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MINUTES AND RECORD  
OF  
SESSIONS NINETEEN THRU TWENTY SEVEN  
OF THE  
COLORADO RIVER COMMISSION  
NEGOTIATING THE  
COLORADO RIVER COMPACT OF 1922

DIAMOND  
Colorado State University  
Fort Collins, Colorado 80521

Colorado River Compact  
Negotiations

Part 4

1-168

missing

135

161

162

## FOREWORD

This is a mimeographed reproduction of the minutes of meetings 19 to 27 inclusive of the Commission which negotiated the Colorado River Compact. The Compact was signed in Santa Fe, New Mexico, on November 24, 1922. Subsequently it was ratified by all of the seven Colorado River Basin States and, in 1928, approved by the Congress of the United States.

There were a total of twenty-seven meetings of the Commission as follows:

First to Seventh, Washington, D. C., January 26-30, 1922; Eighth, Phoenix, Arizona, March 15, 1922; Ninth, Denver, Colorado, April 1, 1922; Tenth to Twenty-seventh, Bishop's Lodge, Santa Fe, New Mexico, November 9-24, 1922.

The Minutes of the First Eighteen Sessions are included in a separate volume.

This mimeographed reproduction was prepared from a copy used by Mr. Frank Delancy of Glenwood Springs, Colorado during the course of the lawsuit United States of America v. Northern Colorado Water Conservancy District, et al., Civil Nos. 2782, 5016 and 5017, in the United States District Court for the District of Colorado.

It will be noted that only the Minutes of the first part of meeting number twenty-six, held Friday, November 24, 1922, at 10:00 a.m. at Santa Fe, New Mexico are included in this volume. In recent years inquiry and search made by various persons for the minutes of subsequent parts of meeting number twenty-six have failed to uncover them. A note at the end of the first part of this meeting states "(First part of meeting held Friday, Nov. 24, '22 at 10 a.m. (concluded) )", which indicates that there must have been a subsequent part or parts of meeting number twenty-six. A careful reading of the Minutes of this meeting further substantiates this conclusion.

April 10, 1956

Ival V. Goslin  
Engineer-Secretary



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EXPLANATION OF INDEX

The numbers of the pages listed on the Log of Meetings and the Log of Topics which follows are consecutive. The page numbers are not identical to those of the original Minutes.

# MINUTES AND RECORD OF COLORADO RIVER COMMISSION

## -- LOG OF MEETINGS --

<u>Session No.</u>	<u>Date</u>	<u>Place</u>	<u>Page</u>
19	November 19, 1922	Bishop's Lodge Santa Fe, New Mexico	1
20	November 19, 1922	Bishop's Lodge Santa Fe, New Mexico	53
21	November 20, 1922	Bishop's Lodge Santa Fe, New Mexico	97
22	November 22, 1922	Bishop's Lodge Santa Fe, New Mexico	135
23	November 22, 1922	Bishop's Lodge Santa Fe, New Mexico	169
24	November 23, 1922	Bishop's Lodge Santa Fe, New Mexico	207
25	November 23, 1922	Bishop's Lodge Santa Fe, New Mexico	245
26	November 24, 1922	Bishop's Lodge Santa Fe, New Mexico	273
27	November 24, 1922	Bishop's Lodge Santa Fe, New Mexico	297

---



-- LOG OF TOPICS --

	PAGE
Session No. 19 -- November 19, 1922	1
Roster of Attendance	1
Appropriations in Excess of 7,500,000 acre-feet	2
Waters in Excess of 15,000,000 acre-feet	3
Including Gila River	5
Mr. Norviel objects to proposed apportionment	7
Mexican burden in lower basin apportionment	11
Adjustment of claims and controversies	14
Waters not covered by the compact	16
Article VIII	18
Article IX	21
Adjustment of controversies between two states	23
Temporary adoption of Article VIII	27
Technical committee	27
Collecting data - responsibility for	28
Second Part - Session No. 19	39
Mexican burden equally borne by Upper and Lower Division	39
No acknowledgment of Mexican rights until established	41
All-American Canal to change conditions	43
200,000 acres irrigated in Mexico in 1922	45
McKisick - Mexican burden to come out of lower basin's 7,500,000 acre-feet	48
Session No. 20 -- November 19, 1922	53
Roster of Attendance	53
Draft of paragraph about Mexican burden	53
McClure recognizes California portion of burden under contract	55
Norviel - doesn't like any recognition of Mexican rights	68
Agreement that upper basin supply half of Mexican burden	69
Preferential uses of water	70
Discussion of purposes of the compact	79
Title - Preamble	83
Definitions	85
Appropriation between basins	88
Indians	89
Draft of compact	90
List of articles agreed to	90
Session No. 21 -- November 20, 1922	97
Roster of Attendance	97
Rights of Indians	97
Protection of rights of states by legal action	98
Approval or consent by Congress	100
Mr. Davis - no compact if disapproved by one legislature	104
Norviel - no time limit - indeterminate until some legislature finally approves	104

## Log of Topics - Continued

PAGE

Certification adopted	108	
McClure wanted compact not to be in effect until construction of dam in Boulder Canyon and flood control works for protection of Imperial Valley	108	
Maintenance of minimum flow in lower basin	117	
Second Part - Session No. 21	119	
Carpenter - reservoir construction in entire basin	121	
Hoover - preliminary division	127	
7,500,000 acre-feet to each basin	129	
Session No. 22 -- November 22, 1922	135	
Roster of Attendance	135	} missing p. 135
Agreement to omit all references to Mexico from minutes	135	
Apportionment	136	
Additional 1,000,000 acre-feet - "of water"	137	
Deferment of date for future apportionment - Carpenter	146	
Adoption of Article III	149	
Preferential rights and navigation	151	
Suggested clause to protect rights of United States	155	
Hamele - enumerates rights of United States	157	
Hoover - Congress gave states right to apportion water	160	} missing p. 161 + 162
Second Part - Session No. 22	163	
Upper Lasin has obligation to control the river - Hoover	164	
Carpenter - Article on purposes is guide to intent of framers	167	
Session No. 23 -- November 22, 1922	169	
Roster of Attendance	169	
Draft of article on present perfected rights	169	
McClure suggests omitting 4,000,000 acre-feet minimum flow	176	
Review of whole compact	177	
Hoover refers to 75,000,000 acre-feet as water	188	
Hoover - Article III(a) affects only the lower basin	190	
United States not a party	192	
Time compact to become effective	203	
Session No. 24 -- November 23, 1922	207	
Roster of Attendance	207	
Definition of "domestic use"	207	
Removal of clause 4,000,000 acre-feet minimum flow	209	
Navigation	210	
Adoption of statement on navigation	221	

# Log of Topics - Continued

PAGE

Second Part - Session No. 24	223
Power generation subservient to dominant purposes	223
Carpenter - right of power should not attach to surplus	225
Storage contemplated	234
A draft of compact	237

## Session No. 25 -- November 23, 1922 245

Roster of Attendance	245
Preamble	246
Article I adopted	247
Definitions (incl. definition of apportionment)	250
Divide water or divide use of water	252
Article III - apportionments - adopted	259

Second Part - Session No. 25	261
Navigation clause adopted	261
Control of water within states	262
Future controversies	262
Compact binding and obligatory when approved	264

Third Part - Session No. 25	267
Lower basin rights to come from storage when 5,000,000 acre-feet capacity available	267

## Session No. 26 -- November 24, 1922 273

Roster of Attendance	273
Storage of water to satisfy lower basin rights	273
Gila River	275
Unperfected rights	276
Judge Davis - water stored must be within apportionment	278
Carpenter - storage not limited to either basin	279
Norviel - regulation and control of storage should be in control of lower basin no matter where it may be	280
Caldwell - lower basin should be brought within its apportionment	284
Hoover - Upper Basin only has to provide 7½ million acre-feet per year	289
Definition of apportionment stricken	293
Motion to adopt compact for engrossment	293
Dividing uses or dividing water	294
Carpenter - apportioning water	295

Log of Topics - Continued

PAGE

Session No. 27 -- November 24, 1922

297

Roster of Attendance

297

Appeal by Jay Turley filed

298

Minutes of 9th and 10th sessions approved

298

Girand Project

298

McClure of California objected to Girand license

300

Girand license beyond jurisdiction of Commission

300

Resolution adopted asking early construction of  
a dam

303

Carpenter - appreciation to Chairman Hoover

304

Response of Hoover

304

Compact adopted as engrossed

305

MINUTES OF THE

19th MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 19, 1922  
10:00 A. M.

MINUTES OF THE  
19th MEETING  
COLORADO RIVER COMMISSION

The nineteenth meeting of the Colorado River Commission was held at Bishop's lodge, Santa Fe, New Mexico, on Sunday morning, November 19, 1922, at 10:00 A.M.

There were present:

Herbert Hoover, representing the U.S., Chairman	
R. E. Caldwell	" Utah
Delph E. Carpenter	" Colorado
Stephen B. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Norviel	" Arizona
Col. J. G. Scrugham	" Nevada

In addition there were present:

Ottomar Hamel, Chief Counsel, U. S. Reclamation Service  
C. C. Lewis, Asst. State Water Commissioner  
Arthur P. Davis, Director U. S. Reclamation Service  
Governor Carey, of Wyoming  
Richard R. Sloan, Advisor from Arizona

The meeting was called to order by Chairman Hoover.

CHAIRMAN HOOVER: We left off with the discussion yesterday of paragraph III, and various groups were to consult and see whether or not we could find a basis for clause A, which I think was the only one in question in that paragraph. I made a suggestion to the southern group and I understood that in a general way in principle it was accepted, but I thought it was very desirable that we should get it formulated precisely so that the northern group should understand where it led in the precise terms of drafting, if we can accomplish it. It seems to me it would be more expeditious if we can get it down on paper.

In a general way the idea was that at any time when the appropriations in either basin should reach a total of 7,500,000 acre feet, that then that basin which had reached this sum could ask for a conference and that at that moment an equation of rights should take place and the conference should determine a further equitable division of the water. Suggestion was made that if within some stated period the conference was not able to come to an agreement as to an equitable division, then someone on behalf of a group of that particular basin should have the right to go to the courts for a determination of an equitable division under the terms of the compact. I think that was approximately the discussion, wasn't it Mr. Norviel?

MR. NORVIEL: Yesterday afternoon?

CHAIRMAN HOOVER: Yes, last evening.

MR. NORVIEL: Yes, I think that approaches it.

CHAIRMAN HOOVER: And my suggestion is that we should endeavor to get down on paper what the actual construction of clause (a) would be under such circumstances and what alterations are involved at any other point.

MR. NORVIEL: I would like to see it in print.

CHAIRMAN HOOVER: This is an article I dictated last evening sort of embracing what was in my mind and it is the one I submitted to the southern group. It reads "The water of the Colorado River System may be appropriated throughout the Colorado River Basin without restriction until appropriations in either the Upper Basin or the Lower Basin shall reach 7,500,000 acre feet per annum including present initiated rights. In that event a notice providing for a new apportionment may be issued under Article IV. If,

at the time of said notice, the aggregate of such appropriations in either Basin shall exceed those in the other there is hereby vested and established in that Basin having the lesser amount a continuing and preferential right to make further appropriations until the totals in each of the Basins shall be equal. The unappropriated surplus of waters then remaining above 15,000,000 acre feet per annum shall be equitably apportioned under Article IV

Judge Sloan raised the point last evening that in case of failure of apportionment by the Commission there should be a right to go to the court for such apportionment and that this clause would need a continuation or some other point effectively in the compact that would carry that out. Was not that the sense of that, Judge?

JUDGE SLOAN: Yes, to guard against the contingency that the one division may be indifferent, because there is no present need for any reapportionment.

CHAIRMAN HOOVER: Did you have an opportunity to write any more than was sketched on my paper here?

JUDGE SLOAN: No, I didn't.

CHAIRMAN HOOVER: What do you think, Mr. Norviel?

MR. NORVIEL: Well, the thing don't mean much to me. I don't understand it at all.

CHAIRMAN HOOVER: How would you express it, Mr. Norviel, to comprise your idea?

MR. NORVIEL: I would want to know what we are driving at first I want to know where the water is to be divided, what the 7,500,000 acre feet per annum mean, and the reason for the 7,500,000 acre feet and if the 7,500,000 acre feet is to include the streams



below Lee Ferry, and things of that kind. Yesterday we arrived at the point of excluding those. Mr. Carpenter made that statement that they were cursutterly to use as we saw fit in addition.--

MR. CARFENTER: (Interrupting) No I didn't, not for a minute.

MR. NORVIEL: I will get the record.

MR. DAVIS: Irrespective of what Mr. Carpenter said, I think it is incorrect to say we have arrived at any point,- if you mean by that All the northern states, because we have arrived at nothing.

