

**SUGGESTIONS OF**  
**JUDGE JOS. H. KIBBEY**

**FOR**

**PLAN TO SECURE GOVERNMENT AID  
FOR CONSTRUCTION OF**

**TONTO RESERVOIR**

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**SUBMITTED SEPTEMBER 4, 1902,**

**TO**

**CONFERENCE COMMITTEE**

**AT PHOENIX, ARIZONA**

## SUGGESTIONS OF JUDGE JOS. H. KIBBEY

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In an attempt to devise a plan whereby the people of this valley may have the benefit of the purpose of the national government to construct, or to aid in the construction of reservoirs and other works for the storage and development of water for irrigation, we must properly interpret the laws affecting the subject, the most recent being that known as the Newlands-Hansbrough act.

The great object that this government has always had in view is the encouragement of settlers to go upon its public lands and there build and maintain homes for the support and the improvement of the material welfare of themselves and their families.

The object has not been, and is not now, merely to get rid of the lands. It is to induce people to go upon those lands and by offering them the lands and the water and the right to make those lands the most profitable that individual industry can make them, and thereby make them desirable and within the reach of its citizens, that the government has adopted its policy concerning the disposal of its public lands.

A nation of owners of homes has been the aim of every statesman who has given expression on the subject of the disposition of our lands. Such a nation is made up of conservative, orderly, conscientious, industrious and peaceful people—people alert to the proper and honest management of affairs, and patriotic—of all of which, prosperous and happy homes are the best possible pledge.

It is interesting to note that in every presidential message on the subject this idea is predominate, and that it has impressed its spirit on every law enacted by congress. In this spirit congress has always jealously attempted to guard the public domain against the

encroachment of monopolists, speculators and absentee landlordism, and with like purpose in view has demanded of its beneficiaries some degree at least of personal industry to be expended upon the lands as a prime requirement in the acquisition of them.

Keeping this central idea and purpose, then, constantly in view, we can proceed to the interpretation of the will of congress as it is expressed, or necessarily implied in its legislation.

Originally, it must be conceded, the national government owned as a proprietor, all the lands, and consequently all the waters within our territorial limits. (Certain possible exceptions relative to Spanish and Mexican grants do not affect the question.)

No individual could acquire any right whatever, even that of simple occupation, to enter these lands or take the waters, without the consent of the proprietor (the government). Congress is the only agency of the proprietor to authorize the disposition of either the land or the water. Until 1866 congress had not expressed itself on the subject of the appropriation of water, and then it only merely recognized what had before only been tolerated—the acquisition of such rights by custom. But these customs do not concern us, and need no further notice, for they never prevailed in this valley as a rule of property, no matter what the practice may have been, because before 1866 and before the earliest settlement of the valley, and before the establishment of Arizona as a territory, we had express local legislation on the subject. Custom cannot prevail against the unquestioned policy of the government, nor can it prevail against expressed legislation, even though the power of legislation were merely a delegated one, if the delegated power was exercised

within the terms of its grant, expressed or implied.

The earliest legislation in this territory recognized the right of appropriation of water from the streams, lakes, etc, for among other things, the cultivation of its soil, and recognized that appropriators were entitled to priority of use of the water appropriated, in the order of the times of their appropriation, and, I think, by necessary inference, the fact of the right being appurtenant to the land, for which it was appropriated, as the right was limited expressly to the owners or occupants of the lands.

In 1877 congress recognizing the arid conditions in a number of the states and territories and wishing to promote the settlement of those states and territories, offered additional inducements to settlers by the enactment of what was commonly known as the "desert land law." Pursuing the long settled policy of having actual tillers of the soil as the owners of its domain congress provided by that law that the entryman could acquire title by paying a nominal sum per acre and for the reclamation and cultivation of the naturally desert land, authorized him to appropriate water from the public sources of supply and gave priority of right to such appropriators, in the order of the times of the appropriation, and upon proof of such reclamation and the permanent right to the use of water the government transmitted its title by the same deed of both land and water to the entryman.

