SENATE.

TUESDAY, *December 2, 1913.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. Forrest J. Prettyman, D. D.

DUNCAN U. FLETCHER, a Senator from the State of Florida, HENRY F. LIPPITT, a Senator from the State of Rhode Island, and JOHN WALTER SMITH, a Senator from the State of Maryland appeared in their seats to-day.

The Journal of yesterday's proceedings was read and approved.

REPORTS OF SECRETARY OF THE SENATE.

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Senate, transmitting, pursuant to law, a full and complete statement of the receipts and expenditures of the Senate and the condition of the public moneys in his possession from March 14, 1913, to June 30, 1913 (S. Doc. No. 252), which, with the accompanying paper, was ordered to lie on the table and be printed.

He also laid before the Senate a communication from the Secretary of the Senate, transmitting, pursuant to law, a full and complete account of all property, including stationery, belonging to the United States in his possession on the 1st day of December, 1913 (S. Doc. No. 248), which, with the accompanying paper, was ordered to lie on the table and be printed.

REPORTS OF SERGEANT AT ARMS.

The VICE PRESIDENT laid before the Senate a communication from the Sergeant at Arms, transmitting, pursuant to law, a statement of the receipts from the sale of condemned property in his possession since March 16, 1913 (S. Doc. No. 250), which, with the accompanying paper, was ordered to lie on the table and be printed.

He also laid before the Senate a communication from the Sergeant at Arms, transmitting, pursuant to law, a full and complete account of all property belonging to the United States in his possession on December 1, 1913 (S. Doc. No. 249), which, with the accompanying paper, was ordered to lie on the table and be printed.

REPORTS OF FREEDMEN'S HOSPITAL.

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, a report of the expenditures for salaries, etc. (H. Doc. No. 346), at the Freedmen's Hospital, Washington, D. C., which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

He also laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, a statement of receipts and expenditures on account of pay patients received into the Freedmen's Hospital, Washington, D. C., during the fiscal year ended June 30, 1913 (H. Doc. No. 344), which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

GOVERNMENT HOSPITAL FOR THE INSANE (H. DOC. NO. 342).

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report of the superintendent of the Government Hospital for the Insane for the fiscal year ended June 30, 1913, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

EXTENSION OF CAPITOL GROUNDS (S. DOC. NO. 251).

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, a statement of receipts from rentals of properties acquired for the extension of the Capitol Grounds, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

REPAIRS OF BUILDINGS, DEPARTMENT OF THE INTERIOR (H. DOC. NO. 349).

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, an itemized statement of expenditures made and charged to the appropriation "Repairs of buildings, Department of the Interior, 1913," for the fiscal year ended June 30, 1913, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

CONTINGENT EXPENSES, DEPARTMENT OF THE INTERIOR (S. DOC. NO. 348.)

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, an itemized statement of expenditures made and charged to the appropriation "Contingent expenses, Department of the Interior, 1913," for the fiscal year ended June 30, 1913, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

PETITIONS AND MEMORIALS.

Mr. ROOT. I have received a telegram in the nature of a memorial relative to the Hetch Hetchy bill, which I send to the desk and ask that it may be read.

There being no objection, the telegram was read and ordered to lie on the table, as follows:

NEW YORK, *December 2, 1913.*

Hon. ELIHU ROOT,
United States Senate, Washington, D. C.:

I wish to add a very emphatic protest in my own name and on behalf of three-quarters of the members of the Sierra Club, of San Francisco, against despoiling the Yosemite National Park for a municipal water supply which can perfectly well be obtained elsewhere. The park belongs to every citizen of the United States and it belongs to posterity. It is our duty to protect this glorious pleasure ground for the people who are to come after us.

ALDEM SAMPSON.

Mr. ROOT presented a memorial of members of the Institute of Arts and Sciences of Columbia University, New York, N. Y., remonstrating against the passage of the so-called Hetch Hetchy bill, which was ordered to lie on the table.

Mr. WEEKS presented a memorial of the Massachusetts State Federation of Woman's Clubs, remonstrating against the passage of the so-called Hetch Hetchy bill, which was ordered to lie on the table.

He also presented petitions of the congregations of the Evangelical Church of Indian Orchard; of the First Methodist Episcopal Church of Warren; of the First Congregational Church of West Springfield; of the Methodist Episcopal Church of Florence; of the Ladies' Aid Society of the Faith Church of Springfield; and of the Auxiliary to the Woman's Home Missionary Association of Granby, all in the State of Massachusetts, praying for the passage of the so-called antipolygamy bill, which were referred to the Committee on the Judiciary.

Mr. WEEKS (for Mr. LODGE) presented a petition of the Massachusetts State Branch, American Federation of Labor, praying for the enactment of legislation granting to the city of San Francisco the right to use the waters of the Hetch Hetchy Valley, which was ordered to lie on the table.

He also (for Mr. LODGE) presented a memorial of the Massachusetts State Federation of Woman's Clubs and the memorial of George L. Farley, superintendent of schools, and sundry other citizens of Brockton, Mass., remonstrating against the enactment of legislation granting to the city of San Francisco the use of the waters of the Hetch Hetchy Valley, which were ordered to lie on the table.

Mr. McLEAN presented a memorial of sundry citizens of Southington, Conn., remonstrating against the passage of the so-called Hetch Hetchy bill, which was ordered to lie on the table.

Mr. LA FOLLETTE presented a petition of the Wisconsin conference of the Evangelical Association, praying for the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Elm Grove and Waterford, in the State of Wisconsin, praying for the enactment of legislation granting applicants the right to settle upon and purchase from the United States, for the sum of $2.50 per acre, the land which they applied to purchase from the Oregon and California railroad companies, and the same be decreed or declared to be forfeited to the United States, etc., which was referred to the Committee on Public Lands.

He also presented a memorial of sundry citizens of West Allis, Wis., and a memorial of sundry citizens of Hillside, Wis., remonstrating against the passage of the so-called Hetch Hetchy bill, which were ordered to lie on the table.

He also presented a petition of the National Woman's Christian Temperance Union, praying for the enactment of legislation providing for the closing on Sunday of the gates to the Panama Canal Exposition, which was referred to the Committee on Interoceanic Canals.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. PENROSE:

A bill (S. 3520) to grant an honorable discharge to C. Wilson Walker; and

A bill (S. 3521) for the relief of George W. Parker; to the Committee on Military Affairs.

A bill (S. 3522) granting an increase of pension to E. A. Whitney;

A bill (S. 3523) granting an increase of pension to Hiram Focht (with accompanying paper); and

A bill (S. 3524) granting a pension to Nelson Dimick (with accompanying papers); to the Committee on Pensions.

By Mr. BRANDEGEE:

A bill (S. 3525) for the relief of Pay Inspector F. T. Arms, United States Navy; to the Committee on Naval Affairs.

By Mr. JOHNSON:

A bill (S. 3526) granting a pension to Helen M. Perkins (with accompanying papers); to the Committee on Pensions.

By Mr. McLEAN:

A bill (S. 3527) granting an increase of pension to Mary Macer (with accompanying papers); and

A bill (S. 3528) granting an increase of pension to Frances A. Couch (with accompanying papers); to the Committee on Pensions.

By Mr. SHIVELY:

A bill (S. 3529) to change the location and straighten the course of the channel of the Grand Calumet River through the lands of the Gary Land Co. and the Indiana Steel Co., and for other purposes; to the Committee on Commerce.

By Mr. CHAMBERLAIN:

A bill (S. 3530) granting an increase of pension to Charles Duggan (with accompanying papers); to the Committee on Pensions.

By Mr. LA FOLLETTE:

A bill (S. 3531) granting an increase of pension to Hiram Kibbey; and

A bill (S. 3532) granting an increase of pension to Adda A. Benson (with accompanying papers); to the Committee on Pensions.

By Mr. CLAPP (for Mr. JONES):

A bill (S. 3533) to authorize the Secretary of Commerce to lease a portion of Ediz Hook Lighthouse Reservation, Wash.; to the Committee on Public Lands.

ADMINISTRATION OF LAND LAWS.

Mr. CLARK of Wyoming. I submit a resolution which I ask may be read and lie over.

The Secretary read the resolution (S. Res. 226), as follows:

Resolved, That the Secretary of the Interior be directed to furnish to the Senate the cost and expense of administering the land laws of the United States for the fiscal years 1908, 1909, 1910, 1911, and 1912, respectively, including rents, salaries of officers in Washington and elsewhere, and salaries, expenses, and subsistence of all agents, servants, and employees wherever and whenever employed, together with all and every expense incurred in or on behalf of the administration, supervision, care, and disposal of the public lands of the United States during the years mentioned.

The VICE PRESIDENT. The resolution will lie over under the rule.

SAN FRANCISCO WATER SUPPLY.

Mr. MYERS. I send to the desk an editorial from yesterday's edition of the Washington Times, on the Hetch Hetchy proposition, and ask that it be read.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the Secretary will read as requested.

The Secretary read as follows:

THE HETCH HETCHY ISSUE.

Whenever a municipality starts out to establish publicly operated utilities, special interests always work underground to defeat it. Just at present San Francisco is striving to end a 12-year effort to procure a municipal water supply. Whether the desire will be fulfilled rests with the Senate of the United States.

The Hetch Hetchy water bill is to be finally acted upon this week. The House passed the bill in September, and since that time hydro-electric power interests, working through insulated political conduits, have sought to short-circuit the grant to the city.

All over the country there has been an editorial and typewritorial voltage directed at the Senate, and this extraordinary current has been solely directed at the electric-power possibilities in San Francisco's project.

The development and use by municipalities of more than 100,000 horsepower would certainly be a shock to the owners of corporations engaged in selling juice at practically their own rates.

Secretary of the Interior Lane and Gifford Pinchot suggest openly and unequivocally that the hydroelectric power companies are the most interested opponents of the bill.

The nature lovers, who protest so vigorously, apparently have been overwrought and stimulated by some powerful interest that seeks to use a laudable and patriotic sentiment for an ulterior and profitable purpose. Many Senators have raised a question mark as to the expense of the anti-Hetch Hetchy propaganda, and the query is also made: "Who is paying the bills for the thousands and thousands of circulars sent from New York and Boston to the women's organizations and individuals throughout the country?" Surely the Society for the Preservation of National Parks, with only 200 members, is not capable of financing such a far-reaching crusade.

Twenty years ago the Geological Survey found the Hetch Hetchy Valley and reported that it would make a proper and ideal source for a water supply for San Francisco. Twelve years ago San Francisco began its effort to obtain this supply, and procured lawfully and by purchase the ownership to the water. Ever since this project was started the city has been frustrated by the water monopoly and the hydroelectric interests.

The Senate ought to pay attention to the reports of noted engineers, including three United States Army engineers, and give San Francisco the right to use its own property.

Mr. WORKS. May I ask from what newspaper the editorial is taken?

The VICE PRESIDENT. It was announced by the Senator from Montana when it was sent to the desk for reading that it came from the Washington Times.

BANKING AND CURRENCY.

Mr. REED. Mr. President, I desire to announce that on Thursday, at the convenience of the Senate, I will address the Senate on the banking and currency bill. I made this announcement for an earlier date, but an opportunity was not afforded.

Mr. SWANSON. I desire to give notice that on Monday, December 8, immediately following the routine morning business, I shall address the Senate upon House bill 7837, the pending currency bill.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. Latta, executive clerk, announced that the President had approved and signed the following acts:

On November 27, 1913:

S. 2779. An act to authorize the conveyance of the steel bridge over the Snake River between Lewiston, Idaho, and Clarkston, Wash., to the States of Idaho and Washington or local subdivisions thereof.

On December 1, 1913:

S. 3397. An act to amend section 2324 of the Revised Statutes of the United States, relating to mining claims.

HOUR OF DAILY MEETING.

The VICE PRESIDENT. The Chair lays before the Senate a resolution coming over from a preceding day, which will be read.

The Secretary read Senate resolution 225, submitted yesterday by Mr. KERN, as follows:

Resolved, That the hour of daily meeting of the Senate be 10 o'clock antemeridian until otherwise ordered.

Mr. NORRIS. I offer a substitute for the resolution.

The VICE PRESIDENT. The substitute will be read.

The Secretary read as follows:

Resolved, That before adjournment on the legislative day of Saturday, December 20, 1913, the Senate will vote upon any amendments that may be pending, any amendments that may be offered, and upon the bill H. R. 7837, a bill to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes, through the regular parliamentary stages to its final disposition, and that until the final disposition of such bill the hour of daily meeting of the Senate shall, unless otherwise ordered, be 11 o'clock a. m.

Mr. GALLINGER. Mr. President, I make the point of order that, under our rules, we can not by resolution fix the time to vote upon any bill. Debate can not be curtailed in that way; it requires unanimous consent to fix a time to vote.

Mr. NORRIS. In reply to the Senator I will say that, even that being true, it would not go to the offering of the resolution or its consideration, but it would require a unanimous vote to adopt it. I do not myself see why it is not in order and could not be adopted the same as any other resolution. Assuming, however, for the moment that the Senator's point of order is correct, it would not make the resolution out of order, but would simply mean that it would require unanimous consent in order to adopt it.

Mr. BACON. With the permission of the Senator, I would suggest that the resolution is out of order because it proposes a change of the rules.

Mr. GALLINGER. Certainly.

Mr. BACON. And a change of the rules can not be proposed in that way.

Mr. NORRIS. I should like to ask the Senator from Georgia if the original resolution offered by the Senator from Indiana [Mr. KERN], which is similar to a great many that have been offered and adopted, does not likewise change the rule by fixing the hour of meeting of the Senate?

Mr. BACON. By no means. There is no rule, Mr. President——

Mr. NORRIS. Pardon me——

Mr. BACON. The Senator was asking me a question. Permit me to make a reply.

Mr. NORRIS. Certainly.

Mr. BACON. There is no rule of the Senate which fixes the hour of meeting; that is a matter for the determination of the Senate each day, if it sees proper to do so. It is now the rule of the Senate that no time shall be fixed for the close of debate. If the Senator from Nebraska desires to change the rule in that particular, he will have to proceed in the way that the rules point out for the amendment of the rules.

Mr. NORRIS. Will the Senator from Georgia kindly point out the particular rule that this resolution infringes?

Mr. BACON. Any new rule is a change of the rules; and this resolution proposes a new rule. No new rule can be proposed, whether it amends a former rule or not, which does not change the rules and which is not subject to the rule which requires that one day's notice in writing must be given of a purpose to make such a motion.

Mr. NORRIS. But the Senator from Georgia says this changes a rule of the Senate.

Mr. BACON. Yes.

Mr. NORRIS. Of course I am not disputing the statement, for the Senator has been here a great many years and is an authority on the rules; but I have asked him to kindly point out a rule that this resolution infringes.

Mr. BACON. I have endeavored to reply. I repeat that any addition to the rules is a change of the rules.

Mr. NORRIS. Well, if that be true—and that makes this resolution objectionable, and there is no specific printed rule on the subject—then it seems to me that the resolution originally offered by the Senator from Indiana changes the same kind of a rule; not written, it is true, in the law, but one that has been followed for a great many years and that has been changed time and again, both recently and in the days that are past, by resolutions similar to the one which the Senator from Indiana has introduced.

Mr. SHAFROTH. Will the Senator from Nebraska yield to me?

Mr. NORRIS. I yield to the Senator.

Mr. SHAFROTH. I should like to call the Senator's attention to the fact that his resolution is practically a cloture rule. We have no cloture in the Senate. What I think the Senator ought to do is to ask unanimous consent for this proposition, for I am heartily in favor of the motion being consented to unanimously. That is the rule, however, that is proposed to be broken by the Senator's resolution. It proposes to limit debate, and that can not be done in the Senate without unanimous consent. Therefore, whenever a Senator desires to close debate, he asks unanimous consent to close it at a certain time.

Mr. NORRIS. Mr. President, it is true that usually when a Senator desires to close debate he asks unanimous consent to do it, but it does not follow because that is done that this kind of a resolution would be out of order; it does not follow because that has been done in the past that it can not be done differently. If there is no rule to the contrary, it seems to me that the resolution is in order and that the Senate has a right to pass on it the same as they do on any other resolution.

Mr. President, if it be said that indirectly, as the Senator from Colorado [Mr. SHAFROTH] has said, it is a cloture rule, then I can answer that by saying that indirectly the original resolution offered by the Senator from Indiana is a cloture rule, for it certainly is. The only difference is that in one case we would have a reasonable consideration of the proposition and in the other we would have to insist on such hours and such times for the meeting of the Senate that it would be a matter of physical endurance only as to when debate should cease.

Mr. GALLINGER. Will the Senator from Nebraska yield to me?

Mr. NORRIS. I yield.

Mr. GALLINGER. It seems to me that the difference between the original resolution and the resolution of the Senator from Nebraska is very marked and very wide. In place of limiting debate or adopting a cloture rule by indirection, the resolution offered by the Senator from Indiana extends debate to an extent that some of us think is somewhat cruel. The difference is so marked that I think the Senator will not insist that there is a similarity between the two resolutions.

While I am on my feet, Mr. President, I will say that it is a well-established custom of the Senate—it certainly has the force of a rule, for we have no previous question here—that we can not close debate until the Senate is ready to close it. Adopting a resolution of this kind, which does propose cloture, must be in contravention not only of the custom but of the rules of the Senate, and I hope the Senator from Nebraska will not insist upon it. The Senator from Nebraska rather gave away his contention when he said that it would require a unanimous vote; yet, if it were put to a vote, we would have a certain number of yeas and a certain number of nays, and the resolution would fail in that way.

Mr. NORRIS. The Senator puts me in a false position when he says that I gave the matter away by saying that it required a unanimous vote. I have not made that contention, but I assume that, for the purposes of the point of order that was made against it, that that would be true; and if that were true, still the resolution would be in order, because it would be possible, at least we might assume that for the purposes of it, that it would be passed unanimously; that there would be unanimous consent.

Mr. GALLINGER. Just one word more——

Mr. NORRIS. I want first to answer the Senator a little bit further.

The Senator contends—and I understand that is the contention of all the Senators who are opposed to the resolution—that it violates a precedent of the Senate, that it violates something that has been going on for years, which has been the custom of the Senate, that debate should cease only by unanimous consent. At the same time every Member of this body knows that the Senate of the United States has for a great many years—so far, I suppose, that the memory even of the Senator from New Hampshire would not run to the contrary—been meeting regularly at 12 o'clock noon. It is conceded that the Senate can change that hour of meeting, and it is said, in answer to my argument, that there is no rule of the Senate that fixes 12 o'clock as the hour of meeting. Then you say as against this——

Mr. WILLIAMS. Mr. President——

Mr. NORRIS. Just a moment. You say, as against the adoption of this resolution, that there is no rule allowing cloture, and therefore this proposition changes the custom, and consequently is out of order.

Mr. GALLINGER. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Mississippi?

Mr. GALLINGER. I addressed the Chair some time ago.

Mr. NORRIS. I will first yield to the Senator from New Hampshire.

Mr. GALLINGER. Mr. President, I only desire to add one suggestion to what I have already said, and that is that, if the resolution offered by the Senator from Nebraska is in order, at any time when we are considering a measure, however important it may be, a majority of the Senate by resolution can close debate.

Mr. NORRIS. A resolution has first to be adopted.

Mr. GALLINGER. Certainly; by a majority vote.

Mr. NORRIS. By a majority vote; which resolution would be debatable.

Mr. GALLINGER. So that a majority of the Senate at any time under a resolution can adopt a cloture rule. I submit to the Senator from Nebraska that, upon careful consideration, I believe he will not think that that will be a wise custom or a wise rule to inaugurate.

Mr. OWEN. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. NORRIS. I yield first to the Senator from Mississippi [Mr. WILLIAMS], who addressed the Chair some time ago.

Mr. WILLIAMS. Mr. President, I wanted merely to make this suggestion to the Senator from Nebraska: The object of all of us, I take it, is to speed consideration of the currency bill. If so, then the very worst thing that can possibly be done is for him to offer this resolution, because it is a resolution to change the rules of the Senate. The rules themselves fix precisely how the rules can be changed, and they can not be changed in any other way.

Mr. NORRIS. The Senator does not contend that there is any rule of the Senate that says there shall not be cloture, does he?

Mr. WILLIAMS. Absolutely. There never was a parliamentary body in the world in which it was not admitted that there was a right of debate which could be put an end to only by an affirmative rule of cloture. That was the case in the British House of Commons until an affirmative rule of cloture was adopted; it was the case in every parliamentary body with whose history I am acquainted until an affirmative rule of cloture was adopted; it was the case in the House of Representatives until then, and this is, so far as I know, perhaps the only parliamentary body now existing where such a rule has not been adopted. Our rules provide as to how the rules themselves can be changed.

But what I was coming to was this, if the Senator will pardon me: The object of all of us is to speed consideration of the currency bill. I undertake to say that a debate upon the proposition offered by the Senator from Nebraska, involving what it does involve, would require a longer debate at the hands of this body than will the banking and currency bill.

Mr. GALLINGER. There is no doubt of that at all.

Mr. WILLIAMS. There are men here who would rather see the banking and currency bill or any other bill go to the waste-basket than to see a cloture rule adopted in the Senate, and your proposed cloture rule could not apply to the debate on the proposition to change the rules. Besides that, under the rule your resolution must go to the Committee on Rules. There is a positive rule to that effect. It seems to me that if the Senator really wants to speed consideration the best thing to do is to withdraw the resolution. It can do no good now.

Mr. KERN. And ask unanimous consent.

Mr. WILLIAMS. And the Senator can get the matter before the Senate, or the substance of it, by asking unanimous consent.

Mr. NORRIS. I understand that, and I am going to do that if the Chair rules the resolution out of order, I will say to the Senator.

Mr. WILLIAMS. But the Senator from New Hampshire [Mr. GALLINGER] has made a point of order against the resolution.

Mr. NORRIS. But the Chair has not ruled that it is out of order, and personally I do not believe it is out of order.

Mr. WILLIAMS. Let the Chair rule.

Mr. NORRIS. I want to say right here that the object of this resolution is to end debate on the currency bill. If the time I have fixed is too short, it can be extended. I am not particular about that. I think it is time enough. The two branches of the Committee on Banking and Currency have agreed on a large majority of the matters in the bill. There are only two or three divisions. They are important, it is true, but it seems to me that practically two weeks' debate would be amply sufficient.

Mr. WILLIAMS. Mr. President——

Mr. NORRIS. Just a moment. I want to call the Senator's attention to the fact that the resolution of the Senator from Indiana, having, as he says, the same object in view, provides only for a meeting of the Senate at 10 o'clock a. m.; but it is intended, as has been announced here by the Senator, that that session shall run until 6, and then a recess shall be taken until 8, and that the night session shall run until 11 o'clock. Now, I submit that to keep that up for two or three weeks is not a good way to bring about good legislation; is is not a fair way to bring about good legislation; and we will not get the best results from Senators here after they have been in session from 10 a. m. until 11 o'clock at night.

There will necessarily drop into the debate a great many things that would otherwise be eliminated. It seems to me that if we were to fix the time indicated, which it seems to me is ample—and if the Senate thinks otherwise the time could be extended—and go on in the regular way, meeting at 11 o'clock, running perhaps until 6, or at least as long as any Senator wanted to speak upon the question, we would reach a result that would be a great deal more satisfactory to the Senate and to the country and bring about better legislation than though we tried to wear each other out by sitting here from 12 to 16 hours a day.

Mr. WILLIAMS. If the Senator from Nebraska will pardon me another interruption——

Mr. NORRIS. Very well.

Mr. WILLIAMS. I have no doubt at all that what the Senator from Nebraska has just said is well said, but there is only one way under the rules of this particular body to arrive at the desired result, and that is to ask unanimous consent. The Senator is right in saying that we contemplate meeting at 10 a. m., recessing from 6 to 8 p. m., and continuing in session until 11 p. m.; but the object of it is to induce and persuade a unanimous-consent agreement.

Mr. NORRIS. Well, the object of it is to wear men out.

Mr. WILLIAMS. Absolutely; and there is no other way of doing it.

Mr. NORRIS. That is like going to war when we ought to have arbitration.

Mr. WILLIAMS. Well, it does not make much difference what the Senator calls it. We have found in this body that there never was any way of inducing a unanimous consent to quit debate except by wearing the body out, and whenever we wanted to do that upon any great question, whether the other side was in power or this side, we have resorted to early morning meetings and night sessions, and that is the only possible practical way of doing it.

I am willing to go further than is the Senator and ask unanimous consent—and I am satisfied it would be agreed to upon this side—to take a vote upon the day fixed by the Senator, and then, as a reward to the Members of the Senate for having been unprecedentedly reticent in debate, to extend the Christmas holidays from that time on to the usual date, instead of adjourning as usual, about the 19th of December, so that all of us may go home and have a bit of rest. That would add a week more to the Christmas holiday recess, and the rest would be deserved and needed.

Mr. OWEN. Mr. President——

Mr. NORRIS. I want to say to the Senator that I am not particularly anxious——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. NORRIS. In just a moment I will yield to the Senator from Oklahoma. I want first to say a word in reply to the Senator from Mississippi. I am not particularly anxious myself about the Christmas holiday recess. I would just as lief stay here and work. The Senator knows, and we all know, that every one of us has a great deal to do besides what we do here in the Senate. If we meet at 10 o'clock in the morning, it means that the standing committees of the Senate can not be at work, and if we stay here until 11 o'clock at night it means that we can not attend to our ordinary routine business; it is a physical impossibility.

Mr. WILLIAMS. That will make us all the more willing to terminate the debate.

Mr. NORRIS. It is not a fair way to terminate debate. I now yield to the Senator from Oklahoma.

Mr. OWEN. Mr. President, I have been trying for 15 minutes to suggest a way how to do it, and the debate continually proceeds upon how not to do it, which seems to be characteristic of the United States Senate; and because of this ancient and archaic rule of no cloture, the Senate being the only civilized parliamentary body on earth that has not got it, the obvious necessity for it is apparent.

Mr. President, I simply wanted to suggest to the Senator that if he would omit the term "resolution" from the head of his proposal and suggest a unanimous-consent agreement it would not be obnoxious to the rule.

Mr. NORRIS. I want to say to the Senator that, as I originally prepared the resolution last night, I drew it in the form of an order instead of a resolution. As I heard read the resolution of the Senator from Indiana yesterday I thought it said "ordered," but when I looked at the RECORD this morning I discovered that it was in the form of a resolution, and inasmuch as this was a substitute for that I used the word "resolution" the same as he did, as I thought it would not properly be a substitute unless I did so.

Mr. OWEN. I ask the Senator if he will not consent to change the form of the resolution to a unanimous-consent agreement to take a vote on the 15th of December, so that we may dispose of the matter through the conference and have it settled before the Christmas holidays, because I venture to say to the Senator that the Members on this side have determined not to have any Christmas recess, except one day, unless we can dispose of this bill.

Mr. NORRIS. I want to say to the Senator that I rather approve of that course. I have believed for a good many years that when Congress convenes here on the first Monday in December and just gets fairly to work, it ought not to adjourn for two or three weeks for Christmas holidays and be crowded to death at the other end of the session. I myself personally believe in that procedure. I think, if it has been determined not to have any Christmas holiday recess, you are entitled to congratulations on that proposition.

Mr. OWEN. It has been determined by this side.

Mr. NORRIS. I would be willing to change it, but I submit to the Senator that that would make the time rather short. We have two bills that have the right of way over this bill, and they will take almost all of the time.

Mr. OWEN. The Alaska railroad bill will be laid aside after it has been taken up.

Mr. NORRIS. If we pass this bill on the 20th of December, then if the Senate wants to take its recess and the House wants to take it they can do so. There will be time enough then to take it.

Mr. REED. Mr. President, I rise simply to suggest that if we continue to debate over this technicality a little longer we will arrive at the point of physical exhaustion, which appears to be so feared by the Senator from Nebraska, and we also will have reached Christmas without acting on anything.

Mr. WEEKS. Mr. President, I think the resolution offered by the Senator from Nebraska is out of order, and the point against it should be sustained; but it has accomplished one good result, and that is it has elicited a declaration from a responsible leader on the other side that we are to have legislation by exhaustion rather than as a result of reason and consideration.

Mr. WILLIAMS. It will not be the first time we have had it in that way, by a great deal.

The VICE PRESIDENT. The resolution offered by the Senator from Indiana [Mr. KERN] simply proposes to fix the hour of meeting of the Senate of the United States—a matter which has always been within the discretion of the Senators. The amendment proposed thereto is one the principle of which the Chair believes has been correctly stated by the Senator from Mississippi [Mr. WILLIAMS], that in all legislative bodies, if there is to be a cloture, it must be by a direct rule of the body. The Chair therefore rules that the amendment proposed by the Senator from Nebraska [Mr. NORRIS] is not in order.

Mr. WILLIAMS. Mr. President, I wish to offer an amendment to the resolution proposed by the Senator from Indiana, to insert after the word "antemeridian" the following:

And that the Senate shall on each day at 6 o'clock p. m. take a recess until 8 o'clock p. m., and adjourn at 11 o'clock p. m.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Mississippi.

Mr. CLARK of Wyoming. I should like to ask the Senator from Mississippi whether, in the event of a condition such as existed last evening, his amendment would not prevent us from adjourning before 11 o'clock? We adjourned last evening at about half past 9 owing to the fact that there was nothing to remain here for.

Mr. WILLIAMS. Yes; this amendment would prevent us from adjourning before 11 o'clock, until after the passage of the banking and currency bill. If we had no quorum we could not do anything. We could not even adjourn.

Mr. CLARK of Wyoming. We could adjourn if we did not adopt this rule.

Mr. NORRIS. Mr. President, I should like to submit a request, if the Senator from Indiana will permit me. It probably would be out of order while his resolution is pending, but with his permission I should like to ask unanimous consent for the adoption of the order which has been read to the Senate changing the word "resolved" to "ordered."

Mr. KERN. I will say to the Senator that if such a unanimous-consent agreement can be reached, I will withdraw the motion.

Mr. NORRIS. Then I ask unanimous consent for the adoption of the order.

Mr. GALLINGER. Let it be read.

The VICE PRESIDENT. The Secretary will read as requested.

The SECRETARY. The Senator from Nebraska asks unanimous consent that before adjournment on the legislative day of Saturday, December 20, 1913, the Senate will vote upon any amendments that may be pending, any amendments that may be offered, and upon the bill (H. R. 7837) to provide for the establishment of Federal reserve banks, for furnishing an elastic currency, affording means of rediscounting commercial paper, and to establish a more effective supervision of banking in the United States, and for other purposes, through the regular parliamentary stages to its final disposition, and that until the final disposition of such bill the hour of daily meeting of the Senate shall, unless otherwise ordered, be 11 o'clock a. m.

The VICE PRESIDENT. Is there objection to the proposed unanimous-consent agreement?

Mr. BORAH. Mr. President, I dislike very much to object to the suggestion made by the Senator from Nebraska, and I am quite in favor of proceeding with all due dispatch to the final disposition of the bill, but the result of adopting this unanimous-consent agreement would be that the debate here would proceed in the absence of the Senate. In my judgment, we will likely dispose of this bill under the rule proposed by the Senator from Indiana at a date as early as that, if not earlier.

Mr. NORRIS. Will the Senator from Idaho yield to me?

Mr. BORAH. Yes.

Mr. NORRIS. The Senator says the debate would proceed without a quorum. The same opportunities for getting a quorum would exist if the order were adopted as though we did not adopt it.

Mr. BORAH. If the resolution offered by the Senator from Indiana is adopted, the majority side will be interested in keeping a quorum as well as ourselves, and we will all be here. I think the debate on this subject ought to be in the presence of a Senate as full and complete as we can have it. Whatever debate we have, let us have a real debate, one in harmony with the tremendous subject before us. Therefore, Mr. Prseident, I object to the unanimous-consent agreement.

The VICE PRESIDENT. The question recurs on the amendment proposed by the Senator from Mississippi [Mr. WILLIAMS] to the resolution of the Senator from Indiana [Mr. KERN].

Mr. KERN. I accept the amendment, Mr. President.

Mr. REED. What is the amendment? Let us have it stated.

Mr. BRANDEGEE. I ask that the resolution be stated as it would read if amended by the amendment of the Senator from Mississippi.

The Secretary read the resolution, as follows:

Resolved, That the hour of daily meeting of the Senate be 10 o'clock a. m., and that the Senate shall on each day at 6 o'clock p. m. take a recess until 8 o'clock p. m. and adjourn at 11 o'clock p. m. until otherwise ordered.

Mr. SMOOT. Mr. President, I wish to ask the Senator from Mississippi if it would not be just as well not to have an adjournment from 6 until 8?

Mr. WILLIAMS. We think not. We do not want to go into this woman-suffragette starvation-threat business in the Senate. We have got to have time to eat dinner, and so we thought it would be well to take a recess from 6 to 8.

Mr. SMOOT. We get time to take our lunch without adjourning.

Mr. WILLIAMS. We do not wish really to punish Senators physically. We merely wish to stay in session until we get through talking.

Mr. NORRIS. If the Senator from Utah is through, I should like to ask the Senator from Mississippi a question. Would he be willing, instead of recessing from 6 to 8, to continue in session during those two hours and then adjourn at 9?

Mr. WILLIAMS. No; because that would interfere with every man's dinner hour and every man's family.

Mr. NORRIS. The whole thing interferes with dinner hours and family hours.

Mr. WILLIAMS. And it would substantially force every Senator to go out and make new arrangements for getting dinner.

Mr. NORRIS. We can get dinner downstairs.

Mr. WILLIAMS. No; we have thought it out carefully, and we want to take a recess from 6 to 8 so that Senators may go home and get their dinners and have a smoke and rest and come back and then stay here until 11. Eleven o'clock is a reasonable hour to go to bed. Then Senators can go home and go to bed. There will be no physical suffering connected with it.

Mr. NORRIS. If the Senator from Mississippi wants Senators to go home and go to bed, why does he not include that in his resolution? [Laughter.]

Mr. WILLIAMS. All it amounts to is that we say to Senators who want to speak upon the bill that whenever there is a vacuum in the speaking they must come in and speak. Instead of standing up here in the time-honored way of the Senate and saying, "Mr. President, I propose to make a few remarks, but I am not prepared now, though I will be prepared to-morrow or day after to-morrow," we say that they shall either go on unprepared or let it go.

As far as the practical debating of the Senate is concerned, the man who has to wait to prepare hardly ever adds much to the subject matter. If he does not know enough about it already, he is hardly going to learn it by next morning.

Mr. GALLINGER. Mr. President, no Senator is more anxious to vote on the currency bill than I am. I shall be prepared to vote on it at any time. I think, however, it would be rather unfortunate to bind ourselves to stay here until 11 o'clock. Last evening at 8 o'clock there were just two Senators present on the Democratic side.

Mr. BACON. I will ask the Senator if he does not think the language of the amendment simply means that we shall not sit longer than 11?

Mr. GALLINGER. I hope so. If it will be so arranged, I have no objection.

Mr. BACON. Is that not what it necessarily means?

Mr. GALLINGER. This body can not be held in session until 11 o'clock if there is not a quorum present. A motion to adjourn undoubtedly would be in order then. To say that we bind ourselves to stay here until 11 o'clock is a mistake, and the matter ought not to be put in that form.

Mr. BACON. Does the Senator think the resolution does that?

Mr. GALLINGER. The terms of the amendment state precisely that.

Mr. BACON. But does not that necessarily mean that the Senate will be automatically adjourned at 11 if it does not adjourn prior to that time?

Mr. GALLINGER. If that is its meaning, it is entirely agreeable to me; but if that is not its meaning, it is a mistake to put it into the resolution——

Mr. WILLIAMS. That is the meaning of it, undoubtedly.

Mr. GALLINGER (continuing). For the reason that we can not be held here until 11 o'clock when there is not a quorum present.

Mr. WILLIAMS. It says "and adjourn at 11 o'clock p. m."

Mr. GALLINGER. Yes; "and adjourn at 11 o'clock."

Mr. WILLIAMS. And the Senate can not remain in session any longer.

Mr. GALLINGER. No; but we are compelled to remain that long, are we not?

Mr. WILLIAMS. Yes.

SEVERAL SENATORS. Oh, no.

Mr. GALLINGER. You can not keep us here unless there is a quorum present. Last night this side of the Chamber furnished the quorum that enabled us to do business.

Mr. WILLIAMS. Mr. President——

Mr. CLARK of Wyoming. I ask for the regular order.

Mr. WILLIAMS. If the Senator means whether the Senate would have power to adjourn, yes; but I thought he was asking what we proposed. We do not propose to adjourn before 11.

Mr. BACON. Mr. President, the Senator from New Hampshire is a parliamentarian. I do not think he can possibly have any doubt about the fact that that means simply what I suggested—that at 11 o'clock the Senate would be automatically adjourned; that we could not sit longer than that if we desired to do so.

Mr. GALLINGER. The doubt does not lodge in my mind, but I think it would lodge in the minds of a great many Senators, and they would think an attempt was made to keep us in session until 11 o'clock at night, whether we had any business to transact or not.

Mr. WILLIAMS. It simply indicates the purpose to stay until 11; but it does not take away from the Senate the power to adjourn before 11 if it sees fit to do so.

Mr. GALLINGER. That is precisely the way I look at it.

Mr. CLARK of Wyoming. I call the attention of the Senator from Georgia to the fact that, in response to my direct inquiry of the mover of this resolution, he said the purpose was to keep us here until 11.

Mr. WILLIAMS. That is our purpose. Do not misunderstand our purpose. I got confused. I thought the Senator was asking our purpose; but that does not go to the power of the Senate. Of course the Senate may adjourn at 10 if you can get a majority to vote in favor of adjournment; but we of the majority party, hoping that we will be the majority, announce to you and to the country that we do not propose to adjourn before 11.

Mr. GALLINGER. Allow me to suggest to the distinguished Senator from Mississippi that if the resolution simply provided that we would take a recess until 8 o'clock we would come in here at 8 o'clock, and the majority could keep us here until 11 o'clock, if there were a quorum present, instead of specifying that we should stay here until then.

Mr. WILLIAMS. But we have preferred to express our purpose in this way. If at any time a majority of the Senate should want to adjourn, notwithstanding our purpose, the majority of the Senate could override that purpose.

Mr. GALLINGER. Mr. President, I have no doubt that this is the result of caucus action, and I am not going to combat it, because I know how futile it would be; so I have said all I care to say on the subject.