MR. NORVIEL: Then we will have to start all over.

MR. DAVIS: In other words, I don't assume a discussion back and forth and statements by any one individual means an agreement.

MR. NORVIEL: Then I can't agree to anything more until it is in writing and I want it stated in here just what you mean.

CHAIRMAN HOOVER: Well, we had a meeting last evening of all the men in the southern division and I read this paragraph and I understood - perhaps I was mistaken - that it was agreed to subject to the addition of a paragraph here providing for the ultimate appeal to the Supreme Court. Is that not so?

MR. SCRUGHAM: That was my understanding.

CHAIRMAN HOOVER: It doesn't seem to me we make progress on this work, which is a very important work, if we have to go back to where we all started from, because we have revolved in so many circles and out again.

MR. NORVIEL: Let it be stated then in here just exactly what it means. I can't understand what it means.

CHAIRMAN HOOVER: Let's go through it and see if we can understand it. "The water of the Colorado River System", which includes

the whole drainage basin of the Colorado River in the United States under our definition, and includes the Gila and all the other lower rivers, "may be appropriated throughout the Colorado River Basin," which includes the whole area,-- "without restriction until appropriations in either the Upper Basin or the Lower Basin shall reach 7,500,000 acre feet per annum including the present initiated rights." Is that clear Mr. Norviel?

MR. NORVIEL: If that means all of the drainage in the Basin, old and new,-- if that is what it means then I understand it up to that point.

CHAIRMAN HOOVER: Well, it means everything in the Basin. We have got a definition here of the exact meaning of those Basins, it includes everything.

MR. NORVIEL: All right. When we have reached that point,--

CHAIRMAN HOOVER: "In that event a notice providing for a new apportionment may be issued under Article IV."

MR. NORVIEL: Now what is that notice?

CHAIRMAN HOOVER: Article IV reads that "at any time after the thirtieth day of June, 1968,"-- and of course it follows there must be an alteration in that article providing for prior notice, prior to that date,--

MR. NORVIEL: That isn't in here yet.

CHAIRMAN HOOVER: Oh no.

MR. NORVIEL: Then I will have to have that included before we settle on Article IV.

CHAIRMAN HOOVER: Oh yes. I had written in here, which I read to you last evening, this provision. "At any time after the thirtieth day of June, 1968, or such previous date as appropriate

of water in either basin shall have reached 7,500,000 acre feet as set out in Article III."

MR. NORVIEL: We don't want to be held then to Article IV as it is?

CHAIRMAN HOOVER: No, you can write that in.

MR. NORVIEL: All right.

CHAIRMAN HOOVER: "If at the time of said notice the aggregate of such appropriations in either basin," - that includes all the drainage in either basin,-

MR. NORVIEL: Yes.

CHAIRMAN HOOVER: "Shall exceed those in the others, there is hereby vested and established in that basin having the lesser amount a continuing and preferential right to make further appropriations until the totals in each of the Basins shall be equal."

MR. NORVIEL: No, I will object to that now,- to this new revision, that must come out.

CHAIRMAN HOOVER: In other words you don't think there should be an equation?

MR. NORVIEL: No, sir, not under this proposition.

CHAIRMAN HOOVER: That was one of the conditions of the proposition I put up.

MR. NORVIEL: That was not the proposition I had in mind all the time.

CHAIRMAN HOOVER: Was not that the proposition I made clearly to you last evening when I read this?

MR. NORVIEL: I don't remember about that, I haven't a copy of it. That was only tentative anyhow, as I understood it.

CHAIRMAN HOOVER: Then the article continued, "The unappropriated surplus of the waters then remaining above 15,000,000 acre feet per annum shall be equitably apportioned under Article IV."

MR. NORVIEL: That wouldn't mean anything, for this reason; that we will reach our internal development in our state long before we will the development in the Colorado River and we will have reached, I think, the 7,500,000 acre feet before the 7,500, million acre feet in the Colorado River which is supposed, I understand now, to come down Lee Ferry, out of which we will obtain priority of rights, or prior rights. There will be remaining, the best I can figure it, something like 3,000,000 acre feet of that 7,500,000 acre feet unappropriated to which we could not obtain any priority of right and you are asking us, - or this is asking us, - to vest the right of that unappropriated portion of the 7,500,000 to the upper states while we could not appropriate that extra 3,500,000 of the 7,000,000 then coming down in the lower division, but to put that back into the general jackpot and divide it up again. That is the situation we are confronted with. Our present use,--I have forgotten the figures, - I had them here yesterday, - and immediate development will bring out internal development to practically 3,000,000 acre feet, which, with the California development, will reach the total of 7,500,000 acre feet in the lower basin before we will have touched upon the development of the Colorado River. If we do touch upon it that would bring it, probably, a little quicker, but the California need, the Nevada need and our development out of the Colorado River will reach, perhaps, beyond the neighborhood of four or perhaps four

and a half or five million acre feet when we shall have reached our 7,500,000 acre feet in the lower basin, leaving three or three and a half million acre feet of the 7,500,000 which I understand is now to be adjudicated to us with the string upon it that if we do not use it when we reach our total development that it is to go back into the general fund and be readjudicated.

So we will have to cut out this general statement here that the "one having the lesser appropriations shall have a priority of right in the unused water up to 7,500,000 acre feet."

CHAIRMAN HOOVER: Well, I just want to get the matter clear. I read this over in the presence of some ten men last night and Judge Sloan made an addition to it here in respect to the provision for going to the Supreme Court, which he said was not final as to that matter, but he would want some more thought on it.. I understood it was accepted by all the gentlemen present. I specifically asked Mr. Norviel if he agreed to it and I understood that was the case.

Now I don't put any importance on that, any more than just this; that if that is not accepted, if Mr. Norviel has found on reconsideration he can't accept it and that he must withdraw his assent, all right then, we start again but let's get it clear that Mr. Norviel has felt that on reconsideration that it isn't desirable to go on with that plan and we must start on some other so let's clear the atmosphere and not work over this. Don't you think that is only fair to the rest of us?

MR. NORVIEL: Sure, I would like to have a proposition presented that I could accept, in writing, if given a chance to consider it, and I would like to have a memorandum with it showing

the basis for it.

CHAIRMAN HOOVER: Well, I rather doubt whether we are ever going to get anywhere if we start correspondence between two groups here.

MR. EMERSON: I think if Mr. Norviel would try to explain to the Commission just where the trouble lies we might be able to find a basis to solve the difficulty. It is my understanding we definitely agreed upon certain fundamental principles and he is now referring to this general clause which was absolutely one of the fundamentals and perhaps if we strike it out thereby the whole structure will be upset.

MR. NORVIEL: I had a distinct understand, and I believe the majority at least of the Commissioners understood yesterday after Judge Davis made his statement of 6,500,000 acre feet, of a division at Lee Ferry to the lower Basin, and I rejected it because it in fact meant 6,500,000 to the lower division and 10,000,000 to the upper division. That, then, was laid aside after further discussion in which it was distinctly stated the rivers below Lee Ferry were to be left out of the consideration. Then our Chairman made the statement, after looking at the tabulation made by Mr. Davis upon which we rested as a basis, and said 6,500,000 would not take care of the needs of the southern states, including our proportion to Mexico, and suggested that we raise the amount to 7,500,000 and then upon that basis, with the same discussion that had gone before, I said I thought we could accept that proposition and that is where we rested yesterday, with 7,500,000 acre feet at Lee Ferry to be used from the Colorado River without the inflow below Lee Ferry. That was, I think, the

record boiled down will show that was the distinct understanding when we closed our meeting yesterday.

MR. DAVIS: In order that I may understand, which I am frankly not sure I do, your position. Are you now rejecting the entire idea of an equation between the two divisions at some stated period?

MR. NORVIEL: No. Well, I know it will be difficult and I state again, as I stated in the first place,- it will be an exceedingly difficult matter to arrive at any just conclusion,- but I am willing to take it up and try to arrive at it.

MR. DAVIS: Then I don't quite understand your objection to this particular provision that we have. What I am trying to get is just what the difference would be?

MR. NORVIEL: You want me to state it again?

MR. DAVIS: If you will, or perhaps you could state it in the opposite way and state what your idea of the equation is?

MR. NORVIEL: I was staisfied, or very well satisfied, with the statement I have just now made, of my understanding of our proposition yesterday.

MR. DAVIS: Then let me ask one more question. Are you standing now on the proposition, if I can call it so, as you stated it at the close of the meeting yesterday afternoon, irrespective of any modification?

MR. NORVIEL: Let me hear it first.

MR. CALDWELL: There is no record of your statement, is there, anywhere?

MR. NORVIEL: I think that was without any record.

MR. DAVIS: I wonder, in view of that fact, if it wouldn't help things along if Mr. Norviel would write a paragraph which

would be satisfactory to him to take the place of this paragraph which is marked (a) under Article III, so that we may know exactly what he would agree to?

MR. EMERSON: It seems to me, Mr. Chairman, that the trouble lies in the confusion of what in my mind are two rather distinct factions. First, we have guaranteed a certain delivery of water at Lee Ferry. That amount of water agreed upon to be delivered by the upper states takes care of the requirements of the lower states, both past and those that are estimated for the future, plus the Mexican burden. The other factor is the question of the relative development of the two drainage basins. Now understand, in that first factor of delivery at Lee Ferry there is allowance for a Mexican burden. When it comes to the question of relative development in the two basins the Mexican acreage does not enter into the consideration.

CHAIRMAN HOOVER: No.

MR. EMERSON: And if Mr. Norviel can consider that proposition as a two factor proposition and not tie up the amount of the development in the two basins with the guaranty of delivery of water at Lee Ferry, it might help in finding a solution of the matter.

MR. NORVIEL: Mr. Chairman, this question of guaranty has come up often in this discussion. The guaranty which the upper states so magnanimously offer to us upon the suggestion of an even division of the water, has always been less than that amount of water which they say is ours. In other words, they say "we will give you a fifty-fifty division of the water at Lee Ferry and then we will guaranty you out of your half of the fifty-fifty division an



amount of water a great deal less than you are entitled to," which is no guaranty upon their part at all.

MR. EMERSON: Don't quote the upper basin as saying that. They have never said anything of the kind. We guarantee water enough to meet your requirements and not less and that has been our proposition all the time.

MR. NORVIEL: You guarantee it out of our half of the water because the proposition in the first place was that you would make a fifty-fifty division and guarantee us out of our half of the water something less than our half.

MR. CALDWELL: If we must go back to the record, which I hope we won't have to do, it will show that I have always opposed the fifty-fifty idea as the partition of the river on the basis that we never could arrive at it.

MR. DAVIS: Mr. Chairman, it seems to me after all it is useless to go back to a rehashing of all the ideas that have been expressed here in the last ten days, or trying to reascertain what the basis is on which we have been proceeding. As I understand Mr. Norviel's position so far it has been that it was up to somebody to make proposition to him which he continually rejects and frankly I have been unable to ascertain, and am unable now to know, just what is acceptable to him. It seems to me the time has come when Mr. Norviel should do a little something constructive on his own part and should state in writing just exactly what the Arizona idea is of what Article III should be, then let us see whether or not on that basis we can work something out. Without that we are absolutely and utterly up in the air because none of us know what it is Mr. Norviel really wants. I think we

have reached that point and I think that is what should be done, if Mr. Norviel feels at this time he can do it.

MR. CALDWELL: Mr. Chairman, I would like to add as a suggestion to what Judge Davis said that with that in view the drafting committee proceed to a draft of a pact to their satisfaction under the instructions that have been given and the principles that have been laid down, so that we may see whether this difference in Article III is the only difference that is between us.

CHAIRMAN HOOVER: I presume by instructions you mean the tentative agreement we came to the other day in which we set out the original ideas?

MR. CALDWELL: Yes, sir. Perhaps it would be all right for the drafting committee to make a draft along the lines of the principles which were passed by the Commission and then have submitted by Mr. Norviel a redraft of paragraph (a), Article III, to which he would agree.

MR. NORVIEL: I think I have definitely stated three propositions which I deem fair.

MR. DAVIS: If you would put them in writing so we would have them before us.

MR. NORVIEL: Well, I will do that."

CHAIRMAN HOOVER: Why not dictate them right here?

MR. NORVIEL: No, I am not that fluent in my thoughts.

MR. EMERSON: Is the rest of the draft ready?

CHAIRMAN HOOVER: No, it requires finishing up. We might go on with some of the ideas this morning so we could get them out of the way. We have consolidated the ideas which we had in Article VIII and Article IX. Article VIII then reads:

"Whenever controversies or claims may arise between any two or more 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 the compact;

(c) As to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters herein provided;

(d) As to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state the Governors of the states affected shall, upon request of the Governor of one such state, appoint commissioners who shall consider and adjust such claims or controversies, subject to ratification by the legislatures of the states so affected.