The judicial expression in this territory has never been otherwise than that rights to the use of water are prior as the appropriations were made in point of time, and that they are appurtenant to the land for which the appropriations were made. This is a fair interpretation of the legislation and is the only one consistent with the policy of the government.

The latest act of congress, the Newlands act, contemplates, and we are governed by it, that stored or other water impounded or developed under its provisions, shall be used only by those acquiring the right to do so under the act, and the right shall be inseparable from the land. Thus we have defined the status of the land owner, who has a right to the use of water.

What acts constitute an appropriat-

tion of water are held to be:

1st. The diversion of the water from the source of supply.

2d. The conveyance of the water to the place of use, and

3d. The actual use.

These different acts may be, and in practice in this valley are most frequently, performed by two different persons; that is, the diversion and carrying or conveyance is by one (an association or a corporation usually), and the actual use by another (the land owner or occupant). The land owner or occupant is the appropriator, for by the law, he is the only one who can appropriate water, and the carrier is merely an agency adopted by the appropriator to effect the appropriation. And thus we define the status of the carrier of the water.

The relation of the one, the appropriator, to the other, the carrier, must arise by contract, express or implied. Or if the term may be used to promote brevity of expression—by estoppel.

Now it is probable that of these propositions none will remain undisputed by some or others of those whose interests are, or seem to be, variant. One of the first, and in any event, the most essential thing to be done, is the settlement of these disputed questions and if success is to be attained it is submitted they must be settled to be as they are here stated.

To settle them by simple agreement is impracticable. That involves unanimity of all the disputants, which is hopeless; and it seems that it would be difficult to frame an agreement to be so definitive of the rights of all the parties as to be satisfactory to either the government or to the parties themselves. Nothing short of a decree of a court of competent jurisdiction will suffice, for that alone can be either definitive or final.

A very casual consideration of the Hansbrough-Newlands act will make apparent the absolute necessity for this settlement. It is sine qua non. It may be assumed that, from motives of self-interest—which in any case are always the safest to which to appeal—if from no others, the appropriators and the carriers of water in this valley are urgent for a prompt, definite and final adjustment of these questions. It ought not to be assumed that the settlement should be unfair, or disturb vested

rights, nor should such an attempt be considered, for that would defeat rather than promote the object in view.

The variant interests may, at large, be divided into two classes: that is, the water users and the carriers, where the user is not also the carrier. There will have to be settled among the one class, the users, the question of time and extent of appropriation of water, and as to them, the fact that the right to use water is appurtenant to the land for which it was appropriated. Amongst those of the other class, the carriers, assuming that they may preserve their autonomy, which they may do, there will arise questions of their relative rights to divert and carry water. All these questions are preliminary to and are independent of any consideration of the administration of stored water, and are questions in the determination of which the government probably cannot, and certainly will not, engage. They must be settled before we can go to the government at all. It may be taken for granted that the Hansbrough-Newlands act will be construed to authorize the construction of reservoirs for the storage of water for the irrigation of lands now in private ownership, for which there is only a partial and hence an inadequate supply, as are most of those to be benefited by the proposed Tonto reservoir. This construction seems easily warranted, and is in entire consonance with the purposes of the act.

The act also contemplates the organization of the owners of the lands irrigated by the reservoir or other works into an association for the management and operation of the works. It is true that this management and operation will not, under the terms of the act, vest in such association until the major part of the cost of the works shall have been repaid to the government.

The cost of the reservoir at Tonto (or practically all of it) will have to be assessed against those who are now the owners of land that is now in private ownership, at a rate fixed by the government, per acre. This assessment will be divided into annual payments extending over a period of not more than ten years, and beginning at a time to be fixed by the secretary of the interior, probably beginning when the reservoir is ready for service.