Mr. BRISTOW. Mr. President, of course the purpose of this resolution is to prevent a fair and free discussion of the bill that is to be up for consideration. The design is to prevent Senators from having an opportunity to present their views as to the measure by creating conditions which will make it physically impossible for them to do so.

I do not blame the majority for seeking to prevent a discussion of the bill, which would attract to it the attention of the country, because it will not stand such analysis. The attention that has already been attracted to the bill since it was referred to the Committee on Banking and Currency has resulted in material changes which have improved the bill. If, at the demand of the chairman, the Committee on Banking and Currency had proceeded to report the bill back with a few amendments which he suggested and it had been passed by the 15th of October, as he announced in the paper he desired to have it passed——

Mr. OWEN. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from Oklahoma?

Mr. BRISTOW. I do.

Mr. OWEN. I remind the Senator from Kansas that if the requests of the chairman of the committee had been heeded by himself and others the committee would have had nearly two months more of active work on the bill.

Mr. BRISTOW. I can not understand just what the Senator from Oklahoma means by "two months more of active work on the bill." I think the work on the bill was forced from the chairman of the committee over his protest, and amendments which the public sentiment of the country demanded have been forced into it over his protest.

Mr. OWEN. Mr. President, I remind the Senator from Kansas that he was unwilling to have the committee proceed while the tariff matter was under discussion, and protested against it so vigorously that the matter was postponed largely on his account.

Mr. BRISTOW. This is the first time I had any knowledge of that fact. I was under the impression that when the tariff bill was before the Senate it was the duty of Senators to give attention to that legislation. We were called into extraordinary session for that purpose. The hearings on the banking and currency bill began before the tariff bill had been passed, and I uttered a protest against the hearings being conducted when the tariff bill was being considered and amendments voted upon by the Senate. It was impossible for Senators to be in both places at the same time.

As I was saying, the purpose of this resolution is to force through this legislation, good or bad, as early as possible. I realize that the majority are responsible for the legislation that passes. They have the right to fix the hours of meeting, and it is the business of the minority to conform as nearly as possible to the rules which the majority prescribe. It has been the practice of the Senate in the past, and I think to the credit of the body, that when a great measure affecting the fortunes of the people of the United States was up for consideration there should be full and free debate upon all the features of the bill. It has been to the credit of the Senate of the United States for at least a quarter of a century that it has been the body which shaped the final form in which the legislation of our country should be passed.

Mr. WILLIAMS Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from Mississippi?

Mr. BRISTOW. I do.

Mr. WILLIAMS. May I ask the Senator to tell me in what manner the passage of this resolution could possibly interfere with full and free debate? It merely gives more time for it—two more hours in the morning, and three more hours at night.

Mr. BRISTOW. The Senator has already said on the floor of the Senate this morning that the purpose of the resolution is to exhaust the Senate so that it can not debate the bill.

Mr. WILLIAMS. To make it talk itself out, yes; to make it go to talking early, and talk late, and get through talking; but it does not interfere with its talking.

Mr. BRISTOW. That is the Senator's view. The purpose, as I have said, is to prevent an intelligent and a fair discussion of this bill. That is the object of the majority, and it is the object of the majority because the bill, since it left the House of Representatives, has been one that could not stand an intelligent discussion before the people of the United States. I want to say that it is to the credit of certain members of the Committee on Banking and Currency on the majority side of this Chamber that they have forced some deliberation in the consideration of this measure and by virtue of their action the bill has been materially improved.

Those gentlemen have been criticized from one end of this country to the other because they saw fit to exercise some individual judgment in regard to legislative matters. The administration in power and those who stand for it owe to them a debt of gratitude they can never repay, because it was due to their efforts that the bill has been amended so that it possibly is workable. As it came to this body it was not workable, as every Senator in this Chamber knows who has given intelligent study to the subject.

As I said, the purpose of this resolution is to prevent fair and open debate. It is to so exhaust the minority Members who seek to amend the bill as to make it physically impossible for them to discuss it with the facility that they would desire, for all men know that 13 hours per day in this Chamber will exhaust the physical endurance of any man who undertakes to conform to such a requirement. This resolution is not for the purpose of promoting the intelligent consideration of the bill but of preventing its intelligent consideration by this body.

I am making these remarks because I want the people of the United States to know that that is the design and the purpose of the majority, and it is the first time in the history of the United States when the Senate has lost sight of its dignity and mission as one of the legislative bodies of this great Nation. It has been the mission of the Senate to bring to bear full, free, and untrammeled debate upon every great question that comes before it and which affects the fortunes of the American people. It is the first time in the history of our country that the method of the legislative ruffian has been employed in the Senate of the United States. This has been a place where intellectual discussion has been invited from its Members, a place where mental attainment and wide information have been at a premium and not a place where physical endurance is to be tested. This is not the place to test the physical powers and endurance of men. The prize ring and other places of similar recreation are more fitting places than here.

But it seems to be the desire of the present membership of the majority party in this body to change the character of the Senate and to take from it its glory, for I say that the glory of the United States Senate in the past has been that in this body a full, free, fair, and open discussion of every public question has been untrammeled. One or two Senators standing

alone on this floor in the past have prevented legislation that was unwise. Standing alone they have discussed public measures and called to the attention of the people of the United States the imperfections and at times iniquities of measures that were before the body. The weaknesses of those measures have been exposed, and as the years went by those debates have borne fruit in the public thought of our country. If the methods now proposed had been in force then, the country would have been deprived of the services of those men which have been of inestimable value to the Nation. But it seems to be the desire of the majority to deprive Senators of the opportunity which they have had in the past and which has been so useful to the American people in the development of public opinion and the crystallization of public policies, and since they have the power to enforce their will I feel that I must voice my protest against such methods.

Mr. SHAFROTH. Mr. President, I want to call the attention of the Senate to the fact that it was the 24th day of June this year when the message of the President was read in the House of Representatives calling for action upon the banking and currency question. Soon after that the Committee on Banking and Currency met for the purpose of taking some action and considering the question of hearings, and it was at that time the Senator from Kansas himself arose and said that inasmuch as debate in the Senate on the tariff bill was of great importance he desired to be upon the floor of the Senate during all that time. I reminded the Senator from Kansas of the fact that in ordinary legislation during regular sessions hearings before committees often took place during the sittings of the Senate, and it seemed to me that we ought to expedite matters. But in deference to the Senator from Kansas and at his earnest plea that he desired especially to be present on the floor of the Senate there was a general consensus of opinion that we should let considerable time elapse.

Again the matter was broached and again the same condition was presented, and thereby we lost time from the 24th day of June until the 2d day of September for the purpose of letting Senators attend the debates before the Senate on the tariff bill, when, as a matter of fact, at a regular session such hearings are generally conducted during the sessions of the Senate.

Mr. WEEKS. Mr. President——

The VICE PRESIDENT. Does the Senator from Colorado yield to the Senator from Massachusetts?

Mr. SHAFROTH. Yes, sir; I yield.

Mr. WEEKS. I do not think the Senator from Colorado should leave the impression that the delay in commencing hearings was due entirely to the wish of the Senator from Kansas. He was simply representing the views of other members of the committee who desired to attend to their duties at that time in connection with the tariff bill.

Mr. SHAFROTH. I think probably it is true that he was also voicing the sentiment of some other members of the committee.

On the 2d day of September we began the hearings, and they did not close until the 25th day of October. The parties who were opposed to speedy action, at least reasonable action, with relation to these hearings were reminded of the fact that the investigation as to the monetary question and as to banking had been before the people and before the Senate for four years; that the National Monetary Commission had given extensive hearings, and they proceeded in a very deliberate manner, and their hearings had extended for many months; and also that there had been hearings in the House and a debate in the House. It seemed to us that there ought to be a closing of this matter. Yet we could not close.

Mr. O'GORMAN. Mr. President——

The VICE PRESIDENT. Does the Senator from Colorado yield to the Senator from New York?

Mr. SHAFROTH. I yield.

Mr. O'GORMAN. Is the Senator from Colorado aware that there never was a single hearing in the House of Representatives on the House bill reported to the Senate? Not a single hearing was ever had.

Mr. SHAFROTH. I am aware that at the last session of Congress the Pujo committee occupied fully six weeks in investigating this same question, in which were involved the question of a monetary trust and the question of banking.

Mr. O'GORMAN. Mr. President——

The VICE PRESIDENT. Does the Senator from Colorado yield further to the Senator from New York?

Mr. SHAFROTH. I do.

Mr. O'GORMAN. The Senator does not answer the question that I ventured to submit to him, and that is whether he is not aware that there never was a single hearing on the concrete proposition contained in the so-called Glass bill, and that the first opportunity the bankers and business men of the United States had to express a judgment upon its provisions was when the Senate committee, against the protest of certain Members, afforded the people of the country an opportunity to come forward and declare their views and submit their advice as to the unwisdom of many of the provisions that certain people in public life in Washington were willing to adopt without reason or without justification.

I can not sit here and listen without protest to the suggestion made now and again that there has been needless delay in the consideration of this currency bill. The country owes much to the committee, which insisted upon intelligent deliberation respecting the provisions of the measure. The bill did not come from the House into the Senate until the 18th day of September, and by the 25th day of the following month, a little over five weeks, the business men of the country had been given an opportunity to come before the committee and advise and confer with the committee; and in consequence of the advice obtained in that way by the committee many manifestly unwise and injudicious features of the House bill were by common consent eliminated, with the result that to-day of the two measures now before the Senate a little over 40 per cent of the House measure is found in either one of the reports submitted to this body.

Yet there were those on the 18th day of September who advised, who urged, who recommended that this House bill be passed as a matter of form; that it was a perfect measure, when no intelligent man in public life to-day will now assert that it was a wise or a judicious measure. Every critic who has had an opportunity to examine it is agreed that it would bring about as great a calamity to this country as ever visited the United States if that bill had not been subjected to the acid test of improvement, correction, and elimination, with the result as has been stated here several times in recent days.

We have two bills, both good measures, but in my judgment the bill proposed by the majority side is the better of the two and the bill that should be adopted.

Mr. SHAFROTH. Mr. President, there can be no question that there has been a study of this subject and an examination of witnesses in relation to this banking and currency matter for the last five years. The hearings that were held before the National Monetary Commission cover practically every point of importance of this bill. We published 33 volumes of the hearings.

Mr. SMITH of Arizona. And they were easily obtainable.

Mr. SHAFROTH. They were easily obtainable by any person who wanted to investigate the subject. The recent hearings have been largely repetitions of what testimony was given before the National Monetary Commission.

Mr. WEEKS. Mr. President——

The VICE PRESIDENT. Does the Senator from Colorado yield to the Senator from Massachusetts?

Mr. SHAFROTH. I should like to get in a word edgeways here, if I have the floor. But go ahead.

Mr. WEEKS. I want to call the attention of the Senator from Colorado to the fact that the Monetary Commission gave substantially no hearings in this country. The hearings which the Monetary Commission had were in other countries almost entirely. Substantially all the information which has been submitted to our committee during the past month is new and had never before been submitted, in my judgment, to any committee of either House of Congress.

Mr. SHAFROTH. I differ with the Senator there. Testimony was taken in a great many cities of the United States. Mr. Warburg's testimony was taken here. Of course, a great many of them took the form of essays or statements, but there were any number made, it seems to me, in this country. However, the examination that we wanted to make, which involved the hearings before the committee in the last few weeks, has been largely as to the practice of European banks and as to the modes that they adopt, because the rediscount principle is one that is well developed in Europe.

Now, when we are perfectly willing to have debate without limit, having long sessions each day, to say that that is attempting to throttle any debate, it seems to me, can not be sustained.

Mr. REED. Mr. President, it seems to me to be rather a useless thing to pause at this time and debate the question whether the members of the committee acted wisely or unwisely when they took time to hear evidence upon and to analyze and consider the banking and currency bill. I regret that the question has been raised. But since it has been injected into the debate, I will refer to it in the briefest possible way.

There were some members of the committee who felt that they were ready to vote upon the bill at a date earlier than did other members. I have no criticism for my associates upon the

committee who were contented to vote upon it without hearings. I think they should have no criticism for those who desired to move with what they conceived to be proper care.

Mr. SHAFROTH. I will state to the Senator that it was in answer to the Senator from Kansas that the bill had not had the deliberation—that he wanted more deliberation—that I made the remark.

Mr. REED. Mr. President, I repeat that as a direct and immediate result of the hearings, changes of the most important character have been made in the bill. These changes were still being made no later than the blessed Sabbath just passed. On that day a radical amendment was added at the immediate solicitation of the Secretary of the Treasury.

Many of the amendments to the bill were concurred in by all of the members of the committee without regard to politics and were subsequently ratified by the Democratic conference. There is no member of the committee who will rise from his seat and dispute the statement I have made. If the assertion is ever going to be challenged, let it be here and now. I pause for the challenge. I have waited, and silence has been the answer.

If, then, these amendments were radical, important, vital, they constitute a complete justification of the hearings; nay, more, the demonstration is absolute that those who insisted upon hearings were right in their insistence. It goes, however, without saying that if these radical and important amendments had not been made the bill would have contained errors of a grave nature. What man is there who dares assert that a bill full of errors should be passed, and its imperfections discovered after the injury is done?

Mr. President, it has been asserted that for five years evidence has been taken upon the currency bill. I utterly and emphatically deny that statement.

Evidence was taken upon the general question of currency reform. It was all grouped and concentered about what is known as the Aldrich plan. Evidence was taken with reference to the Aldrich bill, but the Aldrich bill was not this bill. It was in all its great essentials in complete opposition to this measure as it is now framed. The evidence taken upon the Aldrich bill, therefore, could not be pertinent to this bill in its present shape.

I repeat what already has been said, that there never was a hearing upon this particular bill until it was granted by the Senate committee.

But now, Mr. President, hearings have been held, hearings that apply to this particular bill. Along with the bill, we have laid before the Members of the Senate all of the evidence taken. There has therefore been afforded the Members of the Senate abundant opportunity to examine the pending measure. The question we are now debating is merely how many hours a day the Senate shall remain in session.

It has been asserted that the Democratic side of the Chamber proposes to throttle debate. This I emphatically deny. The Democrats do not propose to deny to any Senator upon either side the fullest opportunity to express his views. We have not undertaken to say to any man in the Chamber "You shall not have the opportunity to speak." Neither have we sought to curtail the length of his remarks. We say to the Senators upon the other side, "You shall have the most abundant opportunity to tell us all you know about this bill, all you imagine about this bill, all you fear will result from this bill." We say to them, "All that your intellect can possibly conceive you shall have the opportunity to bring forth." What we ask, and all we ask, is that the Senate shall remain in session from 10 o'clock in the morning until 11 o'clock at night. We simply propose to breach the union rules in the matter of hours. We ask you to come here at night; to forego the theaters; to deny the grace of your presence at parties and balls. We only ask you to stay here and work and speak until you have had your say.

Mr. President, rightly or wrongly, the business of the country is halting, awaiting the enactment of this law. The fact has been recently developed that the banks hesitate to loan money because they are yet uncertain what demands may be made upon them by the law we are about to enact. Under these circumstances the least we can do is to forego our own pleasure and to work a few hours longer for the next succeeding 10 or 15 days. I hope that the Senators upon the other side will be disposed to agree upon an early date to vote; or, if they can not do that, that they will at least agree to sit here from 10 in the morning until 11 o'clock at night to the end that all shall have full opportunity to express their opinions and at the same time that the business of the country may be relieved from its present strain of uncertainty.

Mr. NELSON. Mr. President, I am unwilling to take up the time of the Senate unnecessarily, but I can not refrain on this occasion from expressing my views in reference to the value of the hearings which have been had before the Committee on Banking and Currency. I entirely coincide with the views expressed by the Senators from New York and Missouri. It would have been a most dangerous thing to have passed the currency bill as it came from the House without any change or amendment; it would have been a great menace and danger to the commerce and finance of this country; and it would certainly, beyond any doubt, have wrecked the Democratic Party.

No greater evidence, Mr. President, can be found of the imperfections of the Glass bill, so called, or the House bill, than the fact that even my friends on the other side—and I am speaking of my friends on the committee—have in the main outlines coincided with our section of the committee in agreeing that the bill in many important particulars needed change and amendment.

Senators have expressed the idea that there was no occasion for these hearings, because the Pujo committee and the Monetary Commission had had hearings. None of them had hearings on any measure of the kind that this bill is, either in its original form or as it is now presented to the Senate in the two substitute bills.

What was the subject of the investigation of the Pujo committee? It was an investigation to reach the so-called Money Trust, the matter of interlocking directorates, and things of that kind. There is nothing in the pending bill or the proposed amendments to it relating to that subject. If you want to remedy the evils which became apparent as the result of that investigation, you must have legislation other than any that is found in any of these bills, either the Glass bill, the Owen bill, or what I may call the Hitchcock bill.

As for the Monetary Commission, it proceeded on entirely different lines than the system outlined in the currency bill. There never were, as the Senator from New York has said, any hearings in the other House on the currency bill, and when that bill came before our committee, with the exception of possibly two or three members on the committee, we were all in accord that the bill needed important and material amendment.

Most of us felt that, however wise and learned we were, it was possible for us to secure information from the bankers and the business men of the country in reference to this measure. So we proceeded, as intelligent legislators ought always to proceed, to give hearings; and, speaking for myself, Mr. President, I will say that it has been one of the best schools in all my experience. While I have read many of the reports and the documents, more or less, of the Monetary Commission, and all other books I could find on the subject, yet I got more of value, more instruction, and more information from the hearings to guide me in this matter than I did from any of the books.

While some of the men who appeared before the committee gave us testimony of little value, yet there were others, great masters of finance, who supplied us with the most valuable information. Some of the greatest men among the bankers of the country came before us and in a most candid spirit acceded to some of the merits of the bill. I never shall forget one remark that Mr. Vanderlip made before our committee that impressed me above everything else. There was a question in regard to compelling one regional bank, against its will, to discount paper for another regional bank. What was Mr. Vanderlip's reply to that? "Why," said he, "obnoxious as it is, it is absolutely necessary to that system; you have got to pipe the reserves from one regional bank into another." He was the first of the great bankers, to my recollection, who admitted that truth in such plain and clear terms.

Mr. President, what the Senator from Missouri and the Senator from New York have said so well is absolutely true. Those hearings have been of great value, and as a result of them you have before you, even from the other side of the Chamber, a bill much more perfect and workable than the bill which came from the House. You Democrats on the other side owe a debt of gratitude to the Democratic members of the committee for taking pains to perfect the Glass bill in the manner in which they have done. We do not think they have gone far enough; they have not gone to the extent that we should like; but, after all, they have done good work and made great progress, and you gentlemen, instead of criticizing your committee, ought to be thankful that you had Democratic members on that committee who were willing to give hearings, willing to consider the bill in detail, to amend it, and present it in a more workable shape than that in which it came to this body.

Mr. STONE. Mr. President——

The VICE PRESIDENT. Does the Senator from Minnesota yield to the Senator from Missouri?

Mr. STONE. I understand the Senator from Minnesota has yielded the floor. If, however, we can take a vote on the resolution, I will not address the Senate.

The VICE PRESIDENT. The question is on the resolution offered by the Senator from Indiana [Mr. KERN].

Mr. GALLINGER. There are two amendments pending to the resolution, Mr. President.

Mr. GOFF. Mr. President, conceding, as we will, that the resolution offered by the other side of the Chamber will ultimately pass, because it is the irrevocable decree of the caucus, nevertheless may we not pause for a moment and ask whether it is not regrettable that it should be boldly, even exultantly, proclaimed upon this floor that the idea of the resolution is simply to wear out the Senate and to force it by physical disability to submit to that which many Senators and many of the people of this country believe to be inimical to their interests? Is it not also regrettable that the caucus should at all consider a measure of this kind? When the President of the United States gave his reasons to the country and to the Congress why a financial bill should be passed, there was almost a universal desire that it should be nonpartisan in character; and, as the hearings proceeded before the committee, the idea was given out from the recesses of its chamber that such was to be the character of the bill offered.

Many changes were made in the bill; continuously, by the hundreds were they made, and we are told to-day by the other side that those changes have made the bill what it is, have made it proper to submit it to the consideration of the Senate for final action. Have these changes made it a party matter? Hardly. Has that which was to have been nonpartisan been made the subject of caucus action? What change came over the spirit of the dreams of those in charge of it? As the investigations and hearings proceeded, this, that, and the other elements of weakness and of strength, of desirability and nondesirability appeared, but still no caucus was called. Weeks, months, passed by after the passage of the tariff act—an act which we were told would result most beneficially to the country immediately after the President had signed it with his gold diamond-tipped pen. But we all know that was a mistaken prophecy. Has the high cost of living been reduced, or is the high cost of living higher to-day than it was when that bill passed? Everyone knows that the cost of living has increased; everyone knows that all along the line our industries have been seriously interfered with, that our manufacturers have been compelled to discharge laborers by the thousands, aye, by tens of thousands; that the nonfiling of orders for 1914 deliveries has produced instability everywhere and caused commercial confusion.

Now we are told that the disaster overshadowing us is that the financial bill has not been passed. That for that reason the banks are in doubt and know not how to regulate loans and discounts, hence financial distress. Therefore the necessity for the caucus. Because of this the power controlling the caucus issued his edict that the financial bill must be passed before the Christmas holidays. So it seems that the necessities of our friends on the other side of this Chamber called for the iron rule of King Caucus concerning a matter that was to have been and should be nonpartisan.

Mr. O'GORMAN. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from New York?

Mr. GOFF. I do.

Mr. O'GORMAN. It may perhaps not be of much importance, but, for the accuracy of the narrative, I desire to advise the Senator from West Virginia that the junior Senator from New York was the humble instrument that moved in the Democratic conference the resolution which has been offered in the Senate to-day by the Senator from Indiana [Mr. KERN]. For the information of the Senator from West Virginia and for the information of the Senate, I will say that there was no soul on earth who knew that I was going to introduce the resolution when I did, and it was not inspired by any person, least of all by the Executive.

Mr. GOFF. I have to say, in reply to that, "Well done, thou good and faithful servant." [Laughter.] I am glad that the Senator from New York anticipated the motion that most undoubtedly would have been made by one of his colleagues, and I may take this occasion to say that I have followed with interest and approval much that the distinguished Senator from New York did in the Committee on Banking and Currency, as well as in the caucus.

Mr. President, I have tried to account in my humble way for the reason of this change from a nonpartisan bill to a caucus bill; I have endeavored to show why this resolution has been offered, and why it is necessary to endeavor, at least, to show the country that the condition of affairs among our manufacturing institutions, in our banking institutions, and in all of our commercial activities, is not because of the failure of the tariff bill from the viewpoint of our friends on the other side, but because the Republican side of the Senate is preventing the passage of the financial bill. Will anyone tell me why the Republican side of the Senate is charged with that? Has there ever been any disposition on this side of the Chamber to prolong this discussion? Has there been any effort on the Republican side of the Chamber to retard the passage of the bill? Has there been any caucus of the Republican Members of the Senate from which such an enunciation has come? Has any Member on this side desired to the contrary? So far as I know, they are ready to vote this week; they are ready——

Mr. JAMES. Mr. President, the Senator from West Virginia certainly was not in the Chamber when a unanimous-consent agreement to vote was objected to by a Senator on that side or he would not make the statement.

Mr. GOFF. I was in the Chamber, and I concurred with that Senator, not because I was not ready to vote, but because I did not believe in that manner of legislation. I did not believe in that method which, while in name not so, is in effect cloture.

The effort, then, I say, to demonstrate to the country that the Republicans of the Senate are preventing the passage of this bill should be, as it will be, a failure; and I, for one, protest against its being charged as an act of the Republican Party or a determination of a Republican agreement.

Mr. ROOT. Mr. President, I should like to see this bill acted upon speedily, and I was much inclined to vote for longer hours of debate. I was ready to give my assent to the request for a unanimous-consent agreement fixing a day. But I can not vote for a resolution which is offered and supported here with the avowed purpose of wearing out the members of the minority in the discussion of a great public measure.

We all know that the resolution which is proposed will have that effect. In the air of the Senate Chamber, which becomes, to speak very mildly, insanitary long before the close of an ordinary session, the forces of even a strong man in the prime of his youth flag and fail. For men of the age of a majority of the Members of the Senate, long before the hours proposed in the resolution shall have elapsed both body and mind will be incapable of properly performing the duty of discussing or listening to discussion upon a difficult and complicated subject such as a banking and currency bill. So the purpose of the resolution, which is avowed to be to wear out the members of the minority in the discussion of the measure, will be accomplished.

I can not vote for any such injury to the great principle and the great right—a principle and a right which I deem to be essential to the maintenance of free self-government—that no matter how powerful a majority may be, there always shall be considerate attention to the protests, the arguments, and the appeals of the minority.

It is quite natural, sir, that there shall be impatience over delay in legislation. I know by experience how natural it is for executive officers to be impatient with the delays that occur in both Houses of Congress, and with the desire to change measures which from the executive point of view are deemed to be important and to be complete.

I know from experience how natural it is for the members of a majority to look with impatience upon the attempts of a minority to change, to modify, to postpone what to them is the evil day of enactment of legislation they do not desire. But, sir, there is nothing more important for us, there is no higher duty for us, than to preserve the right of the minority, of whatever party, upon every public question to present their views, to make their arguments and their protests, and to be heard.

I beg my friends on the other side to consider whether they have not permitted themselves to get into a somewhat intolerant attitude toward this great right of the minority. At the beginning, when this bill came from the House, the pressure was very strong to have immediate action. The very desire to force the committee into hearings while its members were upon the floor taking part in the discussion of the tariff bill was and must have been born from a feeling that, after all, the interference of a minority in the passage of legislation was unnecessary and not to be favored. The place of Senators during the discussion of the tariff bill was upon the floor of the Senate, to discuss the bill, to hear discussion, and to take part in deliberations. The feeling of impatience that they were not willing to abandon that duty in order immediately to begin proceedings in committee while the Senate was in session indicated some intolerance of the right of the minority to continue to do its duty upon the tariff bill. Now the majority, having agreed upon the bill which they will support, and which they have the power to pass, propose to wear out the minority before the discussion has fairly begun.

Mr. President, have we not a duty to perform here? Is it not our duty, if we think there are defects in this bill, to say what

we think in the Senate? Is it not your duty to give respectful consideration to what we say? Is there not somewhat of intolerance for those rights of a minority, which are the rights of a free people, when at the outset of discussion the majority propose a rule for the avowed purpose of wearing out the minority and compelling them to discuss the measure under such circumstances that they will be compelled to desist through physical and mental fatigue?

Ah, Mr. President, parties change. One is in the ascendant to-day and another to-morrow. The rule that the dominant party impose upon the minority to-day may come back to deprive them of their rights to-morrow. But above all parties and more important than any measure is the observance of the right of free discussion, the right of the minority, not to obloquy and condemnation, but to the consideration which is essential to free and peaceful and orderly government among a self-governing people.

I, sir, shall vote against this resolution because it is avowed to be for the purpose of putting an end to discussion through fatigue, and it is aptly framed to accomplish the purpose.

Mr. BACON. Mr. President, I shall detain the Senate for only a few minutes. I am unwilling to have this discussion close, however, without disavowing for myself any such purpose as that upon which the Senator from New York has animadverted, and which, in the absence of a denial, might be assumed to be assented to upon my part when I vote for the pending resolution.

Mr. President, I sat in this Chamber 18 years in the minority, and no one is more impressed than I am with the importance of the preservation of the rights of a minority. I desire to preserve them as sacredly as I desired them to be preserved when I was in the minority. I think the great safeguard of the minority is freedom of debate in the absence of cloture; and I want to say now to my friends in the minority that recognizing that as the great safeguard of the minority, although I am in the majority, I would stand with them in voting against cloture if I were the only Senator on this side to vote that way.

I repeat that in voting for this resolution I have no such desire as that which has been suggested, to accomplish by it the exhaustion of Senators on the other side. I am animated solely by one purpose. I recognize, as I think every Senator must, that the business of the country is in a condition where prompt action on our part is needed. I wish to secure that promptitude, so far as it is possible to do so, without abridging the right of debate.

If it takes until the end of January or into February for Senators to express themselves upon the question, I am in favor of their having the opportunity, although I should greatly deprecate the necessity. The sole object I have in mind in supporting the resolution is not to exhaust Senators, because the same Senator will not be speaking all the time, but so to extend the time as to give all Senators an opportunity to speak and to discuss this great question and at the same time not unduly to postpone the time for its decision.

I thought it proper that I should say this; and while I have not heard any general expression from Senators on this side, I believe I reflect the sentiment and the purpose of Senators on this side. It is to preserve the right of unlimited debate, and at the same time with that preservation to bring this debate to a conclusion after everybody has had an opportunity to be heard, and to give that opportunity by sitting the unusual length of time which is proposed by the resolution.

Mr. President, I do not claim to be the youngest Member of this body. I am sorry to say I am not. I have been here the entire year. I have not had the rest that some of the Senators have had who have manifested so much anxiety on the subject of our physical discomfort. If I can endure it, I think some of my very much younger brethren on the other side need not be so much startled at the prospect of having to sit here from 10 in the morning until 11 at night.

Mr. BRANDEGEE. Mr. President, the resolution as submitted, with the amendments proposed and accepted, will necessitate that Senators leave their residences in the city at 9 o'clock in the morning, come to the Capitol, adjourn at 11 o'clock in the evening, and not return to their homes until 12 o'clock, and that that procedure shall be kept up continuously by this body until this legislation shall have been finally agreed upon

Mr. KERN. Mr. President, will the Senator yield to me?

Mr. BRANDEGEE. I yield to the Senator for an inquiry. I do not yield the floor.

Mr. KERN. Will the Senator yield for a suggestion?

Mr. BRANDEGEE. For a suggestion; yes.

Mr. KERN. I was about to suggest that the Senator suspend his remarks for the present, to the end that the Senate, in compliance with the resolution heretofore adopted, may proceed to the Hall of the House of Representatives, to listen to a message from the President of the United States, which is to be delivered at 1 o'clock.

Mr. BRANDEGEE. Mr. President, having the floor, I am perfectly willing to be courteous, and to defer the conclusion of my remarks for that purpose, provided the resolution shall not be put upon its passage until after we return from the House.

Mr. KERN. Oh, certainly not.

The VICE PRESIDENT. It is understood that the Senator from Connecticut has the floor.

THE PRESIDENT'S ANNUAL ADDRESS.

The VICE PRESIDENT. Senators, the hour of 12 o'clock and 58 minutes has arrived. On Saturday last the Senate accepted the invitation of the House of Representatives to repair to its Hall at this time and listen to the communication of the President of the United States. The Sergeant at Arms will carry out the order of the Senate.

Thereupon the Senate, preceded by its Secretary and Sergeant at Arms, proceeded to the Hall of the House of Representatives.

The Senate returned to its Chamber at 1 o'clock and 40 minutes p. m.

The address of the President of the United States, delivered this day to both Houses of Congress, is as follows:

The PRESIDENT. Mr. Speaker, Mr. President, gentlemen of the Congress, in pursuance of my constitutional duty to "give to the Congress information of the state of the Union," I take the liberty of addressing you on several matters which ought, as it seems to me, particularly to engage the attention of your honorable bodies, as of all who study the welfare and progress of the Nation.

I shall ask your indulgence if I venture to depart in some degree from the usual custom of setting before you in formal review the many matters which have engaged the attention and called for the action of the several departments of the Government or which look to them for early treatment in the future, because the list is long, very long, and would suffer in the abbreviation to which I should have to subject it. I shall submit to you the reports of the heads of the several departments, in which these subjects are set forth in careful detail, and beg that they may receive the thoughtful attention of your committees and of all Members of the Congress who may have the leisure to study them. Their obvious importance, as constituting the very substance of the business of the Government, makes comment and emphasis on my part unnecessary.

The country, I am thankful to say, is at peace with all the world, and many happy manifestations multiply about us of a growing cordiality and sense of community of interest among the nations, foreshadowing an age of settled peace and good will. More and more readily each decade do the nations manifest their willingness to bind themselves by solemn treaty to the processes of peace, the processes of frankness and fair concession. So far the United States has stood at the front of such negotiations. She will, I earnestly hope and confidently believe, give fresh proof of her sincere adherence to the cause of international friendship by ratifying the several treaties of arbitration awaiting renewal by the Senate. In addition to these, it has been the privilege of the Department of State to gain the assent, in principle, of no less than 31 nations, representing four-fifths of the population of the world, to the negotiation of treaties by which it shall be agreed that whenever differences of interest or of policy arise which can not be resolved by the ordinary processes of diplomacy they shall be publicly analyzed, discussed, and reported upon by a tribunal chosen by the parties before either nation determines its course of action.

There is only one possible standard by which to determine controversies between the United States and other nations, and that is compounded of these two elements: Our own honor and our obligations to the peace of the world. A test so compounded ought easily to be made to govern both the establishment of new treaty obligations and the interpretation of those already assumed.

There is but one cloud upon our horizon. That has shown itself to the south of us, and hangs over Mexico. There can be no certain prospect of peace in America until Gen. Huerta has surrendered his usurped authority in Mexico; until it is understood on all hands, indeed, that such pretended governments will not be countenanced or dealt with by the Government of the United States. We are the friends of constitutional government in America; we are more than its friends, we are its champions; because in no other way can our neighbors, to whom we would wish in every way to make proof of our friendship, work out their own development in peace and liberty. Mexico has no government. The attempt to maintain one at the City of Mexico

has broken down, and a mere military despotism has been set up which has hardly more than the semblance of national authority. It originated in the usurpation of Victoriano Huerta, who, after a brief attempt to play the part of constitutional President, has at last cast aside even the pretense of legal right and declared himself dictator. As a consequence, a condition of affairs now exists in Mexico which has made it doubtful whether even the most elementary and fundamental rights either of her own people or of the citizens of other countries resident within her territory can long be successfully safeguarded, and which threatens, if long continued, to imperil the interests of peace, order, and tolerable life in the lands immediately to the south of us. Even if the usurper had succeeded in his purposes, in despite of the constitution of the Republic and the rights of its people, he would have set up nothing but a precarious and hateful power, which could have lasted but a little while, and whose eventual downfall would have left the country in a more deplorable condition than ever. But he has not succeeded. He has forfeited the respect and the moral support even of those who were at one time willing to see him succeed. Little by little he has been completely isolated. By a little every day his power and prestige are crumbling and the collapse is not far away. We shall not, I believe, be obliged to alter our policy of watchful waiting. And then, when the end comes, we shall hope to see constitutional order restored in distressed Mexico by the concert and energy of such of her leaders as prefer the liberty of their people to their own ambitions.

I turn to matters of domestic concern. You already have under consideration a bill for the reform of our system of banking and currency, for which the country waits with impatience, as for something fundamental to its whole business life and necessary to set credit free from arbitrary and artificial restraints. I need not say how earnestly I hope for its early enactment into law. I take leave to beg that the whole energy and attention of the Senate be concentrated upon it till the matter is successfully disposed of. And yet I feel that the request is not needed—that the Members of that great House need no urging in this service to the country.

I present to you, in addition, the urgent necessity that special provision be made also for facilitating the credits needed by the farmers of the country. The pending currency bill does the farmers a great service. It puts them upon an equal footing with other business men and masters of enterprise, as it should; and upon its passage they will find themselves quit of many of the difficulties which now hamper them in the field of credit. The farmers, of course, ask and should be given no special privilege, such as extending to them the credit of the Government itself. What they need and should obtain is legislation which will make their own abundant and substantial credit resources available as a foundation for joint, concerted local action in their own behalf in getting the capital they must use. It is to this we should now address ourselves.

It has, singularly enough, come to pass that we have allowed the industry of our farms to lag behind the other activities of the country in its development. I need not stop to tell you how fundamental to the life of the Nation is the production of its food. Our thoughts may ordinarily be concentrated upon the cities and the hives of industry, upon the cries of the crowded market place and the clangor of the factory, but it is from the quiet interspaces of the open valleys and the free hillsides that we draw the sources of life and of prosperity, from the farm and the ranch, from the forest and the mine. Without these every street would be silent, every office deserted, every factory fallen into disrepair. And yet the farmer does not stand upon the same footing with the forester and the miner in the market of credit. He is the servant of the seasons. Nature determines how long he must wait for his crops, and will not be hurried in her processes. He may give his note, but the season of its maturity depends upon the season when his crop matures, lies at the gates of the market where his products are sold. And the security he gives is of a character not known in the broker's office or as familiarly as it might be on the counter of the banker.

The Agricultural Department of the Government is seeking to assist as never before to make farming an efficient business, of wide cooperative effort, in quick touch with the markets for foodstuffs. The farmers and the Government will henceforth work together as real partners in this field, where we now begin to see our way very clearly and where many intelligent plans are already being put into execution. The Treasury of the United States has, by a timely and well-considered distribution of its deposits, facilitated the moving of the crops in the present season and prevented the scarcity of available funds too often experienced at such times. But we must not allow ourselves to depend upon extraordinary expedients. We must add the means by which the farmer may make his credit constantly and easily available and command when he will the capital by which to support and expand his business. We lag behind many other great countries of the modern world in attempting to do this. Systems of rural credit have been studied and developed on the other side of the water while we left our farmers to shift for themselves in the ordinary money market. You have but to look about you in any rural district to see the result, the handicap and embarrassment which have been put upon those who produce our food.

Conscious of this backwardness and neglect on our part, the Congress recently authorized the creation of a special commission to study the various systems of rural credit which have been put into operation in Europe, and this commission is already prepared to report. Its report ought to make it easier for us to determine what methods will be best suited to our own farmers. I hope and believe that the committees of the Senate and House will address themselves to this matter with the most fruitful results, and I believe that the studies and recently formed plans of the Department of Agriculture may be made to serve them very greatly in their work of framing appropriate and adequate legislation. It would be indiscreet and presumptuous in anyone to dogmatize upon so great and many-sided a question, but I feel confident that common counsel will produce the results we must all desire.

Turn from the farm to the world of business which centers in the city and in the factory, and I think that all thoughtful observers will agree that the immediate service we owe the business communities of the country is to prevent private monopoly more effectually than it has yet been prevented. I think it will be easily agreed that we should let the Sherman antitrust law stand, unaltered, as it is, with its debatable ground about it, but that we should as much as possible reduce the area of that debatable ground by further and more explicit legislation; and should also supplement that great act by legislation which will not only clarify it, but also facilitate its administration and make it fairer to all concerned. No doubt we shall all wish, and the country will expect, this to be the central subject of our deliberations during the present session, but it is a subject so many-sided and so deserving of careful and discriminating discussion that I shall take the liberty of addressing you upon it in a special message at a later date than this. It is of capital importance that the business men of this country should be relieved of all uncertainties of law with regard to their enterprises and investments and a clear path indicated which they can travel without anxiety. It is as important that they should be relieved of embarrassment and set free to prosper as that private monopoly should be destroyed. The ways of action should be thrown wide open.