Nothing herein contained shall hinder or prevent any state from applying to any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions."

I rather think in the second clause from the bottom we had the notion before that they could consider and adjust such claims as to the interpretation of the compact without going back to the legislature.

MR. DAVIS: I merely thought the word "meaning" was perhaps better than "interpretation."

CHAIRMAN HOOVER: The trouble is, from the second clause from the bottom "the governors of the states affected shall, upon

request of the Governor of one such state, appoint commissioners who shall consider and adjust such claims or controversies, subject to ratification by the Legislatures of the states so affected." Well, take the first one, that would apply to (a). As to (b) it necessarily has to go back to the legislature for ratification. If you could determine on the interpretation or enforcement they don't have to go back to the legislature for ratification.

MR. DAVIS: I am not entirely sure about that.

CHAIRMAN HOOVER: (c) and (d), it struck me there is a certain field in there which they might come to an agreement on among themselves without necessarily legislative action.

MR. CARPENTER: It is my impression no such compact should rest without legislative ratification, as a matter of ample caution so that no dispute as to its validity should ever come up by somebody challenging the court. Legislative ratification should always follow.

MR. DAVIS: Of course it might work out in practice.

CHAIRMAN HOOVER: I guess you are right.

MR. CARPENTER: I have one more suggestion to make. Mr. Emerson raised it the other day and I merely bring it up now at this point. This article should not be taken to hinder or prevent the settlement of any such matter, or the granting of consent by one state to another, in clause (d), by direct legislative action. Our Supreme Court has held that compacts between states, -I refer to the United States Supreme Court, may be made by concurrent action of the legislatures when one, as it were, offers and the other accepts, in the language of Justice Holmes. Now that was what was done in Wyoming in the Utah situation and this article

should,--it might be well to add to this last paragraph a memorandum to that effect, the object being primarily to encourage such consideration, such methods,- a little more expeditious even than a Commission.

CHAIRMAN HOOVER: Yes, I think you are right about that. Could you read in the necessary words to accomplish that?

MR. NORVIEL: There is one further thought. Clause (a) reads:  
"With respect to the waters of the Colorado River  
System not covered by the terms of this compact."

The last paragraph reads:

"Nothing herein contained shall hinder or  
prevent any state from applying to any court  
of competent jurisdiction for the protection  
of any rights under this compact."

There we have a condition, "waters not covered by the compact," then we go to the court and ask the court's adjudication upon a matter not within the compact and he says "no, we are only concerned with the things that are in the compact."

CHAIRMAN HOOVER: I think that comes from translating this from the other clause and I think a state has a right to go to the courts at any time it likes.

MR. EMERSON: The last paragraph wouldn't really be necessary, would it?

MR. DAVIS: The last paragraph is not necessary and was only put in out of an abundance of caution. It is not necessary at all in my judgment.

MR. NORVIEL: Cut out the words "under this compact,"

MR. CALDWELL: I think there should be a separate paragraph

to take care of the matter of court division,--taking care of all the provisions under the compact.

MR. NORVIEL: Wouldn't you refer to things not covered by the compact.

MR. DAVIS: Simply to provide that the which are provided in the compact are cumulative merely and do not affect the right of any state. To receive relief, legal or equitable, whenever it may be required.

MR. NORVIEL: You think this should be revamped?

MR. DAVIS: I think it would help the situation if the last paragraph were eliminated and in its place the objection recently advanced by Mr. Carpenter and Mr. Emerson to provide in connection with these matters that "nothing in this Article VIII should operate to prevent two states from agreeing directly without legislative action. What it would amount to is this, Mr. Norviel; that informally a representative of those two states, without any appointment for the express purpose, would agree upon a method of dealing with a particular situation. The location of a interstate dam, for instance. And after having agreed their two legislatures will enact direct legislation such as we have in the instance cited between Wyoming and Utah.

CHAIRMAN HOOVER: When they don't agree, then they come in under this provision and appoint a formal commission.

MR. DAVIS: When they don't agree, then they can call for a commission such as described in this section.

CHAIRMAN HOOVER: In that sense we would strike out the last clause here and put in a general provision elsewhere. This is merely machinery for amiability.

MR. NORVIEL: The last clause is stricken?

MR. DAVIS: The last clause is to be rewritten and put in as a last clause in the compact to apply generally.

MR. HAMELE: I suggest that the first sentence of this article, without being broken up, be put in there solid. I have written it in that form. I think it looks better and is more appropriate.

(Thereupon Article VIII was submitted in the following form by Mr. Haméle)

"Should any controversy or claim arise between any two or more 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; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the States affected shall, upon request of the Governor of one such State, appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected."

MR. NORVIEL: Is there any change in the language?

MR. HAMELE: Practically none. The first sentence is changed slightly.

CHAIRMAN HOOVER: "Should any controversy or claim arise between any two or more states," then you have simply included the paragraph in it. Is that it?

MR. HAMELE: Yes.

CHAIRMAN HOOVER: I see no objection to that.

MR. EMERSON: Just what did the Committee have in mind in paragraph (a) with respect to the Waters of the Colorado River system "not" covered by the terms of this compact. It seems to me that consideration should be confined to anything that was covered by the terms of this compact and not make provision for going outside.

MR. DAVIS: For instance Arizona and New Mexico have a controversy over the waters of the Gila. This would simply allow Arizona and New Mexico to get together and discuss it and possibly settle that controversy. It is not covered by the terms of this compact, that is all.

JUDGE SLOAN: The purpose is to remove the last clause from this paragraph and make an inclusive clause to take care of this situation and others as well.

MR. DAVIS: Yes, a separate article, possibly one of the late articles in the compact.

CHAIRMAN HOOVER: Is that article agreeable with the last clause cut out?

MR. NORVIEL: Does the word "should" mean at the time? The first word?

MR. MC KISICK: There is one thing that occurs to me in connection with the articles as now before us, Mr. Chairman, that was a suggestion which has been made at some prior conferences over the article, that a time limit should be inserted within which the Governor upon whom the request is made should act. That the Governor of the State shall within sixty or ninety days, or



whatever term you may agree upon, but a definite time limit should be put in it.

CHAIRMAN HOOVER: If you go into that detail don't you go into the date of setting the time as to when this meeting is to occur and how quickly it has to get a decision; then you go through a long mill of provisions.

MR. DAVIS: If you make it mandatory upon a Governor to do it, it means he shall do it within a reasonable time.

JUDGE SLOAN: Why not add the words "shall without delay."

CHAIRMAN HOOVER: I think that would help.

MR. MC KISICK: "Forthwith" is a good word, isn't it?

CHAIRMAN HOOVER: It means the same thing.

MR. NORVIEL: "Forthwith" should follow the word "shall."

MR. MC KISICK: You have got a long parenthetical phrase in there.

MR. NORVIEL: "The Governors of the States affected, shall, upon request of the Governor of one such state, forthwith appoint."

MR. DAVIS: We can settle that controversy by putting a comma after the word "affected," and putting the word "shall" after the word "state."

MR. NORVIEL: Put "shall forthwith" before the word "appoint."

CHAIRMAN HOOVER: Is there any further suggestion on that paragraph?

MR. DAVIS: The title isn't clear. "Arbitration" implies the calling in of a third party, does it not? I think the title would perhaps better be "adjustment of controversies" or something of that sort.

CHAIRMAN HOOVER: I think that is a better suggestion.

MR. HAMELE: "Interstate Controversies."

CHAIRMAN HOOVER: Some of these things are not necessarily matters of controversy.

MR. DAVIS: Adjustment of differences.

CHAIRMAN HOOVER: Adjustment of interstate differences?

MR. NORVIEL: There might not be differences.

CHAIRMAN HOOVER: Why not say "Interstate Adjustments?"

Well, we will pass on that for the present:

(Thereupon Article VIII was temporarily adopted in the following form)

#### "Article VIII

#### INTERSTATE ADJUSTMENTS.

Should any controversy or claim arise between any two or more 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; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the States affected, upon request of the Governor of one such state, shall forthwith appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected."

CHAIRMAN HOOVER: Article IX reads: "This compact may be terminated at any time by the unanimous agreement of the signatory states and the United States, but at such termination all rights

then established are hereby confirmed." Is there any comment on that? We cut out all of the last paragraph. If there is no discussion about that, there is not much to do about it. We will accept that for the present. We will now take up Article VI, Technical Committee. There has been some discussion raised about that.

JUDGE SLOAN: Before we leave Article IX I had in mind the suggestion, "all rights then established under this compact are hereby confirmed."

CHAIRMAN HOOVER: Is there any objection to introducing the words in Article IX "all rights established under this compact are hereby confirmed?"

(There being no objection, Article IX was temporarily adopted in the following form)

"This compact may be terminated at any time by the unanimous agreement of the signatory states and the United States, but at such termination all rights then established under this compact are hereby confirmed."

MR. NORVIEL: Have we an article anywhere that confirms the present rights?

CHAIRMAN HOOVER: That comes in under Article III, including all appropriations up to date.

MR. DAVIS: There was some objection yesterday to that particular technical committee. I don't know whether it is to be insisted upon or not; if so, the first paragraph could be made to read, cutting out the first few words, "The official of each state charged with the administration of water rights, together with an official from the United States Reclamation Service and

United States Geological Survey, shall constitute a board having the following ex-officio duties."

MR. CARPENTER: I suggest that (handing paper to Chairman) be added to the last of Article VIII.

CHAIRMAN HOOVER: While you were out we struck out the provision in Article VIII that they should go to the courts, with a suggestion a better provision of that kind should be made separately to cover all questions.

This would read: "nothing herein contained shall prevent adjustment of any controversies or claims by direct legislative action of the interested states," to go on the bottom of Article VIII.

MR. CARPENTER: Had that better be in the affirmative? That applies to this particular subject matter.

JUDGE SLOAN: Is that all you have, Mr. Carpenter, that wording?

MR. CARPENTER: Yes, that is all I have.

CHAIRMAN HOOVER: This new addition would read: "nothing herein contained shall prevent the adjustment of any such controversies or claims by direct legislative action of the interested states."

MR. EMERSON: That would provide for any processes set up under existing statutes?

MR. CARPENTER: Future statutes.

MR. EMERSON: We have certain existing statutes. It would set up a definite way of handling certain problems between, for instance, Wyoming and Utah.

MR. CARPENTER: Yes. Suppose we built a reservoir in the Rio

Grande. We could grant consent to New Mexico to operate the Reservoir.

MR. EMERSON: I just wanted to be sure it wouldn't make void any method set up heretofore.

CHAIRMAN HOOVER: Does that cover your point Mr. Emerson?

MR. EMERSON: I might suggest a little addition there; "by direct legislative action of the interested states," which would seem to refer more to the future than to the past or present; "or by processes now operative under the statutes of interested states.

MR. CARPENTER: Isn't that direct legislative action?

MR. EMERSON: Yes, the statutes are direct legislative action.

MR. MC KISICK: If your statutes are general in their terms they would take care of it.

JUDGE SLOAN: You mean reciprocal legislation, don't you?

MR. EMERSON: It wouldn't necessary be reciprocal.

MR. CARPENTER: You might have a proposition granting servitude in one state, pass a law without any reciprocal legislation in the other, so I changed "reciprocal" to "direct." Put it "reciprocal or direct."

JUDGE SLOAN: But in a case requiring action of both states then it must necessarily be reciprocal in its nature. Just for clearness I should think perhaps "direct" ought to be that wording.

MR. DAVIS: Don't you limit it if you make it reciprocal. Suppose the legislature of Colorado granted the State of New Mexico the right to condemn lands and appropriate waters. There is nothing required on the part of New Mexico at all.

JUDGE SLOAN: It might limit it to such a case and not to a

case where there are two states that get together and say "we will pass this act if you will pass the other act."

MR. MC KISICK: In that event wouldn't the expression "direct legislative action" cover it?

MR. CARPENTER: I adopted the word "direct" as an attempt to cover both single and reciprocal.

MR. DAVIS: You could cut out the word "direct" and have the same results accomplished by legislative action.

JUDGE SLOAN: Of course it wouldn't do in a dispute,-- I mean it wouldn't be any settlement if action were taken by one legislature of one state without some corresponding recognition of that basis of settlement by the other unless it were a concession which covered the ground of the case.

MR. CARPENTER: You may strike the word "direct" out.

MR. MC KISICK: I should think it would want to contain it for the reason it distinguishes between this class of cases and the other class of cases whereby legislative action is to follow adjustment by commissioners.