The act suggests that the govern-

ment will provide its own means for enforcing the payments of these assessments, except possibly, and perhaps preferably, if the plan hereafter proposed shall be approved by the secretary of the interior, and the association selected as the medium of the collection of these payments to the government.

Now, if a plan can be devised whereby: First, All disputes among the variant interests beneficially concerned in the storage proposition so finally and definitely settled that the government has no concern in that respect, and Second, That enough of the owners in number and extent of land now in private ownership (and homesteaders under the act) shall initiate rights to the use of the stored water in the manner outlined in the act to warrant the government in the belief that sufficient money will be by that means ultimately be repaid to reimburse it for its expenditure in the construction of the reservoir; then we have brought ourselves within the purpose, reason and object of the act and subjected ourselves to its conditions and have reason to believe that our application will be favorably entertained by the secretary of the interior.

Now, to accomplish these things it is proposed: First, To at once organize the association of water users contemplated by the act itself.

They should incorporate under the laws of the Territory of Arizona. Those, and those only, who have initiated rights, or may initiate rights to the use of water from the reservoir, should become constituent members. The act defines those to be homesteaders, or owners of lands now in private ownership, who initiate rights to stored water, under the provisions of that act.

The capital stock should be a sum equal to the estimated cost of the reservoir and other works undertaken by the government and divided into a number of shares equal, at a conservative estimate, to the number of acres that may be so supplied with stored or other water. The division of the entire fixed capital by the number of shares, so ascertained, will of course fix the par value per share of the stock. As the proposed stockholders cannot now initiate their water rights under the reservoir, and cannot do so until the government should offer them for acquisition, the subscription for the

stock should be for a cash payment for it at par, with a provision in the articles of incorporation, made irrevocable except upon proper consent of say, three-fourths of the stockholders (in value), that the stock of any subscriber shall be deemed fully paid up, upon the production by him of proper evidence, that he has initiated a right under the reservoir, conditioned for forfeiture, for his failure to comply with his engagement with the government, or with the association as the agent of the government for that purpose, in like manner and under the same circumstances as imposed by the government, and that until that time the subscribers of the capital subscribed for shall not be subject to be called upon for payment of their subscriptions.

In no event does the proposed corporation deal with the government in its corporate capacity, in initiating or perfecting any individual right; all those negotiations are by the individual with the secretary of the interior, precisely as though there were no such corporation, or if there were one, he was not a member of it. (Since writing this, Judge Maxwell, in his address to the people here, on the 9th of August, suggested that the government would probably prefer to deal with the association rather than with individuals who seek to acquire rights under the reservoir. If so, that would simplify matters and the association could become practically the agency of the government in that respect.)

The initiation of the acquisition of the right and its final perfection are mere qualifications to membership of the proposed corporation, and it is the principal qualification required by section 6 of the Hansbrough-Newlands act for membership in such an organization.

In making estimates the most conservative care should be taken. If error is made in fixing the estimate of cost too high, and extent of acreage of land too low, they can be corrected to meet the event with advantage to all; while if the estimate of cost is made too low, and estimate of irrigable acreage too high, the mistake cannot be remedied. To exceed the limits ultimately and irrevocably fixed by conditions in the estimate of lands capable of irrigation by the reservoir is disas-

trous. We can expand to meet conditions, contraction is impracticable, if not impossible.

Until the management and operation of the works shall be turned over to the associated land owners having rights under the reservoir the government will of course have the administration of the stored water; and that it may be assumed will be in accordance with expressed wishes of the right owners whether expressed by them jointly through their association or by them individually.

In practice the government would not only prefer, but it seems would have to have the joint expression of the right owners as to the distribution of the stored water. Of course always within the rules and regulations creating and defining those rights. Neither the association, nor could the individuals composing it, prescribe rules and regulations inconsistent with those prescribed by the act, or by the secretary of the interior by virtue of the act. The rules of the association, then, relative to the administration being necessarily identical with those adopted by the government, the purpose of the organization is to that extent accomplished, even though management and operation of the reservoir and other works for its accomplishment are temporarily with the government.