I turn to a subject which I hope can be handled promptly and without serious controversy of any kind. I mean the method of selecting nominees for the Presidency of the United States. I feel confident that I do not misinterpret the wishes or the expectations of the country when I urge the prompt enactment of legislation which will provide for primary elections throughout the country at which the voters of the several parties may choose their nominees for the Presidency without the intervention of nominating conventions. I venture the suggestion that this legislation should provide for the retention of party conventions, but only for the purpose of declaring and accepting the verdict of the primaries and formulating the platforms of the parties, and I suggest that these conventions should consist not of delegates chosen for this single purpose, but of the nominees for Congress, the nominees for vacant seats in the Senate of the United States, the Senators whose terms have not yet closed, the national committees, and the candidates for the Presidency themselves, in order that platforms may be framed by those responsible to the people for carrying them into effect.

These are all matters of vital domestic concern, and besides them, outside the charmed circle of our own national life in which our affections command us, as well as our consciences, there stand out our obligations toward our territories oversea. Here we are trustees. Porto Rico, Hawaii, the Philippines, are ours, indeed, but not ours to do what we please with. Such territories, once regarded as mere possessions, are no longer to be selfishly exploited; they are part of the domain of public conscience and of serviceable and enlightened statesmanship. We must administer them for the people who live in them and with the same sense of responsibility to them as toward our own people in our domestic affairs. No doubt we shall successfully enough bind Porto Rico and the Hawaiian Islands to ourselves by ties of justice and interest and affection, but the performance of our duty toward the Philippines is a more difficult

and debatable matter. We can satisfy the obligations of generous justice toward the people of Porto Rico by giving them the ample and familiar rights and privileges accorded our own citizens in our own territories and our obligations toward the people of Hawaii by perfecting the provisions for self-government already granted them, but in the Philippines we must go further. We must hold steadily in view their ultimate independence, and we must move toward the time of that independence as steadily as the way can be cleared and the foundations thoughtfully and permanently laid.

Acting under the authority conferred upon the President by Congress, I have already accorded the people of the islands a majority in both houses of their legislative body by appointing five instead of four native citizens to the membership of the commission. I believe that in this way we shall make proof of their capacity in counsel and their sense of responsibility in the exercise of political power, and that the success of this step will be sure to clear our view for the steps which are to follow. Step by step we should extend and perfect the system of self-government in the islands, making test of them and modifying them as experience discloses their successes and their failures; that we should more and more put under the control of the native citizens of the archipelago the essential instruments of their life, their local instrumentalities of government, their schools, all the common interests of their communities, and so by counsel and experience set up a government which all the world will see to be suitable to a people whose affairs are under their own control. At last, I hope and believe, we are beginning to gain the confidence of the Filipino peoples. By their counsel and experience, rather than by our own, we shall learn how best to serve them and how soon it will be possible and wise to withdraw our supervision. Let us once find the path and set out with firm and confident tread upon it and we shall not wander from it or linger upon it.

A duty faces us with regard to Alaska which seems to me very pressing and very imperative; perhaps I should say a double duty, for it concerns both the political and the material development of the Territory. The people of Alaska should be given the full Territorial form of government, and Alaska, as a storehouse, should be unlocked. One key to it is a system of railways. These the Government should itself build and administer, and the ports and terminals it should itself control in the interest of all who wish to use them for the service and development of the country and its people.

But the construction of railways is only the first step; is only thrusting in the key to the storehouse and throwing back the lock and opening the door. How the tempting resources of the country are to be exploited is another matter, to which I shall take the liberty of from time to time calling your attention, for it is a policy which must be worked out by well-considered stages, not upon theory, but upon lines of practical expediency. It is part of our general problem of conservation. We have a freer hand in working out the problem in Alaska than in the States of the Union; and yet the principle and object are the same, wherever we touch it. We must use the resources of the country, not lock them up. There need be no conflict or jealousy as between State and Federal authorities, for there can be no essential difference of purpose between them. The resources in question must be used, but not destroyed or wasted; used, but not monopolized upon any narrow idea of individual rights as against the abiding interests of communities. That a policy can be worked out by conference and concession which will release these resources and yet not jeopard or dissipate them, I for one have no doubt; and it can be done on lines of regulation which need be no less acceptable to the people and governments of the States concerned than to the people and Government of the Nation at large, whose heritage these resources are. We must bend our counsels to this end. A common purpose ought to make agreement easy.

Three or four matters of special importance and significance I beg that you will permit me to mention in closing.

Our Bureau of Mines ought to be equipped and empowered to render even more effectual service than it renders now in improving the conditions of mine labor and making the mines more economically productive as well as more safe. This is an all-important part of the work of conservation; and the conservation of human life and energy lies even nearer to our interest than the preservation from waste of our material resources.

We owe it, in mere justice to the railway employees of the country, to provide for them a fair and effective employers' liability act; and a law that we can stand by in this matter will be no less to the advantage of those who administer the railroads of the country than to the advantage of those whom they employ. The experience of a large number of the States abundantly proves that.

We ought to devote ourselves to meeting pressing demands of plain justice like this as earnestly as to the accomplishment of political and economic reforms. Social justice comes first. Law is the machinery for its realization and is vital only as it expresses and embodies it.

An international congress for the discussion of all questions that affect safety at sea is now sitting in London at the suggestion of our own Government. So soon as the conclusions of that congress can be learned and considered we ought to address ourselves, among other things, to the prompt alleviation of the very unsafe, unjust, and burdensome conditions which now surround the employment of sailors and render it extremely difficult to obtain the services of spirited and competent men such as every ship needs if it is to be safely handled and brought to port.

May I not express the very real pleasure I have experienced in cooperating with this Congress and sharing with it the labors of common service to which it has devoted itself so unreservedly during the past seven months of uncomplaining concentration upon the business of legislation? Surely it is a proper and pertinent part of my report on "the state of the Union" to express my admiration for the diligence, the good temper, and the full comprehension of public duty which has already been manifested by both the Houses; and I hope that it may not be deemed an impertinent intrusion of myself into the picture if I say with how much and how constant satisfaction I have availed myself of the privilege of putting my time and energy at their disposal alike in counsel and in action.

ORDER OF BUSINESS.

The VICE PRESIDENT. The morning hour having expired, the Chair lays before the Senate the unfinished business, the title of which will be stated.

The SECRETARY. A bill (H. R. 7837) to provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.

Mr. CLAPP. I suggest the want of a quorum.

The VICE PRESIDENT. If there be no objection, the unfinished business will be laid aside temporarily.

Mr. BURTON. Mr. President, I should like to be heard on that if it is going to be laid aside. I understand also that there has been a call for a quorum. The Senator from Minnesota [Mr. CLAPP] suggested the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Gallinger	Norris	Smith, Ariz.
Bacon	Goff	O'Gorman	Smith, Ga.
Borah	Gore	Overman	Smith, S. C.
Bradley	Gronna	Owen	Smoot
Brady	Hollis	Page	Stephenson
Brandegee	Hughes	Perkins	Sterling
Bristow	James	Pittman	Sutherland
Bryan	Kenyon	Poindexter	Swanson
Burleigh	Kern	Pomerene	Thompson
Burton	La Follette	Reed	Thornton
Chamberlain	Lane	Robinson	Tillman
Chilton	Lewis	Root	Townsend
Clapp	Lippitt	Saulsbury	Vardaman
Clark, Wyo.	McCumber	Shafroth	Walsh
Colt	Martin, Va.	Sheppard	Warren
Cummins	Martine, N. J.	Sherman	Weeks
du Pont	Myers	Shields	Williams
Fletcher	Nelson	Shively	Works

Mr. SHEPPARD. My colleague [Mr. CULBERSON] is unavoidably absent. He is paired with the Senator from Delaware [Mr. DU PONT]. I ask that this announcement stand for the day.

Mr. WEEKS. I wish to state that my colleague [Mr. LODGE] is absent on account of illness. He has a general pair with the junior Senator from Georgia [Mr. SMITH]. I should like to have that statement stand for the day.

Mr. KERN. I ask that the special order be temporarily laid aside until we dispose of the question before the Senate. I have the consent of the Senator who has charge of that bill to make the request.

Mr. BRANDEGEE. Has the fact as to whether a quorum is present been announced to the Senate? I think nothing is in order until the presence of a quorum has been announced.

Mr. KERN. I thought the announcement had been made.

The VICE PRESIDENT. Seventy-two Senators have answered to the roll call. There is a quorum of the Senate present. The Senator from Indiana asks that the unfinished business may be temporarily laid aside.

Mr. BURTON. As I understand, the object of that request is in order that disposition may be made of the motions which were pending before the recess.

Mr. KERN. It is primarily that the Senator from Connecticut [Mr. BRANDEGEE] may conclude his remarks and, secondarily, that we may vote on the motion.

Mr. GALLINGER. I call attention to the fact that it is not the unfinished business. The Hetch Hetchy bill is properly before the Senate, or it ought to be laid before the Senate.

Mr. BRANDEGEE. My understanding is that the Chair had laid the unfinished business before the Senate and that the Senator from Indiana asked that it be temporarily laid aside.

Mr. CLARK of Wyoming. The unfinished business is the currency bill.

Mr. BURTON. Oh, no.

Mr. BRANDEGEE. Oh, no; the unfinished business is the Hetch Hetchy bill.

Mr. GALLINGER. No; it is the currency bill.

Mr. CLARK of Wyoming. According to the calendar, the currency bill was made the unfinished business.

Mr. BRANDEGEE. The Senator is correct.

Mr. CLARK of Wyoming. Subject to the special order.

Mr. BRANDEGEE. The Senator is correct; but the unanimous-consent agreement is that the Senate shall proceed with the Hetch Hetchy bill, as I understand, after the morning business, and I assumed that the morning business closed at 1 o'clock. Therefore I assumed that the unanimous-consent agreement would have to be enforced.

Mr. KERN. Let the unanimous-consent agreement be laid before the Senate, and then we shall ask that it be temporarily laid aside.

Mr. BRANDEGEE. Well, Mr. President, I failed to make myself clear to the Senator from Indiana, I think. If the Senate has agreed by unanimous consent that after the morning hour shall expire to-day, at 1 o'clock, the Hetch Hetchy bill will be considered, of course it can not be laid aside by unanimous consent. That would be by one unanimous-consent agreement to undo another.

Mr. KERN. It may be temporarily laid aside.

Mr. BRANDEGEE. I do not think so.

The VICE PRESIDENT. The Chair thinks perhaps, to clear the situation, he should state that the currency bill is the unfinished business coming over from yesterday. If the morning business had been concluded prior to 1 o'clock, it would have been the duty of the Chair to have laid before the Senate the Hetch Hetchy bill, but the morning business having run until 1 o'clock, it is the opinion of the Chair that the unfinished business should now be laid before the Senate, but it does not take precedence over a unanimous-consent agreement the moment there is a desire to proceed with the discussion.

Mr. BRANDEGEE. My idea would be that if the morning business had been announced as closed before the hour of 1 o'clock arrived, the calendar, under Rule VIII, would be in order.

The VICE PRESIDENT. No; the unanimous-consent agreement.

Mr. BRANDEGEE. The unanimous-consent agreement.

The VICE PRESIDENT. The unanimous-consent agreement. That is the way the Chair has been trying to rule, though he may not have expressed it in good language.

Mr. BRANDEGEE. Has the Chair made a ruling, may I inquire, then, upon the request of the Senator from Indiana, if he has a request pending?

Mr. CUMMINS. Mr. President, I rise to a parliamentary inquiry. In the absence of unanimous consent, does the resolution (S. Res. 225) offered by the Senator from Indiana go over until to-morrow or would it go to the calendar?

Mr. GALLINGER. It would go to the calendar.

The VICE PRESIDENT. The Chair would so rule, the morning hour having expired.

Mr. CUMMINS. I have no desire that the resolution shall go to the calendar, for I rather favor it; but I know that there will be very considerable discussion upon it before it comes to a vote. Therefore it ought not to be continued this afternoon.

Mr. GALLINGER. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from New Hampshire?

Mr. CUMMINS. I do.

Mr. GALLINGER. I ask unanimous consent that the resolution go over without prejudice until to-morrow.

The VICE PRESIDENT. The Senator from New Hampshire asks unanimous consent that the resolution go over until to-morrow without prejudice. Is there objection?

Mr. KERN. I have none.

The VICE PRESIDENT. The Chair hears no objection, and the resolution goes over until to-morrow.

SAN FRANCISCO WATER SUPPLY.

Mr. WORKS obtained the floor.

Mr. BRANDEGEE. Mr. President, I inquire if the unfinished business has been temporarily laid aside?

The VICE PRESIDENT. It has been.

Mr. BRANDEGEE. Very well.

Mr. SMOOT. What is before the Senate now, Mr. President?

The VICE PRESIDENT. The matter now before the Senate is House bill 7207, the title of which the Secretary will state.

The SECRETARY. A bill (H. R. 7207) granting to the city and county of San Francisco certain rights of way in, over, and through certain public lands, the Yosemite National Park, and Stanislaus National Forest, and certain lands in the Yosemite National Park, the Stanislaus National Forest, and the public lands in the State of California, and for other purposes.

The Senate, as in Committee of the Whole, resumed the consideration of the bill.

Mr. SUTHERLAND. Mr. President——

The VICE PRESIDENT. Does the Senator from California yield to the Senator from Utah?

Mr. WORKS. I yield.

Mr. SUTHERLAND. I judge from the vacant seats on the other side of the Chamber that some of our Democratic friends are seeking a little rest in anticipation of the vigorous night work promised for the future. I therefore suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Dillingham	Martine, N. J.	Smith, Ariz.
Bacon	Fletcher	Nelson	Smith, Ga.
Borah	Gallinger	O'Gorman	Smith, S. C.
Bradley	Goff	Owen	Smoot
Brady	Gronna	Page	Sutherland
Brandegee	Hollis	Perkins	Thomas
Bristow	Hughes	Pittman	Thompson
Bryan	James	Pomerene	Townsend
Burleigh	Johnson	Reed	Vardaman
Burton	Kenyon	Robinson	Walsh
Chamberlain	Kern	Root	Weeks
Chilton	La Follette	Shafroth	Williams
Clapp	Lane	Sheppard	Works
Clark, Wyo.	Lippitt	Sherman	
Clarke, Ark.	McCumber	Shields	
Cummins	Martin, Va.	Shively	

The VICE PRESIDENT. Sixty-one Senators have answered to the roll call. There is a quorum of the Senate present. The Senator from California will proceed.

Mr. WORKS. Mr. President, this bill in its practical results affects the State of California alone. The principles which are involved are of importance to the whole Nation. One of the great cities of the State and one of the largest farming communities are in direct conflict as to the right to use the waters of this stream. I expect to show that this bill, in its general object and purpose, and in most of its provisions, is in direct conflict with the laws of the State of California governing the appropriation and distribution of the waters of the streams of the State.

I was very much surprised that an endeavor should have been made to press this bill to hearing and passage in my absence from the Senate. The reason for it, as announced by some Members of this body, was an entirely mistaken one. It was assumed and directly stated that I was objecting to the bill solely in the interest of people outside of the two irrigation districts that have been mentioned here as protected by the provisions of the bill.

I had not given the bill the attention that it deserved, and that I should have given to it, up to the time I made my visit to my own State. I then found by investigation that there were two sides to the question; that the bill itself did not protect the interests of the farmers of the San Joaquin Valley as it professed to do, and as everybody connected with the legislation understood it to do. Upon discovering that state of things, I sent this telegram to the chairman of the Senate Committee on Public Lands:

CORONADO, CAL., *October 2, 1913.*

Hon. HENRY L. MYERS,
Chairman Committee on Public Lands,
Senate Chamber, Washington, D. C.:

I have satisfied myself that the Hetch Hetchy bill should not pass without further investigation. Ninety-nine per cent of water users in the irrigation districts are strongly opposed to it and claim that they were betrayed by those who consented to the compromise measure. They claim that thousands of acres of lands in their districts and outside of them will be deprived of water to which they are entitled, and that they can show that this sacrifice of the best and most fertile lands in the State is unnecessary in the interest of San Francisco. Because of the compromise, that they indignantly repudiate, this phase of the question has not been investigated. The bill should not be rushed through this session under such circumstances. It is too serious, not only to the parties directly interested but to the whole State.

JOHN D. WORKS.

Upon that telegram being received, the following occurred on the floor of the Senate:

Mr. BRISTOW. I desire to say, with the permission of the Senator from Nevada, that I have not been in the Senate a great while, but I have been here something over four years and I have never known, when a request was made by a Senator from a State which is affected by a bill and that Senator is absent and asks that it be not considered until he can get back, that such a request has been denied.

Not only was such a request made by the junior Senator from California [Mr. WORKS], but the Senator from Utah [Mr. SMOOT], who was until the 4th of last March the chairman of the committee that reports this bill, is absent from the city and he desires to be present when it is heard. For the first time in my short service here has such a request been ignored by the Senate, and I can not understand why this request is not heeded.

Now follows the reason for not heeding it:

Mr. NORRIS. I can tell the Senator why. Personally, I have no objection to postponing it as far as I am concerned, although I voted to consider it. If I understand the telegram of the junior Senator from California, he referred in his telegram to men who have no legal right involved in this bill, men who are not even organized into an irrigation district, men who have made no filing, who have not taken any steps to get the water, who have not any legal claim to it, and if we gave them all they wanted it would be a question whether we should use the water to let people drink or have for domestic use or whether we should use it for irrigation. They have not any legal filing.

Mr. BRISTOW. Let me ask the Senator from Nebraska, through the kindness and courtesy of the Senator from Nevada——

Mr. PITTMAN. Certainly.

Mr. BRISTOW. If the Senator from Nebraska were in Nebraska and there was a bill pending here affecting the State of Nebraska, and he should send a telegram here asking that its consideration be deferred until he could be heard, does not the Senator think it would be a courtesy to him for the Senate to grant his request?

Mr. NORRIS. I think it would be, and it would be a courtesy to the Senator from California, as the Senator from Kansas knows. I do not think there can be any doubt about this proposition.

The Senator from California in his telegram is referring to something that, even if he were here, could not possibly make any difference with this bill one way or the other. These men who are unorganized, who have no legal claim to the water, who have made no filing during all these years that this has been under consideration, have never before until the last days that the bill was before the Senate committee made any protest or any claim of any kind. Mr. Lehane very fairly and squarely stated that he had no legal right; but he said, "We can get our men together, we can organize, and we can use this water; let us have it." In the first place, the committee hearing had been had, the bill had been really passed upon by the committee, and at the very last minute somebody comes in who has no claim, and no one will contend that he has any, and says, "We would like to have this water."

As far as Mr. Lehane is concerned, his hearing before the Senate committee showed distinctly that he was not representing the "outsiders," so called, or the men who were not connected with the irrigation districts only, but that he was representing the water users within the districts. To prove that to be so, notwithstanding the statement of the Senator from Nebraska, I call attention to a short portion of the report of the hearings before the Public Lands Committee. He says:

I have here telegrams that have been sent to Senator MYERS, chairman of the Senate Committee on Public Lands, and I will read them. The first is as follows:

MODESTO, CAL., *September 23, 1913.*

HENRY L. MYERS,
Chairman Senate Public Lands Committee, Washington, D. C.:

We, the undersigned committee, representing the water users of the Modesto irrigation district, 475 of whom have signed a petition to the effect that the lands tributary to the Tuolumne River are able and willing to store the Hetch Hetchy waters, and asking and urging that the Senate postpone action on the Raker bill and appoint a commission to investigate and report on our claims. Said petition was signed by 99 per cent of the water users to whom presented. W. C. Lehane, of this committee, will represent us in person before your committee.

LEVI WINKLEBLECK,
Acting Chairman.

Mr. Winklebleck is head of the Dunkard settlement 5 miles east of Modesto, and when you get a Dunkard out rustling with public sentiment you may know that he has something at stake.

The next telegram I wish to read is from Mr. Thomas Caswell, and is as follows:

MODESTO, CAL., *September 23, 1913.*

HENRY L. MYERS,
Chairman Senate Public Lands Committee, Washington, D. C.:

The undersigned, representing the water users of the Turlock irrigation district, 100 of whom have this day signed a petition setting forth that lands contiguous to the Tuolumne River are ready and able to store the waters of the Hetch Hetchy, request that the Senate postpone action on the Raker bill and appoint a committee to investigate and report on our claims. Said petition was signed by 98 per cent of the water users to whom it was presented.

THOMAS CASWELL.

Now, here is a telegram from the west side of the river, from the chamber of commerce at Crows Landing, which is as follows:

CROWS LANDING, CAL., *September 23, 1913.*

HENRY L. MYERS,
Chairman Committee on Public Lands, Washington, D. C.:

The chamber of commerce of Crows Landing urge delay in the passage of the Raker bill until you investigate the claims of the land on the west side of the San Joaquin River to water or power. W. C. Lehane will appear before you in our behalf.

W. P. WITTEN, *Secretary.*

I will say, gentlemen, that the Modesto irrigation district lies north and west of the Tuolumne River. The Turlock irrigation district lies south and east, and the Turlock irrigation district is twice as large as our district. We have 81,000 acres; they have 176,000 acres. On the west side of the Tuolumne River is a strip of country, probably 8 or 10 miles wide, which runs down the San Joaquin River, down beyond Tracy. They are organized there now into what is known as the Tracy district.

It will be seen that instead of Mr. Lehane coming here and representing outsiders who have no legal claim upon this stream he was here representing 98 per cent of the men who own the lands within the districts and pay their taxes to support them. They were not only protesting here against the passage of the bill, but they were protesting that they had sent a delegation to Washington to oppose its passage, and that instead of following instructions and opposing the passage of the bill they had compromised their interests and consented that a bill should be made which in form protected them but in fact does not do so, as I shall show further along.

After I learned that the claim was being made that I was not speaking for the actual water users who had legal rights in the stream, I sent this telegram to Mr. Levi Winklebleck, who came to me at San Diego and represented the conditions as he claimed them to exist, which prompted the telegram that I sent to the Senate asking for delay in order that the matter might be further investigated:

LOS ANGELES, *October 28, 1913.*

LEVI WINKLEBLECK, *Modesto, Cal.:*

In your representations to me at San Diego did you represent landowners within the irrigation district or outsiders, and did Judge Lehane speak for the people within the irrigation districts or the outsiders alone? It was claimed, I see in the debate in the Senate, that complaint was made only by people who had obtained no legal right to any of the waters of the stream. I did not so understand the situation when I sent the telegram to Washington at your request.

JOHN D. WORKS.

To that telegram I received an answer from J. S. Rhodes, secretary and treasurer of the Water Users' Association of the Modesto irrigation district, as follows:

Hon. JOHN D. WORKS,
United States Senator, Los Angeles, Cal.:

Replying to your telegram of October 28, 1913, received by the Water Users' Association of the Modesto irrigation district of Modesto, Cal., that Mr. Levi Winklebleck represented the bona fide water users of the Modesto irrigation district, and that over 95 per cent of the water users within the district are opposed to the Hetch Hetchy Raker bill and have perfected arrangements to secure a hearing for the water users of the Modesto irrigation district before the United States Senate before the final passage of the Raker bill. Lehane letter will follow.

J. S. RHODES,
Secretary-Treasurer Water Users' Association of Modesto Irrigation District.

I also received this telegram from Mr. Winklebleck himself:

MODESTO, CAL., *October 30, 1913.*

Senator JOHN D. WORKS,
H. W. H. Building, Los Angeles, Cal.:

Made a canvass of the Turlock irrigation district yesterday, and find water users unanimously opposed to the Raker or any other bill taking water from the Hetch Hetchy.

LEVI WINKLEBLECK,
Chairman Modesto Water Users' Association.

So, in asking for delay and further investigation I was speaking for the men who had rights in the stream which were threatened with destruction.

Mr. President, in what I shall say on this subject I speak for the farmers of the San Joaquin Valley. I speak for the thousands of people all over this country who are protesting against the use of a part of the magnificent Yosemite Park for commercial purposes. I speak for the great city of San Francisco in opposition to the attempt that is being made to impose upon it an enormous burden of debt, unnecessary and useless, and which will bring none of the benefits that are claimed for it by those who are advocating the passage of the bill. I shall show, I think, that in practically all of its provisions this bill is in direct conflict with the laws of the State of California providing for the distribution of the waters that belong to the State itself under the constitution of the State; that San Francisco has not secured, by compliance with the laws of the State or otherwise, any legal right to divert from this stream any such quantity of water as is claimed by the advocates of the bill; that if it has the water commission provided for by the laws of the State of California has the right, under the laws of the State, to regulate and control its use and disposition and to compel it to confine its use to what it needs for its own purposes. I shall show, I think, that this whole proceeding, in the attempt to procure these rights from the National Government, has been a tissue of misrepresentations that amount, whether so intended or not, to a positive fraud, not only upon the rights of the people who have already filed upon the stream but upon the people of the city of San Francisco.

What are they proposing to do? They propose, under the grant that they expect from the National Government, as they claim, to construct a dam in the Hetch Hetchy Valley in the Yosemite Park that will store 400,000,000 gallons of water per day. What for? For San Francisco's use? Not at all.

The bill itself provides on its face that this grant is made not alone in the interest of San Francisco, but for San Francisco and the cities around the Bay of San Francisco. Nobody claims, and I suppose nobody will claim, that San Francisco will need 400,000,000 gallons of water a day for a century to come. San Francisco has no more right than I have to enter upon this stream and appropriate water for Oakland or other cities and attempt to distribute it or sell it to those cities, and the National Government has no authority or power to give it any such right. Therefore San Francisco is expecting to spend something like $100,000,000 for the purpose of appropriating water and making the necessary improvements for that purpose that she never will be able to use under the law of the State of California.

If you will take the pains to examine these proceedings, from the report of the Board of Army Engineers that was employed to deal with this question down to this time, you will find that the whole proceeding was for the purpose of acquiring rights for about 26 different cities in the water of this stream, and to impound and take it out for the use of these various cities by the city of San Francisco, and only with her consent, as against the farmers of the San Joaquin Valley, who have made their legal appropriations upon the stream, have taken out a portion of the water they are entitled to use, and under the law of the State of California, if they proceed with reasonable diligence, are entitled to take out the balance of the water for their use.

Not only that, but San Francisco, while claiming the right to take out of the stream 400,000,000 gallons of water per day, has a filing upon the stream that allows her to take out only 161,000,000 gallons for any purpose. Therefore, if she goes to the expense of constructing this vast system for taking out water, when she is through and the laws of California are brought to bear upon her she will not be allowed to take out more than 161,000,000 gallons per day under her initial filings. If she does not need that quantity of water she will not be able to take out even that amount, because under the laws of the State her claims will be confined to the water necessary for her use. The balance of it will go to somebody else who is entitled to enter upon the stream, and it will not be confined to the people who have already made filings.

There has been a good deal said here about these "outsiders," so called, having no legal right to the streams of the State; but that is a mistake. Every citizen who owns land under that stream of water has a legal right at any time to enter upon it and claim the amount of water that he needs for his own use.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. OWEN in the chair). Does the Senator from California yield to the Senator from Idaho?

Mr. WORKS. I do.

Mr. BORAH. I want to ask the Senator from California if the law of California or the constitution of California provides that the waters of the State belong to the public.

Mr. WORKS. Yes; I am coming to that in a moment. I expect before I have done with this branch of the subject to analyze the bill that is before the Senate and then the laws of the State of California and compare the two to show what the conflicts are and what are the rights that these people have under the law as it is. But before I pass to that, on the subject of the rights of San Francisco and these landowners, I would like to read a part of a statement that has been issued by Leon Leighton and others, a committee for the Ceres Water-Users' Association, in which they say:

> The Raker bill, H. R. 7207, allows 2,350 second-feet for both districts out of the natural flow of the river, and, between April 15 and June 15, allows 1,650 second-feet additional out of the flow waters of the river. This amount is totally insufficient for the needs of the districts.

It has been claimed here all along that by this compromise arrangement the bill protects these people in the quantity of water that they need. That the water users deny. They are not only not allowed the amount of water that they have legally filed upon and are entitled to take out if they pursue their work of preparing their district by the application of the water, but they are not allowed sufficient to properly irrigate the land now under irrigation.

> In the Modesto district they are all using almost their full share under the terms of the Raker bill and are barely able to supply their present needs. They have 35,000 acres of land receiving no water, which is being developed from year to year and which is entitled to share in the water they will receive under the Raker bill. If said bill passes, it will result in the farmers having such a small amount of water per acre that they will be ruined. The same thing is true in the Turlock district, excepting that their acreage is over two times as much as in the Modesto district.
>
> San Francisco is attempting to secure the three choicest sites on the entire watershed, and also "desires that all permits for reservoir building on the public lands upstream from Hetch Hetchy, Lake Eleanor, and Cherry reservoir sites be reserved in favor of the municipalities of Greater San Francisco."
>
> We contend that we are entitled to the water to the amount of our original appropriations, provided that we can make use of the same, beneficially, and in that event, we contend that there will not be water for San Francisco and its neighboring cities sufficient to meet with the least of their demands.

Mr. SUTHERLAND. Mr. President, will the Senator from California yield to me?

Mr. WORKS. I yield to the Senator from Utah.

Mr. SUTHERLAND. The Senator from California is making an exceedingly interesting statement on a very important bill. I observe that on the Democratic side of the Chamber there is just one Senator, the Senator from Colorado [Mr. THOMAS]. I name him in order that his patient attention to duty may be properly preserved in the records of the Senate.

Mr. OVERMAN. I think I had better get on the other side. [Laughter.]

Mr. SUTHERLAND. I had not observed the Senator from North Carolina, who is evidently on this side in order that he may be in good company. In view of the situation which I have stated, I suggest the absence of a quorum.

Mr. THOMAS. Before that suggestion is pressed, may I simply say that I think a great many Senators have not returned to the Chamber since the reading of the President's address, but are getting their midday meal.

Mr. SUTHERLAND. The Senators can come in long enough to answer the roll call.

The PRESIDING OFFICER. The Senator from Utah suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Gore	Norris	Smith, Ga.
Bacon	Gronna	O'Gorman	Smith, Md.
Bankhead	Hollis	Overman	Smoot
Borah	James	Owen	Stephenson
Bradley	Johnson	Page	Stone
Brady	Kenyon	Perkins	Sutherland
Bryan	Kern	Pittman	Swanson
Burton	La Follette	Pomerene	Thomas
Chamberlain	Lane	Reed	Thompson
Chilton	Lewis	Robinson	Townsend
Clapp	Lippitt	Root	Vardaman
Clark, Wyo.	McCumber	Shafroth	Walsh
Cummins	Martin, Va.	Sheppard	Williams
Dillingham	Martine, N. J.	Sherman	Works
Fletcher	Myers	Shields	
Gallinger	Nelson	Shively	
Goff	Newlands	Smith, Ariz.	

Mr. GALLINGER. I desire to announce that the Senator from Connecticut [Mr. BRANDEGEE] has been called from the Chamber and that he stands paired with the Senator from Illinois [Mr. LEWIS].

Mr. CLARK of Wyoming. I desire to announce that my colleague, the Senator from Wyoming [Mr. WARREN], is absent from the Senate on public business.

The PRESIDING OFFICER. Sixty-four Senators have answered to their names. A quorum is present. The Senator from California will proceed.

Mr. WORKS. I feel more than ordinarily desirous that Senators should hear what I have to say on this subject. I do not believe that a great number of the Members of this body really understand the situation as they should in order to vote upon it intelligently. I am particularly anxious that the Democratic Members should be in their seats, because it is being circulated here and has come to me at various times that this has been made a Democratic measure, and that the Democrats propose to put it through. I do not believe that statement. This is too important a matter to the State of California to be dealt with in that way, and I am sure that no Senator here has any such disposition. I have been assured of that fact by a number of Democratic Senators.

Mr. STONE. If the Senator will pardon me——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Missouri?

Mr. WORKS. I yield.

Mr. STONE. I desire to say in this immediate connection that I am absolutely sure there has been no consultation even, much less any conference, of the Democratic Senators, with any view of concerted action with respect to this bill. I am absolutely sure that every Senator on this side has his mind open and will vote in accordance with his own judgment.

Mr. WORKS. I have been assured of that fact, as I said before, and I have no doubt of the correctness of the statement of the Senator from Missouri. But it shows the extent to which some people are going for the purpose of bringing about the passage of this bill, and I did want the opportunity to explain the situation to Democratic Senators so that they might fully realize not only the importance of this question but understand what should be done in the interest and for the welfare of the State of California, not only these two sections of it but all of it.

Proceeding with what I was reading—

Our districts need additional storage. This must be found on Tuolumne River and its tributaries. The districts are now in this position:

If San Francisco is permitted to hold back the flood waters of the Tuolumne River in her reservoirs at Hetch Hetchy, Lake Eleanor, and Cherry Creek, there will not be sufficient flood waters to fill such reservoirs as the districts may be able to construct above the La Grange Dam on the Tuolumne River. The natural flow of the Tuolumne River is early in July, and they will therefore be left in the last half of the season without water for irrigation. In other words, under the Raker bill they will have a short supply in the first half of the season and no supply at all in the latter half of the season.

The future progress and development of our community depends upon the water supply of our lands. Any abridgment of our rights in regard to water will discourage investment and injure irreparably the future progress of ourselves and our posterity.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Will the Senator from California yield to the Senator from Colorado?

Mr. WORKS. I yield.

Mr. THOMAS. I should like to inquire of the Senator if he has read the report of the Army engineers upon this project?

Mr. WORKS. I have studied it very carefully, and I will come to comment upon it later.

Mr. THOMAS. Then the Senator probably recalls the fact—I think it is in that report—that this river sometimes at flood season has a flow of between 30,000 and 40,000 second-feet, which, of course, is more than enough to supply San Francisco and all previous appropriations and to build as many reservoirs as natural conditions would permit the construction of.

Mr. WORKS. It is true that at certain times of the year flood water will come down and it may be stored, but I think the Senator is mistaken in his statement that the flood waters of this stream if properly stored will supply San Francisco and leave water enough to supply these lands. I think he is also mistaken in saying that the Army board report shows any such thing.

Mr. THOMAS. I may be mistaken as to that. I remember reading it in one of the many reports.

Mr. WORKS. I will endeavor later on to analyze that report and find out just what it does say in relation to the matter.

Mr. MYERS. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Montana?

Mr. WORKS. I yield.

Mr. MYERS. I was not fortunate enough to be in the Chamber when the Senator began his remarks. I ask from whom is the statement the Senator has just read? What irrigationists are making that complaint?

Mr. WORKS. It is signed by Leon Leighton, W. S. Watson, G. W. Miles, committee for the Ceres Water Users' Association. They compose a part of the water users in one of these irrigation districts.

Mr. MYERS. Under the Turlock-Modesto system or district?

Mr. WORKS. Yes.

Mr. MYERS. Where are those people getting sufficient water for their irrigation purposes now? The flood waters of this river run to the sea, and they are not impounded at all. Where do they get enough water now?

Mr. WORKS. They do not get enough water now.

Mr. MYERS. Why did they not impound it long ago if they needed it?

Mr. WORKS. The conditions in this valley have been such that the single landowners were not able to build the necessary storage reservoirs for the purpose of taking the waters out of the stream. In order to meet that condition and help the farmers themselves a law was passed providing for the formation of irrigation districts. Those districts are being formed all over the State of California, whereby the farmers can combine themselves together and so make the necessary appropriations, build the necessary reservoirs, and take out the water under the direction of the irrigation district, and distribute it to the land belonging to the landowners. That would have been impossible but for the authority given to establish these irrigation districts. They have formed districts taking up a large part of these valley lands, but not all of them. They have formed two irrigation districts lately—one the Tracey and another the name of which I do not remember—for the purpose of combining and making such appropriations and building such reservoirs as may be necessary to store the water that is now going to waste; but if they are prevented from doing that by this grant and the impounding of the water in this large reservoir, then that right is taken away from them.

Mr. MYERS. How long has California's irrigation district law been in existence?

Mr. WORKS. Oh, a number of years.

Mr. MYERS. They have had about 20 years to do this, and why have they not done it, and why do they get in a hurry to do it now?

Mr. WORKS. Will the Senator allow me to answer the question?

Mr. MYERS. Certainly, but I wished to complete my question before the Senator answered it. I have completed it.

Mr. WORKS. The irrigation law has been in force for probably 20 years, as the Senator says. I do not remember the exact time, but the law was defective, and a great many of the irrigation districts that were formed failed. The law has been amended on several different occasions until it is supposed now that investors can safely take up the bonds of the district and that they can negotiate their bonds and build reservoirs and appropriate and use the water. That is the exact condition of the section that I am now talking about. People are coming into that valley by the thousand, induced to come there by the fact that they have taken these steps to appropriate and use water for the irrigation of the lands.

Mr. MYERS. Then I would ask——

The PRESIDING OFFICER (Mr. SHIVELY in the chair). Does the Senator from California yield further to the Senator from Montana?

Mr. WORKS. I yield.

Mr. MYERS. Has there been any organized effort heretofore or any steps taken in the past for the procurement of the appropriation of these waste waters by the irrigation district?

Mr. WORKS. Yes; they have made their regular filings upon the stream, which entitle them to take out a part of the flood waters. They have built some reservoirs there already. They are preparing to build other storage reservoirs below the point where it is proposed to grant the right to build this one, which would be interfered with if this bill should pass and this reservoir be constructed.

Mr. MYERS. I should like to ask further, the Senator does not contend that where any of these appropriations have already been made or where steps have been taken they could be interfered with by this bill?

Mr. WORKS. Certainly, I do. I believe they would be very seriously interfered with.

Mr. MYERS. Does the Senator say that Congress could interfere with a water-right appropriation under a State law when it is initiated according to law?

Mr. WORKS. It can; if this statute is to be enforced.

Mr. MYERS. I should like to have the Senator explain how it can be done.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Idaho?

Mr. WORKS. I yield.