MR. EMERSON: Under the present wording there would that refer to existing legislation as well as any that may be entered into hereafter?

MR. DAVIS: I would say it would not affect it one way or the other, Mr. Emerson. We are protecting the future. We are saying nothing as to the present.

MR. EMERSON: Certain processes are now set up.

MR. DAVIS: They continue.

JUDGE SLOAN: Mr. Emerson, if those matters can be taken care of under existing law there could scarcely be set up any occasion

for controversy arising between two states.

MR. EMERSON: I just wish to be assured this new process if set up wouldn't be necessary until other means may have been exhausted, that is the only point I wish to be assured on.

MR. DAVIS: This is an expression in the negative and in my judgment, as I said, the whole thing is unnecessary. I don't think the expression of one idea in this compact excludes any other plane which may now be in existence. I think, for instance, without the necessity for the appointment of commissioners or anything else, two governors can sit down across a table and settle the controversies between two states, submit it to the legislature and it could be adopted if not covered by the compact at all, it could be accomplished just the same. We are not limiting the state powers, as I see it.

MR. EMERSON: All I am concerned with is that this reservation should apply to the statutes now in effect as well as to those which may be hereafter enacted.

JUDGE SLOAN: Your objection is to the preposition "by". That means it necessarily implies new legislation. Would it accomplish your purpose by saying "under" direct legislation whether it is present or future?

MR. EMERSON: Couldn't you just add on there "or by statutes that may now be in force," or, "by statutes that may now be in force and may hereafter be enacted?" The whole thing is that that, in my mind, expresses futurity.

MR. DAVIS: Here would be your idea. "Nothing herein contained shall prevent adjustment of any such controversies or c nime under any plan now in force or by direct future legislative

action," I don't like that word "plan."

MR. EMERSON: "Any laws now in force."

MR. DAVIS: "Nothing herein contained shall prevent adjustment of any such controversies or claims under any existing methods or by direct future legislative action of the interested states." Would that cover your thought?

MR. EMERSON: Yes.

MR. DAVIS: I don't think it does any harm.

(Thereupon Article VIII was temporarily adopted in the following form)

"Should any controversy or claim arise between any two or more 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 here provided; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the states affected shall, upon request of the Governor of one such state, appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislature of the States so affected.

Nothing herein contained shall prevent adjustment of any such controversies or claims under any existing methods or by direct legislative action of the interested states."

CHAIRMAN HOOVER: Now we get back to the Technical Committee. Mr. Caldwell, you have some observations to make on that paragraph.



MR. CALDWELL: I didn't draft anything I am particularly proud of here, Mr. Chairman. I drafted that before I left here yesterday afternoon and my idea is merely to make it as harmless as possible in its effect on the legislature, if we must have the article at all. If I am proud of any part of it, it is the matter of the title. I don't know whether it is usable or not, but I have called that "Ex-officio Committee." "An ex-officio committee to consist of the state engineers or other persons charged by the states with the administration of water or water rights," together with an official of the United States Reclamation Service and an official of the United States Geological Survey, shall constitute a committee for the collection, reservation and publication of data on the Colorado River System pertaining to, or which may pertain to, this compact.

CHAIRMAN HOOVER: Is that all? We have to make a security of publication flow of water of the Colorado River System at Lee Ferry. We have to make a specific provision for that in order to carry out the guaranty clause. I used the word promoting.

MR. CALDWELL: There is the other feature too, Mr. Chairman. If this committee is appointed especially for the purpose of measuring the water at Lee Ferry it may be construed to be a duty of this Commission or committee which if it neglects it may be a violation of the pact.

CHAIRMAN HOOVER: I thought we got away from that somewhat by saying they should secure the determination and publication. The pact can't revolve unless we have that determination. That must be a part of the pact, that somebody must do it.

MR. CARPENTER: It is imperative for the protection of both

divisions that those facts be ascertained with all reasonably accuracy annually and that they be published and declared.

MR. CALDWELL: To what effect, Mr. Carpenter? If they are published and declared are we bound particularly to those measurements by this pact?

MR. CARPENTER: I think you would be.

CHAIRMAN HOOVER: I think so. I think the whole pact revolve upon that determination.

MR. CALDWELL: Then we are setting up machinery here to which we are bound.

CHAIRMAN HOOVER: Well, you are bound to deliver a certain amount of water, and you must have the water measured.

MR. CALDWELL: That is, the fact that we are to deliver the water I think should be in the pact and outside of the pact we should set up the machinery, which I am very willing to agree to. I think we should do it.

MR. CARPENTER: What prompted the thought was that the state official having charge of the water administration and measurement of streams within his state was the natural and logical representative of that state every year in the future for the purpose of determining the facts respecting the Lee Ferry flow. Now they may concurrently delegate, and should have the right to delegate the principal duty of making the measurements in some institution say the Geological Survey - but each state engineer should have sufficient control that he may make as many check ratings and other proofs of that official rating, or that rating made by the one they select, as may be necessary in order to assure him that those measurements are correct and if dispute arises between the

members of the committee they should settle it among themselves before they publish and declare the fact, otherwise you will have a large confusion of records; you will have one state engineer's office making a rating this year and disputing the rating made by somebody else. So there should be a concurrence of action, an official action by all of the interested states right at that central point, and then and there and in that year clear the future record as to that fundamental delivery.

MR. NORVIEL: You are speaking with reference to Lee Ferry?

MR. CARPENTER: Yes.

MR. NORVIEL: To establish a rating there a man would have to be on the ground all the time.

MR. CARPENTER: Somebody will have to be on the ground, Mr. Norviel, of course.

MR. NORVIEL: And you would have to take that person's measurements of Lee Ferry or else keep another man.

MR. CARPENTER: Yes, but you could check him up. Send a man in occasionally from different localities to rate the river with him, as you know is frequently done. They call it I think, check rating do they not, where two hydrographers go out and measure a stream concurrently and compare notes and see how their ratings correspond, and if they are within a certain per cent of corresponding, then they agree, two or three or four or five per cent in the aggregate it is considered a permissible variance and they are considered to check. Now then, those scout or check raters, hydrographers, could be sent in by any state at any time without notice and check the river at that particular time with the man in charge at the place, hydrographer in charge. Naturally

those ratings thus checked would form the basis of your permanent rating.

CHAIRMAN HOOVER: Do you think this original expression obtained that all right: "Secure the determination and publication of the annual flow of water in the Colorado River System or elsewhere."

MR. CARPENTER: Off hand it seems to me to be sufficiently broad.

CHAIRMAN HOOVER: I think it covers that point.

MR. CARPENTER: Mr. Caldwell's suggestion, I take it, is directed to this thought. As to the ratings at Lee Ferry, there should be some mandatory provision, - directory article. That is imperative to all of us. With respect to the remainder, that should not be so mandatory that a breach or failure of any one official to properly function in that respect could be set up as a ground of breach. It is easy to anticipate that many state engineers coming now into the field by reason of their recent appointment, might overlook one Summer's work in this respect. The states as such should not be held to a breach.

JUDGE SLOAN: Why shouldn't a state that should have failed in that be considered as having breached the contract, without of course the penalty of having the compact rescinded.

MR. CARPENTER: I don't mean that statement to apply to the rating of the river. I mean as to a gathering of data.

JUDGE SLOAN: That is a very important feature, isn't it, the gathering of data?

MR. CARPENTER: Well, the gathering of data will naturally have to fit in largely to the other work of the State engineer's

office. But as to the rating at Lee Ferry, that should be taken care of with great care and thorough methods and the most up-to-date methods used, so that there never can be any question of the results there obtained.

CHAIRMAN HOOVER: Wouldn't Mr. Caldwell's ideas and yours be expressed here if we said this: "Promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin," and stop there, because the balance of that clause is a little mandatory. What I have read is not mandatory. That is the reason I used the word "Promote".

JUDGE SLOAN: How else can you establish the maximum or minimum required by the pact without machinery for the collection of facts from each state.

CHAIRMAN HOOVER: That all revolves around Lee Ferry.

JUDGE SLOAN: In addition to the measurement at Lee Ferry, but in addition to that there may be necessity of determining the consumption of water and extent of appropriations in different states.

MR. CARPENTER: I might answer that by saying if you make that so mandatory that a temporary failure of an engineer may in California or Wyoming to come to the fore, as the others might think he should, you would probably immediately give rise -

JUDGE SLOAN: (Interrupting) To a mandamus suit.

MR. CARPENTER: To a declaration that there had been a breach of the compact. They would probably declare the compact broken, which is abhorrent to the main features of the compact. These matters they will be in charge of can be ascertained later,

without doing injury. The development of the area is a progressive physical problem, and is manifest from the ground, and it is not a fleeting thing, going by on a gallop, as it were, like the flow of the river, that once having passed no man can recheck, but the amount of acreage irrigated can be ascertained even if one engineer fail during his term, the succeeding state engineer can ascertain the accurate acreage, and other like facts, but the only elusive problem in this whole work of these engineers is the flow of the river.

CHAIRMAN HOOVER: Well, now, don't we get at it by simply saying: "Promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin." There is nothing mandatory about that. Doesn't

MR. CALDWELL: I would be able to agree on this outside of the fact it is going to be in the pact, I think your suggestion is the best we can do.

JUDGE SLOAN: Is the objection to putting it in the pact that it might possibly be construed as a breach of the pact in case of the failure of some official.

MR. CALDWELL: My objection is that some statesmen up our way might argue that it would bring about a breach of the pact and get us into an altercation in the legislature over what I consider a trifling matter compared with the main object of the pact.

CHAIRMAN HOOVER: All I would like to see in here is something that will indicate that there should be a collection of this data because when we get to the long periods described in

Paragraph three there must be some accumulation of data. How did you consider that wording of the paragraph?

MR. CARPENTER: Before you go to that wording, you might add "And the interchange of available information." "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."

MR. HAMELE: There apparently should be a provision providing for the appointment of the federal officials by the secretary of the interior. I have written it with that clause in it.

CHAIRMAN HOOVER: We have not stated in here who is to appoint them at all. We have just said they get together. We have tried to avoid any appointment.

MR. HAMELE: It occurred to me the pact wouldn't be quite complete unless there was some affirmative connection as to appointment.

MR. CARPENTER: May I ask why the necessity of two men from each of those departments? Why couldn't the Secretary of the Interior appoint men of either of those departments?

CHAIRMAN HOOVER: I put that in because the Reclamation Service has the best fund of information on appropriation of surveys of water, whereas the Geological Service has full information as to the flow.

MR. HAMELE: My own personal thought on that is that there ought to be no reference to Federal officials; that it ought to be state officials, and whatever federal help they get should be a separate proposition.

CHAIRMAN HOOVER: We get up against a very difficult point there. This committee would get together and say "The Geological Survey has started this business. Now we have secured that they would do it and it would be very desirable that these officials should sit in to collate all information they have got about this Basin, once and for all." In other words, if we leave out the Federal government they can withhold all their information from these states; Further than that we don't compel them to hand it over, but make the pious observation that they should get together I don't know that legally this wording compels or makes it necessary for someone to appoint these officials. It is inferred at least.

MR. CARPENTER: Under every statute, every arid state, I believe, has an official now.

CHAIRMAN HOOVER: I mean appoint them to this ex-officio duty

MR. CARPENTER: The use of the words "Ex-officio" carries with it the fact that the man in office is the man selected.

CHAIRMAN HOOVER: I perhaps didn't get it clear. I meant somebody may have to designate which official from each state and from these two services shall act.

MR. CARPENTER: As to the services I think the suggestion is good.

CHAIRMAN HOOVER: Have you got your wording there at the start of this, Mr. Caldwell?

MR. CALDWELL: I called this an "exofficio committee" instead of a "technical committee."

CHAIRMAN HOOVER: I wonder if we could call it "engineering committee". just a broad distinction.



MR. MCKISICK: May I make a suggestion for heading that article, Mr. Secretary, that will eliminate any possible legislative objection, or any confusion. You could give it the title, "Collation and Publication of Physical Data."

CHAIRMAN HOOVER: I think that might get over Mr. Caldwell's difficulty too.

MR. NORVIEL: I suggest the word "hydrographical" instead of "physical."

MR. DAVIS: "Collection and publication of data" would be my idea.

MR. NORVIEL: That gives them a chance to go far afield.

MR. MC KISICK: "Collation" was the word I suggested. That would imply interchange among the states.

CHAIRMAN HOOVER: "Collation and publication of data."

MR. CALDWELL: "An ex-officio committee to consist of the state engineers or other persons charged by the states with the administration of water or of water rights, together with an official of the United States Reclamation Service and an official of the United States Geological Survey," - the wording is not English here- "is hereby constituted" -

CHAIRMAN HOOVER: I am afraid you have got to embrace the idea of a committee.