There is neither proposed a partnership of government and association, nor can there be interference by the association, either with the purpose of the government or its methods for its accomplishment. Both are independent, seeking to accomplish a common purpose, with the association always subordinate to the government, until by lapse of time and happening of events, the management and operation of the works by the terms of the law, vests in the association.

Now it may happen that some may subscribe to these articles of incorporation who may never qualify by becoming the initiators of rights under the reservoir, either because they do not apply to become so or because there may not be enough rights to be had. To meet this condition a provision should be made that a reasonable time shall be limited after which applications can be made for such rights, within which application shall be made therefor, failing which the subscribers

shall become disqualified, shall be released from his cash subscription, and lose his rights as a stockholder.

Incident to the power to manage and operate the work constructed by the government as provided in section 6 of the act, are naturally the power to acquire the means of distribution of the water stored and developed, as waterways, pipe lines, flumes, gates, dams, etc., and to acquire or use agencies for that purpose, and to manage and control any of these, according to the rules prescribed by the government as to the stored water, pending the vesting of that management and operation in the association, and independent of that, but of course never inconsistently, the distribution of other than stored water, as long and in so far as a distinction can be and is desired to be preserved between stored water, and that normally flowing in the rivers. Those powers should be carefully defined and stated in the articles of incorporation and yet made comprehensive enough to meet any conditions existent or that can be anticipated.

There are now waterways and other means of distribution in the valley more or less adapted to the needs of distribution of stored as well as other water. Provision should be made for the use of these means, or such of them as may be expedient, and as well, if after careful consideration it be deemed best, the acquisition of new and other means. It seems almost too flat a truism to say that the government will not undertake to store water, if there are no means provided for its distribution to the users—and those means must be adapted to that purpose. It is true that the act may be construed to authorize the secretary of the interior to construct or otherwise acquire means of distribution of the stored water, but it seems unreasonable to expect it, under the conditions prevalent in this valley.

As the means for the distribution of stored water is so necessary an adjunct to the storage works, the government will naturally and logically require that the means of distribution shall be co-extensive with the storage works themselves—shall be entirely adequate to the service and subject irrevocably to all the rules making of practical use, to accomplish the purpose of the con-

struction of the storage works, the water so stored.

The owners of the present canals have certain rights, property rights, that cannot be divested without their consent or by the exercise of its power of eminent domain.

It is extremely desirable that the means of distribution of all water, stored and other, shall be under the immediate and exclusive management and control of the water users. Several plans suggest themselves for the accomplishment of this desideratum.

If the canal companies, the owners of most of the canals, should preserve their autonomy and the ultimate title to their property then a perpetual contract could be entered into between them individually with the association of water users, whereby:

First. The property is perpetually leased to the association for an agreed reserved rental payable annually or otherwise, with a right to the association to purchase, or

Second. Whereby the canal company shall undertake to carry and distribute stored and other water to its customers at a reasonable cost to be agreed upon between the company and its customers, subject, however, to the rules of the government as prescribed by it for the distribution of stored water, and to the rules prescribed by the association for the distribution of both stored and other water, not inconsistent with those prescribed by the government, with an agreement to sell to the association.

Either of these plans are short of the desideratum, and involve many practical difficulties. Still they are practical. Each of the above propositions, it will be noted, reserve to the association the privilege of purchase. Many contingencies too numerous to mention here, but necessary to be considered, are to be met, as expropriation of corporate franchises, existing contracts, mortgages, etc.; difficulties not insuperable, but tedious and complex in the working out. They exist and have to be met.

A more desirable plan is the purchase outright by the association of such of the canals, etc., as may be found necessary or desirable for the purposes of the association.

A rather anomalous situation would arise between the proposed association and the canal companies when we come

to consider them as possible purchaser and seller, the one from and to the other. There would be but one possible purchaser and that purchaser would be anxious to buy, and there would be but one seller and he would be anxious to sell; it would seem that they should easily agree upon terms.