Mr. BORAH. In answer to the suggestion of the Senator from Montana, if Congress has any power at all in the premises to control and distribute and adjust this water, it is a superior power, and it can affect that which has been done as well as that which is to be done. If we are correct in our contention that the entire matter rests upon rights arising under the State law, then Congress can not deal with the subject. If that is not true, then it is within the power of Congress to readjust the matter.

Mr. MYERS. With the permission of the Senator from California, I should like to say, if I do not interrupt him too much, that I do not understand how Congress could interfere with any vested right which accrued to anybody under any legitimate and jurisdictional law, State or National.

Mr. WORKS. Does the Senator mean to say that this bill does not attempt to do it?

Mr. MYERS. I claim that it undertakes not to do it. That is my understanding of it.

Mr. BORAH. It is no more difficult for Congress to interfere with a vested right than it is for Congress to interfere with a power reserved entirely to the State. It is, of course, impossible for Congress to do either; but one, I apprehend, could be about as well justified as the other.

Mr. WORKS. Mr. President, I come now to analyze the bill before the Senate.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Colorado?

Mr. WORKS. I do.

Mr. THOMAS. I apologize to the Senator for interrupting him——

Mr. WORKS. That is unnecessary.

Mr. THOMAS. But the source of my statement was not the report of the Board of Army Engineers, but a statement of Mr. O'Shaughnessy, on page 136 of the hearings before the Committee on Public Lands of the House of Representatives.

Mr. WORKS. I have not discovered any statement of that kind in the report of the Army engineers, and I have studied it very carefully.

Mr. THOMAS. The Senator is correct. I was mistaken as to the source of my information.

Mr. STONE. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Missouri?

Mr. WORKS. I do.

Mr. STONE. I should like, as a matter of information, to ask the Senator to state the arable area of the valley through which the river flows.

Mr. WORKS. I would not be able to do that from present memory, but I will do it in the course of my remarks. The whole matter will be disclosed before I have done.

Mr. STONE. Does the Senator know how much of it is now in actual occupancy?

Mr. WORKS. Something like 400,000 acres is under irrigation.

Mr. STONE. And how much is lying idle?

Mr. WORKS. The remainder is lying idle—at least 200,000 acres. The Senator from Utah says more than that.

Mr. STONE. The Senator from Colorado said 6,000,000 acres, in the aggregate.

Mr. WORKS. I am talking about the irrigable land.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the junior Senator from Montana?

Mr. WORKS. I yield.

Mr. WALSH. Before the Senator from California passes from the presentation of the protest or objection made by the irrigation district and those interested in it to consider the particular features of the bill, I should be very thankful, indeed, if he would give us a little clearer idea of just exactly what the protest of these people is and upon what it is founded.

This is a bill permitting the creation and establishment of a dam within the Hetch Hetchy Valley, in the Yosemite National Park, for the purpose of impounding water which would otherwise flow away. No one heretofore has ever had a right to put a dam there for the purpose of impounding the water. Neither the people of San Francisco nor the people of the San Joaquin Valley have had that right. No one has had the right to do so.

I gather from what the Senator says, however, that these people do not want the privilege which is here to be given to the people of San Francisco to erect a dam in the Hetch Hetchy Valley; in other words, to step into the position that the people of San Francisco would occupy under this bill. They are not asking that. If they are not asking that, I do not understand how they are injured in any way by the passage of this act, except it be that they intend hereafter to erect dams at some lower point in the stream for the purpose of there impounding the waters which would by this dam be stored within the Hetch Hetchy Valley. If they do hereafter intend to construct such dams, they have no rights accrued which could be affected by this bill. If they have already, as the Senator now tells us, constructed dams below for the purpose of impounding water there, or if they have started already to do so, any rights which they have acquired by virtue of that work thus initiated or carried to its termination will be, of course, superior and paramount to any rights that the city of San Francisco could acquire by reason of this construction work to be carried on later. Thus, it occurs to me that, as I understand it now—and I ask simply to be enlightened upon the matter—this act can not possibly injure them, and I am anxious to know just what it is that these people complain about.

Mr. WORKS. Mr. President, I am quite willing to yield to questions, but I hope I will not be asked to yield in order that some other Senator may make a speech on this question in my time.

I had not commenced to develop the question the Senator refers to. It was simply a passing reference to it for the purpose of showing the interest these landowners have in the subject. But I expect to take that matter up more fully as I go along, and I shall be very glad to submit to any inquiry the Senator may then desire to make.

I may say, however, in this connection that there seems to be some idea here that there is a difference between the storm waters of a stream and the natural flow of it with respect to the legal rights of persons who are claiming the waters of that stream. That is not so. Precisely the same law applies to both of them. It may be more difficult, it may cost more money to store the water that comes down during a storm time, but the law is precisely the same with respect to its appropriation and its use. There is no difference in a legal sense.

If these landowners have filed upon a specific quantity of water and that water is not to be had from the natural flow of the stream, they have a right to take the balance of it from any storm waters and to take any steps that are necessary to accomplish that result.

Neither the city of San Francisco nor anyone else has undertaken to file upon this stream and take out a part of the storm waters and assume that they are not going to interfere with the natural flow of the stream. They can no more interfere with the rights of the landowners to take out storm water than they can with the natural flow of the stream. Therefore, if any dam is constructed above the dam of the landowners which will stop the flow of the storm waters and impound them for the use of the city of San Francisco, and thereby lessen the quantity of water that will pass down to the dam of the landowners, then they are encroaching upon their rights and could be enjoined.

The landowners, following further the suggestion of the Senator from Montana, have certain filings upon the stream. They have not taken out all the water that they are entitled to take out. They could not take it out from the natural flow of the stream. They will be compelled, in order to get the amount of water to which they are entitled, to erect a storage dam or dams.

They have erected one of them below where it is proposed to construct this dam. They have never said, as the Senator suggested, that they do not propose to erect a dam in Hetch Hetchy Valley. The claim is being made here that they will not be able to do so, but as a matter of fact, with the combination that can be brought about through this irrigation district, they would be able to construct a dam sufficiently high to furnish the water that is necessary for the supply of their lands. But I think I shall show the Senate before I have done that if San Francisco proposes to construct a dam for the purpose of taking out the waters of the stream, and it should be a hundred feet high, the water commissioners could compel the city of San Francisco to permit the landowners to add another 50 feet or another 100 feet for the purpose of storing the water that they need as well and compel a joint distribution of it.

Now, Mr. President, taking up the bill itself, I call attention, in the first place, to a clause on page 2 of the bill, which is a part of the grant and discloses to whom the grant is proposed to be made:

> For conveying water for domestic purposes and uses to the city and county of San Francisco—

Now, mark you—

> *and such other municipalities and water districts as, with the consent of the city and county of San Francisco, or in accordance with the laws of the State of California in force* at the time application is made, may hereafter participate in the beneficial use of the rights and privileges granted by this act.

Has anybody else but the city of San Francisco made application for any grant of this kind? Has Oakland or Berkeley or any of the other 26 cities that are mentioned here asked the Government for any grant to take water from the stream and store it? Not at all. Has the city of San Francisco the right to enter upon the stream and take out the water for anybody else but San Francisco? I shall show that she has not. If San Francisco has no right to enter upon the stream and take out the water for anybody else, then why should the Government grant to San Francisco the right to erect this reservoir for the purpose of storing water that it can never legally take out?

Mr. President, let us look at some of the most remarkable provisions of this bill. Nothing like it has ever been known in the history of this country, so far as I know. There have been grants of this kind made before. There was a grant made to the city of Los Angeles to enter upon the land of the United States and construct its reservoirs and its ditches and canals, but it was a plain simple grant of that right. It made no attempt to interfere with the disposition or use of the water; it made no conditions even for the payment of money to the Government; it simply granted a right to construct these improvements upon Government land in order that the water might be disposed of in accordance with the laws of California; but they are not content with that in this case. They propose to say for what this water shall be stored, to whom it shall be distributed, where it shall go, and what shall be paid for it.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Colorado?

Mr. WORKS. I do.

Mr. THOMAS. I wish to call the Senator's attention to the last section of the act granting the right to use the public lands of the Nation for the construction of this water system, which reads:

> That the city of Los Angeles is prohibited from ever selling or letting to any corporation or individual except a municipality the right for such corporation or individual to sell or sublet the water sold or given to it or him by the city.

I desire to ask whether that does not impose a restriction upon the sale or the use of the water that the city of Los Angeles receives within its municipality to the system of waterworks that it constructed by virtue of this act?

Mr. WORKS. No; because it was simply a statement of the law of California. It could not do it under the law of that State. Therefore the provision amounted to nothing, and was not objectionable to Los Angeles.

Section 6 provides practically what has just been stated by the Senator from Colorado with respect to Los Angeles.

Section 7 provides:

SEC. 7. That for and in consideration of the grant by the United States as provided for in this act the said grantee shall assign, free of cost to the United States, all roads and trails built under the provisions hereof; and further, after the expiration of five years from the passage of this act the grantee shall pay to the United States the sum of $15,000 annually for a period of 10 years, beginning with the expiration of the 5-year period before mentioned, and for the next 10 years following $20,000 annually, and for the remainder of the term of the grant shall, unless in the discretion of Congress the annual charge should be increased or diminished, pay the sum of $30,000 annually.

With respect to the roads, this condition is not objectionable; that is a condition that the Government may very properly impose, as it will affect the Government lands. That is left in its hands after this grant is made, and the Government certainly has the right to make any conditions of the grant that affect the title or the use of its own lands. To those provisions of the bill and those conditions I make no objection, because they are perfectly legitimate.

Section 8 provides:

SEC. 8. That the word "grantee," as used herein, shall be understood as meaning the city and county of San Francisco and such other municipalities or water district or water districts as may, with the consent of the city and county of San Francisco, or in accordance with the laws of the State of California, hereafter participate in or succeed to the beneficial rights and privileges granted by this act.

There is a grant to some city that may or may not at some future time seek to take advantage of the grant; but the grant compels, as I shall show directly, the city of San Francisco to construct a dam 200 feet high for the purpose of storing this entire quantity of water, whether anybody else claims it or not, and for a purpose not within the filing made by the city of San Francisco; and where the filings of that city only amount to 161,000,000 gallons a day, where San Francisco is claiming the right here to construct a dam which will store three times that amount, or nearly that, without any provision or any legal act on the part of the city of San Francisco that entitles it to store that quantity of water.

Going further, section 9 provides:

SEC. 9. That this grant is made to the said grantee subject to the observance on the part of the grantee of all the conditions hereinbefore and hereinafter enumerated.

Now, mind you, those are some of the conditions of the grant. The right of the city of San Francisco to construct a dam and use it is subject to these conditions. If it fails to comply with them, they having been made conditions, of course it forfeits its right and all the money that it has placed upon this property.

Let us now see what it is required to do. I am passing over some of these provisions, which refer simply to sanitary conditions that the Government has the undoubted right to impose; but coming down to subdivision (b), it is provided:

(b) That the said grantee shall recognize the prior rights of the Modesto irrigation district and the Turlock irrigation district as now constituted under the laws of the State of California, or as said districts may be hereafter enlarged to contain in the aggregate not to exceed 300,000 acres of land, to receive 2,350 second-feet of the natural daily flow of the Tuolumne River, measured at the La Grange Dam—

That is a dam that is constructed by the districts themselves—

whenever the same can be beneficially used by said irrigation districts, and that the grantee shall never interfere with said rights.

Who in this Senate knows anything about what water these districts are entitled to? How do we know?

Mr. PITTMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nevada?

Mr. WORKS. I yield.

Mr. PITTMAN. What difference does it make to this body what amount of water either San Francisco or the irrigation districts are entitled to?

Mr. WORKS. It ought not to make any, but it seems to do so by the provisions of this bill. If not, why should the Government legislate upon it at all?

Mr. PITTMAN. Does the Senator think that we should take that question into consideration at all?

Mr. WORKS. I think it ought not to be in the bill at all, I will say to the Senator. That is just what I am complaining of.

Mr. PITTMAN. If the Senator will pardon me, my only answer to that is that I do not think there is a Senator who favors this bill believes that provision is material to the bill; but those who want to give to San Francisco the right to build a dam on the public lands believe that without that agreement in the bill the House of Representatives will not pass the bill.

Mr. WORKS. That is a very singular position for the Senate of the United States to take, to adopt a provision in a bill in opposition to what the Senate thinks it ought to be because of some action that may in the future take place in the House of Representatives.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nebraska?

Mr. WORKS. I yield.

Mr. NORRIS. If the provision to which the Senator refers has no effect——

Mr. WORKS. Mr. President, I have not said it has no effect. That remark was made by the Senator from Nevada [Mr. PITTMAN].

Mr. NORRIS. I understood the Senator to say that.

Mr. WORKS. No; I did not.

Mr. NORRIS. Then, I will ask the Senator, does he claim that we can pass any act that will be effective, that will take away or add to any of the rights belonging to these people who want to use water for irrigation?

Mr. WORKS. Mr. President, the Congress of the United States by a provision of this kind may do one of two things. It may deprive future proprietors in that stream of the surplus waters, of some of the waters to which they are entitled, by providing that a certain quantity of this water shall be taken out by the city of San Francisco, or, if the city of San Francisco is not able to do that by complying with the conditions contained in the bill, then it is subject to a forfeiture of its rights.

Mr. NORRIS. Then, if this section of which the Senator complains was omitted, would that help the matter any?

Mr. WORKS. It would help the matter, certainly, so far as that particular question is concerned.

Mr. NORRIS. Would that eliminate that difficulty?

Mr. WORKS. It would eliminate that particular difficulty; yes.

Mr. NORRIS. I can not understand, if the Senator will pardon me, if this does not undertake to control the balance of the water, and only controls it to the extent named in the bill, if you would eliminate that and say nothing about it, how it would make the matter any better for those who are not mentioned in the bill than it is now. In other words, if this particular part here, which the Senator thinks ought to be out, and which only undertakes to apply to certain corporations, were eliminated, how can the stipulations of the bill in regard to them be construed to injure anybody else who is not mentioned in the bill, when the Senator contends that we ought to say nothing about it and let everybody take water under his rights as given by the California law?

Mr. WORKS. Mr. President, if the Senator from Nebraska does not understand the plain language of the bill and its legal effect, I am afraid I shall have a great deal of trouble in making him understand it.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Montana?

Mr. WORKS. I was about to reply to what the Senator from Nebraska had said, if the Senator from Montana will pardon me for a moment.

Mr. WALSH. I shall be very glad to listen to the Senator.

Mr. WORKS. Here is a provision in this proposed statute made a condition to the grant that a specific quantity of water shall be turned out to the two irrigation districts. I do not know, neither does any Senator here know, whether or not that is the amount of water that they are entitled to. It may be more or it may be less.

Mr. NORRIS. Mr. President——

Mr. WORKS. Wait a moment.

Mr. NORRIS. I was going to answer that question.

Mr. WORKS. Wait until I get through with the answer, and then I will give the Senator an opportunity to do so.

If the Government is compelling San Francisco by this condition to turn out to the two irrigation districts more water than they are entitled to, then it is either taking away from San Francisco part of the water to which it is entitled or it is taking it away from somebody else who may have the legal right to file upon the stream and take out water. On the other hand, if by this condition the Government compels San Francisco to turn out this quantity of water from the amount stored in the reservoir, if it fails to do that it is subject to the forfeiture of its grant.

Suppose the State of California comes in through its water commissioners and determines, as it has the right to do, as I shall show directly, just what quantity of water shall be used by those districts, just what quantity may be left in the streams as surplus water, what is appropriated and what is unappropriated, and how much of it may be taken by San Francisco. Here we have a provision in direct violation of the provisions of those statutes of California which authorize somebody else to determine just how much water shall be taken from the stream and how it shall be used. It can not be said, I will say to the Senator from Nebraska, that this does not limit the use of the water or that it does not provide for the distribution of the water—something which I think the Government of the United States has no power whatever to do.

Mr. NORRIS. Will the Senator permit me there?

Mr. WORKS. Certainly; I yield to the Senator.

Mr. NORRIS. The last remark of the Senator was that it was something that the Government of the United States has no power to do. Then is it not on all fours with a provision in the Los Angeles grant, which the Senator said just a few moments ago was simply a statement of the California law and had no effect?

Mr. WORKS. No; because in the case of the Los Angeles district the bill provided just what the law of California provides for, while in this case it is providing something that is in direct opposition to the law of California.

Mr. NORRIS. Exactly; but if the Senator's theory is true, then the particular provision that he is opposing so strenuously, even if it were left in the bill, would have no legal effect whatever, because, as the Senator says, it is an effort to do something which we have no right to do; so that at least it would not hurt anyone.

Mr. WORKS. I have said very distinctly that it does have a legal effect so far as it affects the grant to the city of San Francisco, because, if she fails to do this, I do not care for what cause, she is subject to the forfeiture of her grant.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Idaho?

Mr. WORKS. Yes; I yield.

Mr. BORAH. I want to ask a question of the Senator from Nebraska, who is on the committee, and doubtless knows something about the genesis of the bill. Does the Senator from Nebraska think that that clause is one that Congress has power to enact?

Mr. NORRIS. Will the Senator from California yield to me to answer the question?

Mr. WORKS. Yes.

Mr. NORRIS. I said the other day, and I think I will take occasion to say again later on in the debate if I take part in it, that I do not think, if I had my own way about it, that I would have this provision and some of the other provisions in the bill. I do not think that we can determine that question, but I think that it does not do any harm in the bill, except perhaps in one sense it might look a little ridiculous. It is the same question exactly, as I look at it, that was in the Los Angeles bill, where certain provisions were put in which, as the Senator from California has said, did not have any legal effect and did not hurt anyone. In this case the provision was put in, not because San Francisco wanted it in, but because the men who were fighting the bill at the time it was put in insisted that it should be put in or they would continue to fight the bill. It was put in to satisfy the very men who are now the enemies of the bill.

Mr. BORAH. As I understand the Senator from Nebraska and also the Senator from Montana, there is very little difference of view here with reference to the legal proposition.

Mr. NORRIS. I do not believe there is any. I think we agree.

Mr. BORAH. I think there is very little difference of opinion as to the proposition that if this bill were stripped of all the things which we can not do and confined to the things which we can do there would be very much less of opposition to it; but evidently these provisions were put in upon the theory that they would be legal, and those who consented to them consented for the reason that they believed it was in the power of Congress to enact them.

Now, having discovered that they have something which is of no legal validity, it is right and proper that they should not desire to have such provisions in there, because it will undoubtedly lead, as the Senator from California said the other day, to litigation and to difficulties and costs in that respect. What the legal effect may be is one thing, but what might grow out of it in the way of lawsuits in order to determine that legal effect is another thing. But it is an anomalous proposition that we will seek to solemnly enact that which all concede to be beyond our power to enact.

Mr. NORRIS. Will the Senator permit a question?

Mr. BORAH. Yes; if the Senator from California will permit.

The PRESIDING OFFICER. Does the Senator from California yield further to the Senator from Nebraska?

Mr. WORKS. I yield.

Mr. NORRIS. The Senator says it will lead to litigation. If the language put in the bill which the Senator is now discussing—I mean that language which says how much water shall be turned out to these two irrigation districts—assuming that the language in the bill states the correct amount that these irrigation companies are entitled to under the California law, then would there be any danger in the conditions? As I understand—at least it was stated to be true on both sides of the proposition—these people were given under the terms of the bill itself all the water to which they were entitled under the laws of California.

Mr. BORAH. If there was no one else to complain or to become involved in a law suit except those whose rights have been passed upon and it should happen that the amount of water given to them was the correct amount, it would not likely lead to a law suit, but the evil of this thing, and the objection I have to it, is that it seems to be conceded that the Government of the United States is asserting the right and asserting the power to distribute the waters of California. It is an assertion of power on the part of the Government to do that thing, and it is a little more difficult to get rid of a proposition upon which you can place the authority of the National Government than it is to settle your rights under the State laws alone. We are asserting a power and we are under oath to legislate in accordance with the Constitution.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Montana?

Mr. WORKS. I am going to yield to the Senator from Montana, but I want to say that from this time on until I have concluded the analysis of this bill and of the California law I shall decline to be interrupted further. Senators may, however, after that, if they so desire, ask me any question, and I shall be glad to answer if I can.

Mr. WALSH. I do not desire to interrupt the Senator unless he wishes. I rose because of the fact that the Senator inquired in the course of his remarks whether there was any Senator upon the floor who was able to say whether this was the amount of water to which these irrigation districts were entitled. I should like to speak briefly on that subject——

Mr. WORKS. Certainly. If the Senator is able to state that I have no objection to his doing so.

Mr. WALSH. I speak in the hope that the discussion may be clearer to Senators who are listening with interest to the remarks of the Senator from California.

It seems to be assumed here—and undoubtedly it is the case—that the Modesto irrigation district has certain rights in this stream. The Senator is suggesting by the question he asked awhile ago that those rights may amount to very much more than is here specified. Of course none of us knows how much they do amount to. They may be more or they may be less than the amount specified here in this paragraph. As I view it, it is a matter of entire indifference to them whether it is the one or the other; and I should like to be corrected by the Senator from California if I am in error.

Mr. WORKS. I think the Senator is greatly in error.

Mr. WALSH. If they have water rights greater in amount than in this paragraph specified, and they go into a court in the State of California for the purpose of asserting those rights, and the Senator was the judge on the bench, are we to understand him to say that he would have to adjudicate that they could take only those rights specified in this act, and that they would lose the excess to which they are otherwise entitled?

Mr. WORKS. Mr. President——

Mr. WALSH. Let me finish the question.

Mr. WORKS. I thought the Senator had asked two or three already.

Mr. WALSH. Now, I want you to assume that they have not a right to that much, and when they bring their suit it is determined that they are not entitled as of right, outside of the provisions of this bill, to the amount mentioned in the bill. The city of San Francisco here, however, agrees that no matter how little they may have a right to, or even if it should appear that they have no rights at all, they shall be entitled to the quantity of water specified. In other words, is not this pro-

vision one to the advantage of those people, assuring them that amount in any case, and in any event enabling them to assert whatever excess they have a right to? The city of San Francisco by accepting this grant is forever estopped from asserting to the contrary, while the irrigation districts are at liberty to establish as before that they are really entitled to twice that much. Is not that right?

Mr. WORKS. If I were a judge on the bench, as the Senator suggests, I should hold that the Government of the United States had no right to impose any such conditions, or to distribute this water at all, or to provide for it, or to make any such condition as affecting the city of San Francisco. But why should the Congress of the United States compel these districts to go to me or to any other judge to have that matter determined by a provision in this bill?

Mr. WALSH. Let me make an inquiry of the Senator. The city of San Francisco has certain rights in this stream. This district has a right in this stream. They are obliged to adjudicate any controversy either before the courts or a commission, are they not?

Mr. WORKS. They ought not to be compelled to litigate it by any provision we may insert in this bill.

Mr. WALSH. We do not make them litigate it by any provision of this bill.

Mr. WORKS. They certainly would. If the city of San Francisco is compelled to turn out a certain quantity of water, and demand is made for that quantity, and the city refuses to grant it, resort would have to be made to the courts to compel it. On the other hand, the Senator does not seem to understand that there are other people who are entitled to the water of this stream besides these two districts. Suppose this bill provided for turning out twice as much water to the districts as they are entitled to, as against other people who may have filed or who may desire to file upon the stream, upon water that is not appropriated, then the Government is proposing to compel San Francisco to turn out to the districts water that legally and justly belongs to somebody else. What right has the Government to do that?

Before leaving this subject, I want to refer again to what has been said by the Senator from Nebraska [Mr. NORRIS]. As I see it, he seems to have an entirely erroneous conception of pretty much everything connected with this bill. He says that this matter has all been agreed upon by the parties in interest. That is a mistake, I will say to the Senator from Nebraska. The very people who are interested in this matter sent a delegation here to Washington for the purpose of opposing the bill. When they got here, in their wisdom they concluded they had better compromise their differences. They had no authority from the water users of the districts to make any compromise of that kind or any authority from the officials of the district itself. The water users who were not willing that there should be any compromise made upon the bill at once protested, but the people who were here said, "Well, we are right here on the ground, and we know better than you what is to the interest of the water owners, and you had better wait." They did wait until this bill had passed the House, I believe, but it is a mistake to say that nobody was here even at the time of the hearings before the House committee who was protesting against this bill, because Judge Dennett, a resident of that community and a very respectable and able man, was here protesting before the House committee against the passage of the bill; but he was hardly listened to with patience when he undertook to show the committee the injustice of the compromise that had been made. So it is a mistake to say that there has been no protest made by anybody who is interested on the other side of this question. But it has had this effect, Mr. President: The effect of it has been that this hearing was completely one-sided; the rights of the irrigationists and landowners were never presented to the committee, except in that one statement that was made by Judge Dennett with respect to what are called, the outsiders.

Mr. PITTMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nevada?

Mr. WORKS. I yield.

Mr. PITTMAN. The Senator from California evidently has a different opinion as to what took place than have those who are advocating this bill, and I think that his last statement is in error with regard to the fact that the representatives of the irrigation districts were not confirmed in their action by those who created them. It will only take me a minute to read a statement of the confirmation, if the Senator will permit me.

Mr. WORKS. Certainly.

Mr. PITTMAN. So that it will be understood, I will state that this matter was first taken up before the Public Lands Committee of the House, which held a hearing lasting several weeks. At least two months subsequent to that time the matter was taken up for consideration before the Public Lands Committee of the Senate, of which I am a member and of which the Senator from California is a member. Mr. Lehane appeared before that committee, making the same charges that the Senator from California now is making.

Mr. WORKS. But that, I remind the Senator, was after the bill had passed the House and was before the Senate, and while I was away in California.

Mr. PITTMAN. The Senator is correct; but at that time Mr. Lehane was here. It was after the bill had passed the House, and Mr. Lehane charged before the Public Lands Committee of the Senate the same things that the Senator is now charging—that the representatives of the irrigation districts violated their authority in making this agreement. My answer to that is that Mr. CHURCH gave the following testimony before the Public Lands Committee of the Senate, which is found in the hearings of the Senate committee on this bill at page 64:

The CHAIRMAN. All right; you may proceed, Mr. CHURCH.

Representative RAKER. Mr. CHURCH is from the San Joaquin district, and he is familiar with this entire question.

By the way, Mr. CHURCH is a Representative from that district.

Mr. CHURCH. Originally I was very much opposed to this plan. I had heard of this Hetch Hetchy matter for years and years; I had heard that Mr. Needham was fighting for the rights of the irrigation districts and the people. When I came to Washington this spring the battle was on in reference to the Hetch Hetchy and, very fortunately, certain representatives from these districts came here. Their names were as follows: Hon. L. W. Fulkerth, superior judge of Stanislaus County, wherein is located both these irrigation districts, in a way. There were two representatives, two attorneys for these districts—the Stanislaus and the Modesto districts—also two engineers representing the districts who came here, Mr. Corey and Mr. Smith. Mr. Needham was also employed to represent the districts, and all these people came on here to Washington. All the interests they had on earth were involved and they were acquainted with the whole history of the case from start to finish.

I felt greatly relieved, because I knew that what they decided in relation to the matter would be for the best interest of the districts. They came here and they entered into an arrangement—an agreement. Those agreements are all embodied in this bill. They all agreed to them—the engineers, the attorneys, and the special representatives. They all agreed to the conditions that are now embodied in this bill. For that reason I withdrew any opposition that I had, and in view of the fact that these people who knew so much about the matter and had only the interests of the irrigation districts at heart advised me this way, I withdrew what little opposition I had manifested to the bill. I was very greatly pleased, gentlemen, when those men went back home to report, that the people back there ratified their work, and so I will just here read some telegrams that I have received, which I have published in your records and which are in the CONGRESSIONAL RECORD. Those telegrams are sent by people of standing in the community, and their position has been manifested by the gentlemen who represented them. I can see at once that, whatever course this committee pursues, I will be damned if they do, and I will also be damned if they don't.

Senator THOMAS. So will the committee.

Mr. CHURCH. Here is a telegram I received, dated August 13, 1913:

MODESTO, CAL., *August 13, 1913.*

DENVER S. CHURCH, M. C.,
Washington, D. C.:

At a joint meeting of the board of directors of the Modesto and Turlock irrigation districts held in Modesto this day the action of the committee sent to Washington to represent the districts was fully indorsed, and the Raker bill, as recommended by the House committee, was approved. The boards also passed resolutions requesting our Representatives in Congress to use their best efforts to pass such bill and oppose the passage of any bill granting San Francisco the Hetch Hetchy which does not contain provisions recognizing and protecting the rights of the districts in the Tuolumne watershed, as provided in the bill.

Stanislaus County Board of Trade passed resolutions on Monday night in effect that no further opposition would be made to the Raker bill. Some little opposition to the bill had been engendered by persons having special interests outside of the districts and by a few others who feel that the waters of the river should never be taken from the valley. People generally of the irrigation districts believe that under all the circumstances the Raker bill should be adopted without material amendment and that the strongest opposition should be made to any change in the bill which would eliminate any of the conditions in favor of the districts.

C. S. ABBOTT,
Secretary Joint Meeting of Directors Modesto and Turlock Irrigation Districts.
P. H. GRIFFIN,
Attorney Turlock Irrigation District.
E. R. JONES,
Attorney Modesto Irrigation District.
L. W. FULKERTH.

I will now read another telegram sent under date of August 12 of this year, which is as follows:

HUGHSON, CAL., *August 12, 1913.*

Hon. DENVER S. CHURCH, M. C.,
Washington, D. C.:

At a mass meeting of taxpayers and irrigators of Hughson section of the Turlock irrigation district the secretary of the meeting was instructed by resolution to wire you to vote for and use your influence for the immediate passage of the Raker bill as approved by our committee.

E. F. SAWDEY, *Secretary.*

I have another one from Turlock, dated August 14, 1913, which is as follows:

TURLOCK, CAL., *August 14, 1913.*

DENVER S. CHURCH,
House of Representatives, Washington, D. C.:

We, the committee appointed by a citizens' mass meeting of the Turlock irrigation district, working in conjunction with the directors of said district, do hereby indorse the work of the representatives of the Turlock and Modesto irrigation districts sent to Washington for the purpose of protecting our rights as against the proposed claims of San Francisco as set forth in a certain bill known as the Raker bill. We further ask our Representatives in Congress to support and vote for the said Raker bill, H. R. 7207, as reported out of the Public Lands Committee and now before Congress.

Unanimously carried.

H. C. HOSKINS, *Chairman.*

Gentlemen, that is all I have to say. I thank you for your courtesy and attention.

Mr. WORKS. Mr. President, I do not quite understand why the Senator from Nevada should have taken up so much of my time in reading something that does not contradict a single word I have said here. These telegrams relate to the board of directors, not to the water users of the district. They have confirmed what these people did; but the directors of one of these districts have been removed by the water users for that very reason and others substituted in their places. This matter never was submitted to the water users at any time in order to determine whether or not they desired that this course should be taken. The moment they discovered that it was, they formed their own separate organization, independent of the board of directors, and insisted that this bill should be opposed. The new board of directors, appointed in place of those referred to by the Senator from Nevada, have appropriated certain moneys for the purpose of aiding in defeating this bill.

Mr. PITTMAN. Mr. President——

Mr. WORKS. Mr. President, I object to any further interruption. A number of Senators have expressed a desire to hear what I have to say, in connected form, and I am not able to get anything in any logical form before the Senate in the face of continued interruptions. I shall submit to any questions that may be asked after I have finished.

The PRESIDING OFFICER. The Senator from California declines to be further interrupted.

Mr. WORKS. Representative CHURCH has been to his district since he made the statements contained in this hearing. He is in the Senate Chamber now, and I imagine that if he were to tell what the sentiments of his constituents in these districts were it would be quite a different story from that disclosed in the hearings.

Now I proceed, Mr. President. Subdivision (c) provides:

That whenever said irrigation districts receive at the La Grange Dam less than 2,350 second-feet of water, and when it is necessary for their beneficial use to receive more water, the said grantee shall release, free of charge, out of the natural daily flow of the streams which it has intercepted, so much water as may be necessary for the beneficial use of said irrigation districts, not exceeding an amount which, with the waters of the Tuolumne and its tributaries, will cause a flow at La Grange Dam of 2,350 second-feet; and shall also recognize the rights of the said irrigation districts to the extent of 4,000 second-feet of water out of the natural daily flow of the Tuolumne River for combined direct use and collection into storage reservoirs as may be provided by said irrigation districts, during the period of 60 days immediately following and including April 15 of each year, and shall during such period release free of charge such quantity of water as may be necessary to secure to the said irrigation districts such 4,000 second-feet flow or portion thereof as the said irrigation districts are capable of beneficially directly using and storing below Jawbone Creek: *Provided, however*, That at such times as the aggregate daily natural flow of the watershed of the Tuolumne and its tributaries measured at the La Grange Dam shall be less than said districts can beneficially use and less than 2,350 second-feet, then and in that event the said grantee shall release, free of charge, the entire natural daily flow of the streams which it has under this grant intercepted.

The object and effect of that provision, if it has any effect at all, legally speaking, is to provide specifically for the taking over by the Government of the actual distribution and use of the water referred to in the bill. Everybody who has spoken heretofore has admitted that the Government has no such power as that. Therefore, why should it make the attempt? Why should it impose that condition upon San Francisco?

Subdivision (d) provides:

That the said grantee whenever the said irrigation districts desire water in excess of that to which they are entitled under the foregoing, shall on the written demand of the said irrigation districts sell to the said irrigation districts from the reservoir or reservoirs of the said grantee such amounts of stored water as may be needed—

and so forth.

They go a little further than that. They not only provide how much water shall be turned out to these people, but they provide that the city of San Francisco shall sell them the water that they demand, at prices fixed by the Government.

Subdivision (e) provides:

That such minimum and maximum amounts of such stored water to be so released during any calendar year as hereinbefore provided and the price to be paid therefor by the said irrigation districts are to be determined and fixed by the Secretary of the Interior in accordance with the provisions of the preceding paragraph.

Then the right is given to the Secretary of the Interior to determine how this water shall be distributed in accordance with the terms of the bill—not in accordance with the laws of California, but in accordance with the terms of the bill itself. What right has the Secretary of the Interior to take upon himself, or what right has the Congress of the United States to impose upon the Secretary of the Interior the duty of caring for and determining how the water shall be distributed?

Subdivision (f) provides:

That the Secretary of the Interior shall revise the maximum and minimum amounts of stored water to be supplied to said irrigation districts by said grantee as hereinbefore provided, whenever the said irrigation districts have properly developed the facilities of the Davis Reservoir of the Turlock Irrigation District and the Warner-Dallas Reservoir of the Modesto Irrigation District to the fullest practicable extent up to a development not exceeding in cost $15 per acre-foot storage capacity, and whenever additional storage has been provided by the said irrigation districts which is necessary to the economical utilization of the waters of said watershed, and also after water losses and wastes have been reduced to such reasonable minimum as will assure the economical and beneficial use of such water.

(g) That the said grantee shall not be required to furnish more than the said minimum quantity of stored water hereinbefore provided for until the said irrigation districts shall have first drawn upon their own stored water to the fullest practicable extent.

(h) That the said grantee shall not divert beyond the limits of the San Joaquin Valley any more of the waters from the Tuolumne watershed than, together with the waters which it now has or may hereafter acquire, shall be necessary for its beneficial use for domestic and other municipal purposes.

That subdivision is in direct conflict with the first section of the bill, which provides that San Francisco may store not only the water she needs but the water all these other cities need, running up to 400,000,000 gallons a day:

(i) That the said grantee shall, at its own expense, locate and construct, under the direction of the Secretary of the Interior, such weirs or other suitable structures on sites to be granted, if necessary, by the United States, for accurately measuring the flow in the said river at or above La Grange Dam, and measuring the flow into and out from the reservoirs or intakes of said districts, and into and out from any reservoirs constructed by the said grantee, and at any other point on the Tuolumne River or its tributaries which he may designate, and fit the same with water-measuring apparatus satisfactory to said Secretary and keep such hydrographic records as he may direct, such apparatus and records to be open to inspection by any interested party at any time.

(j) That by "the flow," "natural daily flow," "aggregate daily natural flow," and "what is naturally flowing," as are used herein, is meant such flow as on any given day would flow in the Tuolumne River or its tributaries if said grantee had no storage or diversion works on the said Tuolumne watershed.

(k) That when the said grantee begins the development of the Hetch Hetchy Reservoir site it shall undertake and vigorously prosecute to completion a dam at least 200 feet high, with a foundation capable of supporting said dam when built to its greatest economic and safe height.

The question is whether the construction of a dam 200 feet high is necessary to store the water actually needed by the city of San Francisco. Not a single one of the engineers who have investigated this question will say that it is necessary to construct any such dam as that to supply San Francisco with water. They have not conducted this affair with any such idea or principle as that. They have been conducting it upon the theory that San Francisco shall have the right to store water not only for herself but for 25 other cities in California.

Suppose, as I shall point out after a while, that the water commission of California should come along and say to San Francisco, "You have no right to construct a dam on this stream and obstruct its flow and store the water above what you are entitled to take from it for your own uses," and should resort to the courts to compel San Francisco to limit the height of her dam so that the water not needed by her should flow down to the people below. What would happen then? It has that power, as I shall show you directly.

If San Francisco should construct her dam to such a height that it would be an obstruction of the flow of the water to the people below and should be compelled to take down 100 feet of it for their protection, what would become of the grant that had been made by the Government upon the condition that she should construct and maintain a dam of that height?

(l) That the said grantee shall, upon request, sell or supply to said irrigation districts, and also to the municipalities within either or both said irrigation districts, for the use of any land owner or owners therein for pumping subsurface water for drainage or irrigation, or for the actual municipal public purposes of said municipalities (which purposes shall not include sale to private persons or corporations) any excess of electrical energy which may be generated, and which may be so beneficially used by said irrigation districts or municipalities, when any such excess of electric energy may not be required for pumping the water supply for said grantee and for the actual municipal public purposes of the said grantee (which purposes shall not include sale to private persons or corporations) at such price as will actually reimburse the said grantee for developing and maintaining and transmitting the surplus electrical energy thus sold; and no power plant shall be interposed on the line of the conduit except by the said grantee, or the lessee, as hereinafter provided, and for the purposes and within the limitations in the conditions set forth herein: *Provided*, That said grantee shall satisfy the needs of the landowners in said irrigation districts for pumping subsurface water for drainage or irrigation, and the

needs of the municipalities within such irrigation districts for actual municipal public purposes, after which it may dispose of any excess electrical energy for commercial purposes.