MR. CALDWELL: I said "for the collection, reservation, and publication of data on the Colorado River" but you have changed that.

CHAIRMAN HOOVER: How would it do to say "the official of each state charged with the administration of water rights, who, together with an official from the United States Reclamation Service, and the United States Geological Survey, shall cooperate

in securing" -

MR. CALDWELL: (Interrupting) Have you abandoned your "promotion"?

CHAIRMAN HOOVER: No, "shall cooperate to promote and to secure the determination and perform such other duties as may be assigned"-

MR. NORVIEL: By whom?

CHAIRMAN HOOVER: By this pact, by mutual consent of the signatories. That gets your sense and gets away from a committee.

MR. CALDWELL: If we take Mr. McKissick's suggestion here as to the heading, we can leave out "technical" in that altogether in the body and just say "committee."

CHAIRMAN HOOVER: I was getting away from it, just simply saying they should cooperate.

## Second part

MR. HOOVER: We will get out an edition of that so we can work it over. While we are getting that, we might go on to the next clause, - clause 7.

As we have it now:

"The contracting states agree that the burden of supplying water of the Colorado River System from the United States of America to the Republic of Mexico in fulfillment of obligations, if any, which may exist, or may be determined to exist between the two Nations, shall be equally apportioned between and equally borne by the Upper Division and Lower Division; and the States of the Upper Division shall deliver at Lee Ferry a quantity of water over and above that provided in Article III which will enable the fulfillment of one-half of the amount required to satisfy such delivery."

MR. CALDWELL: I wonder if that might require the Upper States in case its position turned out to be say 1,000,000 acre feet, to deliver past Lee's Ferry 8,500,000 acre feet, that might be an obligation that we couldn't meet, but we might be able to take it out of our 7,500,000 acre feet and curtail our rights above to that extent.

MR. CARPENTER: We would have to deliver that in addition.

CHAIRMAN HOOVER: It will have to go down anyhow.

MR. CALDWELL: What I mean is that - Yes, that is all right.

MR. CARPENTER: We would have to take it from our rights anyhow. As I understand paragraph 7- with the figure of the total as in paragraph 3, was that this would come on us as an additional burden for our half.

CHAIRMAN HOOVER: There isn't any objection to that if it is drafted under our new totals. We have to change "division" to "basin" but that is immaterial.

DR. S. B. DAVIS: I have just a couple of suggestions. This is the only paragraph as I recollect that we have started off with the language "the contracting states agree that -". And I think that should come out so that it starts, "the burden."

CHAIRMAN HOOVER: Yes, that is right.

MR. DAVIS: I have changed in the third line the language: "In fulfillment of obligations, if any, which may exist, or may be determined to exist between the two nations," and would suggest this language: "The burden of supplying water of the Colorado River System from the United States of America to the Republic of Mexico, to the extent that rights thereto may at any time be established, shall be equally apportioned between," etc.

CHAIRMAN HOOVER: We were trying to draft in an expression here which would - we do not believe they ever had any rights.

MR. DAVIS: I think my clause would carry that idea when I say "to the extent that rights thereto may at any time be established." I do not like the word "obligations" myself.

MR. CALDWELL: Couldn't we cut out the words "which may exist?"

MR. DAVIS: As I originally wrote that, I said "to the extent that rights thereto may at any time be established by treaty," which, of course, states our idea that the only way in which those rights - or the principal way in which those rights will arise, will be under a treaty. But there was some objection to being that blunt about it and I eliminated it. My own judgment

is that there isn't any harm in saying that there will be a treaty there may be a treaty.

CHAIRMAN HOOVER: About this same clause as to whether that wouldn't possibly open up a way to Mexico to say that she had rights and that we want to wrong those rights.

JUDGE SLOAN: There being no adjustment by international agreement of that situation, California will be practically compelled to delivery some water to Mexico in order to enjoy her rights.

CHAIRMAN HOOVER: It comes to this: That if they raise that question as to the present contract that exists down there, if that is brought into discussion anywhere in this compact, we give value to it which we must keep away from with all our might. And therefore we better keep awful still because the infernal contract they have calls for about 10,000 acre feet. It is one of those practical things that has to work itself out because they are as busy as bees trying to get away from that, and time will get them away because they can't expand and develop in this basin without getting their canal. And we are in a hole if we even attempt to discuss the situation here.

JUDGE SLOAN: I think it is wise if it can be done without injustice to Arizona, for instance, or California, in their relation to the Upper States. The question is when half of the burden is to begin; under the terms of the proposed article it can't begin until those rights are established and probably by international agreement.

CHAIRMAN HOOVER: That is the intention. Because if we established it now, we have established an acknowledgment of

that situation, which is pretty difficult.

MR. NORVIEL: But in the meantime they are receiving notice and it would be probably more difficult to set that off.

CHAIRMAN HOOVER: Yes, until they get further with their development.

MR. NORVIEL: In any event, this last Summer, I understand the Imperial Valley was short of water and it wouldn't have been if it hadn't been for the Mexican land receiving water, and that condition will exist until some International agreement is made.

MR. S. B. DAVIS: This is merely another suggestion, partly mine, partly Mr. Carpenter's: "If in the adjustment of international relations, the Republic of Mexico shall hereafter establish any rights to waters from the Colorado River System, the burden of supplying such water shall be" - then follow with the same language as the present.

MR. NORVIEL: Which is your parts, Judge?

MR. S. B. DAVIS: "If in the adjustment of international relations, the Republic of Mexico --

MR. NORVIEL: Just read it - your part.

MR. DAVIS: "If the Republic of Mexico shall hereafter establish any rights to water from the Colorado River System, the burden of supplying such water shall be," etc.

MR. NORVIEL: What will you do with existing conditions?

MR. DAVIS: We simply assume that their right is not established.

MR. NORVIEL: And that they have no right to water.

MR. DAVIS: We say nothing about it. We don't bind ourselves one way or another. My draft says, whenever the Republic

of Mexico establishes that right, then we shall give her some water.

MR. NORVIEL: That puts the burden on California of denying the burden now.

MR. DAVIS: It leaves it just as it is at present so far as the acknowledgment of delivery of water is concerned. That is the matter that the chairman suggested the other day.

MR. MC KISICK: I am not a member of the commission. I am not authorized to speak--

MR. CARPENTER: I understand it has been the thought expressed by the chair heretofore that certain physical phases of the river would probably handle that entirely.

CHAIRMAN HOOVER: An agreement could be made.

MR. CARPENTER: An international treaty would be --

JUDGE SLOAN: (Interrupting) The word "probably" is dangerous.

MR. CARPENTER: We don't use the word "probably."

JUDGE SLOAN: You used it.

MR. CARPENTER: So I did.

MR. MC KISICK: If an expression of my personal views of the conditions down there would help out, I don't mind stating them. Under existing conditions there is no way for the Imperial Valley to get the water except by taking it from Mexico, and it is at the menace of the Mexican water users, who will take it with or without consent; but when the so-called "All American Canal" has been constructed and the water is diverted and used on American territory, there would be no continuing obligation on the part of the Imperial Valley or the Imperial Valley Water District, to send that water down into Mexico, and then it will

to Mexico to get the water as it can.

MR. NORVIEL: There is the pending space of time.

MR. MC KISICK: There is the pending space of time which must apply until the All-American Canal can be built.

CHAIRMAN HOOVER: Whereas they get a certain amount of water now to Mexico, they can't increase their draft on the Colorado River until they have built the All-American Canal.

MR. CARPENTER: And get the canals at a higher level.

CHAIRMAN HOOVER: Yes.

JUDGE SLOAN: I would like to ask Mr. Davis if it is a fact that Mexico is now taking one-half of the water.

MR. ARTHUR P. DAVIS: It is not. The contract so provides, but it is an illegal contract.

JUDGE SLOAN: It is a contract which Mexico can practically enforce, can't it?

ARTHUR P. DAVIS: Yes, as a physical fact it can take the water. If Mexico would develop her lands beyond 200,000 acres in the next few years and make a demand of 2,000,000 acre feet, then the Imperial Valley would be up against it. Her water supply is very seriously menaced from that source.

CHAIRMAN HOOVER: You think my statement would be somewhat correct, Mr. Davis, that the Imperial Valley or Mexico cannot extensively increase its acreage with out the All-American Canal.

ARTHUR P. DAVIS: That is correct. They can increase about 10% only.

CHAIRMAN HOOVER: And that therefore the draft on the Colorado River cannot increase without the construction of the canal so that there is a matter of limitation here on the amount of water that is going into that hole?



ARTHUR P. DAVIS: That is true. But it doesn't remove the menace. There are now about 200,000 acres of land - a little less irrigated in Mexico, and 450,000 in the United States, making 650,000 in all. If Mexico enforces that contract and she is in a physical position to do it, that would mean 325,000 acres would be irrigation in Mexico, which would be 100,000 acres more than she gets now, and that water would come out of the supply that the river furnishes to the Imperial Valley.

CHAIRMAN HOOVER: Until such an All-American Canal is built. When it is built then we are free from the Mexican danger?

ARTHUR P. DAVIS: Yes.

CHAIRMAN HOOVER: And that it is - there may be a sequence of three events. The first is the present draft from the river which is limited and will therefore not be a draft against the 7 1/2 million feet. The second event, the construction of the All-American Canal which will increase the draft on the river but will put the basin in a position to defend itself from the Mexico draft. The third is an international agreement which fixes that right. The draft on the river in the second event may be an increased draft on the 7 1/2 million feet, but it will be exclusively for California and not for Mexican purposes. The third event of the international treaty might settle it.

JUDGE SLOAN: Doesn't that put a burden on the Imperial Valley so far as the division of water between itself and Mexico is concerned.

CHAIRMAN HOOVER: Yes, that burden is there now and that doesn't increase their draft on the river.

MR. CARPENTER: You mean for their own benefits.

CHAIRMAN HOOVER: Yes, for their own benefits.

MR. ARTHUR P. DAVIS: They cannot increase the draft because they are taking it all now you mean. That will not be changed by the construction of the All-American Canal. The only things that will make a substantial increase of the draft on the river is storage, then some crops can be reduced; grain can be raised; alfalfa can be raised, after that, and in that way it is physically possible to increase the draft. But any draft is subject to diversion in Mexico. It is physically possible to take even more than half, they could take it all if they wanted it.

CHAIRMAN HOOVER: It is to this very danger point I am referring. The physical situation is there that will solve this problem in itself, ultimately, without our attempting to solve it in a compact, and it is a dangerous thing for us to enter into the question at all.

JUDGE SLOAN: But it may lead to controversies between Arizona and California - serious controversies.

CHAIRMAN HOOVER: But that we can't solve.

JUDGE SLOAN: No, but I am getting to the ratification of this compact again - which may defeat that very thing.

MR. NORVIEL: May I observe that that was another one of the obstructions I ran up against when I tried to work out this problem and I side stepped it. We are still leaving the matter in a delicate position which was avoided under my proposition. This now leaves you in a position where the water must be furnished and somebody has to bear the burden, and unless we made some provision for the bearing of the burden, someone will have to suffer.

CHAIRMAN HOOVER: So far as the river is concerned, the draft can't be increased on the river in the present situation.

ARTHUR P. DAVIS: The diversion is at the lowest point on the river anyhow. They can't deprive anybody but the Imperial Valley of water.

MR. CALDWELL: But in that case, the Imperial Valley, of course, would be bearing the burden until the international agreement.

ARTHUR P. DAVIS: Just as it is now.

CHAIRMAN HOOVER: Not quite - she is bearing the burden until there is an All-American Canal.

MR. CALDWELL: There may be an increased draft on the river into the Imperial Valley, notwithstanding the Imperial Valley can't take more now, that is true, isn't it? That is, there are more Mexican lands that could take water now which Arizona might construe to be to her detriment and not California's.

ARTHUR P. DAVIS: They can't take the lands above any diversions that Arizona can utilize that are all in the United States.

JUDGE SLOAN: Why couldn't the Imperial Valley raise the claim that Arizona is diverting water that she needs. You are permitting Mexico to deplete the flow that you take out of the river. May not they reply - and I am not certain but what it might have some legal force - that in order to enjoy our rights we are compelled to surrender a certain portion of the water?

MR. NORVIEL: The statement has been made in our meetings on the part of California that they consider themselves in a position now to ask for an injunction against any further development above; and if this form of compact leaves the states within each of the basins to work out their own salvation, California having that view in mind might undertake to stop us from any development

in Arizona. Isn't that so, Judge?