The maximum value of the property to be sold is simply the amount of money necessary to construct a new system of canals, etc., adequate to the carriage and distribution of both stored and other water.

In the event of new construction the old canals would be valueless, for there would then be no purchaser and the relation suggested above as anomalous would be changed. If this plan of purchase were adopted it would have to be after it was found desirable to do so after negotiations have progressed so far as to determine the price and the terms of its payment. The price should be satisfactory and the terms of payment adjusted so as to be conveniently met by the purchaser. In this plan, as in the others suggested, there will be difficulty in adjusting the rights of lienors and others who will have to be dealt with before final consummation. The rights of water right owners offer no obstacle, for if the association is formed as suggested, and a purchase of any or all of the canals are effected by it, the water right owner's right is replaced by a better one in the association, and merged in it, as will be hereafter explained.

Another, and the simplest plan, is the acquisition of the canals by the exercise of the power of eminent domain, by condemnation proceedings. This plan may be adopted to acquire the title to one or more of the canals, or of all of them seriatim, as the association may elect, the procedure being entirely adequate to those ends. This plan eliminates in a great measure a consideration of the right of lienors, etc., as they are transferred to the fund created by the payment of the assessed damages.

Finally, the association may construct its own system of canals and other distributive works.

I have at hand no data from which to make an estimate of the cost of the execution of any of these plans, but whatever that cost may be it will have to be paid. The cost might and should

have considerable influence in the determination of the selection of a plan.

Now, as the raising of funds for meeting the cost under any plan: The articles of incorporation should provide that all the ordinary expenses of maintenance and operation should be annually or at other stated intervals be estimated by the directors and assessed pro rata by the number of acres, against the stockholders. That when an extraordinary expenditure is contemplated, as for the purchase, construction or other method of acquisition of a canal or other works, exceeding in cost, say \$5,000, the board of directors shall formulate the same into a proposition to be submitted to the stockholders. The proposition should contain a statement of the purpose of the contemplated expenditure and the estimated amount of it fully enough to acquaint the stockholders in a general way of the purpose of the expenditure. Upon a resolution of two-thirds of the directors a special election by the stockholders shall be called to consider the proposition submitted, and if two-thirds of the stockholders shall vote in favor of the proposition the directors shall proceed to carry on the work proposed, and shall assess the estimated cost thereof against the stockholders, as hereinafter proposed.

For the purpose of these extraordinary expenses the country embraced in the lands under cultivation by stockholders of the association should be divided into districts. These districts should be made severally to consist as nearly as it is practicable to do so of lands immediately supplied by the canal system; as, tentatively, those lands under the Salt River Valley canal should constitute one district, those under the Maricopa another, those under the Utah another, and so on. Then when it is proposed by the association to expend money for an extraordinary purpose, as for the acquisition of a canal by purchase, condemnation or construction, the cost should be assessed against the stockholders of the district particularly benefited, and amongst those in that district as they are individually benefited.

It should be provided that if in particular cases it should seem inequitable to assess the whole cost against a particular district, then the council should have power to direct what portion

should be so assessed, and what portion should be borne by the association at large.

If the proposed expenditure is not required to be all made in one year the assessments may be made payable in annual or other periodical installments, adjusted so as to meet the expenditure as they may be required. The manner of enforcing the payments of such assessments is explained in another place.