What right has San Francisco to enter into the market and sell to somebody else for profit either the water it has appropriated or the energy it has developed?

Subdivision (m) provides:

That the right of said grantee in the Tuolumne water supply to develop electric power for either municipal or commercial use is to be made conditional for 20 years following the completion of any portion of the works adapted to the generation of electrical energy, as follows: The said grantee shall within three years from the date of completion of said portion of the works install, operate, and maintain apparatus capable of developing and transmitting not less than 10,000 horsepower of electric power for municipal and commercial use, said 10,000 horsepower to be actually used or offered for use; and within 10 years from the completion of said portion of the works not less than 20,000 horsepower; and within 15 years therefrom not less than 30,000 horsepower; and within 20 years therefrom not less than 60,000 horsepower, unless in the judgment of the Secretary of the Interior the public interest will be satisfied with a lesser development. The said grantee shall develop and use hydroelectric power for the use of its people and shall, at prices to be fixed under the laws of California or, in the absence of such laws, at prices approved by the Secretary of the Interior, sell or supply such power for irrigation, pumping, or other beneficial use, said prices not to be less than will return to said grantee the actual total costs of providing and supplying said power, which costs shall be computed in accordance with the currently accepted practice of public cost accounting, as shall be determined by the Secretary of the Interior, including, however, a fair proportion of cost of conduit, lands, dams, and water-supply system; and, further, said grantee shall, before using any of said water for the purpose of developing hydroelectric power, file such maps, surveys, field notes, or other data as may be required by law, and shall conform to any law existing and applicable to said subject of development of said hydroelectric power for municipal or commercial uses.

Why should the Government of the United States compel the city of San Francisco, as a condition of granting her the right to erect a dam to supply herself with water, to develop 60,000 horsepower of electrical energy, without any reference to the question as to how much she actually needs for her uses, and then provide that she can go into the market and sell this electricity commercially?

Now let us look at subdivision (n):

That after the period of 20 years hereinbefore provided for the development, transmission, use, and sale of electric power, the Secretary of the Interior, under authorization hereby given, may require the grantee, within a time fixed by the Secretary, to develop, transmit, and use, or offer for sale, such additional power, and also such power less than 60,000 horsepower as the grantee may have failed to develop, transmit, use, or sell, within the 20 years aforesaid, as in the judgment of said Secretary the grantee may or ought to develop under this grant, and which in his judgment the public interest demands or convenience requires; and in case of the failure of the grantee to carry out any such requirements of the Secretary of the Interior the latter is hereby authorized so to do, and he may, in such manner and form and upon such terms and conditions as he may determine, provide for the development, transmission, use, and sale of such additional power and such power not so developed, transmitted, or used by the grantee at the end of said 20 years up to 60,000 horsepower; and for that purpose the Secretary of the Interior may take possession of and lease to such person or persons as he may designate such portion of the rights of way, structures, dams, conduits, and other property acquired or constructed by the grantee hereunder as may be necessary for the development, transmission, use, and sale of such power.

In other words, if San Francisco fails to apply the electric energy, the Secretary of the Interior, acting for the National Government, may himself lease this power to somebody else and provide for its transmission and sale. Under the laws of California the rates to be charged for electric power or for the use of water are fixed by the water commission. Nobody has any authority to sell water to the city or anybody else until those rates are fixed by the proper State authorities. The Secretary of the Interior has no more power than some private individual to make disposition of this water power.

Mr. LIPPITT. That is all provided for in the next section.

Mr. WORKS. What is provided for?

Mr. LIPPITT. That they must conform to the laws of the State of California.

Mr. WORKS. They can not conform to the laws of California, because the Secretary of the Interior has no power to deal with the matter at all. The provision is purely superfluous.

Then I call attention to the following language in subdivision (p):

The said grantee shall further lay and maintain a water pipe, or otherwise provide a good and sufficient supply of water for camp purposes at the Meadow, one-third of a mile, more or less, southeasterly from the Hetch Hetchy Dam site.

Then, there is a provision as follows:

(q) That the said grantee shall furnish water at cost to any authorized occupant within 1 mile of the reservoir and in addition to the sums provided for in section 7 it shall reimburse the United States Government for the actual cost of maintenance of the above roads and trails in a condition of repair as good as when constructed.

Subdivision (u) provides that water shall be furnished to the Government.

Section 10 provides:

That this grant, so far as it relates to the said irrigation districts, shall be deemed and held to constitute a binding obligation upon said grantee in favor of the said irrigation districts which said districts, or either of them, may judicially enforce in any court of competent jurisdiction.

We come now to section 11, which has been commented upon here, and which is a most remarkable section to attach to the bill. It provides:

That this act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with the laws of said State.

It is utterly impossible that the Secretary of the Interior could do anything under this bill in conformity with the laws of the State of California, because those things must be done by a water commission provided for by the State, and the Secretary of the Interior has no right to interfere with it directly or indirectly. To set out in a bill provision after provision that is in direct opposition to the laws of the State of California, and then to say in a final section that the provisions shall not have that effect is simply absurd. Either the section should be eliminated, together with all of these provisions, or the section itself ought to be eliminated, for at the time it was made it was a fraud upon the rights of the people who were relying upon it.

Mr. SMITH of Arizona. Mr. President, for my own information as a lawyer I should like to ask the Senator a question.

In the opinion of the Senator, is not the effect of that section largely to nullify the powers granted in the bill to the Secretary of the Interior? If the State of California, as I apprehend and believe is the case, has control of the waters of the State of California flowing in these streams—and in this matter I feel very much in sympathy with the Senator—the question arises in my mind, and that is the reason I have been giving attention to the matter, why this provision says that all of this shall be done in absolute conformity with the laws of the State, and that the State law shall apply to everything the bill contains. If the framers of this bill have given or attempted to give to the Secretary of the Interior power that he could not exercise in opposition to the power of the State, does it not become a mere nullity in the bill?

I ask for the opinion of the Senator about that matter.

Mr. WORKS. Mr. President, I have already said that it would be utterly impossible to do the things provided in this bill in accordance with the laws of California, and that is all the section provides. The Secretary of the Interior is not excluded from the powers granted by the last section of the bill, but it provides that the Secretary of the Interior shall do these things in accordance with the laws of the State of California. The Senator knows as well as I do that he can not do that.

I have undertaken to analyze this bill, and to point out as well as I could the provisions that I think are objectionable and in violation of the constitution and laws of the State of California. In order to verify what I have said in that respect I wish now to take up the laws of California relating to the subject of the distribution of water.

For a good many years after I went to California we had what I always considered a very imperfect and unsatisfactory law providing for the appropriation and distribution of water. It gave anybody who claimed it the right to enter upon a stream and give notice of the quantity of water he desired to appropriate and divert from the stream, stating the purposes for which he proposed to appropriate it, how it was to be taken out of the stream, and by what means; and thereby established an inchoate right to the water that might be followed up by the actual construction of the necessary works and the actual appropriation of the water to a beneficial use—for instance, irrigation or domestic purposes.

The result of it was that hundreds of filings were made on some of the streams, away beyond the entire volume of the stream, the natural flow as well as the storm water. Great conflicts arose and an immense amount of litigation grew out of that condition of things. San Francisco was one of the attempted appropriators under that statute, just as the irrigation districts were, and I suppose hundreds of others on the same stream. I have no doubt that if an investigation were made, it would be found that there were numerous filings upon the stream, a great many of which have been abandoned because the filing was not followed up within a reasonable time, as required by the statute to give them the right to take out the water.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Utah?

Mr. WORKS. I yield to the Senator.

Mr. SMOOT. The Senator from California is about to enter upon a discussion of the laws of California affecting the waters of that State—one of the most important questions involved in this bill. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Johnson	Perkins	Smith, S. C.
Bacon	Kenyon	Pittman	Smoot
Brady	Kern	Reed	Stephenson
Bryan	La Follette	Robinson	Sterling
Burton	Lane	Root	Stone
Chilton	Lewis	Saulsbury	Sutherland
Cummins	Lippitt	Shafroth	Swanson
Fletcher	McCumber	Sheppard	Thomas
Gallinger	Martin, Va.	Sherman	Thompson
Goff	Martine, N. J.	Shively	Thornton
Gore	Norris	Simmons	Vardaman
Gronna	O'Gorman	Smith, Ariz.	Walsh
Hollis	Overman	Smith, Ga.	Works
James	Page	Smith, Md.	

The PRESIDING OFFICER. Fifty-six Senators having answered to their names, a quorum is present. The Senator from California will proceed.

Mr. WORKS. Mr. President, I was about to take up the laws of California relating to this subject and to point out how and in what respect this bill is in conflict with the laws of that State. We first have this provision of the constitution——

Mr. LEWIS. Before the Senator proceeds with that particular branch I should like to have his information upon a point, knowing that he was an eminent judicial officer of that State and is informed as to the law. I ask the Senator from California if my memory is correct in assuming that there was a concession by the State of California which ceded this very park and this very body of land and water to the National Government with certain qualifications for local use?

Mr. WORKS. I have no recollection of the specific provision of that act; so I could not answer the Senator's question.

Mr. LEWIS. I was only going to follow that with the question whether those qualifications embodied the use of the water. As the Senator can not remember, of course he is not able to state.

Mr. WORKS. I am not able to state. The constitution of California provides that—

> All water now appropriated or that may hereafter be appropriated for sale, rental, or distribution is hereby declared to be a public use and subject to the regulation and control of the State in the manner to be prescribed by law.

This is a late amendment to the constitution of California which puts in the hands of the State full power to control the distribution and use of the water.

In carrying out the provisions of that section of the constitution, an act was passed known as the water commissioners act of California. It was approved June 16, 1913, and is therefore a new and a very complete act on the subject. I think I may say that the California statute, as it now stands, is about as advanced and as complete a provision for the control and use of the waters by the people of the State as has ever been enacted in any State in the Union. It provides for the appointment of commissioners and their salaries and the manner in which they shall be organized, and all that sort of thing, which I have not included in what I am going to submit to the Senate; but I want to call the attention of the Senate to the working provisions of the act, that Senators may see how completely the act which we are asked to make a law is in violation of and in conflict with those provisions of the California statutes. Section 10 of the statute provides that—

> The State water commission is hereby authorized and empowered to investigate for the purpose of this act all streams, stream systems, portions of stream systems, lakes, or other bodies of water and to take testimony in regard to the rights to water or the use of water thereon or therein, and to ascertain whether or not such water, or any portion thereof, or the use of said water, or any portion thereof, heretofore filed upon or attempted to be appropriated by any person, firm, association, or corporation is appropriated under the laws of the State.

Now, applying it to this bill, if it should be enacted into law, whatever the provisions of that statute may be, the water commissioners of California have a right to investigate the whole thing and determine just how much of the water is properly appropriated and used and to compel its proper distribution, no matter what has gone before. If San Francisco has filed upon twice as much water as it needs, this water commission has the right to compel it to let go of the excess and allow it to be used by somebody else. The commission has a right to determine just how much water is needed for the use of San Francisco, and if the National Government has authorized the city to construct a dam that will supply the 400,000,000 gallons of water a day and the commission finds that it can only use properly, within a reasonable time, 100,000,000 gallons of water a day, then the decision of the water commission on that subject is binding and conclusive, except upon an appeal to the courts, and the Congress of the United States has no right to interfere with that control of the water.

> SEC. 11. All water or the use of water which has never been appropriated, or which has been heretofore appropriated and which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water, or the use of water, or which has not been put or which has ceased to be put to some useful or beneficial purpose, or which may hereafter be appropriated and cease to be put to the useful or beneficial purpose for which it was appropriated, or which in the future may be appropriated and not be, in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water, or the use of water, is hereby declared to be unappropriated. And all waters flowing in any river, stream, canyon, ravine, or other natural channel, excepting so far as such waters have been or are being applied to useful and beneficial purposes upon, or in so far as such waters are or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is, and are hereby, declared to be public waters of the State of California and subject to appropriation in accordance with the provisions of this act.

The purpose of this particular provision is that these streams may be relieved of the various filings that have been made upon them where the necessary work to appropriate and put the water to a beneficial use has not been done. This commission may go upon any of the streams, investigate the different filings, determine the amount of work that has been done in order to make them good, and if in any instance it is found that they have not complied with the provisions of the statute that previously existed by actually putting the water to beneficial use, then the water commission has the right to declare that unappropriated water and it is subject to be granted to somebody else.

Section 12 provides that—

> SEC. 12. *The State water commission shall have authority to, and may, for good cause shown, upon the application of any appropriator or user of water under an appropriation made and maintained according to law prior to the passage of this act, prescribe the time within which the full amount of the water appropriated shall be applied to a useful or beneficial purpose: Provided,* That said appropriator or user shall have proceeded with due diligence in proportion to the magnitude of the project to carry on the work necessary to put the water to a beneficial use; and in determining said time said commission shall grant a reasonable time after the construction of the works or canal or ditch or conduits or storage system used for the diversion, conveyance, or storage of water; and in doing so, said commission shall also take into consideration the cost of the application of such water to the useful or beneficial purpose, *the good faith of the appropriator,* the market for water or power to be supplied, the present demand therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment and any other facts or matters pertinent to the inquiry. Upon prescribing such time the State water commission shall issue a certificate showing its determination of the matter. For good cause shown the State water commission may extend the time by granting further certificates. And for the time so prescribed or extended the said appropriation or user shall be deemed to be putting said water to a beneficial use.

Suppose we apply that to the condition of the irrigation districts. The water users in the districts complain that they have not all the water that they need. They have expended the money that they have been able to expend in attempting to carry on the work necessary in order to distribute the water. If the commission should make an investigation, as provided in that section, and it should be shown by the irrigation districts that they need more water than they have now and ask for an extension of time in order to take out and supply the water for beneficial use, the commission would have a right to provide for that extension of time and the taking out of additional water, no matter what is contained in this bill, and any attempt on the part of the National Government to limit the amount that is to be turned out of this stream by San Francisco to the districts will be an absolute nullity as against any order that might be made by the water commission. Further:

> And if at any time it shall appear to the State water commission, after a hearing of the parties interested and an investigation, that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof made under the provisions of this act has not developed or can not develop the full capacity of the stream at the point where said works have been or are being built or constructed, and that the holder of the said appropriation will not or can not, within a period deemed to be reasonable by the commission, develop the said stream at said point to such a capacity as the commission deems to be required by the public good, then and in that case the said commission, in its discretion, *may permit the joint occupancy and use, with the holder of the appropriation, to the extent necessary to develop the stream to its full capacity or to such portion of said capacity as may appear to the State water commission to be advisable, by any and all persons, firms, associations, or corporations applying therefor, of any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under this act: Provided,* That said commission shall take into consideration the reasonable cost of the original and new work, the good faith of the applicant, the market for

water or power to be supplied by the original and the new work, and the income or use that may be required to provide fair and reasonable returns upon such cost: *Provided further, That the applicant or applicants shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and the new works, said pro rata portion to be based upon the proportion of the water used by the original and the subsequent users of said dam, tunnel, diversion works, ditch, or other works or constructions,* if the water is used or to be used for irrigation or domestic purposes; or, if the water is used or to be used for the generation of electricity or electrical or other power, the said pro rata portion shall be based upon the relative amount of electricity or electrical or other power capable of being developed by the original and the new works; or, if a portion of the water utilized under a joint occupancy of any dam, tunnel, diversion works, ditch, or other works or construction shall be used for the purpose of irrigation and another portion of said water shall be used for the generation of electricity or electrical or other power, then and in that case the applicant or applicants for joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and new works, said pro rata portion to be based upon the proportion of the relative amount of the water used by each joint occupant and the income derived by each said joint occupant from said joint occupancy; or, if any of the waters used under such joint occupancy shall be utilized for purposes other than those specified above, then and in that case the applicant or applicants for such joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions such a pro rata portion of the total cost of the old and new works as shall appear to the State water commission to be just and equitable. Said applicant or applicants shall also be required to pay a proper pro rata share, based as above, of the cost of maintaining said dam, tunnel, diversion works, ditch, or other works or constructions on and after beginning the occupancy and use thereof. Furthermore, the State water commission, if it appears to the said commission that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof under this act, will not develop the full capacity of the stream at that point, and it appears to the commission that the public good requires it, and the commission specifically so finds after investigation and hearing of the parties interested,

The object and purpose of that section is quite evident. It is to allow persons who are claiming water from a stream to join together for the purpose of constructing the necessary dam and works. Taking this case, if San Francisco should construct a dam at this point sufficient to take out the 161,000,000 gallons of water per day that it is legally entitled to under its filing, then the State water commissioners would have the right to compel the city of San Francisco to allow these irrigation districts or anybody else to add to that dam a sufficient amount to store the water that they desire to take out of the stream, and the water commissioners would not allow the city of San Francisco to construct its dam higher than was necessary to take out the water that it is legally entitled to. It would have no right to construct this dam to a height that would enable it to take out water for Oakland or for Alameda, or Berkeley or San Jose or any of the other cities. It has no filing of that kind. It has no legal right to any water, no matter what it does, for any of the other cities. It has filed upon water for its own use, limited in quantity, and has no right to go beyond that under the laws of the State of California. Therefore, if the other cities, which, it is said, are willing that San Francisco should expend this money for the purpose of taking out and bringing down the water to the bay, are depending upon any right of theirs to have any part of the water under that appropriation they will be woefully mistaken.

The statute—which I shall make a part of my remarks in full, or at least this portion of it—provides specifically with respect to what shall be done relative to water that is stored by these claimants jointly, and it is provided:

May permit any person, firm, association, or corporation to repair, improve, add to, supplement, or enlarge, at his or its proper cost, charge, and expense, any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under the provisions of this act, and to use the same jointly with the owners thereof: Provided, That the said repairing, improving, adding to, supplementing, or enlarging shall not materially interfere with the proper use thereof by the owner of said dam, tunnel, diversion works, ditch, or other works or constructions or shall not materially injure said dam, tunnel, diversion works, ditch, or other works or constructions. And the said State water commission shall determine the pro rata and other costs provided for in this section.

Section 15 of the act provides:

The State water commission shall allow, under the provisions of this act, the appropriation of unappropriated water or of the use thereof, or of water or of the use thereof which may hereafter cease to be appropriated, or which may hereafter be declared to be unappropriated, or which, having been used under claim of riparian proprietorship or appropriation finds its way back into a stream, lake, or other body of water, and also such water as is declared under section 11 of this act to be subject to appropriation.

Then the statute provides that the applicant for water, no matter in what form or for what purpose, shall file an application with the water commissioners for a permit to construct necessary works, to appropriate, divert, and apply the water to beneficial uses, and, amongst other things, it also provides that—

if for storage in a reservoir, it shall give, in addition to the general requirements prescribed above, the height of dam, the capacity of the reservoir, and the use to be made of the impounded waters; if for municipal water supply, it shall give, besides the general requirements specified above, the present population to be served and, as near as may be, the future requirements of the city. * * *

San Francisco has not gone so far under the filing that it has made that it will not be subject to the provisions of this statute. When it undertakes to construct its works it will be compelled to procure a permit for that purpose from the water commission, and that permit will have to set out the height of the dam that they propose to construct and the various things that are called for under this section of the statute. The permit to be issued will allow San Francisco only to construct such a dam as is necessary to carry out the purposes stated in the application. It will make no difference that the National Government has granted to the city the right to construct a dam sufficient to store water for itself and for 25 other cities, for San Francisco can not procure a permit to supply water to the city of Oakland or any other city; those cities must make their own application, and if San Francisco makes its application and takes out the water of the stream, if it is found at any time that it is taking more water than it needs for its actual purposes, the water commission can compel it to allow that water to flow down to somebody else who is entitled to water.

Section 18 provides:

SEC. 18. Actual construction work upon any project shall begin within such time after the date of the approval of the application as shall be specified in said approval, which time shall not be less than 60 days from date of said approval, and the construction of the work thereafter shall be prosecuted with due diligence in accordance with this act, the terms of the approved application, and the rules and regulations of said commission; and said work shall be completed in accordance with law, the rules and regulations of the State water commission, and the terms of the approved application and within a period specified in the permit, but the period of completion specified in the permit may, for good cause shown, be extended by the State water commission. And if such work be not so commenced, prosecuted, and completed, the water commission shall, after notice in writing and mailed in a sealed, postage-prepaid, and registered letter addressed to the applicant at the address given in his application for a permit to appropriate water, and a hearing before the commission, revoke its approval of the application. But any applicant, the approval of whose application shall have been thus revoked, shall have the right to bring an action in the superior court of the county in which is situated the point of proposed diversion of the water for a review of the order of the commission revoking said approval of the application.

Section 19 provides:

SEC. 19. Immediately upon completion, in accordance with law, the rules and regulations of the State water commission, and the terms of the permit, of the project under such application, the holder of a permit for the right to appropriate water shall report said completion to the State water commission. The said commission shall immediately thereafter cause to be made a full inspection and examination of the works constructed, and shall determine whether the construction of said works is in conformity with law, the terms of the approved application, the rules and regulations of the State water commission, and the permit. *The said water commission shall, if said determination is favorable to the applicant, issue a license which shall give the right to the diversion of such an amount of water and to the use thereof as may be necessary to fulfill the purpose of the approved application.*

That section provides just what amount of water shall be allowed to the city of San Francisco. It must be investigated and determined by the water commission; and whatever it says on the subject is final, except, as I have said before, that appeal may be made to the courts for the purpose of settling the question.

The city, as I have more than once said, has filed upon water amounting to about 160,000,000 gallons per day. It would have no right under this statute to go beyond that amount. It has not made any application for more than that. It is not entitled under the old law to more. While its vested rights, whatever they may be, can not be taken away by this later statute, yet it is subject to the regulations contained in the statute in the matter of the construction of its works and the various other things necessary to apply water to a beneficial use. Therefore any attempt on the part of the National Government to say that this water shall go to some other city, or that the right shall be granted for the purpose of furnishing water to San Francisco and other cities, is absurd.

Section 20 provides:

SEC. 20. * * * The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time: *Provided, however,* That such application for a permit or the granting thereafter of permission to any municipality to appropriate waters shall not *authorize the appropriation of any water for other than municipal purposes: And provided further, That where permission to appropriate is granted by the State water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted the State water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality.*

Now, stop and observe the effect of that provision. Under the grant which it is proposed to make to the city the provision is that San Francisco may dispose of the water to other cities and to various persons, landowners, for irrigation, or for any-

thing of that sort; but this proposed law provides that the water can only be used where the application is by a municipal corporation for municipal purposes, and during the time it is not using the full quantity that it has filed upon and to which it is entitled the water commission may send the water to anybody else who needs it temporarily until the city itself needs the water for its own uses. The object and purpose of this bill, which we are asked to pass, is to take that matter over into the hands of the National Government and say where San Francisco shall dispose of the water, and for what purpose.

And provided further, That in lieu of the granting of such temporary permits for appropriation, the State water commission may authorize such municipality to become, as to such surplus, a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate as may be allowed for the application to municipal uses of the entire appropriation permitted.

There is an alternative, but it is one that can only be granted by the water commissioners. It may, instead of determining for itself how the water shall be distributed, give the city of San Francisco the right to dispose of the water for municipal purposes under the direction and control of the State railroad commission, which is authorized to fix the rates at which water shall be furnished.

And provided further, That when such municipality shall desire to use the additional water granted in its said application it may so do upon making just compensation for the facilities for taking, conveying, and storing such additional water rendered valueless for said purposes to the person, firm, or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm, or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent-domain proceedings.

Section 37 provides:

The power to supervise the distribution of water in accordance with the priorities established under this act, when such supervision does not contravene the authority vested in the judiciary of the State, is hereby vested in the State water commission.

Section 38 provides:

The diversion or use of water subject to the provisions of this act, other than as it is in this act authorized, is hereby declared to be a trespass, and the State water commission is hereby authorized to institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined.

Section 40 provides:

The State water commission is also authorized and empowered to investigate any natural situation available for reservoirs or reservoir systems for gathering and distributing flood or other waters not under beneficial use in any stream, stream system, or lake, or other body of water, and to ascertain the feasibility of such projects, including the supply of water that may thereby be made available, the extent and character of the areas that may be thereby irrigated, and make estimate of the cost of such project.

Section 41 provides:

Nothing in this act shall be construed as depriving any city, city and county, municipal water district, irrigation district, or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water or the use of water; and nothing in this act shall affect or limit in any manner whatsoever the right or power of any municipality which has heretofore appropriated or acquired water or the use of water for municipal purposes to use or sell or otherwise dispose of such water or the use thereof, either within or without its limits, for domestic, irrigation, or other purposes, in accordance with laws in effect at the time of the passage of this act.

That section has no relation to San Francisco, because she has not yet appropriated the water and is subject to the regulations with respect to its final appropriation and use.

Mr. President, this is a complete scheme for the control of the distribution of the waters of the State, and I think it is about as complete as any law that has ever been enacted on the subject. The National Government, if this bill is passed, is interfering with that system providing for the distribution of the water equitably and justly between the people of the State.

There is another statute to which I desire to call the attention of the Senate, because it is claimed that this statute authorizes the sale and disposition of the water by the city of San Francisco. It is an act that was passed and approved in 1911. It was passed in the interest of the city of Los Angeles. That city had provided for the construction of reservoirs and an aqueduct, to cost something in the neighborhood of $30,000,000. The city was growing rapidly, and it was thought best to provide for the appropriation and storage of water beyond its present needs in order that it might be supplied in the future. This act was passed for the purpose of allowing the city of Los Angeles, and any other cities in like condition, to convey the surplus water belonging to it until it should need the water for its own purposes, so that the water might not be in the meantime wasted. It provides in section 2—I will make the whole of this short statute a part of my remarks, but I will read section 2, as follows.

SEC. 2. For such purpose any such municipal corporation may acquire, own, control, sell, or exchange lands, easements, licenses, and rights of every nature within or without its municipal limits, and may operate any such public utility within or without the municipal limits when necessary to supply such municipality, or the inhabitants of any portion thereof, with the service desired.

Section 3 provides that—

Whenever, in the operation of any such utility, any such municipality shall develop an excess of water, light, heat, or power over and above the amount thereof which is necessary for the use of such municipality and its inhabitants, or of such portion thereof as the legislative body of such municipality may determine shall be supplied therewith, then such municipality may sell, lease, or distribute such excess of water, light, heat, or power outside of the corporate limits of such municipality.

That statute, obviously, is repealed by the later statute under the new amendment to the constitution which I have just read, which provides completely for the determination by the water commission as to how the excess of water may be distributed. In addition to that, it has been held in California that under this permission the city of Los Angeles had no right to sell its water except on regulations and at rates fixed by the railroad commission. Neither could San Francisco do so even if this new statute had not been enacted, so that that statute does not help the situation.

In order to justify San Francisco in the attempt to procure this large supply of water and deprive the landowners of the San Joaquin Valley of its use an act was procured to be passed by the Legislature of California providing for the formation of a municipal water district, to be composed of such cities as might join together for the purpose of forming that district, and it is claimed that for that reason San Francisco may appropriate this large quantity of water that is not at all necessary for its own use for the purpose eventually of turning it over to the water district. One of the difficulties about that is that no water has been appropriated for this district; no water has been appropriated upon this stream for any other city than San Francisco; and if the district should be formed and San Francisco as one of the cities composing that district should turn over its rights to the district it could only turn over to it the 160,000,000 gallons of water which it has legally appropriated for its own use. Therefore the other cities and other water districts would gain nothing by any attempt of that kind; but this scheme, utterly impracticable under the laws of California, has been used to justify the people who have been besieging Senators and Members of the House here in support of their claim of the right to appropriate the 400,000,000 gallons of water.

The whole proceeding from beginning to end has been based upon the claim that this water is necessary not for San Francisco but for San Francisco and all of these other cities eventually to be combined in one water district. It is done for effect. I do not believe the men who are trying to work this scheme through here have ever believed they could form such a water district as this under the laws of California.

Does anybody suppose that the city of Oakland, for example, with a population of probably 175,000 people, would enter into an arrangement of this kind, which, as I shall show you, would put Oakland absolutely within the control of San Francisco in the distribution and application of the water supplied to that city? Do you suppose you could get the 26 cities that are mentioned here to combine for the purpose of procuring a water supply to be furnished to them by a district that is to be organized?

But that is not all. Suppose they did organize a district of that kind. What right would the city of San Jose have, for example, by becoming a party to this district, to apply for permission to take out water that justly belongs to the landowners of the San Joaquin Valley? She could not do it alone. Probably not a single one of these cities except San Francisco could establish the right to file upon this stream in the future, if there should be any water left there for distribution. But whether they could or not, none of them ever have filed upon the stream. None of them have acquired a right to any part of the water of the stream by any proceeding under the laws of the State of California; and if there should be an attempt made now, through this concession proposed to be made by the Congress of the United States, to carry into this district 400,000,000 gallons of water per day you would be taking it away from the landowners of the San Joaquin Valley and taking it to cities that have no more right to the water than you or I have.

I am going to make a part of my remarks the portion of the statute which provides the means of organizing water districts.

The portion of the statute referred to is as follows:

An act to provide for the incorporation, organization, and management of municipal water districts. (Approved Apr. 26, 1909.)

SECTION 1. A municipal water district may be organized and incorporated and managed as herein provided, and may exercise the powers herein expressly granted or necessarily implied.

SEC. 2. When any municipality in the State of California desires to organize such a municipal water district, as herein provided for, the legislative body of any municipal corporation, at any regular meeting of such body, may pass an ordinance reciting:

1. The name of the city adopting the ordinance.

2. That the public interest requires the incorporation of a municipal water district.

3. The names of the municipalities which it is desired to include within the district.

4. The name of the district which shall include the words "municipal water district."

SEC. 3. Within 10 days after such ordinance becomes a law the clerk of the said legislative body adopting the same shall transmit by registered mail a certified copy thereof to the legislative body, or bodies, of the other municipalities named therein, addressed to the clerk thereof.

SEC. 4. Within 40 days after the receipt of such certified copy of such ordinance by any municipality named therein the legislative body thereof shall by ordinance either approve or disapprove the said ordinance without alteration or amendment; a failure on the part of any municipality to act as herein provided shall be deemed a refusal to approve of such ordinance.

SEC. 5. After the passage of said ordinance required to be passed by section 4 hereof the clerk of the municipality acting thereon shall forthwith forward a certified copy of such ordinance to the municipality initiating the proceedings.

SEC. 6. Within 30 days after the receipt of all the ordinances passed by the municipalities named in the initiatory ordinance, if it shall appear that said initiatory ordinance has been approved by all of the municipalities named therein, the legislative body of the municipality initiating the proceeding shall fix a day for holding a special election in each of the municipalities that have approved of said ordinance, at which shall be submitted to the electors thereof the proposition of organizing such municipal water district, and shall also provide for holding a similar election within its own municipality; in case the initiatory ordinance has not been approved by all of the municipalities named therein no further proceedings shall be had, but new proceedings may be taken as provided in section 2.

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SEC. 9. Within 30 days after the receipt of the certificates showing the result of the election held in the several municipalities, if it appears therefrom that the proposition submitted has been approved by a majority of the votes cast on said proposition in each municipality wherein such election is held, the legislative body of the municipality receiving such certificates shall certify to the secretary of state the passage of the ordinance provided for in section 2, its subsequent approval by the several municipalities approving the same in manner aforesaid, and the result of the elections held as herein provided.

SEC. 10. Upon the receipt of the certificate mentioned in the foregoing section, the secretary of state shall, within 10 days, issue his certificate reciting that the municipal water district (naming it) has been duly incorporated according to the laws of the State of California, and that such district is composed of the municipalities of ——— (naming all the municipalities which have approved at the election such organization). A copy of such certificate shall be transmitted to each of the municipalities comprising such district. From and after the date of such certificate the district named therein shall be deemed incorporated as a municipal water district, with all the rights, privileges, and powers set forth in this act and necessarily incident thereto.

* * * * * * *

SEC. 13. * * * 1. The mayor or president of the board of trustees of each municipality comprising the district shall be ex officio a member of said board.

2. Each municipality having 5,000 legal and registered voters shall choose by and from the members of its legislative body one additional director, and each municipality for each and every 10,000 legal and registered voters over 5,000 shall choose by and from the members of its legislative body one additional director, all of whom shall serve during the pleasure of the body making the appointment: *Provided*, That if such members do not desire to serve as such directors, said legislative body may choose any other person who is an elector and resident of such municipality. The number of legal and registered voters in each municipality on the 1st day of November, 1908, and every four years thereafter shall be taken as the basis for determining the representation of such municipality in the board of directors.

It provides that any city may pass an ordinance proposing to organize a water district with certain cities it may name in the ordinance within a fixed time. That ordinance, when enacted, is to be sent to the other cities for their action, and within another specified time any city that desires to become a part of the water district may signify its intention to do so by passing a like ordinance, and so on around until all that are willing to join in the proposed water district have signified their willingness to do so. Then the whole matter is to be submitted to a vote of the people of the various cities for the purpose of determining, by that vote, whether or not the organization shall be entered into; and it is provided that the mayor of each one of the cities shall be a member of the board of directors to control the affairs of the district. In addition to that, it is provided that the board of directors shall be made up of members selected by the different cities, and they are provided for in proportion to the population of the cities.

The result would be, in this particular instance, that the smaller cities, including Oakland itself, would be put in the absolute control of the city of San Francisco in dealing with the water that may be acquired for the uses of the various cities. They are distributed around, some of them being 50 miles or more away from the city of San Francisco. As I have said, a great many of them have no right whatever to participate in the waters of the stream. They have sources of supply elsewhere. They have the means by which they can procure additional water. Nobody has intimated here that San Jose is crying out for water, or Alameda, or Berkeley, or Niles, or the various other cities that are mentioned. There is no claim that there is any emergency that calls upon the National Government to allow these cities to enter upon the Yosemite Park for the purpose of supplying themselves with water.

Mr. President, I am not going to discuss at any length the legal aspect of this matter. I do not think there is very much controversy about what the law is respecting the right to the use of the water. I do not think it will be seriously contended—it has not been so far—that the National Government has any right to interfere with the distribution of water. That is a right that belongs exclusively to the States. But in view of the support to this bill by the Senator from Colorado [Mr. THOMAS], a very able and distinguished lawyer, a man in whose judgment I place great confidence, and the views of two other distinguished Senators on the other side of the Chamber, I have made a short extract from a colloquy that took place when the Senator from Colorado was discussing the Connecticut River bill, where the question of the right of the National Government to interfere was very thoroughly discussed by the Senate, and the bill was defeated for the reason that it was an attempt to interfere with the disposition of power in that instance. One of the differences between that bill and this, however, is that there the National Government was dealing with a navigable stream. It had a right, therefore, to authorize the structure that was under discussion in that case; and the question was whether, in doing so, it had a right to impose conditions upon the distribution of the power. It was a much stronger case than this one in favor of the National Government.

This is what was said:

Mr. O'GORMAN. Does the Senator from Nevada claim that an agreement may be made between the Federal Government and an agent whereby the property of a State may be taken without the consent of the State?

Mr. NEWLANDS. I do not.

Mr. O'GORMAN. Does the Senator from Nevada claim that the Federal Government has any right, under the commerce clause, to do more than to enter the stream for the single, naked purpose of promoting its navigation, and that when it performs that purpose it exhausts every power granted to the Federal Government under the Constitution—that the right to go into a stream for the purpose of promoting its navigation can not be construed into a grant of property rights in the possession of the State? The stream belongs to the State before the Federal Government enters it for the purpose of exercising this naked right, and the stream continues the property of the State even after the Federal Government exercises this right. The right exercised by the Federal Government is akin to a limited agency conferred by a principal upon an agent to do a specific thing, and it can not be extended or enlarged, as I understand the Senator from Nevada is disposed to enlarge this power.

Much of the discussion here to-day and previously relates to a question of policy and ignores the vital proposition that under this bill recognition is proposed to be given to a principle which would be destructive of the rights reserved to the States.

Mr. NEWLANDS. Mr. President, will the Senator from Colorado permit me?

The PRESIDING OFFICER. Does the Senator from Colorado yield further to the Senator from Nevada?

Mr. THOMAS. Certainly.

Mr. NEWLANDS. It is not necessary, in order to answer the Senator from New York [Mr. O'GORMAN], to enter into all the refinements which he has considered with reference to the rights of the States and the rights of the Nation. Every man will admit that the Nation has a right in aid of navigation to construct the structure which is authorized by this bill. If the Nation constructed it, it would be the owner of it; and, being the owner of it, it could put that structure to any beneficial use it chose.

Mr. O'GORMAN. Whether provided for by the Constitution or not?

Mr. NEWLANDS. It could put it to any beneficial use it chose—that is my contention—because it is the owner of the structure, and every right of ownership attaches to it as the owner of the structure. In this case the agent is designated by the National Government to put up that structure. The agent would have the same right as the Government itself in that structure if those rights are secured by the contract with the National Government. It is a matter simply of contract between the National Government and the agent regarding the construction and regarding the use of a structure which the National Government has the right to create or which it can authorize an agent to create. That is my contention. That structure in that stream creates a certain head of water which can be used beneficially either by the Government or by the agent, and the use of that head of water created by the structure, which no one else can erect, does not invade any right of the State in the stream.

Mr. THOMAS. Mr. President, the Senator is logical, and his conclusion is consistent with his premise, but the fundamental difference between us is evolved at the threshold of his statement. If it be true that the Government, after constructing a dam of its own for the improvement of navigation, can use it for any purpose it pleases consistent with navigation, then it is equally true that if it authorizes me to build a dam, I can use it for every purpose consistent with its original purpose of the improvement of navigation. But the Government's power, Mr. President, is measured and limited by the purpose contemplated in the commerce clause of the Constitution. To say that it can be extended further in one direction is to concede that it can be extended further in any direction; and when that is given due consideration the consequences, it seems to me, conclude the existence of the authority.

Now, proceeding with the discussion, I maintain that the grant here proposed to be made by Congress to the Connecticut River Co. must consist of property or property rights, or both, belonging to or under the exclusive proprietary control of the Federal Government or it can not be made at all.

I contend, further, that the Federal Government can not, through the exercise of the sovereign Federal authority or power to regulate or improve a navigable stream, acquire interests or rights to its waters as the owner or proprietor thereof which may be used or conveyed or sold or leased to others for purposes wholly foreign to navigation. It is a fundamental proposition that you can not lease or sell or dispose of property unless you own it or have some interest in it which is the subject of a transfer; and I do not perceive any difference—certainly there is no essential difference—between the proprietary powers of the Government of the United States in that regard and those of an individual.