MR. MC KISICK: I hardly think so, Mr. Norviel. As I look at it, the allotment of 7,500,000 acre feet past Lee's Ferry was intended to make provision to supply the present Mexican use and allow for the development in the southern basin states up to the 7,500,000 acres within the United States. Now this Mexican burden involves - what I think would be the practical effect of the paragraph as submitted, would be to charge the southern basin until such time as there might be a treaty adjustment, with the whole of the Mexican burden of use of the water coming down past Lee's Ferry.

CHAIRMAN HOOVER: Or alternately until the All-American Canal be built.

JUDGE SLOAN: There is a contingency that they may increase their consumption, which would raise a controversy between the Valley and Arizona.

MR. NORVIEL: Then this question comes up. Suppose that neither storage is obtained nor the all-American Canal built for twenty years. You have twenty years before you with the probability of exhausting the river at our head gates every year without any further development. We have some rights equal to yours in the amount of water which shall come down to us, a total of 7 1/2 million acre feet per annum. Suppose we divert our half of our third of that, or some large quantity of it, - that diversion will be above you. We will take it out when we need it which will be at the same time that you need it. We will probably deplete the river one-half of the low flow which is now all needed in the Imperial Valley without any further diversion. Then suppose the Mexican people go on and, having the physical ability,

take out the full amount that your contract with them permits, that would leave you in the Imperial valley during the season when you must have the water, practically without any, wouldn't it.

MR. MC KISICK: That would be true. But the answer to it is that in the absence of storage there is no security anyhow.

MR. NORVIEL: But suppose it isn't for twenty years.

CHAIRMAN HOOVER: Then the Imperial Valley is ruined. We have to face that fact and it is a physical fact which we hoped to meet and remedy to a large degree by this compact.

MR. CARPENTER: You mean as a result of the compact and not by the compact itself.

CHAIRMAN HOOVER: Yes. In other words, the Imperial Valley has tied itself up in a bow knot and unless they get storage they are ruined.

MR. NORVIEL: But without the flood menace, leaving that out of the question, the Imperial Valley is subject to a depletion of the water, at times when they need it most.

CHAIRMAN HOOVER: Yes, and it can't be remedied because of their own foolish contract. Coming back to the question of this clause. How did you have it formulated, Judge Davis?

S. B. DAVIS: "If in the adjustment of international relations, the Republic of Mexico shall hereafter establish any rights to waters from the Colorado River System, the burden of supplying such water shall be equally apportioned," and the remainder of the clause is the same as it was.

CHAIRMAN HOOVER: "If in the adjustment of international relations, the Republic of Mexico shall hereafter establish any rights to waters from the Colorado River System, the burden of

supplying such water shall be equally apportioned between and equally borne by the Upper Basin and Lower Basin; and the States of the Upper Basin shall deliver at Lee Ferry a quantity of water over and above that provided in Article III which will enable the fulfillment of one-half of the amount required to satisfy such delivery."

MR. CARPENTER: The rights exist right now, and shall be established for the benefit of the Republic of Mexico.:

MR. S. B. DAVIS: Well that is all right.

JUDGE SLOAN: Suppose they would be established by a court decree. I can't get it out of my head but what they might possibly be a result. Suppose the Imperial Valley should bring a suit setting up that under the exigency of the situation it is compelled to deliver water to Mexico or to Mexican lands. Suppose that contention be sustained by the courts. What if that contingency entered into it.

CHAIRMAN HOOVER: Our original language would cover that.

S. B. DAVIS: If you cut out "If in the adjustment of international relations" that accomplishes the same result. That is the part that I suggested Mr. Carpenter would have to sustain.

CHAIRMAN HOOVER: If you cut out that phrase, it would read: "If the Republic of Mexico shall establish any rights to waters from the Colorado River System, the burden of supplying such water shall be equally apportioned," etc.

JUDGE SLOAN: That would not meet my contention because the United States of Mexico might not be a party to that suit.

MR. CARPENTER: How does this sound: "If there shall be established any rights to the water from the Colorado River System in the United States of America for the benefit of the territory

of the United States of Mexico, the burden of supplying" etc.?

JUDGE SLOAN: The idea is possibly along that line. I am not certain that the language is. I can't visualize the language. I would like to have it written out.

The meeting thereupon adjourned to meet at 3:00 P.m.  
November 19, 1922.

MINUTES OF THE

• 20th MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 19, 1922  
3:45 P. M.



## MINUTES OF THE

## 20th Meeting

## COLORADO RIVER COMMISSION

The twentieth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Sunday afternoon, November 19th, 1922, at 3:45 P.M.

There were present:

Herbert Hoover, Representing the United States, Chairman	
R. E. Caldwell	" Utah
Delph E. Carpenter	" Colorado
Stephen B. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Norviel	" Arizona
Col. J. O. Scrugham	" Nevada

In addition there were present:

Mr. McKisick  
 Richard E. Sloan  
 C. C. Lewis  
 Arthur P. Davis  
 Ottomar Hamel  
 Mr. Bannister  
 Victor E. Keyes  
 Charles P. Squires  
 Edward W. Clark

The meeting was called to order by Chairman Hoover.

MR. HOOVER: We were discussing the paragraph on international relations "The burden of supplying water of the Colorado River System from the United States of America to the United States of Mexico in fulfillment of obligations, if any, which may exist or may be determined to exist between the two nations shall be equally apportioned between, and equally apportioned by the upper basin and the lower basin and the states of the upper basin shall deliver at Lee Ferry a quantity of water over and above that provided in Article III, which shall enable the fulfillment of one-

half of the amount required to satisfy such delivery."

MR. DAVIS: Your first clause, however, "In fulfillment of obligations, if any, which may exist,"-

MR. HOOVER: Wouldn't that allow the indirect invitation of of a private suite, the previous way it didn't.

JUDGE SLOAN: Do you think it inadvisable to include what may be established by a court?

MR. HOOVER: That is a pretty dangerous situation, here, of what may happen in a court proceeding because the nation might deny it.

MR. CARPENTER: We don't want to put anything in here that can be construed in any way as the slightest admission when it comes to matters of the State Department.

JUDGE SLOAN: I think it would be satisfactory to Arizona, particularly, if it could be fixed in any way that would not throw the burden upon the southern division in excess of the burden of the northern division. As a practical proposition, that they will be compelled to deliver water that could not be compensated for to the extent of fifty per cent by an additional flow from the northern division.

MR. CARPENTER: You can't do that without express language in here that you cannot put your finger on.

JUDGE SLOAN: What is the worst for us, to take the chance or the other?

MR. HOOVER: I think the worse situation is for you to have anything in here which looks like a recognition of the present situation.

JUDGE SLOAN: It is desirable to cut that down to the limit

and eliminate it altogether as far as the future is concerned if it can be done.

MR. NORVIEL: The spot is there, no matter how much we say "out" it is there.

MR. DAVIS: The first is a substantive question to be determined before anything can be drafted as to whether we are going to include rights that may be recognized otherwise than through a treaty. That is something that must be determined before any of us can draft anything. I think we should get that out of the way before we try to draft it.

MR. CALDWELL: Does this contract run to the government of Mexico, or are they just a third party to the contract?

MR. NORVIEL: Between two irrigation companies, - it was approved by President Diaz.

MR. HOOVER: The first question is, whether we dare recognize at all this present compact directly or indirectly.

MR. NORVIEL: It seems there is a contract by one section of the basin with a development company in Mexico recognized and approved by the President of Mexico, - it is almost an agreement.

MR. CALDWELL: Except the United States has not recognized it

MR. MC CLURE: I don't think we are morally bound to recognize it.

MR. NORVIEL: Do you assume the burden?

MR. MC CLURE: My portion of it.

MR. HOOVER: You were not here this morning (addressing Mr. McClure) when we came to this Mexican question. It goes concrete: as to whether or not we should attempt to provide here that the two basins should equally bear the present burden of Mexico, and

by so doing we give practically a moral substantiation to that contract which will be a very serious national embarrassment some day, and therefore, our debate is whether or not from a practical point of view we should not omit it, and with due regard to the fact that the burden is borne by the southern basin until such time as there is a remedy. We went over this ground which I think was agreed that at the present time the increase use of water by the Imperial Valley is impossible, therefore, there should be no increment of consumptive use of the southern basin through the development of the Imperial Valley. We think increased consumptive use in the Imperial Valley can only come about under two circumstances, first, the construction of an All-American canal. The moment that takes place the Mexican burden may be rid of so far as the basin, as a whole, is concerned, and there would be an opportunity to say to the Mexicans "You can't come in, and if you do you get it by a national treaty." Therefore we have a physical limitation of the lower basin. It would increase its consumptive use in respect to the Imperial Valley until it is rid of Mexico, because it cannot add physically to its own irrigation until it get an All-American canal. Therefore, my argument was directed to this end, that it is an immaterial thing at the present time,-- the burden that is now being carried by the southern basin... It is not increasing, and the margin of some billion and a half acre feet, which will be required for the further development of the Imperial Valley cannot fall on the southern basin until you have arrived, in fact, at a diffance of Mexico.

MR. CARPENTER: Leaving that much surplus in the river to bare for the present condition.

JUDGE SLOAN: It is quite accurate to say that demand from Mexico is fixed, because the demand from the Imperial Valley is fixed. As I understand it, they are not taking, in Mexico, one-half of the water under the contract, but they might exceed upon that by the development of additional lands, - that's the practical thing that would effect this seven and a half million acre feet allotment.

MR. CARPENTER: Judge Sloan, until the All-American canal is built the acreage that would be included in the increased demand is shut off, leaving that surplus in the river.

JUDGE SLOAN: In the event that's built.

MR. CARPENTER: No, I said until the seven and a half million acre feet, there is considered an increase in the Imperial Valley for future development wasn't there? Now, then, until that future development that water remains in the stream and goes on down.

JUDGE SLOAN: But that doesn't meet the objection.

MR. CARPENTER: It does, for this reason, when that canal is built the international development will be handled that way.

MR. HOOVER: It becomes a burden on the two basins.

JUDGE SLOAN: What I am saying, assume now that they increase their demands up to the full quantity of water that the Imperial Valley may use, or carry in their canal. That would be a million acre feet, - more than that, - that would enter into the calculations.

MR. CARPENTER: Don't you get Mr. Hoover's reasoning, that the Imperial Valley itself would not be making a demand for the increase, it would be Mexican lands.

JUDGE SLOAN: You overlook just the point I made before. The Mexican government might say "You can't get a drop unless you give

us one-half," and then the Imperial Valley would be confronted with this situation, -we must either deliver the water or we must suffer a diminution.

MR. CARPENTER: But the water is there.

JUDGE SLOAN: A diminution from what they may be entitled to from this seven and a half million flow annually.

MR. CARPENTER: The water is in the river and in the canal until they take it out by the All-American, and when they do that then the international problem develops.

JUDGE SLOAN: Suppose we develop and need that increase that we give to Mexico. That arouses a controversy between us and California immediately. It puts the burden upon the southern division immediately to take care of that Mexican situation. If some provision could be put in without mentioning Mexico at all by which you could share this burden, it would be established so that it is a recognized necessity on the part of the Imperial Valley to furnish that water, -recognized through treaty or through court decree of some court binding upon them or otherwise. That would be all that I should say we could justly demand, -against our interest to demand anything more which would be expressed in the compact.

MR. HOOVER: I am not objecting to the partition of the water, but I don't want to embarrass the Federal Government when it comes to the Mexican situation.

MR. MC CLURE: What would be the result if we don't mention it?

MR. HOOVER: That the southern division will carry the burden until we get the American canal.

MR. MC CLURE: The Imperial Valley has reached its limit until that American canal is built.

MR. HOOVER: That amount will flow down the river until you get the All-American canal.

MR. CALDWELL: There will, at least, be that much toward satisfying the Mexican burden for the present.

JUDGE SLOAN: How are you going to express the obligation after that without mentioning it?

MR. CARPENTER: Do you know of any way, - I know of nothing except language, and I am fearful of that.

MR. DAVIS: I think it can be expressed if we once agree on what we want to express, - I think some of us can express it, if it is agreed that we are assuming only half of the burden that may be assumed by treaty I think we can find language to express that idea.

MR. CARPENTER: State what you said to me a while ago.

MR. DAVIS: I hardly think it is necessary. If we want to make it apparent that we are not recognizing any present right in Mexico, either under that contract, or any other way, I see no objection to saying so, - starting the paragraph right off with a flat statement that the States, by entering into this compact do not admit or recognize any right in Mexico to the right to demand any water whatever, - being the idea, - not the language.

MR. CARPENTER: Let me give you an idea to pick at, - it came into my range of thought and is probably worthless. Suppose it would be stipulated in this compact that the burden of supplying all water that was necessary to pass Yuma for diversion below

shall be equally borne by the two divisions,- yes, I realize that the Imperial Valley is in that division.