The articles should provide that the shares of stockholders should be complete evidence of the right of the holder to the use of the water for the irrigation of designated land at the rate of one acre for each share of stock, subject to the rules and regulations prescribed by the association therefor. That the ownership of stock shall be evidenced by a certificate thereof, duly attested by the proper officers of the association, wherein the lands to which the water right is appurtenant shall be described with certainty sufficient to identify them. That the stock shall be transferable on the books of the association, but as appurtenant to the lands described in the certificate, and the same shall be deemed to pass, whether expressly conveyed or transferred by any conveyance of the land, or pro tanto any part of it to the successor in title, whether such transmission of title is by grant or by operation of law. It should be further provided that any stockholder by the act of subscription shall pledge the land and appurtenances for which water rights are acquired and evidenced by such certificate of stock for the prompt payment of all assessments made in the manner prescribed by the articles, and that the lien for the payment thereof may be enforced by a sale of the land or so much thereof as may be necessary to discharge the same from time to time, and as often as such assessments are in default. Such sale to be by the treasurer of the association, upon due notice, and at a place designated, with a reasonable time of redemption reserved. The particular provisions concerning the enforcement of the collections of the assessments should be very definitely stated.

The creation of this lien will probably require the assent of the wife, where the land is community property; but this presents no great difficulty. It must be remembered that the whole

matter, whatever plan be adopted, will particularly, at first, involve long and tedious labor. But there is no evading it and it ceases to be formidable when it is considered that the work is much of the same character, and no more difficult, than the assessment of county taxes, and can be done much cheaper and much better.

Each stockholder of at least one share should be allowed one vote at all corporate elections, and only one, whatever the number of shares he or she may own, and his or her qualifications as an elector shall be determined by reference to the association's books as they appear, say twenty days before an election. In no event shall voting be permitted by proxy, but must be done at the designated polling place or places, by the stockholder in person.

Regular elections should be provided for, to be held annually for the election of directors, and upon other matters properly referable to the stockholders. These regular elections should be held in the spring, so as to be free from the influences of and the confusion incident to county and territorial elections. Specific rules governing elections should be provided, as for polling places, election boards, voting, canvass of votes and returns, etc. Provision should be made also for the calling and holding of special elections. There should be provided a council, in whom shall be lodged the general legislative powers of the corporation, as to making, modification or repealing of by-laws, for the government of the members and the directors. The council should consist, tentatively, of say forty members, who shall be stockholders, one-half elected every year, and holding two years. This council should meet in regular session at designated times and places, and specially when called by the directors, or by a designated number of the stockholders. To this council should be left the general matters of the by-laws, the fixing of salaries and compensation of officers, etc. They should serve without compensation and be governed in the transaction of their business by rules usually governing legislative bodies.

The immediate management of the affairs of the association should be vested in a board, of say nine directors, and in such officers as the articles of the association or the council may

prescribe. The board should hold regularly designated meetings and special ones in a manner to be prescribed by the by-laws. The directors should be allowed a proper compensation, to be fixed by the council. There should be a president, with the usual executive powers of that office, who should also be the presiding officer of the council. There should also be a secretary and treasurer exercising respectively the usual functions pertaining to those offices, who should be required to execute a proper bond in amount and with sureties prescribed by the council. Any proposition emanating with the directors, involving an expenditure of more than \$10,000, shall be first approved by the council before being submitted to the stockholders. Council may prescribe penalties for the infraction of by-laws and provide that those imposed, if not otherwise discharged, shall be added to the assessments against defaulting stockholders and collected as assessments are.

Now, as to the settlement of the rights of water users; as they now are, and which the act expressly provides shall not, and which could not, be disturbed or divested.

A discussion of the matter here seems unnecessary. That there is a priority of right to use water must be conceded. The priority of appropriation is the fundamental rule of all property; the first right to it was its appropriation, and every right is inevitably traceable to it. As with any other species of property so it is with the property in the right to use water. If there is enough for all to take indefinitely, and as he wants it, the exercise of the right conflicts with that of no other, and priority becomes a distinction of no practical importance.

It is proposed that the government shall construct a reservoir that shall conserve an amount of water which with the natural flow of the Salt and its tributaries shall afford an ample supply for all the wants of the owners of a given extent of land. It should be an inflexible rule never to be departed from, that no right to the use of water from these sources should be accorded to the owner or occupant of one acre of land beyond the capacity of these sources of supply to fully and adequately furnish. If these conditions can be made to prevail, as long as they

do prevail, then it matters not to Z that A is first in the list in point of time, for A and Z are equally supplied.

