

February 8, 1999

A severe sustained drought (see appendix C hereto) could knock the "Criteria for Coordinated Long Range Operation of Colorado River Reservoirs" (Mr. Cook's paragraph 11) into a cocked hat. What a drought would not change, however, is in case of a deficiency, the obligation of the Upper Basin states to furnish the water at Lee Ferry referred to in Article III(a)(b)(c) and (d) would continue undiminished. If, pursuant to the Upper Basin states water managers' recommendations and encouragement, more water is permitted to be withdrawn than has now been decreed and divested for the purpose of increasing development out of the basin on the Front Range of Colorado, disaster looms on the horizon.

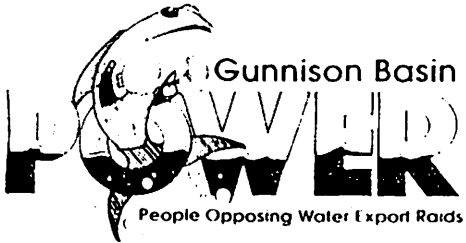
POWER would make a further point not dealt with by Mr. Cook. Lower Basin need for water is increasing exponentially. Las Vegas, Nevada, has been awarded 42+ sections of dry land by the U.S. Government, (30,080 acres), much of which will need water. (See Appendix D hereto.) Southern California's and the Imperial Valley's need for water is growing by leaps and bounds. No Upper Basin water manager should want to involve Colorado in a dispute over water with the Lower Basin States which boast of 3 U.S. Supreme Court Justices, and whose U.S. Representatives outnumber our Congressional delegation about 10 to 1. To set up a conflict with such weighty opponents does not seem wise to POWER, but rather seems to be a recipe for calamity for our Colorado community.

We ask that you read POWER'S amended letter again with an open mind. We ask our water managers to reconsider the risks and possible dire consequences of dismissing interpretations of the Colorado River compact which Lower Basin users are virtually certain to make in the future as their demands for Colorado River water grow ever more intense.

Sincerely,

POWER

By: P.C. Klingsmith, Chairman  
POWER Steering Committee



xc: Kathleen Klein  
L. Richard Bratton, Esq.  
Charles Cliggett, Esq.  
David Baumgarten, Esq.  
Robert S. Crites, Jr.  
Mr. Wayne E. Cook  
Mr. Randy Seaholm  
Representative Russell George  
Senator Ray Powers

### Colorado River Compact

37-61-101.	Colorado River compact.	37-61-103.	Approval waived.
37-61-102.	Compact effective on approval.	37-61-104.	Certified copies of compact.

37-61-101. Colorado River compact. The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making

an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

- W. S. Norviel, for the State of Arizona;
- W. F. McClure, for the State of California;
- Delph E. Carpenter, for the State of Colorado;
- J. G. Scrugham, for the State of Nevada;
- Stephen B. Davis, Jr., for the State of New Mexico;
- R. E. Caldwell, for the State of Utah;
- Frank C. Emerson, for the State of Wyoming;

who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Article II

As used in this Compact: -

- (a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.
- (b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.
- (c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.
- (d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

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the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

### Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

### Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

EXH "A"

## Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

## Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

## Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

## Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

## Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

## Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

## Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

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pg 2

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,  
W. F. McClure,  
Delph E. Carpenter,  
J. G. Scrugham,  
Stephen B. Davis, Jr.,  
R. E. Caldwell,  
Frank E. Emerson.

Approved:  
Herbert Hoover.

Source: L. 23: p. 684, § 1. not in CSA. CRS 53: § 148-2-1. C.R.S. 1963: § 149-2-1.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § 309, 310, 373, 374.  
C.J.S. See 81A C.J.S., States, § § 8, 31; 93 C.J.S., Waters, § § 5-8.  
Law reviews. For article, "Water for Oil Shale Development", see 43 Den. L.J. 72 (1966). For comment, "Bryant v. Yellen: Perfected Rights Acquire New Status Under a Belated Clarification of Arizona v. California", see 58 Den. L.J. 847 (1981). For article, "The Law of Equitable Apportionment Revisited, Updated and Restated", see 56 U. Colo. L. Rev. 381 (1985). For article, "Competing Demands for the Colorado River", see 56 U. Colo. L. Rev. 413 (1985). For article, "Management and Marketing of Indian Water: From Conflict to Pragmatism", see 58 U. Colo. L. Rev. 515 (1988).

**37-61-102. Compact effective on approval.** That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

Source: L. 23: p. 693, § 2. not in CSA. CRS 53: § 148-2-2. C.R.S. 1963: § 149-2-2.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § 309, 310. C.J.S. See 81A C.J.S., States, § § 8, 31.