This proposition, apart from its self-evident truth, to my mind was ultimately conceded by the Senator from Ohio before he took his seat and concluded his discussion. On page 2815 of the CONGRESSIONAL RECORD he is reported to have made this statement:

"First, that whenever an improvement is made which promotes navigation and in such improvement, whether by locks or dams or otherwise, a water power is created—"

Which, of course, means that it did not before exist; which means that it was brought into existence by virtue of the improvement—

"that water power is an incident to the principal fact, and it belongs to the State or Government which seeks to promote navigation."

Hence, unless it can be said that this power so created does belong to the Government, its authority, acting through Congress, to enact this measure falls to the ground. We therefore are at one with reference to the fundamental condition underlying the exercise of this power. I might paraphrase the expression of the Senator from Ohio by stating the proposition thus: Wherever an improvement is made which promotes navigation, but which improvement is primarily designed to develop water power and to promote navigation merely as an incident to the principal fact, such water power does not belong nor become subject to the control of the Government either in its proprietary or sovereign capacity.

Mr. President, that is good law. There can be no question about it. There was some sort of foundation for the claim in that instance, because the Government was dealing with a navigable stream. In this instance, however, there is not even that justification for it.

I wish to call attention to two or three editorials in the San Francisco Chronicle, which, as you know, is one of the leading newspapers of San Francisco and of the Pacific coast, upon the question of the Government attempting to control the distribution of this water.

They are as follows:

THE HETCH HETCHY BILL—BUT A VERY SMALL CHANCE OF PASSAGE AT THE EXTRA SESSION.

While the Hetch Hetchy bill will doubtless pass the Senate whenever a vote is taken, it can not pass without opposition from Senators who hold that it is gross usurpation—as it doubtless is—for Congress to make use of a power which is open to dispute to effect legislation in a matter of which it does not even pretend to have jurisdiction.

If the general laws of California are paramount within the State, Congress can not hinder San Francisco from utilizing the Tuolumne water. Congress does not pretend to possess jurisdiction of the use of water in any State, and yet the Hetch Hetchy bill purports to control the use of the Hetch Hetchy water by making a prescribed use, the condition of what it calls a permit.

The entire Hetch Hetchy bill, except in so far as it grants whatever authority Congress can lawfully give, will be so regarded as void until the Supreme Court has held otherwise. If Congress chooses to enact void legislation, we in San Francisco need make no more objection than the man made whose wife gave him a whipping. If it pleased her he did not object, for it did not hurt him any.

But there are Senators who do most seriously object to the impairment of the dignity of Congress by purporting to enact legislation which has no validity. And it is right that they should be fully heard and the case set forth in the RECORD. This will probably take two or three days, after which the bill will pass and become what they will call a law. And thereupon we can proceed with our work and settle the question of right and law some years hence when the water becomes available.

But unless the bill is taken from the calendar to-day it is not believed that there will again be a quorum of the Senate in attendance until the currency bill is reported, which will not be for some time. Senators who have stayed all summer in Washington are claiming their vacations. And when debate on the currency bill gets started we are not likely to get any attention for Hetch Hetchy; and Congress is not likely to consent to continue in session until December, when the regular session begins.

This delay is the more aggravating from the fact that water from the Sierra is now within 38 miles of the city of Los Angeles and is now being delivered there, as it will soon be delivered to the city, without any attempt on the part of the Federal powers that be to impose any of the absurd, unjust, and unlawful restrictions upon its use which are sought to be imposed on the people of this city.

As in any case, it must be years before this city actually receives any water from the Sierra, and as the necessity for an additional supply is now upon us, and in default of abundant winter rains will involve grave distress next summer, it will be best that our authorities devote all their energy to the prosecution of the suit for the condemnation of Spring Valley, which seems to slumber soundly and strangely.

Another short editorial that I will read has this to say:

SAN JOAQUIN VALLEY IRRIGATORS PROTEST AGAINST ITS DIVERSION.

The people of this city demand that the use of this water be determined by the laws of California. We deny both the moral and legal right of Congress to have any voice in the matter whatever.

We submit to Federal usurpation as we would submit to any other superior force when we are deserted by the State authorities, which should be our protectors, but who are as silent as the grave.

Nothing is ever settled until it is settled right. Regardless of what Congress does or does not do, we shall ultimately get the Hetch Hetchy water, because it belongs to us in virtue of proper proceedings under the State law, which is the only authority having lawful jurisdiction in the premises.

The question of maintaining the undisputed constitutional rights of the States against unblushing Federal usurpation is the most important question before the people of the United States to-day.

It is a great deal bigger than the Hetch Hetchy question. (From the San Francisco Chronicle, Nov. 16, 1913.)

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[From the San Francisco Chronicle.]

WORKS NO OBSTRUCTIONIST—THE SENATOR HOLDS THAT CALIFORNIA LAW GOVERNS USE OF CALIFORNIA WATER.

Senator WORKS does not oppose the acquirement of the Hetch Hetchy water supply by this city, and is in favor of a congressional grant to this city of whatever the National Government has power to grant.

He is opposed, however, to including in the grant language purporting to in any way designate the use or control of that water, because he holds that any such purported direction or restriction will be absolutely void and of no effect because outside the Federal jurisdiction.

More power to Senator WORKS's tongue. The louder and more continuous the protest the better. Senator SMOOT is with him, and how many more Senators is not known. It is to be hoped that they will not give way until there has been exhaustive and thoroughgoing discussion of the fundamental principle involved.

As an act of courtesy and to avoid discussion on a point immaterial in this particular case, and because the Federal Government as trustee may have some color of title to a voice in the matter, no objection is raised to having Congress grant a formal permit for right of way.

But it is denied that Congress can confer any right or privilege whatever affecting the use of any water in this State or the means of putting it to use, because the State law is paramount within the State except as to areas where jurisdiction has been ceded.

While we all desire and expect to get the Tuolumne water, *it is not desirable that the bill shall be rushed through without a full and free discussion* of the rights of the States. The water which we shall need for the next few years will have to be got by the development of the Spring Valley property, and we should make a very poor trade to surrender the rights of the State within its own boundaries in order to get glory for our municipal officials just as an election is coming on.

Whatever act Congress may pass on the subject will in due time be challenged as void for want of jurisdiction, although the city would gain by the removal of an obstruction, which is all that Congress can lawfully do. Nor could any purported "acceptance" by this municipality give validity to any act in derogation of the lawful rights of the State.

That, however, will all settle itself in due time. We are now suffering from the pest of bureaucratic interference. That Congress can remove, and our lawful status can be determined in due course when a material issue is presented, which can not be for some years.

We therefore trust that Congress will pass the bill in such form as can be managed, but not without discussion of the fundamental principle involved.

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[From the San Francisco Chronicle.]

THE HETCH HETCHY BILL—IT HAS RAISED THE WHOLE QUESTION OF STATE RIGHTS IN CONGRESS.

It is improbable that the Hetch Hetchy bill will be considered at the special session of Congress, although on the mere question of giving this city the Tuolumne water source the bill would probably pass both House of Congress by unanimous vote.

It may be considered settled that the Hetch Hetchy dam site will be utilized, that San Francisco will get it, and that there will be pressure put upon us to develop it more rapidly than our requirements demand. As our home supply when developed will be ample for the next decade, and payments for it will use all our borrowing ability, the delay of a session will not be an unmixed evil.

It is improbable that the bill will be taken up this session, for the reason that it is now evident that the discussion will center, not on the propriety of awarding the water to this city, but on the power of Congress to prescribe any conditions whatever as to the use of the water or to extort from any beneficiary any revenue whatever for the Federal Treasury.

We deny the right of Congress to deal with the subject in any way except in the capacity of trustee of the national domain, but not of its usufruct. We insist that all the laws of California, including the power of eminent domain, but not including the power to tax the public land run everywhere within the State, except when the State has expressly ceded jurisdiction, as it has as to some portions of the Yosemite National Park, but not as to the Hetch Hetchy Valley.

It has become evident that many Senators and Congressmen entertain the same views, and that the Hetch Hetchy bill will create in Congress the most momentous debate that has occurred there for a generation.

Upon that the whole batch of Federal departments will be solidly against us, for in each department there is a given determination to place all the great interests of the country in control of a formidable bureaucracy, with headquarters at Washington. And that bureaucracy proposes to filch from the States the entire revenue derivable from the public domain or by any misuse of disputed powers in respect to it. It is a question whether the millions of revenue which some time will be available from the public domain shall be applied to the benefit of the States in which the lands lie or be placed at the disposal of the Washington bureaucracy. And it is also a question whether the State law shall control the application of natural resources to beneficial use. If California had a Californian for governor, there would be a most vigorous fight to protect the interests of the State. Having, unfortunately, in that place a so-called Progressive, wholly given over to the interests of the Federal bureaucracy, the fight for the present on our part must be unofficial. But it shall not be the less vigorous.

Happily, we have with us not only the entire West, but the awakening consciousness of the representatives of the older States that the bureaucracy has no intent to rest content with the public domain. When the Supreme Court so "construed" the Constitution as to wrest control of the Connecticut River as a power producer from the States through which it runs it scared the whole country.

The claims of the bureaucracy in respect to the use of the Tuolumne waters are outrageous, and, if conceded, upturn the very foundations of the Government under which we live.

Mr. President, assuming that the city of San Francisco is entitled to this water as a part of the public use of the State, why should the National Government impose upon that city these onerous burdens and obligations? This magnificent park belonged to the State of California. It voluntarily turned it over to the National Government that it might be the better protected and cared for and made accessible to the people of the whole country. It is the duty of the National Government to

care for that park and to protect it from invasion except in case of necessity. It comes with very poor grace from the National Government to say that the people of San Francisco, upon whom this burden will finally fall, shall pay to the Government $30,000 a year for the mere privilege of putting a dam upon land that for practical purposes is absolutely worthless or that it should compel it to pay for the power that it generates by the expenditure of its own money. Why should the National Government be small enough to impose upon the people of that city the burden of constructing the highways and roads in its own park, simply because it has the power to do it, as a condition upon which it grants to the city of San Francisco the right that it asks for?

I wish to dwell for a moment upon the question of the destruction of a portion of the beauties of the park. There are thousands of people in this country who believe that this magnificent park, which belongs to the National Government as the trustee of the people themselves, should not be invaded and its beauties destroyed. If San Francisco actually needed this water for domestic purposes, if the children of San Francisco were famishing for water, as the Senator from Montana [Mr. MYERS] has been led to believe, and there was nowhere else that the city could procure the water for its necessary uses, this claim of the destruction of the park would not weigh a feather's weight with me.

But if the city of San Francisco can procure its water elsewhere without entering upon the park, as I shall show it can, then it is the duty of the National Government to protect this park for the people of the Nation. However, it is said that the portion of the park called Hetch Hetchy is not accessible to the people to the extent that they would desire to go there. Why is it not accessible? Simply because the Government has neglected the obligations that rest upon it to construct roads that will enable people to go into this portion of the park as well as the other. Can the Government's failure to make the necessary roads in the park justify it in allowing somebody else to use it for some other purpose, because it is inaccessible by reason of the failure of the Government to supply the necessary means of getting into the Hetch Hetchy?

I suppose I have a reasonable degree of appreciation of the beauties of nature. I feel a good many times that I would like to get away from the strife and turmoil and noise of the great cities to the quiet and peace of the mountains, with their trees and running streams. But my lot has been cast elsewhere. However, those people who are able to enjoy the beauties of a place like the Yosemite Park should be protected in that right by the National Government, and I think I am going to show before I complete the discussion of this question that there is not the slightest reason why San Francisco should go into the park for the purpose of securing all the water it needs for a century to come.

Mr. SMOOT. Mr. President——

The VICE PRESIDENT. Does the Senator from California yield to the Senator from Utah?

Mr. WORKS. I do.

Mr. SMOOT. The very crux of this question is whether San Francisco can get water from any other source than the Tuolumne River. It seems to me that the Senator has now reached that point, and I believe we ought to have a quorum of the Senate to hear him discuss that question. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Hollis	Page	Smith, Md.
Bacon	Hughes	Perkins	Smith, S. C.
Borah	James	Pittman	Smoot
Brady	Johnson	Poindexter	Stephenson
Bryan	Kenyon	Pomerene	Sterling
Burton	Kern	Reed	Stone
Chilton	La Follette	Robinson	Thomas
Clapp	Lane	Root	Thompson
Clark, Wyo.	McCumber	Saulsbury	Vardaman
Clarke, Ark.	Martin, Va.	Shafroth	Walsh
Cummins	Martine, N. J.	Sheppard	Warren
Dillingham	Norris	Sherman	Williams
Gallinger	O'Gorman	Shields	Works
Goff	Overman	Simmons	
Gronna	Owen	Smith, Ga.	

The VICE PRESIDENT. Fifty-eight Senators have answered to the roll call. There is a quorum present. The Senator from California will proceed.

Mr. KERN. If the Senator from California will yield to me, and he has kindly consented to do so for that purpose, I move that when the hour of 6 o'clock shall have arrived, the Senate will take a recess until 8 o'clock this evening.

The VICE PRESIDENT. The question is on the motion of the Senator from Indiana.

Mr. SMOOT. Just to keep the record straight, I do not want the Senator from Indiana to understand that I am going to object, but I wish to call the attention of Senators to the fact that it is against the rules of the Senate, when a Senator is on the floor speaking, for any other Senator to make any kind of a motion. However, I am not going to object.

Mr. KERN. I thought I had the implied promise of the Senator from Utah that he would not object to the motion.

Mr. SMOOT. It is only for the record that I called attention to it.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Indiana.

The motion was agreed to.

Mr. McCUMBER. As new business has intervened, I should like to ask unanimous consent out of order to submit an amendment to the pending bill. I ask that it may be printed and lie on the table until to-morrow.

The VICE PRESIDENT. Without objection, the amendment will be received and printed, and it will lie on the table.

Mr. WORKS. Mr. President, I have said that the application for this grant was not made in the interest of San Francisco alone. Nobody has claimed that San Francisco needs any such quantity of water as they are seeking to store by the erection of the dam, but in order to procure this grant they have taken in ostensibly 26 cities. During all this investigation from beginning to end you will not find any showing as to the quantity of water that the city of San Francisco actually needs, except a statement in one sentence by Mr. Wadsworth, who was delegated by the Army board to make an additional investigation into the different water supplies. In that sentence he makes a statement, as I remember it now—I shall call it to the attention of the Senate later—that San Francisco will need up to the year 1955, 100,000,000 gallons of water per day.

The application for this grant is founded upon the necessity of San Francisco and these other cities for 400,000,000 gallons of water per day, and all the hearings—the whole proceedings—have been founded upon the supposition that that quantity of water was needed for the purposes of meeting the needs of San Francisco.

There is not a Senator here who can determine from the hearings or anything that has taken place in this whole transaction how much water San Francisco actually needs or whether she can procure that water somewhere else than from the Hetch Hetchy Valley. There are numerous statements in the reports that are made, including the report of the Board of Army Engineers, to the effect that there are other places where San Francisco can procure even the 400,000,000 gallons of water per day. It is said that it will cost more money by probably $20,000,000. Just a few days ago, at the request of the people who are here representing the interests of San Francisco, I called upon Col. Biddle, who was the chairman of the Army board, and asked him the direct question whether he had ever considered the question as to whether San Francisco could procure nearer at home and at less expense and without entering into the Hetch Hetchy Valley the water that it needed for its own use, and he said, "No." I said, "Have you ever considered this question with respect to any other quantity of water than the 400,000,000 gallons that are necessary for all of these cities?" He said, "No." I said, "Do you believe that there are places nearer to San Francisco where she could procure the necessary supply of water for herself at a less cost without going to the Hetch Hetchy Valley?" He said, "Yes." I said, "Could not San Francisco procure all the water she needs for half a century by simply improving Cherry Creek and Eleanor Lake?" He said, "Yes; but that has never been considered." They have not taken into account the simple question as to what San Francisco needs; they have taken this greater supply and have based all their calculations upon the necessity for 400,000,000 gallons of water.

In that connection I call attention to a statement that is made in the brief of representatives of San Francisco by Mr. Percy V. Long, city attorney, a very able and very competent gentleman. He says:

GEOGRAPHICAL SITUATION.

For the benefit of those Senators who are not wholly familiar with the relative geographical location of the cities, districts, and water sources affected by this bill, the following brief statement is made:

The cities of San Francisco, Burlingame, San Mateo, Redwood, Palo Alto, Hayward, Alameda, Oakland, Piedmont, and Berkeley, which are to be organized into a municipal water district for development of the Hetch Hetchy water supply, form an almost continuous chain around the Bay of San Francisco. Their combined population at the present date is more than 700,000. Directly east of these bay cities the Coast Range Mountains form a low barrier between the bay cities and the San Joaquin Valley, one of the two great interior valleys of California. Through the middle of this valley the San Joaquin River flows north to the Carquinez Straits and thence into San Francisco Bay. On the east side of the valley the Sierra Nevada Range rises, reaching heights of over 12,000 feet at the summit. Down the western slopes of the

Sierras the Tuolumne River winds in a general westerly direction to its confluence with the San Joaquin River. For the purpose of irrigating during the dry season the part of the valley floor which is normally drained by the Tuolumne River, the Modesto and Turlock irrigation districts were formed, comprising 257,000 acres in extent. Conjointly they have built the La Grange diverting dam at the point where the Tuolumne leaves the foothills on its westward course and divert its waters through irrigating canals to the extent of their needs. About 50 miles farther up the Tuolumne and about 165 miles due east from San Francisco the river flows through the Hetch Hetchy Valley, which lies within the boundaries of the Yosemite National Park, about 25 miles north of the Yosemite Valley and on an entirely different watershed. The valley floor is about 3,530 feet in elevation. To the north of Hetch Hetchy and about 9 miles distant lies Lake Eleanor, one of the numerous mountain lakes of the Sierras. A short distance west of Lake Eleanor the ground falls off into Cherry Valley, through which the Cherry River flows to join the Tuolumne about 12 miles below the Hetch Hetchy Valley. The relative positions of the foregoing points will more readily appear from the map on file with your committee.

Not a single one of those cities named had any filings upon this stream; they have no kind of legal claim to the waters of the stream in any way whatever; they have no legal right, nor any equitable right, to receive any part of the water as against this vast section of farm lands that are needing all the water they can get from this stream for irrigation and can not get it anywhere else.

Mr. GALLINGER. Is it not also true that none of those cities need any more water than it has at the present time?

Mr. WORKS. I am not able to say from my own personal information whether they do or not; but there is no showing anywhere that they do need it; and if they are proposing to secure a grant from the National Government to invade one of the national parks the burden is upon them to show that they do need water, that they have a right to appropriate it from this stream, and that they are not able to get it anywhere else. I will say, in answer to the Senator from New Hampshire, that, so far as I know, there is no claim that these cities need the water.

I want Senators to notice another thing. They have talked a good deal about this municipal water district. It will be noticed that only these three or four cities are mentioned as having any intention to form a water district. There is no claim made that San Francisco and Oakland and these larger cities propose to combine in a water district for the purpose of taking water out of this stream. I do not believe that any such thing as that will ever occur in the history of the State of California; but to show further what the disposition has been and the deception that has been practiced upon Members of Congress with respect to this matter, I want to call attention to an extract from the report of Mr. Freeman, who was called in as consulting engineer, at the instance, I think, of the Government itself, to investigate this situation and to report. It was at his suggestion that the law was enacted providing for a municipal water district. They had something of that sort in Boston and its surroundings, where some of the cities had joined with Boston, or some other cities had joined together for the purpose of organizing a water district. Certainly Mr. Freeman had very little conception of the conditions in California, involving not only the question of the right of the cities to domestic water, but of the landowners to irrigation, when he suggested the idea of organizing a water district under the circumstances that existed in the State.

I do not mean to say that Mr. Freeman was intending to deceive anybody. I have no idea but that he was acting in perfect good faith, but I do think that he misunderstood the conditions. He is a man of the highest qualifications, a man of exalted character, a man who has a reputation all over the country as one of the ablest hydraulic engineers that we have, but most of his work has been done not in California or in the Western States. He was called in consultation out at Los Angeles at the time it was proposing to spend about $30,000,000 for aqueducts and was going up in the mountains 230 miles to get its water supply. He thought that was nonsense; he thought Los Angeles could get its water supply nearer home. He told me the other day that he went out there thinking it was a remarkable thing that Los Angeles should be going 230 miles to get water when there was plenty of water nearer by, but when he got out to California and consulted with William Mulholland, who knows every stream and canyon and mountain in the southern part of California and who constructed the reservoirs and aqueduct for the city of Los Angeles, Mr. Mulholland told him, "If you undertake to take water out of the mountains nearer by you will be taking it away from the farmers who are entitled to use it for the irrigation of their lands, and Los Angeles can not afford to do that." So Los Angeles went 230 miles away, notwithstanding the idea of Mr. Freeman that she might get her water closer home, and secured water that affected but very few landowners and compensated them for their losses.

Mr. POMERENE. Mr. President——

The VICE PRESIDENT. Does the Senator from California yield to the Senator from Ohio?

Mr. WORKS. Yes.

Mr. POMERENE. The only question I desired to ask the Senator was in view of the statement he has just made. Assuming that water should be taken out of that section of country for the city of San Francisco, would the farmers whose supply of water was thereby interfered with have a cause of action against the city or company that might be thus taking water from them?

Mr. WORKS. They would have a cause of action, of course, if the water was taken in violation of the rights of the farmers. The question would arise as to the respective rights of the parties in the streams.

I was about to read, right at the beginning, a part of the report of Mr. Freeman, which is really the basis on which he made all of his calculations, and is the only justification for the conclusions which he reached:

FORMATION OF A METROPOLITAN WATER DISTRICT.

It is confidently expected that in the near future definite and important progress can be made upon the formation of a metropolitan water district, including, with San Francisco, the rapidly growing communities in San Mateo County and the group of cities that may be described as Greater Oakland, all of which together now consume about two-thirds as much water as San Francisco.

That is to say, these other cities that have no claim at all to the stream use two-thirds as much water as does San Francisco, which claims, on account of its filing, to have a right to take water out of the stream.

The members of this metropolitan water district would share all of the expense incurred in providing the supply and in delivering it into the chief storage reservoirs, the water district conducting, as it were, a wholesale business in water supply, while leaving to each of the several municipalities the retail business of supplying its own citizens through its own distribution mains, very much as is done in the case of the Boston metropolitan district.

After the Hetch Hetchy aqueduct is once brought into use, the natural policy will be to use the better, softer water, and to either waste the harder water from the near-by sources or divert it temporarily to agricultural purposes until again needed for domestic supply, and therefore each of these reservoirs enumerated above would seldom or never be drawn so low in future as under present conditions.

Three-fourths of the aggregate quantity that the above contain—exclusive of raising Crystal and Chabot—would supply a daily draft of 200,000,000 gallons for a full year, or would supply 400,000,000 gallons for six months, and beyond this the city could still draw water from the Pleasanton-Sunol sources, and draft would still be possible from the bay shore gravels, and the run-off from the several catchments to these reservoirs would add an important amount.

I quote again from the Freeman report:

SAN FRANCISCO AND NEIGHBORING MUNICIPALITIES.

For simplicity in all of the following descriptions the word San Francisco has been used to indicate the group of cities of which that city is the commercial center, *comprising substantially all of the cities and smaller communities bordering upon the bay, from San Francisco around southerly, easterly, and northerly to Oakland, Berkeley, and Richmond, some 26 municipalities, comprising 37 separate communities in all.* As will appear later, the matter of uniting more or less of these communities in closer municipal relations, possibly into a metropolitan water district, in some respects similar to that which supplies the Boston metropolitan district, is now being actively promoted with practical certainty of ultimate success.

When the second pipe across the San Joaquin Valley is added, this quantity of 400,000,000 gallons daily can be conveyed from Hetch Hetchy to the gatehouse, near Irvington, where it will be subdivided among the different communities contributing to its cost. During the early years, with only a single pipe across the San Joaquin Valley, the delivery of the aqueduct would be in excess of 200,000,000 gallons daily—possibly 240,000,000. The branch line of steel pipe to be taken across to supply the cities and valleys of the San Francisco Peninsula will have a capacity of about 100,000,000 gallons per 24 hours.

A single branch is sufficient to supply San Francisco with all the water she needs for half a century.

In this connection, with respect to the rights of the different parties, I want to submit what is called "A Primer of Facts," relating to the Modesto and Turlock irrigation districts. It is quite brief and concise, and contains a good deal of what I regard as valuable information:

A PRIMER OF FACTS—THE MODESTO AND TURLOCK IRRIGATION DISTRICTS.

First. Organized under the Wright law, 1887; the first in California.

Second. Area, 258,000 acres. Now irrigated, about 150,000 acres.

Third. Source of water, Tuolumne River, diverted at the La Grange Dam.

Fourth. Amount of water filed on, 9,500 second-feet. San Francisco generously proposes to allow the districts 2,350 second-feet.

And only 150,000 acres of the 258,000 is receiving water at the present time.

Fifth. Total cost of irrigation works and up-keep to date, $4,500,000.

Sixth. Estimated area outside the districts which could be irrigated from the Tuolumne River, about 200,000 acres.

Seventh. Development resulting from irrigation:

Increase of population in Stanislaus County in the last decade, 135.8 per cent, which is only second to Los Angeles County.

Shipments of agricultural products, $3,000,000; dairy products, $3,000,000; butter, 1912, 6,894,225 pounds, leading all the California counties. For the past year the butter product was 8,292,100 pounds, 58 per cent more than was ever produced in any other California county. This development is attributable to irrigation alone.

Eighth. Our present prosperity would be threatened and all further development of the districts and adjoining lands would be prevented by taking the so-called "flood waters" to San Francisco.

Ninth. The proposed measure does not protect the districts because:

(a) It cuts down our water to one-fourth of our legal appropriation, while San Francisco adds 50,000 acres to our area without providing any additional water therefor, and prohibits the development of any lands outside the districts (of which we have some 200,000 acres) contiguous to the Tuolumne River.

(b) It allows the districts to buy power only "when not wanted for pumping by the grantee."

(c) It allows the districts to buy stored water only under onerous conditions.

(d) It may establish, if the "restrictions" are removed (as now threatened by San Francisco), another power monopoly in the valley by which the people would be not served but exploited.

Tenth. The undisputed fact that the Sacramento Valley has six times the water that the San Joaquin Valley has, and equally as good, is sufficient to show that San Francisco should go to the northern valley for her supply.

Eleventh. Finally, we ask that the "waters of the San Joaquin Valley be conserved for the land of the San Joaquin Valley."

I have here also a letter from the Livingston Chronicle, which I think is worthy of the attention of the Senate. All of us have received numerous communications of this kind. I have tried to select a few of them that will carry to the Senate some valuable information bearing upon this important subject. Livingston is in Merced County, right in this section of California.

LIVINGSTON, MERCED COUNTY, CAL.,
September 18, 1913.

Hon. JOHN D. WORKS,
United States Senator, Washington, D. C.

DEAR SIR: At the request of citizens of portions of Merced and Stanislaus Counties, Cal., I am addressing you relative to their feeling regarding the Raker bill. In as few words as possible, and without any attempt to discuss any of the features of the act, I desire to present to you the sentiment of a unanimous people regarding the proposed diversion of a portion of the Tuolumne River to San Francisco for alleged municipal purposes. This feeling extends to the point where the diversion of any water from any stream of the San Joaquin Valley basin to points outside of the valley would meet with opposition.

It would be useless for me at this time to quote at length from reports of the Board of Army Engineers or from the reports of the United States Geological Survey, relative to the amount of land in the San Joaquin Valley that is susceptible of irrigation, or as to the amount of water that is available in these watersheds. Such reports are doubtless at your hand.

The people of this section of the San Joaquin Valley, in Merced and Stanislaus Counties, are a unit in declaring that the diversion of any water from the Tuolumne River (Hetch Hetchy) or from any other stream having a source in the Sierra Nevada Mountains and finding its way toward the sea through this great inland valley to San Francisco, or to any other point outside of this valley, for municipal or other purposes will prove an irreparable loss to the land in this valley, as every drop of this water and more if it could be secured is needed for the proper irrigation and development of the agricultural lands of the valley.

If San Francisco or any of the bay cities had no other source to which they could go to secure a supply for its municipal needs, then the people of the San Joaquin would open to them the mountains at their back and say, "Take what is needed." But those cities have other ample sources, as has been shown in the several engineering reports that have been made of record in previous hearings upon this question. Three such sources are the McCloud River, Sacramento River, and American River, any one of which could supply San Francisco for all time to come without in any manner drawing upon the needs of lands that might be irrigated, for the Sacramento Valley has an annual rainfall sufficient to cover its irrigable portions to a depth of 11 feet, while in the San Joaquin Valley there would be only 20 inches.

Permit me to suggest at this moment that if it were a mere matter of securing water for municipal purposes that prompts San Francisco to seek privileges in the Hetch Hetchy; that if the matter of the generation of electrical energy were not a consideration, any of the above-mentioned sources would have been considered in preference to Hetch Hetchy, even though San Francisco might be compelled to purchase certain rights in order to obtain the water that is alleged to be needed.

I will ask that you eliminate the power features of the Raker bill in this consideration and see for yourself what would be left of the measure that would be of value to San Francisco. It is here contended that the Raker Act makes possible a "power grab," and that if this "grab" were not veiled by the alleged needs of the city for water for municipal purposes the bill would never have seen the light of day outside of a pigeonhole in the room of the Public Lands Committee of the House and would not now be before your committee for consideration.

I submit that the business men of San Francisco do not understand that by securing this grant in Hetch Hetchy they are taking water from 250 square miles of arable and irrigable land in the San Joaquin Valley that can look to no other source of supply save the Tuolumne River alone. I charge that the great mass of citizens of San Francisco do not know the "inside" of this proposed diversion of Tuolumne River water; that if they did, their support would not now be with the board of supervisors of the county of San Francisco and those who are spurring them on to secure Hetch Hetchy for a reservoir site. I submit that this feature can be shown to the entire satisfaction of your committee and to the Members of Congress if this measure is put over until the next session. So many points have developed within recent weeks that I feel that the people shall not be given a fair chance to present their side of this contention if this bill is rushed to passage in the Senate at the present session.

I desire to submit that the Raker bill is not an emergency measure in any sense of the word, for an emergency does not exist, unless it be the immediate need of the San Joaquin Valley for the use of all of the water flowing in its rivers and streams. That no emergency exists in San Francisco is apparent to all, for should Congress grant the demands of San Francisco and give Hetch Hetchy Valley to that city for a reservoir site the city is not in a position to even commence development of this supply. The Garfield permit, without Hetch Hetchy, will furnish San Francisco with water for many, many years to come, according to the report of the Director of the United States Geological Survey; and yet no hurry is manifested in San Francisco to exercise rights which the city claims on Lake Eleanor. Should San Francisco be given Hetch Hetchy, water from that source could not be delivered to the city within a dozen years; perhaps not within a score of years; perhaps not within a century. Business men in San Francisco are free to admit at this time that they do not know how the supervisors propose to bring water from Hetch Hetchy to San Francisco, as the municipality is now bonded beyond its legal limit.

Why, then, all of this hurry? Where is the emergency? I pray you, consider this matter carefully; I pray you nothing be done that shall make possible the entering of the Yosemite National Park or any other public domain by interests whose object is the exploiting of public property, even though such exploitation be hid by the veil of an alleged municipal necessity.

As regarding Hetch Hetchy, no municipal necessity exists, save and alone the necessity of the Waterford irrigation district, organized by the vote of the people on Saturday, September 6, 1913, when the proposition of organizing an irrigation district under the Wright law of California was given unanimous approval. Only one vote was cast against the organization. This new district represents an area of 20,000 acres. This district is organized for the purpose of securing water for irrigation from the Tuolumne River. Another district that is contemplated is the Merced irrigation district, to be organized under the same law. This proposed district has tentative boundaries fixed to cover 220,000 acres, and intends when organized to secure and develop the Dry Creek reservoir site, mention of which was made by City Engineer O'Shaughnessy, of San Francisco, in private reports to William H. Crocker and other San Francisco capitalists, but not reported to the board of Army engineers.

The Dry Creek reservoir, when built, can be filled from the Tuolumne and Merced Rivers, and the proper development of the lands adjacent to these two streams can only be accomplished through the use of this site and all of the flood waters of these two rivers. This feature has not been presented to public consideration because of the fact that no organization existed which could place the stamp of authority upon a presentation. If this Raker bill can go over until the next session of Congress organizations will be in existence that will be empowered to gather and present just such information as this.

There is no wonder that such information has not been supplied to the Senate and House committees having this bill in charge, for this is the first time that a situation has arisen whereby a protest of any character was necessary to protect the rights of the people of this section of the San Joaquin Valley to the waters of the Tuolumne River or the waters of any other stream. Resting confident in their rights to appropriate the waters of these streams as a means made possible, the people little dreamed until engineering reports were made that they did not have more than enough water for all their needs.

The last session of the Legislature of California revised the Wright law, as well as other irrigation laws of the State, to such an extent that it is now practical for the people to organize districts and bond them for the building of irrigation systems. In this connection it may not be amiss to suggest that perhaps therein lies one of the reasons why the "interests" who are behind this Hetch Hetchy movement, and who are covering their work with the curtain of San Francisco's alleged municipal need, are anxious to have this measure passed by this Congress, so they can forestall any organization of people in the San Joaquin Valley who might seek to appropriate the unappropriated flow of the streams of this valley or to store the flood waters for irrigation purposes; perhaps, I say, this is the "emergency" that exists for San Francisco.

San Francisco is endeavoring to establish a right to divert 400,000,000 gallons of water daily from the Tuolumne watershed. This is sufficient to irrigate 250 square miles of territory, or 160,000 acres. If this quantity of water is diverted for other purposes, 160,000 acres will be condemned to remain forever arid and barren, for there is no other adequate supply this land can draw upon. Allow me to point out what this means. The 160,000 acres of land that will be thus barred from irrigation and development is the same character of land found in the Turlock irrigation district, to which it is adjacent.

Statistics show that the Turlock district during the year 1912 produced crops valued at more than $100 per acre on its irrigated sections. Let us bring these 160,000 acres under irrigation and they will produce crops annually valued at more than $16,000,000.

That is to say, this valley will lose in a single year almost as much as the difference between the cost of the two water supplies to which San Francisco may resort. They are insisting that they ought not to resort to the one that costs $20,000,000 more than the other, when their taking away the water from these valuable tracts of land will cause them to lose in one year nearly as much as the difference in the cost of the two systems.

Land in the Turlock district, which has only a 50 per cent irrigation service, is worth anywhere from $250 to $500 per acre. Has San Francisco ever shown a necessity equal to the possibility of making 160,000 acres of land worth anywhere from $40,000,000 to $80,000,000? I submit that the task is impossible upon the part of San Francisco, but that it will be realized here if the land can secure this water. I assure you every possible step is being taken looking to this development. Sir, this is a matter of such magnitude that the plea of San Francisco that an emergency exists is but the plea of the beggar who steals and blames his crime against an alleged necessity that does not exist.

In the protests before the Public Lands Committee before the House the Modesto and Turlock irrigation districts were compelled to stand alone and take whatever they could get. I beg to advise you that if this measure can be put over until the next session of Congress there will be a united demand from every county, eight in number, in the San Joaquin Valley that this water be not diverted. As proof of this I refer you to resolutions of protest that have been filed before the House committee from chambers of commerce and public meetings and from the San Joaquin Valley Water Problem Association. Similar protests from the Water Problem Association should reach your committee at any time, as the resolutions have been prepared and are now receiving the referendum vote of the members of the association. Mr. A. L. Cowell, secretary of the association, will transmit them to your committee and to others.

In conclusion I may be permitted to say that the San Joaquin Valley Water Problem Association has been formed for the purpose of working out a comprehensive scheme whereby the irrigation, reclamation, and drainage of every section of the San Joaquin Valley can be made possible. This is a vast undertaking, when it is considered that there are eight counties in this valley and that there are over 7,000,000 acres of land that can be made to produce bountifully, if irrigation, reclamation, or drainage, as the need may be, is supplied. Sir, the

very first obstacle this organization has encountered is this proposed diversion of water.

We are hardly prepared to meet it at this time, yet it must be met. This situation appearing, we have but one alternative and that an appeal to you to use your very best efforts to secure a postponement of action on the Raker bill, or any other similar measure that might be presented, until the next session of Congress. The necessity for this postponement must be apparent to you, and our people desire this most fervently.

I may add as a suggestion of our future work for the irrigation, reclamation, and drainage of this valley that the matter of applying to the United States Reclamation Service is being considered. Should this be done, and we have strong reason to believe that action of this sort will be taken in the near future, you will realize at once that this branch of the Federal Government must be safeguarded in the matter of water supplies. Sir, in submitting this appeal, I beg that it will receive that careful consideration which I am impelled to believe you will give it.

Respectfully submitted.

EDWARD S. ELLIS.

Mr. President, this appeal was made mainly for delay until the next session of Congress, which has now arrived. The trouble about it, however, is that these people have been foreclosed against making any further showing upon this question because of the unanimous-consent agreement entered into by the Senate, which calls for a vote on the coming Saturday, and therefore the matter could not go back to the committee for further consideration.

RECESS.

Mr. WILLIAMS. Mr. President, I thought a motion had been made and carried that at 6 o'clock we should take a recess until 8 o'clock. The hour of 6 o'clock has arrived.

The PRESIDING OFFICER (Mr. O'GORMAN in the chair). That is correct. The hour of 6 o'clock having arrived, the Senate will take a recess until 8 o'clock p. m.

The Senate thereupon, at 6 o'clock p. m., took a recess until 8 o'clock p. m.

EVENING SESSION.

The PRESIDENT pro tempore (JAMES P. CLARKE, a Senator from the State of Arkansas) called the Senate to order at 8 o'clock p. m.

SAN FRANCISCO WATER SUPPLY.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 7207) granting to the city and county of San Francisco certain rights of way in, over, and through certain public lands, the Yosemite National Park, and Stanislaus National Forest, and certain lands in the Yosemite National Park, the Stanislaus National Forest, and the public lands in the State of California, and for other purposes.