It would be disastrous if these conditions should change—that is, if the supply of water should become insufficient for the needs of all who shall have acquired a right to it. This could occur by the breaking away of the impounding dam, and we should then be remitted to the conditions that now prevail, and the natural flow of the Salt and its tributaries, as now, would be the supply and be, of course, insufficient for all; and the question then obtrudes itself, who should have the use of that water? The conditions having reverted to their present state, the rights of water users would naturally and logically also revert and be as they now are.

If by miscalculation, carelessness, want of foresight or other untoward cause, the right to use water from the reservoir was disposed of, or attempted to be disposed of, to the owners or occupants of a greater extent of land than can be justly supplied, there would be instantly a conflict of rights. If there were but water, of both stored and other water, enough for, say 200,000 acres, and rights had been issued to the owners and occupants of 300,000 acres, then there would be only two-thirds of a sufficient supply for all, or 100,000 acres that would be without any. The latter alternative is vastly more preferable, for land with an appreciably inadequate supply of water is in reality valueless. That conclusion is inevitable and has been demonstrated so often in history that it hardly needs the statement of it. Then the old question obtrudes itself—who of these owners of the 300,000 acres should have the adequate supply, and who of them none? Or should the whole 300,000 all go down in common disaster? Any policy that requires any water user to use less water than is necessary under the most economical and skillful cultivation and irrigation to make his lands the most productive, is a policy that leads to universal ruin.

It is not intended to say that it might not be good policy in a time of unexpected and sudden but temporary shortage of water to provide for a distribution of water that will save permanent growths as distinguished from annual or temporary ones—but this

would be simply to meet an emergency and it is not obnoxious to, but rather proves the rule stated.

There is another consideration that is of very practical importance, and that is the question, who shall be the beneficiaries of the construction of the proposed reservoir?

It would seem that it would be the policy of the government to make up by means of stored water the deficient supply for those lands already imperfectly cultivated, because of this deficiency.

There is, it may safely be stated, more than 1,000,000 acres of land in this valley to which water could be distributed from the proposed Tonto reservoir, by the existing means of distribution if there were a sufficient supply of it. Some of it is absolutely unreclaimed, some partially reclaimed and others more nearly so, but none in practice as it has lately prevailed here, completely so.

If the reservoir is built and fulfills our expectations there will be no distinction in practice, in the distribution of stored water and other water, whatever its source, by the general reservoir and canal system. All will have the benefit of the water as it did naturally, and would again if not for the reservoir, naturally flow in the river, a large but indefinite part of which never has been appropriated. If it can be obtained there will be applications for water for the 1,000,000 or more acres susceptible of service. But there will not be enough. There can never be enough to meet the demand.

Then how shall applicants be served? It is the most logical, the most natural, the most just and the most practicable plan to meet the demands in the order of the existing appropriations until they are supplied, and if there be a surplus then to new lands acquired by homesteading under the provisions of the Newlands law.

Enough has been said to demonstrate the necessity of speedy and finally settling the question of priority of rights of land owners within the territory proposed to be supplied by the Tonto reservoir. Two plans suggest themselves, the selection of one or the other much depending upon the readiness with which the proposed beneficiaries approve of either.

One is by agreement of all the water

users to submit the question of the date of appropriation, the extent of the appropriation and the manner of use to arbitrators selected under the statute, for award, for with a provision that the award shall be final, without appeal, and that the award be made a decree of court.

The other is to institute a suit in the district court for that purpose, having all the water users parties plaintiff or defendant with the incidental right of omitted parties, to make themselves parties; then have the case submitted to a referee to report to the court his conclusions as to time and extent of the appropriation of each party, and in due course a decree of the court thereon.

Of course it must be understood that nothing can be done or attempted to regulate the course of business of the courts by such an agreement.