MR. MC CLURE: I think we might accept that,- all water to be divided below Yuma to be equally divided between the two divisions.

DIRECTOR DAVIS: There may be something in Mr. Carpenter's statement, because the Imperial Valley is now under contract to change its heading to Laguna Dam. That could be placed in, and leave Mexico in without mentioning it.

MR. HOOVER: What is the geographical situation there,- does it pass the head or not?

MR. NORVIEL: It is below Yuma.

MR. CARPENTER: I was thinking of the All-American canal when I made the suggestion. The All-American canal will now be above Yuma. Of course, at present the amount passing Yuma would have the effect of imposing an additional burden at once at Lee Ferry that in our minds we had already cared for at that point, which would not be satisfactory I know to,-

MR. HOOVER: That would be putting on the upper states half of the burden.

MR. CARPENTER: Which we feel have already provided for.

MR. HOOVER: Until the All-American canal was provided and then it would be clearly the treaty situation that would arise, wouldn't it? Would there be any water going into Mexico from the All-American canal?

MR. CARPENTER: No.

MR. HOOVER: It seems to me you would have to prevent that, because those below might make another contract to supply water



of the All-American.

MR. CARPENTER: I have a vague recollection of seeing some time a discussion that expressed that the Mexican lands now served by the present Imperial Valley canal might some day be similarly served by water dropped by the All-American,- I don't know where I got the idea.

MR. MC CLURE: It is feasible.

MR. CALDWELL: Assume that appropriations are limited to the provisions of this contract, the water over and above that that is left in the river might be dedicated to the supplying of this burden, it seems to me, until there is an international agreement.

MR. CARPENTER: It automatically gets there.

MR. CALDWELL: I know some one of the other states might want to take it up until the end of the period, or something of that sort.

MR. CARPENTER: They get it anyhow.

MR. CALDWELL: Who gets it? They don't if it is diverted before it gets to the boundary as a secondary right, and if it is permitted to go down to satisfy the Mexican burden it is very certain there is enough to do it.

MR. CARPENTER: The only object would be to compel the lower division to release it in some big reservoir, because it already gets there and always will get there. As a matter of fact it will continue to go there until the lower development reaches the maximum.

MR. HOOVER: We are not dealing with the practical situation at all, because the flow for the next fifteen or twenty years is far in excess of the seven and a half million acre feet, and that

flow is ample to take care of this extra burden, the present burden of Mexico, and the practical assumption is the All-American canal will be completed long before that seven and a half million acre feet will be absorbed, or long before the seven and a half million acre feet will be absorbed above. Here you have got prospective use on Mr. Davis' figures of six million one hundred thousand acre feet above for discussion, and it probably would be twenty years before you got up to that figure, which means that twelve million acre feet are going to go down anyhow, and it will be enough to drown Mexico in excess of all the development below. We are dealing with an impracticable situation - simply a possibility - which was the reason I reached the conclusion it was not a pertinent question because before the time that this water will be absorbed, either above or below, to any point where this becomes interesting, the American canal will have been completed and the treaty will have been fixed.

MR. SLOAN: Provided in the meantime there will be recognition of the government of Mexico.

MR. HOOVER: Have you got something Davis?

MR. DAVIS: Something that hits my idea. We do not admit or recognize that there exists any obligation on the United States or any state to deliver water, or allow water to flow to the United States of Mexico for use upon lands in that republic, but if by international agreement, or otherwise, an obligation to deliver any such water shall be established, then and in that event the burden of supplying such water shall be equally borne by the upper and lower divisions, etc. The way I was arguing in my own mind is this: I am looking at it now from the viewpoint of the

upper division. Those states are apparently willing to accept one half of whatever burden may be imposed by a treaty - the burden which is imposed by a treaty is necessarily much greater than any burden which may be established by a court, because a court, in fixing rights, would deal only with existing rights. That is to say, water actually appropriated, while we all assume that in a treaty there will be provision not only for lands on which water is now used, but a provision for water for additional lands which a court would not take into consideration, so that as a practical question, it seems to me if we are willing to assume half of the larger burden we should assume half of the lesser burden. I took it up with Mr. McClure and he thought it would be alright.

MR. MC CLURE: I am not at all certain that would be the case. Those men are shrewd enough to know there must be a reckoning some of these days and it must come through federal sources.

MR. HOOVER: You will have also all the Americans who have holdings down there aligned at once against this compact, which is worth considering. I thought it was to avoid all we can.

MR. DAVIS: That goes to the first statement that we recognize no right in Mexico - that observation.

MR. HAMELE: It appears there might be reasons why Congress might not wish to approve a statement of that kind.

MR. HOOVER: Because this would be a congressional statement.

MR. DAVIS: It is a correct statement as it exists - the method of expressing it might be improved on.

MR. HOOVER: What we have here is this: "The burden of supplying water of the Colorado River System from the United State of America to the United States of Mexico in fulfillment of

obligations, if any, which may exist, or may be determined to exist, by the two governments, shall be equally apportioned between and equally borne by the upper basin and lower basin and the states of the upper basin shall deliver at Lee Ferry a quantity of water over and above that provided in Art. IIIx which will enable the fulfillment of one half of the amount required to satisfy such delivery." I don't know that we need say that. It is the U. S. government as far as we are concerned in the basin here, that determines.

MR. DAVIS: I rather like that language myself. That implies treaty.

JUDGE SLOAN: The other might imply executive action.

MR. CARPENTER: Why not say 'nations.'

MR. HOOVER: Governments rather imply treaty, while nations might imply other processes.

MR. CARPENTER: As determined by the nation, it is determined by its government.

MR. HOOVER: But it may be its Supreme Court.

MR. CARPENTER: Of course, pursuing that one step further, that is a determination by a government - one branch of the government.

MR. MC KISICK: I think there is a great deal of force in Judge Davis' contention.

MR. HOOVER: It brings us back merely to the question of determining "If any, which may be determined to exist," - don't say who determines. I am eliminating the red rag to various people.

MR. CALDWELL: Are we correct in assuming, Judge, that a

court only establishes rights as they exist, meaning that there is only apportioned rights to water when the water has been supplied?

MR. DAVIS: What I had in mind was this. No court would have power to say that a certain amount of water should go down to Mexico for the supply of lands which had no water rights at present. While by treaty such an obligation could be established - that was the idea.

MR. CALDWELL: Maybe a court might say that in certain eventualities water would go down to supply these lands, virtually having the same effect as a treaty allocating a lump of water.

MR. DAVIS: I can't imagine just how such a thing could arise. Are you referring to a contract down there for half of that water?

MR. CALDWELL: Yes.

MR. SLOAN: Yes, on the basis of contract.

MR. DAVIS: That's a possibility; then it would immediately raise the question of the validity of the contract, because there is existing right on that contract.

MR. CALDWELL: It might be as far reaching as a treaty up to the terms of the contract.

MR. DAVIS: Yes, but I had in mind the treaty obligation would be much broader - would involve a larger amount of water than involved under that contract.

MR. MC KISICK: On the other hand there is this possibility: That we run along as conditions now exist, supplying the Mexican demand out of the diversions made by the Imperial Valley up to the extent of their present use. When the all American Canal is constructed, and diversions are no longer made through the Mexican

Canal, certain lands will have acquired some right to water which they had been using, and they will contend that they are entitled to continue to use it." The amount they are now using is 950,000 acre feet. I don't know whether they could go beyond and establish a further right to the Mexicans on the contract or not.

MR. HOOVER: We covered that by this expression "In fulfillment of obligations, if any, which may be established by the two governments etc."

MR. CALDWELL: I rather like the two governments myself.

MR. CARPENTER: I cannot help but feel that the two governments would not only have a good psychological effect and the state department less embarrassed, but would also be an inclusive term - whatever the governments establish - the state department and the courts would be included in that. The action of the court is an action of the branch of government.

MR. HOOVER: We said "two governments". If we said U. S. Government, that would be only one.

MR. CARPENTER: I am in error.

MR. HOOVER: If not our government, it would imply executive action that might go down and establish it.

MR. DAVIS: I doubt myself if there will be any court action to establish any rights in Mexico. I am very much inclined to doubt whether any court would have any jurisdiction.

JUDGE SLOAN: Except this one contingency, that the Imperial Valley might bring suit to compel delivery of water, sufficient for its needs and lie down as one condition the fact that it is compelled in order to enjoy its right for a number of years to deliver water to Mexico, and the court might say that is

not an unreasonable condition, therefore you will be allowed a sufficient quantity of water to meet your needs, which would include necessarily the amount they are compelled to deliver under their contract.

MR. DAVIS: I think the court possibly, as a matter of guess work, would decide precisely as the Supreme Court of Colorado decided, where there was an attempt to obtain adjudication of water from the Colorado in New Mexico, and they refused to do it.

JUDGE SLOAN: Was that a condition upon which the Colorado use was already enjoyed? .

MR. DAVIS: It was a long continued diversion in Colorado, by which the Colorado Court refused to recognize any appropriation outside of Colorado.

JUDGE SLOAN: I think a court would allow a diversion of the Colorado River for use of water in Mexico direct, but in order to enjoy its own established rights, if that was necessary, the court might fix the amount of water which might be diverted.

MR. DAVIS: I do not believe a Mexican land owner will go into a court of the United States and compel the delivery of water to that Mexican land. I doubt it, is what I mean.

JUDGE SLOAN: I agree.

MR. DAVIS: I doubt if the same result could be obtained by indirect action.

JUDGE SLOAN: Except a court would take this into consideration - except a refusal by the court would mean refusal to grant relief to its own suitors - that's the only consideration that could possibly effect the situation adversely to us.

MR. DAVIS: It would raise the question to divide water in the United States for the benefit of Mexican lands.

JUDGE SLOAN: Which would be denied if that's all there is to it.

MR. DAVIS: That's the reason I am willing to take the chance.

MR. HOOVER: Then you think "which may be established" is alright?

MR. DAVIS: I would be in favor of the wording that you had originally, but I would accept this, but I prefer the other.

MR. HOOVER: The wording I had was "which may be established by the two governments."

MR. DAVIS: I would prefer that, but I think it is immaterial and would accept the other.

MR. HOOVER: Mr. McClure, which expression do you prefer "which may be established". Shall we put in "by the two governments."

MR. MC CLURE: I think that might prove a long contingency - omit those words preferably.

MR. CARPENTER: Put them in.

MR. CALDWELL: I would prefer to have them in, but my opinion is not worth much.

MR. EMERSON: I would prefer to have them in, but would accept the other.

MR. NORVIEL: I believe that those two words should be omitted, but I don't like the whole thing. - Don't like any recognition.

MR. DAVIS: I would agree with Mr. Norviel to leave out all recognition of Mexico.



MR. NORVIEL: Not in this sort of compact; we will have to have it; that's the reason I got away from this sort of definition.

MR. DAVIS: Your objection now goes to the entire compact?

MR. CARPENTER: I don't think that's fair to Mr. Norviel.

MR. HOOVER: Can we take it then California and Arizona would agree to this if we leave out the words "by the two governments," so it would read "The burden of supplying water of the Colorado River System from the United States of America to the United States of Mexico in fulfillment of obligations, if any, which may be established, shall be equally apportioned between and equally borne by the upper and lower basin." Would you approve of it that way.

MR. NORVIEL: I would.

MR. MC CLURE: I would.

MR. HOOVER: How does that strike the rest of you? One gives an opportunity for a court determination presumably, and the other involves a treaty.

MR. CALDWELL: May not leaving out those words some time mean that private individuals, regardless of the government might demand rights on certain grounds. It seems to me important that final adjudication of these rights in toto should be by the governments.

MR. EMERSON: They would have to establish their rights to the court.

MR. CALDWELL: The final adjudication should be between the two nations.

MR. HOOVER: In the first place, the court determination would likely be less than an international treaty, and second, if

a court determines it, the treaty, you can take it, will confirm it, because it would have the value of an instrument of the United States, and they could not very well deny it, so it is fairly well inclusive.

MR. CALDWELL: The courts would not undertake it anyway.

MR. HOOVER: They are not likely to and if they should, it would be binding upon the government, so it really doesn't matter which way.

MR. CALDWELL: I will accept it, to be agreeable.

MR. HOOVER: We can take it we have fixed that one.

MR. DAVIS: I accept it in principle - I am not satisfied that the language is exact. I am thinking now as to that word "establish" as to whether that does in itself contemplate that it is determined either by treaty or by a court. The right may be established merely by an appropriation.

MR. HOOVER: We can go back to the other word 'determine'.

MR. DAVIS: Established and determined would cover what I had in mind.

MR. CARPENTER: Suppose a court of Mexico would establish something, where are you?

MR. DAVIS: Would there be any objection to saying "established by a treaty or court decree."