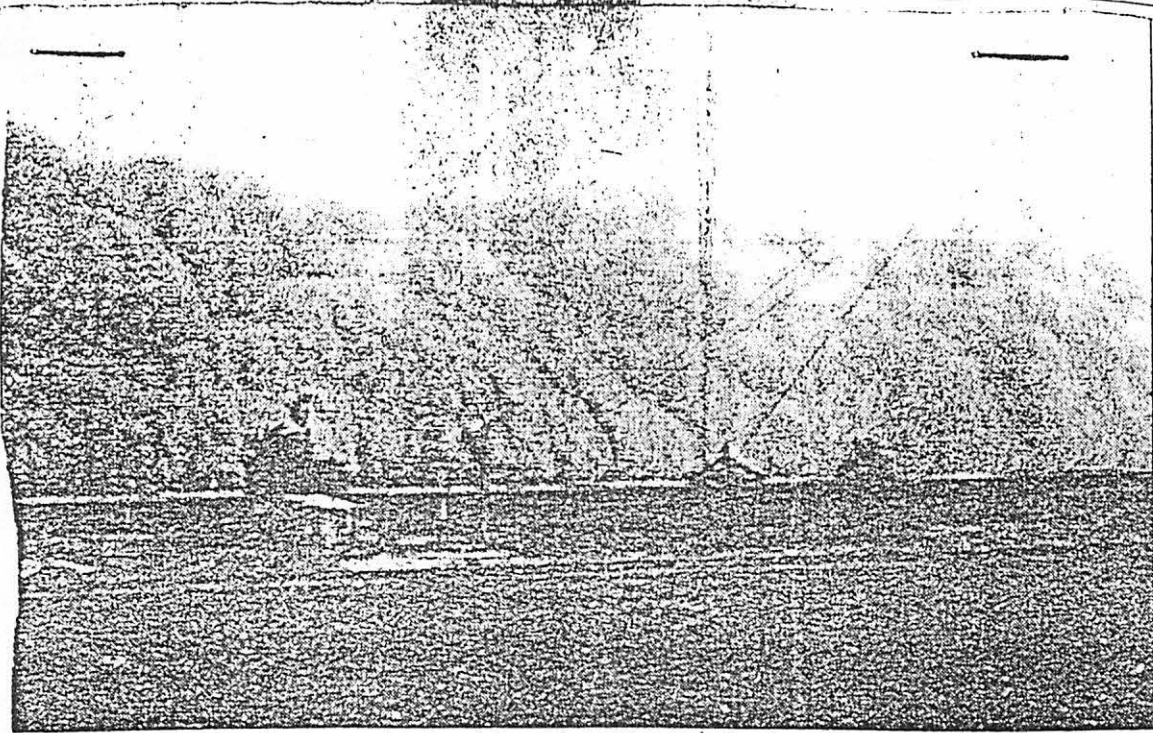
**37-61-103. Approval waived.** That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 525, § 1; not in CSA; CRS 53, § 148-2-3; C.R.S. 1963, § 149-2-3.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § 309, 310. C.J.S. See 81A C.J.S., States, § § 8, 31; 93 C.J.S., Waters, § 7.

**37-61-104. Certified copies of compact.** That certified copies of this article be forwarded by the governor of the state of Colorado to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 526, § 2. not in CSA. CRS 53: § 148-2-4. C.R.S. 1963: § 149-2-4.



Denver Post file photo

**A giant dust storm approaches Dodge City, Kan., during the 1930s drought.**

# Scientists differ on next drought

DROUGHT from Page 1E

cluding the Midwest "bread basket," during the last 700 years.

The first of those megadroughts, in the 1200s, is widely believed to have wiped out the Anasazi culture around Mesa Verde and elsewhere in the Four Corners region.

Both Woodhouse and Hoerling said recent years have seen revived scientific interest in a formerly discredited "sunspot theory" that linked sunspot activity, and changes in solar radiation, to weather and agricultural cycles. Those, in turn, were tied to economic cycles of boom and bust when agriculture played a bigger role in world economies.

## Vivid memories

For some people, Dust Bowl memories remain vivid more than 60 years later.

Seventy-year-old Kansas rancher Bill Young, in Denver for the National Western Stock Show and Rodeo, remembers Dust Bowl times in Kansas in 1936.

"It was terrible," he said. "I remember people lined up to get emergency food from the federal government.

"My family lived in a house with a dirt floor and no electricity. We had no gas for the car. People weren't eating and out-of-work men were riding the rails in box cars. But there was no work anywhere in a part of the country that could feed half the world.

"Not many people today can even imagine what it was like in 1936," said Young, whose Broken Lance cattle operation today spans 500 acres in south Kansas and Missouri. "But you couldn't blame farmers and ranchers then. They were uneducated and had no idea what was going to happen. Today, we know better. We know how to hold the soil down with contour plowing and shelter belts.

"But if we have just two consecutive years of drought, a lot of ranchers won't make it. Old-timers, who got their land years ago, can survive. But those who came in later and have big bank notes to pay off have no chance. Today, the banks can't even carry them if they wanted to; new regulations have eliminated that."