Diligent work can accomplish this in a comparatively short time and the question laid away as settled.

It should be made a condition precedent to the acceptance of a subscription to the capital stock of the proposed association heretofore outlined, that the subscriber shall have agreed to submit these questions, for settlement as proposed so that the extent and time of his appropriation shall have been determined by one or the other of these proceedings. After the determination of these rights the owners of them should be classified, each by the year of his appropriation.

Then, when the government is ready to issue rights under the reservoir, preference should be given to applicants therefor according to the class in which their appropriations are found, giving preference to the oldest, thence in order of time to the newest.

Reasonable limitations of time should be imposed within which this preference should be exercised, imposing upon the delinquent the penalty of postponement to await his turn at the last.

It is of course contemplated that after the plan here proposed shall be in operation, that there will be no pecuniary benefits accruing to the stockholders by way of profit of operation, and that when the cost of maintenance and operation shall have been provided for there can and will be no further charge to the water user.

It would require others than the com-

plers of this to make even an approximate estimate of the cost of and maintenance and operation and the probable income from sources other than the assessments against the stockholders.

The association will have no interest bearing debt to be charged up against the water users. The cost of management and administration can be reduced to the lowest possible limit by concentration and systematization. Taking these things into consideration it is conservative to say that the cost of water to the user ought not to exceed 75 cents per acre to the user per year. And this cost can be still further reduced from various sources of income.

The water impounded in the reservoir will afford power at a cost of one-fourth of that now paid for many times the amount now used in this valley, and even then produce a handsome income.

The cities and town in the valleys will need a supply from which an important income can be derived. Power could be transmitted to pump water for the Pima Indians and the requirements for that purpose would hardly make an appreciable diminution of the whole amount developed, and would afford them a greater, more certain, more constant and a more reliable supply of water than they ever had. The power could be used to raise the water now stored and constantly renewed in the gravelly strata underlying the surface of the valley—an amount of important magnitude.

Viewing the matter from that of the extreme pessimist the prospect is almost dazzling. Taking the cost of the reservoir and of the system of distribution at the highest it can be expected. Reduce the amount of land to be irrigated to the least extent, within the certain knowledge of the most incredulous. Make liberal allowance for faults, providence, carelessness, mistakes and unskillful management and administration. Take into consideration disaster by flood. Ignore possible income from other sources other than from the stockholders themselves, and yet the result is of such magnificent proportions as to be alluring.

There are dangers, too, some of them

already realized, that have crept insidiously upon us, and are yet more insidiously and steadily increasing, that we will be at least better equipped to confront.

For more than fifteen years under our very eyes, but seemingly unnoticed, there has been a constant diminution of the water flowing into this valley. Aside from unusual meteorological conditions, prevalent for the three or four years last past, this is due to the constantly increasing diversion of water from the tributaries to our supply. And it is going on unchecked. It would be one of the most important functions of the proposed association to check this encroachment. That no attempt has heretofore been made to remedy this sufficiently suggests that while the present conditions of diversity and antagonism of interests continues in this valley it need not be expected. With unity of interest it may be hoped for.

We cannot console ourselves with the hope that matters with us cannot grow worse than they now are. Simple inactivity will make them worse. How much the prophet will tell you leaves a result not worth the computation.

Whether the government builds or aids in building the Tonto reservoir or not, to stay our progress to a disastrous end, there must be a unification of the interests of the water users of this valley. Instances of utter ruin that is inevitable under a continuance of the present conditions in this valley may easily be pointed out within easy search.

The plans and suggestions here submitted are tentative. It has not been attempted to work out every proposal in detail to its ultimate result. The result has been anticipated in each instance as desirable; the general means to the end has been suggested, and the filling in left for time for more and varied deliberation.

If the plans and suggestions do not, or some of them do and others do not, meet with approval, yet if they have the effect of pointing out other and better ones, this work will have justified itself.