Mr. GALLINGER. Mr. President, there are very few Senators present, and I would suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from New Hampshire suggests the absence of a quorum. Let the Secretary call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Goff	Owen	Smith, Ga.
Bankhead	Gronna	Page	Smith, Md.
Borah	Hollis	Pomerene	Smith, S. C.
Brady	Johnson	Reed	Swanson
Bryan	Kenyon	Robinson	Thomas
Burton	Lane	Saulsbury	Thompson
Clapp	Martin, Va.	Shafroth	Thornton
Clarke, Ark.	Martine, N. J.	Sheppard	Townsend
Colt	Myers	Sherman	Works
Dillingham	Nelson	Shields	
Fletcher	O'Gorman	Shively	
Gallinger	Overman	Simmons	

Mr. CLAPP. The senior Senator from Utah [Mr. SMOOT] is unavoidably detained from the Chamber.

The PRESIDING OFFICER (Mr. O'GORMAN in the chair). Forty-five Senators having responded to the call, there is not a quorum present.

Mr. GALLINGER. Let the names of the absentees be called.

The PRESIDING OFFICER. The Secretary will call the names of the absentees.

The Secretary called the names of the absent Senators, and Mr. PITTMAN, Mr. STERLING, and Mr. VARDAMAN answered to their names when called.

Mr. SMITH of Arizona, Mr. ASHURST, Mr. HUGHES, Mr. NORRIS, Mr. CUMMINS, Mr. KERN, Mr. CHILTON, and Mr. WALSH entered the Chamber and answered to their names.

The PRESIDING OFFICER. Fifty-six Senators being present, a quorum is present and ready for the transaction of business. The Senator from California will proceed.

Mr. WORKS. Mr. President, I shall read next a letter from J. R. Horsley on this subject. He says:

J. R. HORSLEY & SON,
Waterford, Cal., November 21, 1913.

Hon. JOHN D. WORKS, *Washington, D. C.*

DEAR SIR: The great and absorbing question here is the proposition to grant Hetch Hetchy Valley to San Francisco for a great reservoir in which to store the flood waters of the Tuolumne River, to be diverted thence to the city for municipal and other purposes.

Out of the Hetch Hetchy Valley comes three-fourths of the water of the Tuolumne River. The area of irrigable land on the Tuolumne River watershed is about 1,000,000 acres.

Of this about 500,000 acres is level valley land of great fertility and capable of supporting a large population.

About 500,000 acres lie in the foothills on both sides of the Tuolumne River and are equal in value to any other body of foothill land in the State.

Of this area about 275,000 acres are organized in the Turlock, Modesto, and Waterford districts, leaving 225,000 acres of level valley land and 500,000 acres of foothill land to be organized. Of course it takes time to accomplish this.

We have to await population, especially for the foothills.

Now, Senator, we oppose the Raker bill because we believe that if it is passed it will give San Francisco a great advantage in a contest before the courts. Such contest we expect, whether the Raker bill passes or does not pass.

Does San Francisco need the Hetch Hetchy? Is there an emergency requiring an immediate decision of this water question?

H. M. Chittenden, in his report on the Spring Valley, says: "One result of the investigation has been to show that such a necessity does not now and possibly may never exist. * * * So far as quantity is concerned, there is no present necessity for a resort to the Sierra, and will not be for an indefinite period to come. * * * As to quality, the Sierra supply is softer, but hygienically no purer."

In view of the vast importance of this question, would it not be best to delay a decision at this time? Refer it back to the Land Committee and give the Tuolumne River farmers a chance to show the disastrous effect the passage of the bill will have on their interests and also to show that San Francisco can get a water supply elsewhere.

Yours, truly,

J. R. HORSLEY.

I also read an editorial from the Stockton Daily Evening Record of October 29, which is as follows:

THE SAN JOAQUIN VALLEY MUST SAVE HETCH HETCHY WATER FOR IRRIGATION—SAN FRANCISCO CAN GET WATER IN NORTH COAST RANGE.

San Francisco bases its claims to the Hetch Hetchy water supply on the unfounded statement that it is the only available and sufficient supply for the present and future needs of the city.

San Francisco gives no indication of what use it purposes to make of the Spring Valley water system, which now supplies the city.

San Francisco proposes to capitalize a great water supply for the city's own profit, irrespective of the injury to the San Joaquin Valley.

San Francisco bases its claim to Hetch Hetchy on its own estimation of its future needs.

San Francisco has forced the Hetch Hetchy bill through the House. It is now in the Senate. The bill will be called up December 1, and there is unanimous consent to vote on it six days later.

If the San Joaquin Valley is to be aroused to the injury which will be done to the valley by the bill, action must be immediate and positive.

San Francisco can obtain a water supply—a larger water supply than the Hetch Hetchy, and at less cost. And not one drop of the water need be diverted from the limited amount belonging by nature and equity to the San Joaquin Valley.

The estimated amount of water available in Hetch Hetchy for diversion to San Francisco is 400,000,000 gallons daily. The Army engineers estimate the cost of the storage, diversion, and delivery of the water to San Francisco at $77,400,000. The Army engineers examined several sources of water supply and reported that the Hetch Hetchy was the most practical and easily available for the future needs of San Francisco. But perhaps the investigations of the engineers did not go far enough.

Let us consider what may be designated as the Snow Mountain, Clear Lake, and Putah Creek supply. The distance from Snow Mountain to San Francisco is 140 miles. Surveys just completed show that of this distance the water can be conveyed through natural channels for 66 miles, leaving only 74 miles for aqueducts, etc.

Where can this alleged supply be secured and how much of it is available?

From the South Eel River in Mendocino, from the watershed ranging south to Clear Lake in Lake County, and still farther south to Putah Creek in latitude with Napa.

This transfers the watershed for San Francisco's supply from the Sierra to the Coast Range, and from a diversion of the limited supply for the San Joaquin Valley to the surplus running to waste in the overwatered Sacramento Valley.

How much water?

Estimates just completed by competent engineers show that the South Eel River watershed may be relied upon for 200,000,000 gallons daily; that the Putah Creek watershed has a dependable supply of 300,000,000 gallons daily. The two sources combined assure 100,000,000 more gallons daily than Hetch Hetchy. Further, the cost of bringing this water to San Francisco across the upper Berkeley Hills and Carquinez Straits is only $41,250,000—about one-half as much as the Hetch Hetchy plan. The storage capacity of the Snow Mountain-Eel River-Putah Creek plan is 1,500,000 acre-feet—enough water to supply San Francisco with water for three and one-half years, even if not another drop of water fell. There are practically no water rights filed against this proposed supply. Less than 2,000 acres are now in cultivation in districts affected by it.

It will be noticed that in this instance as in a good many others they combine two or three of these different systems. What for? Not to secure the supply of water that San Francisco needs, because either one of them alone would furnish ample water for San Francisco, but they do it upon the theory that they must raise the 400,000,000 gallons of water that are necessary for all these cities. Therefore all these petitions and the reports of the engineers are misleading in that respect.

Get this fact in mind: Sacramento Valley has more water than it needs. The area of the valley susceptible to irrigation is small. Ten million one hundred and seventy-five thousand feet of water flow past Redding. The total available water supply for the entire San Joaquin watershed is officially placed at 10,065,000 acre-feet—more than 100,000 less than the volume in the Sacramento at Redding.

The total of the Sacramento Valley watershed is placed at 24,026,000 feet. The area in the Sacramento Valley available for irrigation is only 2,659,000 acres. The area in the San Joaquin Valley available for irrigation is 6,630,000 acres. Sacramento Valley's watershed has

a supply of more than 24,000,000 feet for 2,659,000 acres, while San Joaquin has only 10,065,000 feet for its 6,630,000 acres. Yet San Francisco would divert the Hetch Hetchy supply, which San Joaquin Valley will soon need and which some of the districts already need.

The Eel River and Putah Creek supply always will be waste water, unless utilized for the supply of some large city.

The watershed belonging naturally to the San Joaquin Valley will not irrigate one-half the valley's acreage which can be brought under irrigation. The situation is reversed in Sacramento Valley, where there is not enough acreage susceptible to irrigation to use one-half its available water supply.

It is time for the people of San Joaquin Valley to get busy, and the press will be derelict in its duty if it fails to put the facts before the people.

The Hetch Hetchy scheme is unnecessary for the future of San Francisco, since a better and cheaper water supply can be secured in the Coast Range watershed.

The water of Hetch Hetchy ought to be conserved for the future use of San Joaquin Valley, which needs every drop of it.

The Record protests, as it has protested before, against the Hetch Hetchy bill.

It embodies nothing but the inate selfishness of San Francisco, shortsighted statesmanship by the bill's sponsors, and a wanton injury to the San Joaquin Valley, upon the development of which much of the future greatness of California depends.

Mr. TOWNSEND. Mr. President, I notice that there is in the Chamber now considerably less than half of a quorum. Very few of the Senators on the majority side are in their seats, yet we have been compelled to come here to-night to carry on an evening session. Unless the speaker insists to the contrary, I shall make a point of no quorum whenever I discover that there is no quorum in the Chamber. I now, Mr. President, suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Goff	Owen	Smith, Ga.
Bacon	Gronna	Page	Smith, Md.
Bankhead	Hollis	Pittman	Smith, S. C.
Borah	Hughes	Poindexter	Sterling
Brady	James	Pomerene	Thomas
Brandegee	Johnson	Reed	Thompson
Bryan	Kenyon	Robinson	Thornton
Chilton	Kern	Saulsbury	Townsend
Clapp	Lane	Shafroth	Vardaman
Clarke, Ark.	Lippitt	Sheppard	Walsh
Colt	Martin, Va.	Sherman	Warren
Cummins	Martine, N. J.	Shields	Williams
Dillingham	Myers	Shively	Works
Fletcher	Nelson	Simmons	
Gallinger	O'Gorman	Smith, Ariz.	

The PRESIDING OFFICER. The roll call discloses the presence of 58 Senators. A quorum being present, the Senator from California will proceed.

Mr. WORKS. Mr. President, one of the claims made is that while there are other sources of supply that will furnish 400,000,000 gallons of water daily, which it is claimed San Francisco needs, it will cost the city more money to secure that supply from other sources. I have here a telegram from Mr. Doak, of San Francisco, addressed to Mr. FERRIS, chairman of the House Committee on the Public Lands, bearing upon that question, which I think will be of interest to the Senate. It is as follows:

SAN FRANCISCO, *July 5, 1913.*

Hon. SCOTT FERRIS,
Chairman Committee Public Lands, Washington, D. C.:

At the hearing before the congressional committee on the Raker bill, now before Congress, to grant the city of San Francisco the right to use the Hetch Hetchy Valley as a reservoir site, according to press reports, statements were made by the representatives of the city that the Army board's report shows the cost of construction of the Hetch Hetchy project to be $20,000,000 less than the McCloud River or other sources. This is not correct and is not borne out by the reports.

The board's estimate of cost of the Hetch Hetchy project, fully developed for a supply of 400,000,000 gallons per day, as set forth in the report, is $77,367,400. Their estimate of the cost of the McCloud project fully developed for a supply of 500,000,000 gallons per day, with Bay Crossing, is $71,446,200, showing a saving in favor of the McCloud in actual cost of construction of $5,921,200.

The figures of Mr. H. H. Wadsworth, assistant engineer of the board, show a saving of $12,416,300, and those of R. W. Van Norden, a prominent and well-known engineer of San Francisco, who made an independent estimate of cost for the Journal of Electricity, finds a saving of $22,743,000.

It should be understood that the plans submitted by the proponents of the McCloud project call for the construction of a reinforced concrete aqueduct of the highest type and class of permanent construction, developed at the beginning to its full capacity of 500,000,000 gallons per day, with a view of utilizing the surplus water for irrigation until the same is needed for domestic purposes; whereas the plans submitted by the city for the Hetch Hetchy project call for an entirely different class of construction, a large part of which is steel-pressure pipe, which will deteriorate and will have to be replaced at the end of 20 or 25 years. The Standard Oil Co. are now replacing oil pipe line in the San Joaquin Valley that has been laid less than 8 years.

By adopting a system of high finance, suggested by Mr. Freeman, by which the dates of expenditures required for the several projects are discounted on the basis of 4½ per cent compound interest, the Board of Army Engineers find that the amount required to finance the Hetch Hetchy project (entirely due to dates of expenditures) would be about $20,000,000 less than would be required to finance the McCloud River project on the plans submitted.

In arriving at this result, however, no account was taken of the revenue which would be derived from the surplus water of the McCloud project sold for irrigation up to the time this water would be needed for city use. The revenue from this surplus water would, if sold at the price fixed by the Los Angeles aqueduct for their surplus water, be sufficient to pay 4½ per cent interest on over $40,000,000.

There was also no account taken of the cost of the extra depreciation of the Hetch Hetchy project due to the replacement of the pipe construction. No competent engineer will estimate the life of that part of the pipe across the San Joaquin Valley at over 25 years and that of the Santa Clara Valley at 40 years. It must be remembered that the plans and estimates call for ordinary steel pipe and not expensive Scotch iron pipe, such as used by the Spring Valley Co.

Both City Engineer Grunsky and Manson estimate the cost of renewals for 40 years for the 60,000,000 gallons supply Hetch Hetchy project planned by them, at $21,335,000. (See city water supply report of 1908.) On this basis renewals for a 400,000,000 capacity plant up to the end of the present century would be over $175,000,000. It is very certain that the cost of renewal of the pipe alone up to the end of the present century would be many times what would be saved in interest by constructing the project in units. The plans proposed for the McCloud project call for reinforced concrete construction, which would require very little replacement or renewal. It is therefore impossible, considering the different classes of construction of the two projects, to make any relative comparison of cost of construction, operating, or maintenance.

If there was any merit in constructing the project in units, the plans for the McCloud project could be redesigned for the same class of construction proposed for the Hetch Hetchy project, which would admit of the proper comparison of the amount of money necessary to finance each project. But when the exceptional advantages which the McCloud project offers for the class of permanent construction as proposed—not possible on the Hetch Hetchy project—are considered, and the saving in operation and maintenance by such class of permanent construction, such a change in plans could not be considered.

The plans and the data submitted at the hearing before the Secretary of the Interior thoroughly demonstrate that the McCloud River is just as practicable and a more economical source of supply for San Francisco than the Hetch Hetchy, and can be utilized without interfering with any existing rights.

The report of the advisory board of Army engineers shows that the minimum flow of the McCloud River is over 1,200 second feet, or equal to about 800,000,000 gallons daily. That the quality of the water is good and pure, and that it can be easily and economically maintained in its present good condition. That it is not needed for irrigation, and that reservoirs are available which could be used, if necessary, to overcome any interference with navigation.

In fact, the report of the board of Army engineers absolutely sustains every claim made by the proponents of the McCloud River project.

There can be developed over 150,000 electrical horsepower economically on the McCloud River by a series of dams, which would also serve as reservoirs for storage if for any reason necessary. No data was submitted to the Army board on the possible power development on the McCloud. Our understanding is that the city can not develop any power on the Hetch Hetchy project as planned without first purchasing the power rights owned and controlled by a certain strong and influential syndicate at great cost. It has been openly stated that this syndicate, whose rights would be so greatly enhanced by the construction of a reservoir in the Hetch Hetchy Valley, is the real power behind the city's persistent effort to secure the permit to build this reservoir on any conditions that might be proposed. Under the bill now before your committee the irrigation districts are given all prior rights to which they are entitled, and which, if complied with and the reservoir was completed this year, would not leave a gallon of water available for the city.

Why is it that all telegrams from representatives of the city and information given the public convey the impression that there have been no concessions made to the irrigation district other than those provided in the original Garfield permit? It may be that this is all for the purpose of influencing Spring Valley stockholders, and that after the Spring Valley is purchased we will hear no more about the Hetch Hetchy project. It is very certain that we will hear no more about it when the people of San Francisco know the real facts.

The proponents of the McCloud project offered to turn over all of their lands and water rights on the McCloud River to the city and accept one-half of what they could demonstrate could be saved on cost of construction of the McCloud as compared with the Hetch Hetchy project, which showed their good faith in the matter.

Mr. C. H. Miller, chief engineer of the McCloud project, stands ready to appear before your committee, if requested, and verify the statements here made.

Yours, respectfully, D. P. DOAK.

I have a communication from Mr. Miller, who is referred to in that letter, bearing upon that same question. It is dated July 31, 1913. It is as follows:

JULY 31, 1913.

Hon. JOHN D. WORKS,
United States Senate, Washington, D. C.

MY DEAR SIR: I had the the privilege of reading a letter addressed by you to Mr. Taggart Ashton, civil engineer of this city, relative to the subject of water supply for San Francisco and the bay cities. In response to your request contained therein for further information on this subject, I have taken the liberty of addressing you.

I have given this subject three years of very careful study, including formulation of reports supplied to the advisory board of Army engineers appointed by the Secretary of the Interior. I desire particularly to call your attention to certain circumstances that prevailed during the period in which San Francisco was requested and expected to furnish the Army board with correct and detailed information.

Mr. John R. Freeman had been engaged by the city of San Francisco to make an appraisal of the value of the Spring Valley Water Co., for which he was paid many thousands of dollars, and if his report was ever submitted to San Francisco this fact has never been made public.

On the order of Secretary Ballinger requiring San Francisco to show cause why the Garfield permit should not be revoked, Mr. Freeman was selected by San Francisco as the engineer to acquire facts and report on all available sources of supply. This report was to be submitted for a hearing in June, 1911. At this time negotiations were pending between the city of San Francisco and the company claiming to own certain water rights on Lake Eleanor and Cherry Creek, of which company John Hays Hammond was the principal owner. It appeared to be difficult to bring these negotiations to a definite conclusion, and apparently the city officials had no desire to investigate other sources of supply until these negotiations were closed. As a

consequence, the city asked for postponement of the hearing from June until the following December, and repeatedly asked for other extensions until the negotiations for the purchase of these water rights were concluded and the money paid over, amounting to $1,000,000. During this period of time complete data was furnished relative to obtaining a supply from the McCloud River, with a definite offer by Mr. D. P. Doak and associates, which on its face presented a project very much cheaper than from the Tuolumne River. This information was furnished in December of 1911 and included the only detailed information with maps and profiles of an accurate survey that has ever been submitted in connection with the water supply for San Francisco. Soon after the conclusion of the purchase of the Hammond water rights Mr. Freeman discovered that he had time to take up this investigation. He proceeded to change the entire plan of development as made originally by the city engineer of San Francisco, said change in plan eliminating entirely the use for development of electric power from Lake Eleanor and Cherry Creek, for which they had paid John Hays Hammond $1,000,000.

It seems very strange to a layman that the city of San Francisco would have delayed, or permitted the engineer engaged by them to delay, for an entire year taking up this investigation, unless there was some ulterior motive to be gained in paying out this large sum of money for water rights that Mr. Freeman admits have no value.

The investigation (so called) made by Mr. Freeman and associated engineers covering the 17 sources of supply investigated were all made during a period of 60 days, and consisted principally of automobile rides and a revision of previous reports made by the same engineers, all of which was done in offices in San Francisco.

The investigation made by Mr. H. H. Wadsworth, assistant to the advisory board of Army engineers, was conscientiously and carefully made as far as it was possible to go on an appropriation of Congress for the amount of $12,000. The duty involved upon this board included reading a great mass of documentary reports furnished by the engineers of San Francisco and a number of engineers employed by the Spring Valley Water Co., and their conclusions were largely based on assumptions or conclusions reached by them from the study of these reports. *The board state plainly in their report* that most of this *information was misleading;* that the *estimates of cost were not* in any sense *conclusive* or of *sufficient detail* to afford any *fair basis of comparison* of the *cost of the various projects.* The conclusions reached by the board merely deal with matters pertaining to cost of construction. They do not take up any of the economic questions involved in consideration of loss to the State through depriving arid land of water essential for its development, or depriving some 200,000 acres of land tributary to San Francisco Bay, now owned by the local water companies, from being placed in cultivation and made available for home sites. They do not deal with the question of depreciation on steel pipe involved in the construction of the conduit or the relative operating costs of various projects. They do not consider the additional interest charges necessary in the purchase of the properties of the local water companies around the bay in conjunction with the cost of the Hetch Hetchy project, and do not show or deal with the question of relative cost of water to the consumers in San Francisco; neither do they consider the advantages that would accrue to San Francisco and the entire State of California by having a municipal water supply of sufficient abundance to also supply the present and future population of the Sacramento Valley.

These facts were all set forth in the report on the McCloud project.

The latest report of the *State Conservation Commission* of California presents *facts that prove conclusively the advantages to San Francisco* of securing their *water supply from the watershed of the Sacramento Valley* and the *great detriment* that would prevail *in diverting any waters from the San Joaquin Valley.*

We claim that a complete investigation by unprejudiced engineers will supply data on which the Army board would beyond any question revise their report and reach conclusions diametrically opposed to the report already submitted.

In fact, if their report be carefully read and the data contained therein thoroughly analyzed, no other conclusion can be reached than the one that *at least two other sources of supply* are *not only available* for *San Francisco* and the *bay cities,* but *would cost a great deal less money.*

From reading a transcript of the hearing before the House committee it appears that that committee have *not read* the *Army Engineers' report* or the *conclusions* and *recommendations made by Secretary Fisher,* nor any other documents on file in the city of Washington pertaining to this matter, and as a consequence *are basing their opinions on verbal evidence given by officials of San Francisco,* which *do not present* any of the *real facts* in the case and in many respects *are inaccurate* and absolutely *misleading.*

We would be willing to incur the expense and time necessary in presenting the merits of our project if this matter were to be taken up by Congress and considered impartially and thoroughly; and if, as you suggest, this hearing will be postponed until the next regular session, I can assure you that we will be present and fully prepared.

I am inclosing copy of a telegram, dated July 5, addressed to the House Committee on the Public Lands, which is self-explanatory. A copy of this telegram wes later sent to the Senate Committee on Public Lands. I am also inclosing an article written for publication dealing with this subject.

Very respectfully, yours, CLEMENT H. MILLER,
Chief Engineer.

Here is another short statement of the water conditions. It is headed "Misapprehensions about the Hetch Hetchy, and a correction":

In the recent debate Senators have been led into positive misstatements that befog the issue.

THOSE "WATER RIGHTS" CLAIMED BY THE CITY.

The city claims "legal rights" to the Hetch Hetchy water through its "filings." There are no such rights. In 1901 (July 29) James D. Phelan "filed" at Hetch Hetchy for 10,000 miners inches, equal to 161,000,000 gallons daily, and for half that amount at Lake Eleanor, or another stream. The city now insists that these "filings" are entirely inadequate for its needs, as the bill contemplates 400,000,000 gallons daily from Hetch Hetchy alone.

But, further, the law requires a "filing" to be followed by "diversion and beneficial use" of the water. When Secretary Hitchcock denied the right to dam Hetch Hetchy in 1903 the city abandoned the project and took away its plans, which were burned up in the great fire. This abandonment was formally voted by the board of supervisors on January 24, 1906 (resolution No. 6949). Later, after Mr. Pinchot had urged the city to take the matter up again, Secretary Garfield, in 1908, granted the right to dam Lake Eleanor, but required postponement of any development at Hetch Hetchy till the Eleanor source was fully developed—say 50 years. Even at Lake Eleanor there has been no "diversion and use," although 200,000,000 gallons daily can be obtained from that source alone.

I should like Senators to remember that statement, which is a correct one, that from Lake Eleanor alone 200,000,000 gallons of water daily can be obtained for the use of San Francisco. That is 40,000,000 gallons more than the amount San Francisco has filed upon and has a right to take from the stream.

I have here a statement of the cost of the Eel River project in detail, which I ask leave to make a part of my remarks, without reading.

The PRESIDING OFFICER. If there be no objection, it will be so ordered.

The matter referred to is as follows:

EEL RIVER PROJECT.

Estimated complete cost 400,000,000 gallons daily delivered.

FIRST DIVISION.

(Gravelly Valley Reservoir to Clear Lake.)

Gravelly Valley Reservoir, dam with spillway crest at 150 feet, storage 215,000 acre-feet	$809,000
Pressure tunnel (220,000,000 gallons daily capacity) 8 feet diameter, 56,500 linear feet, at $35	1,977,000
Concrete tunnel entrance, tunnel shafts, gate tower, and gates	220,000
Total	3,006,500

SECOND DIVISION.

(Clear Lake to Monticello Reservoir.)

Tunnel entrance, gates, etc., Cache Creek	26,000
Pressure tunnel (220,000,000 gallons daily capacity) 8 feet diameter, 15,800 linear feet, at $33.50	529,300
Total	555,300

THIRD DIVISION.

(Monticello Reservoir to Carquinez Straits.)

Devil's Gate Dam, with spillway crest at 240 feet, storage 1,019,000 acre-feet	2,128,000
Pressure tunnel (400,000,000 gallons daily capacity) 11 feet diameter, 85,100 feet, at $56	4,765,600
5,850 feet, at $50	292,500
Tunnel shafts	120,000
Steel pipe line (200,000,000 gallons daily capacity) 8.2 feet diameter, ¾-inch shell, cement lined and coated, 104,300 linear feet, price per foot $30	3,129,000
Total	10,435,100

FOURTH DIVISION.

(North side Carquinez Straits to San Francisco.)

Tunnels (400,000,000 gallons daily capacity):	
12.8 feet diameter, pressure, concrete lined, 5,300 feet under Carquinez Straits, at $220	1,166,000
Two 300-foot shafts, at $165	99,000
12.8 feet diameter, pressure, concrete lined, 12,600 linear feet, at $60	756,000
11 feet diameter, pressure, concrete lined—	
21,920 feet, at $56	1,227,520
30,180 feet, at $56	1,690,000
Steel pipe (200,000,000 gallons daily capacity), cement lined and covered:	
6.75 feet diameter, shell ¾ to 7/8 inch, price per foot $16.50 to $26, 19,860 linear feet	436,000
6.75 feet diameter, shell 7/8 inch, 35,680 feet, at $26	927,680
Pumping station at Martinez, 200,000,000 gallons daily capacity, 300-foot lift	1,200,000
Equalizing reservoir, San Pablo and Pinole Creek:	
2,500 acres of land, at $200	500,000
Construction of dams	2,750,000
Submerged pipe, San Francisco Bay, 6.75 feet diameter, 18,480 linear feet, at $120	2,217,600
Total	12,970,700
Estimated cost sewage-disposal systems for towns of Middletown, population 500; Upper Lake, population 350; and Lower Lake, population 350	26,000

SUMMARY OF ESTIMATED COSTS.

First division	3,006,500
Second division	555,300
Third division	10,435,100
Fourth division	12,970,700
Sewage-disposal systems, three towns	26,000
Total costs construction of aqueduct for delivery 200,000,000 gallons daily to San Francisco	26,993,600
Water rights, reservoir sites, and aqueduct rights of way, estimated at	6,000,000
Additional 200,000,000 gallons daily to bay cities by duplicating pipe lines and doubling capacity of Martinez pumping plant	5,393,580
Total cost construction, 400,000,000 gallons daily to San Francisco and bay cities	38,387,180

Mr. WORKS. In connection with that statement I wish to read the telegram I sent to Hon. C. N. Felton, of San Francisco, who at one time was a member of this body. I have no doubt some of the older Members of the Senate will remember him.

Mr. TOWNSEND. Mr. President, will the Senator yield to me?

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Michigan?

Mr. WORKS. I do.

Mr. TOWNSEND. I notice that there are 15 Members of the majority in their places, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Goff	O'Gorman	Smith, Ga.
Bacon	Gronna	Overman	Smith, Md.
Borah	Hollis	Owen	Smith, S. C.
Brady	Hughes	Page	Sterling
Brandegee	James	Pittman	Thomas
Bryan	Johnson	Poindexter	Thompson
Chilton	Kenyon	Pomerene	Thornton
Clapp	Kern	Reed	Townsend
Clark, Wyo.	Lane	Robinson	Vardaman
Clarke, Ark.	Lippitt	Saulsbury	Walsh
Colt	Martin, Va.	Sheppard	Warren
Cummins	Martine, N. J.	Shields	Williams
Dillingham	Myers	Shively	Works
Fletcher	Nelson	Simmons	
Gallinger	Norris	Smith, Ariz.	

The PRESIDING OFFICER. Fifty-eight Senators have answered to their names. A quorum of the Senate is present. The Senator from California will proceed.

Mr. BACON. Mr. President, before the Senator from California proceeds, inasmuch as the Senator from Michigan has twice had put into the RECORD his estimate of the number of Senators present, I think it is proper to say that each time the roll call has shown that there were present about three times as many Democrats as Republicans.

Mr. TOWNSEND. Mr. President, undoubtedly that is true, as shown by the roll call. It does not follow, however, that it was true when the Senator from California was speaking. Furthermore, it was the majority that called the Senate here to-night for the purpose of facilitating the business of the Senate, and the members of the majority are not here in their seats. The Senator from Michigan was correct in making the statement as to the attendance at the time he called for a quorum.

Mr. BACON. Mr. President, one Senator is under just as much obligation as another to attend to his duties in this Chamber. There may be greater responsibility upon some than upon others, but no greater duty. I wish to say to the Senator from Michigan that when he made his first remark as to the number of Senators present I counted, and there were only 11 Republicans present.

Mr. OWEN. Mr. President, at 1.55 p. m. to-day the Senator from Utah [Mr. SUTHERLAND] made the point of no quorum. There were 61 Senators present. At 2.45 p. m. the Senator from Utah [Mr. SUTHERLAND] again made the point of no quorum. There were 65 Senators present. At 4 o'clock p. m. the Senator from Utah [Mr. SMOOT] made the point of no quorum. There were 56 Senators present. The Senator from Utah [Mr. SMOOT] again made the point of no quorum at 12 minutes past 5. There were 58 Senators present. Neither of those Senators is in his seat to-night.

Mr. SHIVELY. Mr. President, does the Senator think he ought to make these observations in the absence of the Senator from Utah [Mr. SMOOT]?

Mr. OWEN. It is very painful to make observations of this character in the absence of the Senator. The Senator from New Hampshire [Mr. GALLINGER] made the point of no quorum at 8 o'clock to-night. There were 56 Senators present. The Senator from Michigan [Mr. TOWNSEND] made the point of no quorum at 8.25. There were 57 Senators present. The Senator from Michigan [Mr. TOWNSEND] again made the point of no quorum 25 minutes later, at 8.50. There were 56 Senators present.

If the Senators on the other side care to continue that kind of record, it is open to them to do so.

Mr. GALLINGER. Mr. President, did I understand the Senator to say that when I made the point of no quorum, at 8 o'clock, there were forty-odd Senators present?

Mr. OWEN. I said the call of the roll disclosed the presence of 56 Senators.

Mr. GALLINGER. Yes; but we do not count Senators who are in the cloakroom or in other places outside of the Chamber. There were not half that number present when I made the point of no quorum.

Mr. OWEN. The Senator made the point of no quorum instantly after 8 o'clock.

Mr. GALLINGER. I did, because the Senator from California was about to proceed with his speech.

Mr. OWEN. I have no objection, of course, to the Senator making that explanation.

Mr. GALLINGER. Inasmuch as the Senators on the other side seem to have pretty decided opinions on this question, I thought possibly the Senator from California might convert some of them.

Mr. WORKS. Mr. President, I have noticed that upon the roll call my Democratic friends come out from their hole somewhere, I do not know just where, and answer to the roll call and make a quorum, but it may be on account of my manner of speech, and before I have gone very far they have melted away. Now, I am not asking the attendance of any Senator here on my account, but here is a great question involved, of vital importance to my State, and I do think that Democratic Senators, and Republicans as well, should remain here and listen to what is said upon this subject, whether well said or not, in order to inform themselves upon this important question, and I think it is unfair and unjust that I should be compelled to proceed with my speech to-night when other Members of this body abandon the Chamber and go to the cloakroom or anywhere else while I am addressing myself to a subject that is one of importance.

Mr. WORKS. I shall now read the telegram that I addressed to Senator Felton.

WASHINGTON, *November 28, 1913.*

Hon. C. N. FELTON,
452 Mills Building, San Francisco, Cal.:

Wire me amount of water and of what kind San Francisco can obtain from Eel River and at what cost to the city, and any particulars that you may feel at liberty to give me on that subject. Expect to address the Senate on Hetch Hetchy bill on Thursday next. Any information you may give me will be important in that connection.

JOHN D. WORKS.

I received from the Senator the following telegram:

SAN FRANCISCO, CAL., *December 2, 1913.*

Hon. JOHN D. WORKS,
United States Senate, Washington, D. C.:

Have this day answered your wire of the 28th by telegram through the engineer of the Snow Mount Water & Power Co., who is more capable and conversant of the facts than myself. Trusting that it may be of service to you,

C. N. FELTON.

The telegram of the engineer is as follows:

SAN FRANCISCO, CAL., *December 1, 1913.*

Hon. JOHN D. WORKS,
United States Senate, Washington, D. C.:

In reply to yours of the 28th, San Francisco can obtain more than 200,000,000 gallons a day from South Eel River and 300,000,000 gallons a day from Middle Eel River of mountain water uncontaminated by local influences. I think an examination will prove that 500,000,000 gallons a day can be delivered from this source to San Francisco, and am advised and believe within the sum of $60,000,000. The line is already paralleled by and for four-fifths of the distance is immediately adjacent to the Northwestern Pacific Railroad. This scheme has also the advantage that the pipe line can be laid much nearer the hydraulic grade line, and thus the weight of steel pipe would be less than for the Sierra Nevada schemes; or reenforced concrete pipe could be used over portions of the distance, which makes the unit cost very low. Quoting from A. M. Hunt's report on the South Eel River supply, written in 1906, the water rights of the Snow Mountain Water & Power Co. are not in conflict with any others; in fact, there are no prior rights, nor has the water ever been diverted for any purpose. There is practically no agricultural land in the river bottom below the diversion point, so there can be no claim that the waters are needed or may be needed in the future for irrigation purposes. In this respect, as a supply for San Francisco, it is superior to any of the Sierra propositions. The same is true of the waters of the Middle Eel River.

W. S. GRAHAM,
Engineer and General Manager
Snow Mountain Water & Power Co.

Now, either of those projects taken alone—not both of them, but either one of them—would furnish more water than San Francisco is legally entitled to under its filing to take out of the Tuolumne River and twice as much as the only engineer who has said anything on the subject has declared is needed by San Francisco for 30 years to come.

Now, Mr. President, I come to the question as to whether San Francisco——

Mr. BACON. Mr. President, I ask this question in the utmost good faith. I am seeking light. Could the Senator within a few words tell us why it would be conducive to the public interest that the one project should be carried out and not the other? In other words, why is it that there will be any objection of a public or private character to the Hetch Hetchy project which does not apply to the other? I want a comparison between the two.

Mr. WORKS. The objection is that San Francisco ought not to be allowed to take of the waters of the State more than is necessary for its own use, and it should leave the balance for distribution to others who may need it. Therefore it would be unjust if San Francisco should take out of both these systems an amount of water that it is not able to use, and San Fran-

cisco has no right to sell the water to anybody else. If it should have these two sources of supply, and they are more than it needs, the water commission of the State of California would compel it to surrender a part of it to other people who needed it for irrigation purposes.

The Senator must understand that there is not enough water in California to go around, and one of the great efforts on the part of the Legislature of California and of the administration of affairs in connection with the water is to make the water go just as far as possible. It is different in the State of Georgia, I assume, where it is not a question of lack of water, but very frequently there is too much of it. But that is not so in California. The purpose is to distribute this water so that it will cover the most acres of land and supply the greater number of people for domestic purposes. Therefore San Francisco has no right to take two of these supplies if one of them is sufficient. Did I answer the Senator's question?

Mr. BACON. I am not sufficiently familiar with the subject to say whether or not it is a complete answer. I will state to the Senator in passing, if I do not occupy too much time, that I have always been under a somewhat different impression in regard to the water supply of California, if the statement of the Senator is now correct.

Mr. WORKS. A great many people are under that misapprehension.

Mr. BACON. I recollect once in passing from San Francisco east I was very much struck by the accounts given me of the vast snowfall upon the mountains, which in the spring and summer melts and furnishes the necessary water for the lowlands. I presumed that that was one great source of supply. I recollect at one place where the cars stopped—I think it was for supper, before the days when the trains carried dining cars—I was told that snow accumulated to the extent of 20 feet in depth.

Mr. WORKS. Has the Senator any idea how much water that would make down on the Sacramento Valley, for example?

Mr. BACON. That would depend a good deal upon the area over which it fell.

Mr. WORKS. One of the difficulties that we have had in the West has been in making ourselves understood with respect to this water question. I appreciate that, because I went from a Middle Western State to California. It is extremely difficult for a man who has had no practical experience of the appropriation and distribution of water to understand the situation.

Mr. POINDEXTER. Mr. President, if the Senator will permit me——

Mr. WORKS. I yield to the Senator from Washington.

Mr. POINDEXTER. I should like to make a statement in a very few words to go into the RECORD at this point. The question of the Senator from Georgia of course, I should judge, indicates that the Senator has not understood the basis of the opposition to this bill. The entire objection to it is based upon just such a distinction as asked for by the Senator from Georgia. The water of the Tuolumne River is all needed for irrigation.

If San Francisco takes it, it will deprive the land in the San Joaquin Valley of the necessary water needed for irrigation, whereas if you take the water from the Eel River, or preferably from the McCloud River, that would be taking water which is not needed for irrigation.

And there is another reason which is an answer to the question of the Senator from Georgia which is the basis of the objection of one class of opponents to this bill, and that is that the adoption of the Hetch Hetchy project will destroy the Hetch Hetchy Valley, so far as its present condition is concerned, whereas the taking of water from the McCloud or from the Eel Rivers will not destroy any national park or any great scenic wonder or unusually attractive scenery.

Mr. BACON. I hope I may not be misunderstood. I did not mean by my question to interject myself into the debate. The Senator from California had stated as a fact that water could be obtained from another river, and I really, for the purpose of acquiring the information, wanted to know why it was that it was objectionable to obtain water from one river and not from another. I do not wish to be understood as taking part in this debate. I have not a sufficient knowledge of the subject to attempt anything of the kind.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Idaho?

Mr. WORKS. I yield.

Mr. BORAH. I wish to ask the Senator from California with reference to the construction of this grant a little more fully than it has been discussed, because I think he has passed over that feature of it. What is the effect of it? I will read the language of it—

That there is hereby granted to the city and county of San Francisco, a municipal corporation in the State of California, all necessary rights of way—

And so forth.

Now, the grant runs to the city of San Franciso.

Mr. WORKS. The city and county of San Francisco.

