are thoroughly familiar with my views which I feel are well supported by facts. In the light of all the circumstances, I find it unwise to recede from the position I have previously taken. In consequence I have advised Dr. Barrows that I cannot approve the inclusion of any problem relating to the adjudication of water rights in the Central Valley project studies.

Very truly yours,

JOHN C. PAGE, *Commissioner.*]

● Exhibit No. 10, "Excerpts from Testimony Relating to the Origin and the Content of an Unsigned Draft of a Suggested Letter to be

Sent from the Secretary of the Interior to the Governor of California", is not reproduced herein.

[EXHIBIT No. 11

SACRAMENTO VALLEY WATER USERS
COMMITTEE OF THE CALIFORNIA CENTRAL
VALLEYS FLOOD-CONTROL ASSOCIATION,
Sacramento, Calif., October 25, 1951.

MR. STEPHEN W. DOWNEY,
Downey, Brand, Seymour & Rohwer,
Capital National Bank Building,
Sacramento, Calif.

DEAR MR. DOWNEY: The Sacramento Valley Water Users Committee at a regular meeting October 18, 1951, in Sacramento, authorized you as its attorney to represent the committee in the hearings to be held in Sacramento October 29, 30, and 31, 1951, of the House Subcommittee on Interior and Insular Affairs, and the Joint Interim Committee on Water Problems of the State legislature. Your attendance at such hearings and participation in the presentation of such information, statements, or other material, as in your judgment will best represent the mutual interests of the committee and its membership is therefore requested.

The Sacramento Valley Water Users Committee—a committee of the California Central Valleys Flood Control Association—represents the membership of that association with respect to water problems together with certain of the water users in the Sacramento Valley who divert directly from the Sacramento River but who are not regular members of the association.

The committee as constituted represents more than 85 percent of the total volume of all water annually diverted for irrigation purposes from the Sacramento River between Redding and the river's confluence with the San Joaquin River at Collinsville. While a great percentage of the total water annually used is diverted by a relatively small number of individual diverters, these large diverters are in the main irrigation districts, reclamation districts, or mutual water companies who serve many thousands of individual landowners and who in reality are merely the legal holders of the water right as trustees for the landowners.

While the total of individual landowners depending on these rights for irrigation has not been tabulated, it may be of interest to point out that in the Glenn-Colusa irrigation district, which is the largest single user of water in the valley, there are over 1,000 individual landowners. The average size of individual holdings (of irrigated land)

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