In Colorado in the 1930s, "ranchers went broke and some committed suicide," recalled Greeley rancher W.D. Farr, 88, who was

presented the National Western's 1999 "Citizen of the West" award last week.

"During dust storms, cars had their headlights on in the middle of the day. Kansas and Oklahoma were worse, but it was pretty terrible in Colorado with no water. That's why we needed the Big Thompson project," added Farr, who was a prime mover behind the tunnel project that in the late 1930s began diverting water from the Western Slope to the Front Range.

## Question of survival

During those Dust Bowl years, "it wasn't a question of making any money, but of simply surviving," said Stock Show President Pat Grant, whose father ran a ranch near Roggen in northeast Colorado. Weld County rancher and Stock Show official Ben Houston was just a boy back then, but "I often wonder how we survived it at all."

"They'd have to trail cattle 50 miles to find some grass, and I remember dust caked on cattle so that they could barely breathe."





# UPPER COLORADO RIVER COMMISSION

received  
F11-99

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

January 8, 1999

Ms. Kathleen C. Klein  
Manager  
Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Pete Klingsmith		
From	Jill Steele		
Co.	UGRWC	Co.	UGRWC
Dept.		Phone #	641 6065
Fax #	641 1331	Fax #	641 6727

Dear Ms. Klein:

I am writing in response to your letter dated December 3, 1998. You have asked for the Commission's opinion concerning a letter you received from People Opposing Water Export Raids (POWER) regarding water availability in the State of Colorado as affected by requirements of the Colorado River Compact. The POWER letter contains serious misinterpretations of the Colorado River Compact and disregards facts regarding water use in the Colorado River Basin.

POWER's letter fails to recognize the following critical Compact provisions:

The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America (Article II(a), emphasis added). 2

There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of rights which may now exist (Article III(a), emphasis added). 3

In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters [i.e. waters of "the Colorado River system"] by 1,000,000 acre-feet per annum (Article III(b), emphasis added). 4

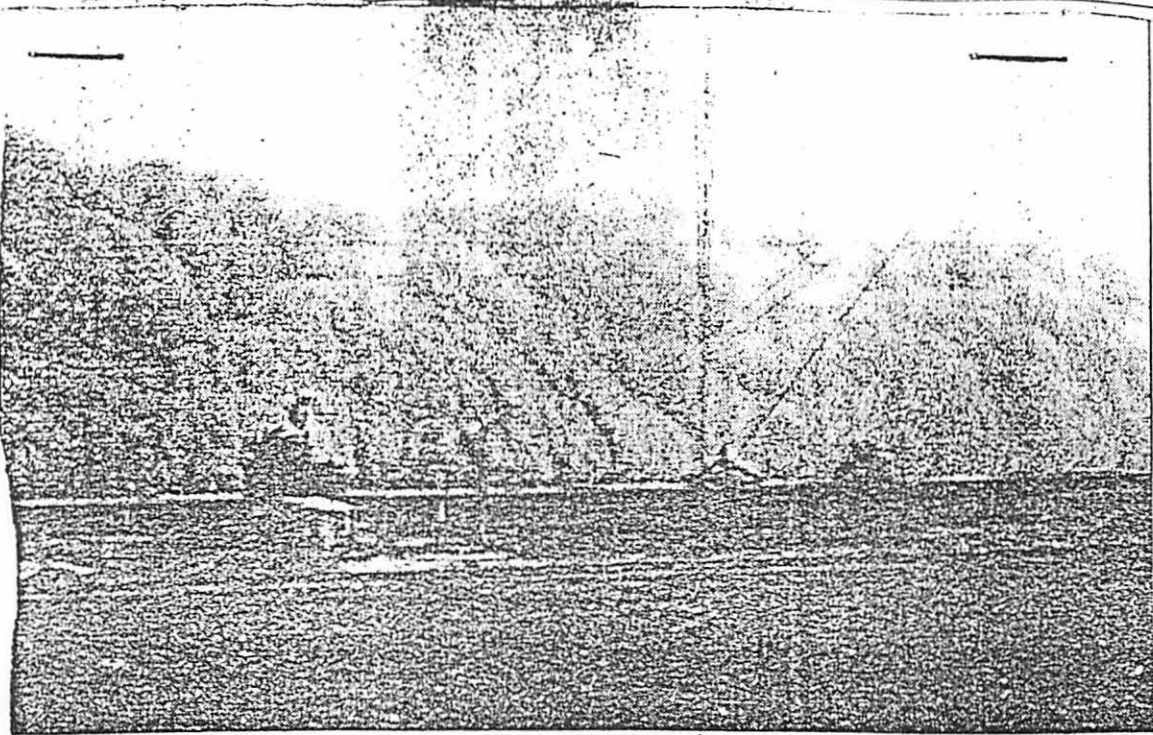
The Colorado River system includes the tributaries below Lee Ferry such as the Virgin, Little Colorado and Gila Rivers. These tributaries produce an average of at least two million acre-feet of water per year. 5

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