Mr. BORAH. Yes; and it goes on to say:

All necessary rights of way along such locations and of such width, not to exceed 250 feet, as in the judgment of the Secretary of the Interior may be required for the purposes of this act, in, over, and through the public lands of the United States in the counties of Tuolumne—

And the other counties named here—

and in, and over, and through the Yosemite National Park and the Stanislaus National Forest, or portions thereof, lying within the said counties, for the purpose of constructing, operating, and maintaining aqueducts, canals, ditches, pipes, pipe lines, flumes, tunnels, and conduits for conveying water for domestic purposes and uses to the city and county of San Francisco and such other municipalities and water districts as, with the consent of the city and county of San Francisco, or in accordance with the laws of the State of California in force at the time application is made, may hereafter participate, etc.

Now, does the Senator understand that that grant running direct to the city and county of San Francisco passes the title to San Francisco, but gives over the privilege of selling and disposing of this water to the other municipalities and irrigation districts?

Mr. WORKS. Certainly.

Mr. BORAH. Then are we granting to the city of San Francisco not water sufficient for herself, but water upon which she may speculate and which she may sell?

Mr. WORKS. I think I so stated in positive terms. That is my understanding of the construction of the bill. I do not think there can be any question about that. I made the further point——

Mr. WALSH rose.

Mr. WORKS. If the Senator will bear with me, I made the further point that San Francisco had no right under the laws of California to make any disposition of the surplus which is conveyed to it in that way.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Montana?

Mr. WORKS. I yield.

Mr. WALSH. With the permission of the gentlemen on the floor, will either of them kindly call our attention to the language of the bill that grants any water at all to San Francisco?

Mr. BORAH. I do not know whether I can do it kindly or not, but I will do it:

That there is hereby granted to the city and county of San Francisco, a municipal corporation in the State of California, all necessary rights of way along such locations and of such width, not to exceed 250 feet, as in the judgment of the Secretary of the Interior may be required for the purposes of this act, in, over, and through the public lands of the United States in the counties of Tuolumne, Stanislaus, San Joaquin, and Alameda, in the State of California, and in, over, and through the Yosemite National Park and the Stanislaus National Forest, or portions thereof, lying within the said counties, for the purpose of constructing, operating, and maintaining aqueducts, canals, ditches, pipes, pipe lines, flumes, tunnels, and conduits for conveying water for domestic purposes and uses to the city and county of San Francisco and such other municipalities and water districts as, with the consent of the city and county of San Francisco, or in accordance with the laws of the State of California in force at the time application is made, may hereafter participate in the beneficial use of the rights and privileges granted by this act; and for the purpose of constructing, operating, and maintaining power and electric plants——

Mr. WALSH. Mr. President, there is not any "and" in my copy.

Mr. BORAH. There is not any "and" where?

Mr. WALSH. There is not any "and" before "for." It is simply "for the purpose of constructing."

Mr. BORAH. There is a semicolon there, which has largely the same effect:

For the purpose of constructing, operating, and maintaining power and electric plants, poles, and lines for generation and sale and distribution of electric energy.

Now, it would be worthy of the metaphysical capacity of the Senator from Montana to show how they will dispose of any electrical energy unless they have some water.

Mr. WALSH. Certainly, but that is not the question. I ask the Senator to point out the language by which they are granted by this act the water.

Mr. BORAH. We will go ahead now. We have got it granted. The thing which comes from that is water.

Mr. WALSH. You have a right of way granted.

Mr. BORAH. I will venture to say that San Francisco will get the rest of it.

Mr. WALSH. Mr. President, I daresay that is true. If she gets the rest of it she gets it by virtue of the laws of the State of California. I think the Senator will agree with me in that.

Mr. BORAH. Now, without reading the bill, what it purports to do is to grant the right to impound the water upon the

public land of the United States, and that by reason of impounding that water the National Government has the right to fix the terms upon which it shall be used, because it is impounded upon the public land and belongs to it. That is the doctrine of many of our conservation friends. They believe that the water which flows off the public land is subject to the control of the National Government because it comes off the public land, as if the water which flowed off the Capitol here belonged to the National Government because it fell upon the Capitol Building and went off the Capitol.

Mr. WALSH. Of course the Senator from Idaho recognizes that I myself do not entertain such an opinion as that.

Mr. BORAH. I know the Senator does not.

Mr. WALSH. It is a simple question as to the construction of this act, as to whether this act does recognize that theory and that principle or does not recognize that theory and principle.

Mr. BORAH. We will go further.

Mr. WALSH. What is there here except a pure and simple grant of a right to flood certain lands and to carry the ditches and pipe lines over other land?

Mr. BORAH. If the Senator is correct, I very much appreciate the Senator's ability as an attorney. He would be a dangerous antagonist on the other side of this bill if he were trying to get the water.

Mr. WALSH. I should like, if I may have the floor for a moment, to call the attention of the Senator a little later to some features that I think ought not to be in here. I think there are conditions which ought not to be imposed.

Mr. BORAH. It says so. The language is:

(b) That the said grantee shall recognize the prior rights of the Modesto irrigation district and the Turlock irrigation district as now constituted under the laws of the State of California, or as said districts may be hereafter enlarged to contain in the aggregate not to exceed 300,000 acres of land, to receive 2,350 second-feet of the natural daily flow of the Tuolumne River, measured at the La Grange Dam.

Now, the city of San Francisco is to recognize the rights of these districts to so much water, and when they get so much water the city of San Francisco is to have the right to the power, to take the balance, and deprive them of it. If you are placing a construction upon this act as a whole, considering that the water is impounded upon the public land, that the city of San Francisco is given the right to use the power which is generated by this water, that the city of San Francisco is given the right to limit the use of other water users, and that the city of San Francisco is entitled to take the rest of it, it would be construed, in my judgment, on the whole, as an attempt to grant water to the city of San Francisco.

Mr. WALSH. Mr. President I should like to inquire of the Senator from Idaho whether he does not agree with me that subsection "b," to which he has now invited our attention, far from being a grant of anything to the city of San Francisco, is a limitation upon the right and the power of the city of San Francisco. The Modesto Irrigation Co. and the Turlock Irrigation Co. have or have not rights in the stream. If they have any rights, they are either greater or they are less than the amount here prescribed. If they are, as a matter of fact, greater than the amount here prescribed, these irrigation districts will go into any court in the State of California and establish their right to the greater amount of water, regardless of any limitation that may be imposed by this bill, if a limitation were sought to be imposed. If, on the other hand, in that kind of a controversy it should be established that they had not appropriated that much water, the city of San Francisco would be estopped from asserting it by accepting this grant. Accordingly, it actually guarantees to them more than they would be entitled to, so far as the city of San Francisco is concerned, if they are not entitled to that much. On the other hand, if they are entitled to more, this is no limitation upon them at all. Will not the Senator from Idaho agree to that?

Mr. BORAH. I will agree with the legal proposition which the Senator from Montana states, the effect of which is, as I understand, that we have no power as a Congress to pass that provision at all.

Mr. WALSH. Am I to understand, then, the Senator to assume the position that when the Congress grants the power to flood the public lands, to carry the ditches and the pole lines over the public lands, to take timber from the public lands for the purpose of constructing the work, and to take other material from the public lands for the purpose of aiding it, that Congress can not then impose just exactly such conditions as it may see fit, and say to San Francisco, "You must observe these conditions or forfeit the grant"?

Mr. BORAH. I have no doubt about that at all.

Mr. POINDEXTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Washington?

Mr. BORAH. I yield to the Senator.

Mr. POINDEXTER. I should like to ask the Senator from Montana [Mr. WALSH] if the proposition which he has just stated, and with which I very largely agree, as the basis of the regulation of the use of the water by the grantee of whatever is granted by this bill is not identical with the authority claimed for the United States in every water-power bill that has been considered by Congress? Are they not all based on the same proposition?

Mr. WALSH. I will say to the Senator from Washington that I do not think so. I have not the slightest doubt in the world that these provisions were put in here by the gentlemen who entertained those views as another means of reaching exactly the same end. In further answer to the Senator from Washington, as I said on yesterday, I would agree with everybody that if there were no grant of rights in public lands here, but if this act were for the purpose of disposing of the running water in the streams of the State of California, I would say unquestionably Congress has no power to do that, but that is not the situation. We are making a grant of rights in the public lands to the city of San Francisco, and we may impose just exactly such conditions as we see fit, and San Francisco can take the grant with all those conditions or it can let it alone.

Mr. POINDEXTER. Mr. President, that, I think, is a perfectly correct statement of the theory of this bill, and if the Senator from Montana was present when the so-called Coosa River Dam bill and the Connecticut River Dam bill were discussed here, he would certainly realize that the identical proposition was involved in those two bills, and all the controversy about the authority of the United States Government to attach conditions to the use of power or of water upon a grant of a right to construct a dam in the bed of a river or to occupy the shores of a river involved the identical propositions that are involved in this bill.

I myself believe, and I think the Senator now admits, that the Government has the right to attach such conditions. That was the basis upon which I thought that the other bills which I have mentioned were perfectly valid exercises of the Federal power; but those who opposed those two bills, all of those Senators—and there were many of them on the Democratic side who took a different and an opposite view in regard to the Federal power—opposed the adoption of the conditions attached to the grant of the power of the Coosa River and the Connecticut River. I fail to see how they can reconcile their attitude in regard to those power bills with their support of this bill because the principles in them are identical.

Mr. WALSH. I thought I had made myself clear enough so that my position would be understood by the Senator from Washington.

Mr. BORAH. The Senator from Montana, as I understand, simply contends that the United States, as a proprietor of this public land, may make a grant, as might any other proprietor, and attach such conditions to the grant as a proprietor sees fit to attach, and that the grantee must take the grant subject to the terms of the grant, or not take it at all. I do no disagree with that proposition, that the United States Government as a proprietor may do what any other proprietor may do; but the United States Government can not attach to its proprietary power its municipal or governmental power and do things in addition to its proprietary power which an individual can not do, as is attempted to be done in this bill.

Now, if the Senator will listen for a moment, I will call his attention to what he asked me in the first instance. We have read subdivision "b," upon page 13, which provides for a division of the water between these parties. Subdivision "c" provides:

(c) That whenever said irrigation districts receive at the La Grange Dam less than 2,350 second-feet of water, and when it is necessary for their beneficial use to receive more water the said grantee shall release free of charge—

Shall release what? The water which it has free of charge—

shall release free of charge, out of the natural daily flow of the streams which it has intercepted, so much water as may be necessary for the beneficial use of said irrigation districts not exceeding an amount which, with the waters of the Tuolumne and its tributaries, will cause a flow at La Grange Dam of 2,350 second-feet; and shall also recognize the rights of the said irrigation districts to the extent of 4,000 second-feet of water.

Now, will not the Senator agree with me that it is not within our power to say as a Congress that San Francisco shall distribute so much water to this individual and so much water to that individual, but that the State of California itself must distribute its water and say to whom the right shall go, who shall be recognized and who shall not?

Mr. WALSH. I will answer the Senator from Idaho by saying that there are a great many duties imposed upon the officers

of the Federal Government by these conditions which, in my judgment, ought not to be imposed upon them. I will say, however, to the Senator from Idaho that I do not take that view of the matter at all. This bill recognizes that when we make the grants provided by it—the grant of the right to flood these lands, the grant of the right to occupy the public lands with the ditches and canals to be constructed—that right will be absolutely valueless to the city of San Francisco until, under and by virtue of the laws of the State of California, it acquires rights to the water. The bill contemplates likewise that San Francisco will acquire those rights, and therefore it will impound the water by means of these dams; and then it is provided that, as a condition of this grant, it shall do thus and so with the water which it impounds.

Mr. BORAH. Permit me to ask the Senator this question: Suppose an action were brought against the city of San Francisco to forfeit this grant and the distinguished Senator were attorney for the city of San Francisco, and it was sought to forfeit the grant by reason of the fact that it could not comply with the provision because it was not lawful to do so, to wit, that it could not distribute the water so and so because the commissioners of California had authorized it to be distributed otherwise. Does the Senator from Montana believe that a person who had entered in good faith upon a grant could be made to forfeit that grant by reason of an impossible clause or an illegal clause placed in the grant?

Mr. WALSH. The Senator from Montana will be obliged to say to the Senator from Idaho that if any controversy of that character arose the ctiy of San Francisco would be estopped to deny that these people had a right to any less than the amount specified. If a controversy arose between them and some one else, some one else claiming the right over and above both of them or against either of them as being entitled to a prior right, undoubtedly it would go to them. To illustrate——

Mr. BORAH. Now, Mr. President, upon what ground of estoppel would the city of San Francisco be estopped?

Mr. WALSH. Because it took this grant.

Mr. BORAH. But in order to work the principle of estoppel there must be something moving in favor of the party against whom the estoppel is worked. Now, nothing would move in favor of San Francisco in taking a grant containing an illegal proposition.

Mr. WALSH. Of course that assumes the illegality of it, which is the basis of the contention.

Mr. BORAH. But the Senator admitted yesterday, and is willing to admit to-night, as I understand, that we have not any power to distribute this water as against the distribution which the commission of the State of California might make. So when we impose upon the city of San Francisco a condition to recognize a certain distribution, we are imposing impossible terms, illegal terms, unconstitutional terms.

Mr. WALSH. I have simply asserted that in a controversy between the Modesto and the Turlock Irrigation Cos. and the city of San Francisco the city of San Francisco could not be heard to say that the irrigation companies are not entitled to the amount of water which is given here, while the irrigation companies would be able to assert anything that they would be able to prove.

Mr. BRANDEGEE. Mr. President, in relation to the suggestion interpolated by the Senator from Washington [Mr. POINDEXTER] as to the principle attaching in this bill to the public lands owned by the Government and the right of the Government to grant an easement on its public lands under such conditions as the Government may see fit to impose, as being parallel or even analogous to the right of the Government to attach conditions to the issuing of a permit to maintain a dam across a navigable stream under the commerce clause of the Constitution, I want to suggest that I think the two cases can be differentiated quite clearly from each other. I will not, however, take the time to do so now.

Mr. CUMMINS and Mr. POINDEXTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. WORKS. I hope the Presiding Officer will recognize the fact that I still have the floor.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Iowa?

Mr. WORKS. I yield to the Senator from Iowa.

Mr. CUMMINS. Mr. President, the colloquy that has taken place between the Senator from Idaho [Mr. BORAH] and the Senator from Montana [Mr. WALSH] has almost convinced me that we have no right to make the grant at all. I should like, before we go further in the matter, to ask a question or so of the Senator from Montana, in order to clear up what is now a very perplexing problem in my mind.

We all agree that the United States owns a bit of ground out there, and I suppose we will all agree that the United States can not use it in contravention of the laws of California nor permit anybody else to use it in contravention of the laws of California. The Senator from Montana has asserted—and that seems to be the prevailing opinion here, and I have no reason to doubt its correctness—that the State of California owns the water that runs in this river. The river runs across land that is owned by the Nation. San Francisco asks the United States to allow it to impound property that belongs to somebody else upon the land of the United States. The Senator from Montana has very nearly established the proposition, in my mind, that if the United States grants to anyone the right to put this water upon his lands, it must deal with California and with no one else.

With all these premises agreed upon, we certainly can not agree that San Francisco can take the property of California and put it upon the lands of the United States. Therefore, it seems to me, that instead of dealing with San Francisco we ought to grant the right of way over this property to the State of California and allow it to collect what water it pleases of its own upon our property and to distribute it according to its notion of the welfare of its people.

This seems to me to be the inevitable conclusion to be drawn from the premises that have been agreed upon by the Senator from Idaho and the Senator from Montana; and I should like to know upon what basis the United States, as a proprietor and not as a sovereign, can grant the use of its lands to San Francisco upon which to store water that belongs to the State of California.

Mr. WALSH. Mr. President, I shall be glad to do what I can to clear up the matter that troubles the mind of the Senator from Iowa. Of course, all our national legislation is enacted in view of and recognizing the scope and field of State legislation and in the presence of and recognizing the existence of State laws. While the water running in the streams of the State of California belongs to the State of California, we recognize the fact that the State of California permits any of its citizens at their will to take that water from the streams for their use, pursuant to its laws. Thus, when we grant to the city of San Francisco the right to construct this dam and these canals and ditches for the purpose of impounding water and transporting it, we recognize that the laws of the State of California permit the city of San Francisco and any others who may care to make use of it for any beneficial purpose to take that water out of the stream, to impound it by means of a dam, and thus to divert it.

Mr. CUMMINS. Precisely; but, Mr. President, California does with her water precisely what we are doing with these lands. California makes a grant to her people under a general statute, I take it, authorizing them to enter upon these waters that belong to the State and take from them certain quantities. Nevertheless, before they are entered upon and taken they belong to the State.

It seems to me, therefore, that it is in the highest degree illogical, if not unjust, for us to undertake to allow some citizen of California, whether a municipal citizen or an individual, to use our lands upon which to store water until we have dealt with California upon the subject and know whether she desires to use our lands for that purpose.

I have been driven to the conclusion that the only thing for us to do, if this water ought to be used—and I am entirely satisfied that it ought to be used—is to give California the right to use our lands, and let her designate who shall use them and how they shall be used.

Mr. BORAH. Mr. President——

Mr. WALSH. If I may be pardoned for just a moment, I will conclude. Another illustration will serve to illustrate how, as I think, there is not the force in the suggestions of the Senator from Iowa that he seems to think they possess.

We frequently grant to a company the right to dam a stream. To do so almost of necessity occasions the flooding of private lands above the dam. We do not hesitate, however, to give the right to construct the dam because the construction of the dam is going to occasion the flooding. We recognize that before the right thus granted to construct the dam can be availed of at all it will be necessary for the grantee to acquire an easement in the lands to be flooded, either by a grant or by condemnation proceedings; but we do not halt our legislation until the right is acquired.

Mr. CUMMINS. Mr. President, the principle invoked in the case of a navigable stream is radically different from the principle invoked when we deal with our private property. Without saying now just what power Congress has over a

navigable stream with respect to bridges that are proposed to be built over it, it is sufficient to remember that we deal with that subject as a sovereign and not as a proprietor. Granting that we have the constitutional authority to do it—and I am not here to question it—we can grant the right to an individual to build a bridge over a navigable stream, and that is all we have to do with it. Now, if we grant the right to build a dam in a navigable stream—a matter of which I have the gravest doubt, unless we can say that we are granting it in order to improve navigation—then the individual or the corporation to which we grant the right must proceed in the usual way to acquire whatever other rights are necessary in order to enable him or it to enjoy the franchise granted by the sovereign power.

I see no parallel at all between granting the privilege of damming a navigable river and the conveyance by the United States of property not as a sovereign but as a proprietor. I am very sure that it is utterly impossible for the United States to attach to any grant it may make of its lands a condition which in the fulfillment involves a violation of the laws of the State in which the lands may be situated.

It was for these reasons that the question arose which I originally propounded to the Senator from Montana.

Mr. CLARK of Wyoming. Mr. President, if I may be permitted, in pursuing further the immediate subject before the Senate which was called up by the Senator from Montana [Mr. WALSH], it might be well to remember that the rights of proprietors of land in some States differ from the rights of proprietors of land in other States. I know that in some States—and I assume the same is true in California in regard to these streams—the proprietor of land may not even build a dam upon his own land to impound and divert the waters of a stream without the consent of the State first had and obtained. I believe that is true in California.

Mr. WORKS. That is true in California.

Mr. CLARK of Wyoming. I know it is true in nearly all the States where the law of irrigation has prevailed that the proprietor or the owner of land may not build a dam upon his land and impound or divert the waters of a stream running through and over his land without first obtaining permission from the State so to do. In other words, the State reserves the right to have the waters of its rivers run unfettered over every proprietor's land which they may touch.

The Government of the United States recognizes that identical principle in its own irrigation works in the arid-land States where it is building these irrigation projects and these great dams. This carries out the idea expressed for the first time in this Chamber, I think, by the Senator from Iowa. The Government of the United States in building its great dams, which cost millions of dollars to construct, for the purpose of impounding and distributing the waters over its own lands, first goes to the State authorities and gets permission from them to proceed with the work.

Mr. WALSH. Mr. President, before that feature is passed I desire to add that we are endeavoring now to enact such a law in our State, prohibiting anybody from constructing a dam for the diversion of waters except by permission of the State authorities. We have not got it yet, however. Under the present law of our State any riparian proprietor is permitted to dam a stream, and the Government of the United States in its irrigation works exercises that right without any let or privilege of any kind from the State.

Mr. CLARK of Wyoming. Of course I was not alluding to the State of the Senator; but in my own State and in the State of California, as is said, and in others, no water can be impounded or diverted without the consent of the State.

Mr. WALSH. A very wise law; but let me remark further that this dam is to be constructed within the Yosemite National Park, over which the Government of the United States has exclusive jurisdiction.

Mr. BORAH. Mr. President, I wish to ask a question of the Senator from Montana. Has the Senator ever examined the grant by which the State of California granted these lands to the United States? Did not the lands which constitute the Yosemite Park come from the State of California to the United States?

Mr. WALSH. I did not make any such statement.

Mr. BORAH. I know the Senator did not make any such statement.

Mr. WORKS. That is the fact, however.

Mr. WALSH. I did not understand that the United States ever had acquired any public lands in the State of California by grant from that State.

Mr. BORAH. My understanding is that the State of California granted the land contained in the Yosemite National Park to the United States for park purposes; that the United States has not anything in the park but an easement; that it is granted to the United States for a specific purpose, and the United States has not anything to grant away.

Mr. WALSH. That is a piece of history with which I was not familiar. My understanding was that the Yosemite National Park, like the Yellowstone National Park, was originally public land.

Mr. REED. Mr. President, even then the Government would have the right to give its permission. It might not convey a complete title; it might be that the title would be disputed by the State of California; but in so far as the Government has any right, it can grant that right. If it has no right whatever, then, of course, it grants nothing. No man ought to be heard to complain very loudly because the Government wrote a piece of paper purporting to grant something that, in fact, conveyed no title. But if the fee is in the State of California, and the Government has a park easement, certainly the Government can grant its permission, so far as it has any easement or right, that that easement or right may be released by the Government. Nevertheless, if the fee is in the State of California, it can afterwards raise the question of Federal authority.

Mr. BORAH. Suppose the State of California deeded the land in this park to the United States to be used exclusively for park purposes. I do not know that that is true, but I am informed that it is. Suppose they granted it to be used exclusively for park purposes. Then have we any authority to grant it to be used for reservoir purposes?

Mr. REED. That goes to the question of whether we can convey a good title.

Mr. BORAH. That is what I thought.

Mr. REED. That would be a question which the men who propose to make this investment might well examine; but, so far as we are concerned, if we are satisfied that the improvement will do the Government no harm and that it ought to be made from our standpoint, we have a perfect right to give our consent. Then, if the title be not good, if the State of California has a paramount title, the State of California can assert it against the grantee.

Mr. BORAH. Let me ask the Senator from Missouri another question. I do not know that what I am stating is the fact; it is only represented to me, and I have not had time to examine the grant. Suppose it be true, however, that the State of California deeded this park to the United States to be used solely for park purposes and the United States should undertake to deed it away for reservoir purposes. What would be the effect of the action of the United States upon the entire grant of the Yosemite National Park? Would the United States forfeit its grant by undertaking to make a grant for another purpose?

Mr. REED. That would be a very strained construction, and one which, I think, the Senator would not greatly fear. First, I think it is extremely improbable that any grant should have been accepted by the Government conditioned as the Senator states. Second, no court would forfeit the grant because the Government of the United States allowed a lake to be created in the park, which is legitimately part of a park scheme and plan. The mere fact that the Government permitted somebody to take out the water in a pipe certainly would not be such a diversion of the subject matter of the grant as to warrant the harsh remedy of a forfeiture.

It seems to me that those who stand here to assert that there is such a condition in the grant ought to bring forward their evidence, and the grant ought to be brought in by that side. As we are in possession of this property, exercising apparently complete control over it, it would seem that the burden would be upon those who claim that the Government is liable to work a forfeiture of the grant. That, I think, is not a serious risk.

Mr. BORAH. I have not asserted that that is true. I have asserted, however, that it has been stated to me by a person who has read the grant, and promises to have it here, that it is true. I do not know that that is the case. If it is true, however, that the grant is upon a specific basis and for a specific purpose, our undertaking to grant it for another purpose might work an injury to the entire grant.

Mr. THOMAS. Mr. President, my understanding of the grant—and I should like to be set right if it is not correct—is that the original boundary of the Yosemite National Park does not include the Hetch Hetchy Valley, but that the boundaries of the park were afterwards extended by the action of the Government so as to include the part of the Stanislaus Forest Reserve that included the Hetch Hetchy Valley. In other words, I understand that the grant of the State of California to the Government was of the Yosemite Park as it was originally bounded, but that its present dimensions were extended

to include the Hetch Hetchy Valley by merely carving it out of the Stanislaus Forest Reserve. If that be so, then of course the grant by the State to the National Government would not affect the part of the Yosemite which is here in controversy.

Mr. BORAH. If the Senator is correct in his statement of facts, then I think he is correct in his statement of law. I am frank to say that I do not know whether it was by enlargement or in the original grant. We shall have to wait until we get the grant to see. It may be that the Senator is correct about the grant.

Mr. THOMAS. I have not examined the grant. That is merely my information.

Mr. STONE. Mr. President, I have been a little surprised that Senators who have been giving special attention to this matter have not said anything with knowledge, with definite information, with respect to the grant by the State of California of the Yosemite Park. It is important that clear and definite information on that subject should be laid before the Senate, and I suppose it will be later. We have had several speeches, and I have been listening to them with a view to informing myself in respect to this question, that I might be able to vote with some degree of satisfaction as to the accuracy of my opinion. I have been waiting to hear something on that subject. So far nothing has been said.

Mr. WORKS. If the Senator will allow me, I will take up the particular portion that he thinks has been overlooked. I was interrupted by a Senator who was talking to me. Will the Senator kindly restate it?

Mr. STONE. I said that so far I have not heard any clear or definite statement as to the exact terms of the grant made by the State of California of the Yosemite Park.

Mr. WORKS. I have not been considering that feature of it. I have taken it for granted in what I have said that the National Government has the right to make this grant. I did not suppose there was any question about it until it was raised by the Senator from Idaho [Mr. BORAH].

Mr. STONE. Very well. Then, if you have no question about the right of the Government of the United States to make the grant, of course it is conceded that there is nothing in the grant made by the State of California to the Government of the tract constituting the Yosemite Park that would conflict with this bill. There is nothing in that grant that would conflict with this bill?

Mr. WORKS. I have not said that I conceded that fact. I do not know. I have taken it for granted, as I said, that the power does exist in the National Government to make the grant, and I have been discussing it upon that theory. I have never examined and, as far as I remember now, I have never seen the instrument by which the State of California transferred the park to the National Government. I do not know what its terms are.

Mr. STONE. Mr. President, it may not be important, it may turn out to be of very little importance when the grant itself is laid before the Senate; but I say I have been a little bit surprised that so far that subject has not been discussed before the Senate.

Mr. President, I confess that I am a little bit up in the air about this Hetch Hetchy proposition. I do not know just "where I am at," and just what I ought to do, but at present I am under the impression—and if I am wrong I want to be set right—that this bill primarily proposes to grant to the city of San Francisco a right—that is, the permission, so far as the Government of the United States is concerned—for the erection of a dam across the Tuolumne River to flood certain lands belonging to the United States, and if the dam is erected a condition, an easement, a license, so to speak, as far as the United States is concerned, is granted to the city of San Francisco to spread out the water from this dam over the lands belonging to the United States, and, further, to use the lands of the United States to this extent in tunneling, in piping, or in any way to convey the water from the dam to the city. The lands of the United States may be used for purposes of this kind, and that is substantially the extent of the grant, the concession, the permission embodied in this bill.

It is true there are some other provisions in it. There are some regulations in it. If the United States owns the lands, as it does concededly, or apparently concededly, that are to be flooded and through and over which these water conveyances may be constructed, the United States may impose certain conditions upon which it may be done, and those conditions are embodied in this bill. That is to say, the United States in this bill says that you may flood these lands of ours, you may use other lands of ours for the purposes mentioned, but upon the condition that certain things shall be done. Now, is not that the whole bill?

Mr. BORAH. Mr. President, the matter to which I referred a few moments ago for whatever it is worth——

Mr. WORKS. Will the Senator from Idaho allow me in this connection to answer the question that has been put by the Senator from Missouri?

Mr. BORAH. Certainly; I did not know that he had put a question to the Senator.

Mr. WORKS. The Senator from Missouri is right enough as far as his statement goes, but it does not go far enough.

The Government of the United States owns the land; the State of California owns the water that passes over the land. The Government of the United States would have no right to place a structure in the stream that would obstruct its flow to the people below who were entitled to its use. It has no right to make a grant to anybody else to construct a dam in the stream unless that person has a legal right to obstruct the stream for the purpose of storing the water for his use, and if it does make the grant, if San Francisco or anybody else has a right to the water of the stream and to store it by the dam, it can only legally grant the right to store the quantity of water that San Francisco is entitled to receive.

Now, suppose this dam were constructed by the National Government and it had no right to take out any of the water for these purposes; that would be a trespass, would it not? It is a trespass, Mr. President, by the direct and positive terms of the statute of California relating to this very subject. Therefore, if the Government were to construct the dam in the stream it would be a trespass, a violation of the rights of people who are entitled to the water below, and if it makes a grant to somebody else to do the same thing, it is a void grant and a grant that it has no power and no authority to make. It can not grant its use if this land belongs to it and at the same time obstruct the flow of the water that belongs to the State.

Mr. STONE and Mr. BORAH addressed the Chair.

The PRESIDING OFFICER (Mr. SAULSBURY in the chair). Does the Senator from California yield, and to whom?

Mr. WORKS. I yield to the Senator from Missouri.

Mr. STONE. I did not know the Senator from California had the floor.

The PRESIDING OFFICER. The Senator from California has been recognized as having the floor, and was so recognized before the present occupant of the chair took it.

Mr. STONE. I thought the Senator had yielded the floor.

Mr. WORKS. I beg pardon of the Senator from Missouri; I have had the floor all the time.

Mr. STONE. Oh, well; I beg pardon.

Mr. WORKS. Other gentlemen seemed disposed to rest me for a little while.

Mr. STONE. I was not aware the Senator had the floor.

Mr. WORKS. But I am not objecting to the Senator from Missouri saying what he has to say on the subject.

Mr. STONE. I want information. That was my only purpose in rising. I am inclined to agree wholly with the Senator from California that this being a nonnavigable stream the United States has an exceedingly limited right, if any right at all, to concern itself with the waters; they are absolutely under the control of the government of California. But does the Senator understand that the Government of the United States by this bill proposes to authorize the city of San Francisco, without regard to the State of California, to construct this dam?

Mr. WORKS. Certainly. It not only authorizes the city of San Francisco to construct the dam and to distribute a part of the water to the districts, but absolutely commands it to do it as one of the conditions contained in the bill. Now, the vice about it——

Mr. STONE. I did not think that was quite the meaning of the bill.

Mr. WORKS. The Senator and I may disagree as to the meaning of the bill, but he asked me for my construction of it, and I am giving it.

Mr. STONE. Well, the Senator gives it and I am not controverting it; I am asking the opinion of the Senator. If he himself believes that the chief purpose of the bill is merely to grant the right to flood public lands and to use them in conveying water, I can not see any objection to it. If it be to assert sovereign jurisdiction over the water itself and the matter of erecting dams and impounding it and controlling it as against the State of California, then that is a different question.

Mr. WORKS. Mr. President, a good deal has been said here to-night upon the question of the provisions of the bill relating to the water. The vice of the bill is that Congress is proposing to deal with the question of water at all. It has no power to make any provisions that will be binding upon anybody with respect to the uses of the water. The provisions that are contained in the bill that are made conditions as

against the city of San Francisco are not binding upon anybody else. Then why should the Government undertake to do something through an act of Congress that it has absolutely no right or power to do? It does not make the slightest difference whether it undertakes to control the distribution of water by imposing a condition upon the city of San Francisco or by a direct provision in the bill that the water shall go here or there, according to its provisions. The National Government has no right to deal with the question at all, and I think the Senator from Idaho [Mr. BORAH] admitted altogether too much when he admitted that the Government might impose a condition in this bill that would affect in any way whatever the distribution or use of the waters of the stream.

Mr. THOMAS and Mr. BORAH addressed the Chair.

The PRESIDING OFFICER. Does the Senator from California yield, and to whom?

Mr. WORKS. I yield first to the Senator from Colorado.

Mr. THOMAS. My purpose is merely to set the Senate right over the extent and nature of the grant of the State of California to the United States of the Yosemite National Park. I quote from the testimony of Mr. Long in the House hearings, on page 102:

> I might say that at the time these filings were made Hetch Hetchy Valley was not in the national park. It was not in the national park until 1905, and even then not by express dedication. It has been referred to as being in the Yosemite National Park, but the forest reservation of which it was then a part, or that portion of it in which were Lake Eleanor and Hetch Hetchy, was merged into the Yosemite National Park without expressly naming Hetch Hetchy as a national park.

So it would appear that this is a part of the Yosemite National Park now, but not by grant from the State of California to the United States.

Mr. BORAH. Mr. President——

Mr. WORKS. Now I yield to the Senator from Idaho.

Mr. BORAH. In connection with what the Senator from Colorado has said, I do not know what the boundaries of this park are, but this is the provision to which my attention was called a while ago and to which I called the attention of the Senate. The grant of the State of California to the United States of the Yosemite National Park——

Mr. THOMAS. Will the Senator give me the date of it?

Mr. BORAH. The date is 1905.

> This act shall take effect from and after acceptance by the United States of America of the recession and regrants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort, and recreation, and imposing on the United States of America the cost of maintaining the same as a national park.

That was what the party had reference to. I will have something to say about it later, but did I understand the Senator from California to think that I made a certain concession that was not the law?

Mr. WORKS. I certainly did.

Mr. BORAH. What was it?

Mr. WORKS. The concession that the National Government might provide as a condition that the water of this stream should be distributed by San Francisco to certain individuals.

Mr. BORAH. If I made any such concession as that it was by a slip of language. I said that the National Government as a proprietor could deed the land which it owned upon the same condition that any other proprietor could, with the same terms and grants of any other proprietor, but that it could not impose and attach to its proprietary power a governmental power to control the situation.

Mr. WORKS. But the Senator from Montana [Mr. WALSH] had made the direct statement that as a condition, not as a direct act, the United States Government could impose just such a condition, and the Senator admitted that his statement was correct.

Mr. BORAH. No; I beg the Senator's pardon.

Mr. WORKS. I think the Senator will correct that statement, if I am right as to what was said.

Mr. BORAH. If the Senator is right, I will correct it, but I said the Senator from Montana had said what I understood to be the legal proposition, and then I stated in my own terms the legal proposition that I have just stated. I have no reason to modify that.

Mr. PITTMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nevada?

Mr. WORKS. If I am expected to go on and make my speech to-night and continue until 11 o'clock, I should prefer to continue. If other Senators desire to take up the balance of the time in discussion, I shall be very glad to have them do so, for I have been on the floor a good part of the day, and I shall be very glad to be allowed to suspend my remarks at this point with notice that I will conclude my remarks to-morrow morning after the routine morning business.

Mr. PITTMAN. I realize the Senator's position. I will not urge it, but I want to correct what I believe is a misstatement of fact in regard to the law of California. I want to call his attention to it.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nevada?

Mr. WORKS. The Senator may make the statement now if he desires.

Mr. PITTMAN. I simply wish to state that the law of California provides for the building of dams in national parks and forest reserves.

Mr. WORKS. I have made no statement, I will say to the Senator, with respect to that matter.

Mr. PITTMAN. It not only provides for it, but it has already granted to the city of San Francisco the right to build a dam at the exact place it is now asking the Government to grant the same right.

Mr. WORKS. The Senator, I suppose, is not intending to address his remarks to me, for I have made no such contention as that. That originated in the discussion between other Senators.

Mr. PITTMAN. It may be an error on my part, but I thought the Senator from California contended that it had to go first to the State of California.

Mr. WORKS. Not at all. I made no such contention.

Mr. PITTMAN. They have the permission of the State now, and they are now asking the Government to permit them to impound water upon Government land.

Mr. WORKS. I do not think it makes any difference whether there is an express provision of that kind by the State of California or not. I think that right exists independently of any statute under the general laws of the State.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from New Hampshire?

Mr. WORKS. I yield to the Senator.

Mr. GALLINGER. Mr. President, we all understand that probably on to-morrow a resolution will be passed keeping us in session from 8 o'clock until 11 o'clock in the evening, but that resolution has not yet passed the Senate. The Senator from California has spoken several hours; he says he is very much fatigued, and he must be, and it seems to me that the majority might well permit us to adjourn. We have been here almost 11 hours in practically continuous session, and if we adjourn the Senator can complete his speech in the morning. I trust that a motion will be made to adjourn at this time.

Mr. THOMAS. About how much more time will the Senator from California occupy?

Mr. WORKS. I can not tell the Senator. I have to go over the reports.

Mr. SMITH of Arizona. Why not let the Senator rest, and take up the currency bill?

Mr. WORKS. We would hardly get started on that in the little over half an hour now remaining before 11 o'clock.

Mr. GALLINGER. The request, Mr. President, that I make is not an unusual one; in fact, it is one that has been made hundreds of times during my service in the Senate, and it occurs to me that it ought to be acceded to. If the resolution had passed that we should sit until 11 o'clock, I would not have ventured to make the suggestion, and, as I said in the beginning, I have no doubt that that resolution will pass to-morrow and that in the future we will be held in session until 11 o'clock in the evening.

Mr. STONE. Mr. President, I very much hope the request of the Senator from New Hampshire will be acceded to. There is only about half an hour left, and I think as a matter of ordinary courtesy, under the circumstances, the request, for the convenience of the Senator from California, might be agreed to. I can not see how we will facilitate matters very much by proceeding further to-night.

Mr. OWEN. Is it the Senator's understanding, then, that we will meet at 10 o'clock in the morning?

Mr. GALLINGER. It is. I think we have agreed to that.

The PRESIDING OFFICER. The Chair will state that there has been no motion to that effect.

Mr. GALLINGER. It will not be resisted on this side if it shall be made. I think the minority is quite willing to meet to-morrow at 10 o'clock.

Mr. OWEN. I move that the Senate adjourn to meet to-morrow morning at 10 o'clock.

The motion was agreed to; and (at 10 o'clock and 23 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, December 3, 1913, at 10 o'clock a. m.