MR. HOOVER: Then you invite the thing right off.

MR. DAVIS: I think some word could be found to cover that thought. All I want is not to commit myself too strongly on that.

MR. HOOVER: We will pass this for the present. We next come to the Preference clause, which reads: Art. 5. (a) The uses of the waters of the Colorado River System for purposes of navigation

shall be subservient to the need and necessary consumption of such waters for domestic, agricultural, manufacturing and power purposes

MR. CARPENTER: Now it is my original thought to follow the word 'domestic' with the word 'municipal'. The suggestion was brought forward that municipal might be taken to include power.

MR. HOOVER: Is there any other amendment to that paragraph? I may just mention there may be the same opposition to that in Congress, but I don't know how much.

MR. NORVIEL: I was just wondering if the word 'flood control' would have any influence or effect.

MR. HOOVER: To put in the first clause flood control?

MR. CARPENTER: It isn't of any use at all.

MR. HAMBLE: I have already suggested that I think it is unwise to put that paragraph in this compact because this these contracting parties have no power to make such provision in the first place, and in the second place, it endangers the compact because it is almost certain to be eliminated by Congress in some form of reservation, which may make it much more difficult to get a formal approval of the compact; that is, to make the approval final and binding. This question of navigation is one which the federal government guards very jealously, and I have not heard any reason given before this commission, except a purely sentimental one, as to why it should go in, and I think it would be said by the government that an approval of such a clause might embarrass the state department in connection with a treaty with Mexico. There are various questions still unsettled as to what the rights of Mexico are under previous treaties in connection with navigation, and with that in mind, it seems almost absolutely certain that the

government would not approve this. If these states want this navigation question swept aside, the logical way, and the proper way, it seems to me, is to do it by a separate act, then the question can be brought on its merits and passed on its merits. If it is injected in this compact, it cannot be handled that way, and would have a tendency, as I view it, to possibly kill the compact.

MR. CARPENTER: I am a little rusty, Mr. Hamele, on the rights of the states and the United States in respect to navigation. Of course, I realize that the rights of the nation is paramount in the matter of navigation, but don't the states of themselves have certain control over navigation, subject always to the paramount power of the United States.

MR. HAMELE: That's true.

MR. CARPENTER: As to the states, have they not a right as to whatever powers they may have, to contract respecting those powers?

MR. HAMELE: That's true. What's intended by this compact is for the states to legislate to the extent they can upon that point and that the approval of the United States shall complete the legislation and cover the whole subject and eliminate it and make the status as defined in this contract. The United States could not possibly agree to it.

MR. MC CLURE: Haven't I the right to assume, inasmuch as Congress has taken the right to lead, practically, by consenting to the construction of the Laguna Dam, therefore we may follow it with this step?

MR. HAMELE: There isn't any specific consent by Congress

for the construction of the Laguna Dam. There is an act that is so interpreted, but all it says, it gives the right to divert power from a navigable stream to water Indian lands, and others. There is no direct provision in any act provising for construction of a dam across the Colorado River.

MR. MC CLURE: The federal government has built one, that's the practical view of the situation.

MR. HAMELE: That doesn't destroy navigation.

MR. CARPENTER: If the United States is a part of this compact and signs as such, it will be presumed that it dealt with their paramount right of control of navigation. It occurred to me afterward the other day, that while I would wish and hope that the United States of America might construe this to be, in legal effect a control of their power of navigation, it has several times occurred to me that inasmuch as it is a transaction between the states, would it be interpreted as far as I would hope it would go or would it not really be interpreted simply to mean as to the power of the states over navigation, that they agree as here expressed. I am prone to believe that the latter might be the interpretation, although the former would be my wish.

MR. HAMELE: The argument was presented here that it was the wish of the states that the rights of the national government may be eliminated, or made subservient as defined in this article, and I think if the U. S. approved this compact with this provision in without some specific reservation on the point - that's what it would amount to.

MR. CARPENTER: If that's the interpretation, doesn't it raise the issue here in this compact, and isn't it just as well to

raise it in the compact as it is a special bill?

MR. HAMELE: In a special bill, the thing would stand on its own feet and could be handled on its own merits, while a great many other things are bound up in this compact, and it is a sort of - well, - forced action on it, you might say, and cannot be considered on its merits as it could in a separate bill. I see no great harm that could come to any of the states by a continuation of all federal rights regarding navigation. I don't know of any harm that could come to any of these states.

MR. HOOVER: At the present moment, the war department keeps a man down here at places where the diversion is made in the lower basin and constantly tells them what they can and cannot do.

MR. HAMELE: That's principally to protect the Yuma people from flood and the destruction of their property.

MR. HOOVER: They do it, however, on the ground of navigation.

MR. NORVIEL: I suggest: "The consumptive uses of the Colorado River system so far as this compact is concerned, shall have preference right as follows: Domestic, municipal, agricultural and power." speaking only of consumptive uses.

MR. HOOVER: And cut out all of the rest?

MR. NORVIEL: "The uses of the waters of the Colorado River System for purpose of navigation shall be subservient; that the consumptive uses of the waters of the Colorado River System, so far as this compact is concerned, shall have preference in right as follows: Domestic, municipal, agricultural and power."

MR. CARFENTER: I make one servient and one dominant.

MR. EMERSON: I move that we adopt Article A.

MR. DAVIS: Seconded.

MR. HOCVER: It is moved and seconded that paragraph 2, Art.5. be adopted and that the word 'municipal' be inserted after the word 'domestic'.

MR. CALDWELL: MR. NORVIEL: MR. CARPENTER: MR. MC CLURE: Aye

MR. HOOVER: "(b) The uses of the waters of the Colorado River System for purposes of generating power or of manufacture shall be subservient to the uses and necessary consumption of such waters for domestic and agricultural purposes and shall not interfere with or prevent the use of said waters for said dominant purposes."

MR. CARPENTER: 'Municipal' will be a qualifying word.

MR. NORVIEL: I don't see how 'municipal' must mean power.

MR. CARPENTER: Let the word 'municipal' referring to uses here mean all the uses of municipalities and cities, as specifying particularly except power.

MR. NORVIEL: Have we a definition of 'municipal' in connection with cities and towns that would help us?

MR. HOOVER: Define municipal in advance. What is your definition then?

MR. CARPENTER: I haven't any prepared, but can dictate one, or I will prepare one. I would rather prepare one - it will be quicker.

MR. HOOVER: Prepare one that will exclude power.

MR. CALDWELL: Omit 'domestic' out of the first paragraph and put 'municipal' in its place, and then power in the same paragraph is clearly distinguished from municipal, and 'municipal' in the next paragraph below instead of 'domestic.'

MR. HOOVER: Farmhouse use is not agricultural.

MR. NORVIEL: Stock watering I suppose comes under domestic use.

MR. HOOVER: Is there any further comment on this?

MR. MC KISICK: Col. Scrugham isn't here, but when this was discussed the other day, he wanted some provision for industrial applications, other than those requiring consumption of power and it seems to me this would be the appropriate place to handle it with a qualifying definition of the same, as municipal. "Manufacturing" is in paragraph (a), but has no corresponding use in paragraph (b).

MR. HOOVER: I am afraid of getting a lot of definitions against power, because it gives more emphasis to the ostracism of power and that we don't want.

MR. MC CLURE: We don't want to ostracize it but simply to make it subservient.

MR. CARPENTER: Manufacturing is considered broader than power.

MR. SCRUGHAM: I request that adequate provision be made to cover water required for mining and milling. I wish to insert the terms "mining and milling" in this article of the fact because it seems desirable the rights of those who use water for such purposes.

MR. CARPENTER: Suppose we put in mining and milling and then say that 'municipal, mining and milling, will not be taken to include the generation of power.'

MR. SCRUGHAM: How about "domestic, municipal, agricultural, mining and milling purposes".

MR. CARPENTER: Milling is a generation of power.



MR. SCRUGHAM: Not the milling of ores. Milling is an entirely separate process from mining. A dependable water supply is required for milling.

MR. CARPENTER: Why not say the words 'municipal, mining and milling.'

MR. NORVIEL: I think the word 'industrial' would cover that.

MR. CARPENTER: I would rather have that.

MR. HOOVER: I am not sure but that Mr. Norviel hasn't something that will be helpful. I think we might as well take in the other industries.

MR. NORVIEL: This would not include a water mill for grinding corn - industrial would use all.

MR. EMERSON: Would 'industrial' cover it?

MR. SCRUGHAM: I favor the term 'mining, Milling and other industries'. I want to conform to the language of our state statutes.

MR. EMERSON: Industrial, will take the place of manufacturing and so it will materially lessen the expression.

MR. HOOVER: In the previous paragraph this shows the notation of the same idea, so let's say "mining, milling and other industrial uses." Mr. Carpenter's suggestion was --

MR. NORVIEL: None of which shall include the generation of electric power.

MR. HOOVER: "Municipal, mining and milling and industrial uses shall not be taken to include the generation of power." Is it satisfactory?

MR. NORVIEL: MR. EMERSON: MR. CARPENTER: MR. SCRUGHAM:

MR. DAVIS: Aye.

MR. HOOVER: Then we come to paragraph (c). "The provisions of this article shall not apply to, or interfere with the regulation and control of the appropriation, use and distribution of water by any state within its limits."

MR. CARPENTER: The previous paragraphs imply only interstate relations and this provision limits the others to interstate relations.

MR. EMERSON: Isn't it intrastate, rather than interstate?

MR. HOOVER: In other words, I just wanted to be sure whether it did make the rest wholly interstate, and whether or not one state will decide what it's going to do if it doesn't upset the rest of them.

MR. NORVIEL: Refers to the whole basin, the first two sections. I don't see any necessity for (c) at all.

MR. SCRUGHAM: I think that paragraph is a desirable part of the compact.

MR. HOOVER: Let's see how we stand on it? I don't think it's material.

MR. MC CLURE: I think it isn't important; aye.

MR. SCRUGHAM: MR. CARPENTER: MR. DAVIS: MR. CALDWELL:

MR. EMERSON: Aye.

MR. NORVIEL: Just a word right here: "Use and distribution of water by any state". What does 'by any state' mean?

MR. HOOVER: Within the limits of any state. -- The last time we said that wasn't necessary. I think Mr. Norviel made a point; it looks like states use - what is meant is within a state and should be "within the limits of any state."

MR. CARPENTER: If I were writing it for a lawyer I would

say "intrastate."

MR. NORVIEL: Write it for laymen and I would see what it means.

MR. EMERSON: I think in all the states, the water is declared to be the property of the state, and when you speak of determination by any state, it refers to the whole volume of water within the state.

MR. HOOVER: Is that satisfactory now, Norviel? (addressing the rest) Is that satisfactory? (Everyone assents) Then we can pass that article. This is a new edition of 'Purposes', the contents of which have been suggested by various parties: "The major purpose of this compact is to provide for the equitable division and apportionment of the use of the waters of the Colorado River System among the seven states signatory to this compact in order to promote interstate comity by removing causes of present and future controversies between them, and thus to assure the expeditious agricultural and industrial development of the Colorado River Basin through storage of its waters and the early erection of river control works for the protection of the Imperial Valley. To this end the Basin is divided into two divisions and apportionment of the use of an equal amount of the waters made to each of them with provisions that at a subsequent time a further equitable apportionment of the use of the remaining unappropriated waters may be made to correct the inequities that cannot now be foreseen; and the relative importance of different beneficial uses may be established and provision made for settlement of future controversies." I have incorporated one idea of my own in relation to the control works in the Imperial Valley in the hope it might

satisfy a kob of farmers saying we are not doing anything for the control works. They want to introduce a clause into the compact making it contingent upon the erection of such control works.

Such an expression in the purposes of the compact of such obvious consequences of any development, would not carry any legal weight.

MR. CARPENTER: Do you need to limit that to the Imperial Valley. It is the lower part of the territory of the United States that we want to protect, both the Yuma and Imperial Valley, isn't it?

MR. HOOVER: I don't object to that.

MR. NORVIEL: There are three valleys that are in danger. The Paloverde, first, and the Yuma and Imperial. I guess the Imperial Valley needs the greatest protection as its headgate is in danger of flood menace and is caused by the dam at the headgate.

MR. DAVIS: Just the ordinary river levies, and the menace that high water is to these levies. The Imperial Valley diversions is supposed to somewhat aggravate that.

MR. HOOVER: We could say, "The lower part of the basin," but it wouldn't quite satisfy them. They would want you to put it in the sky near the snow banks.

MR. DAVIS: It isn't really germane to the compact at all.

MR. CALDWELL: I am wondering if this may not really sometime be made a menace, such a menace that it cannot pass Congress. It depends on the order in which these things come up in Congress it seems to me. If the compact were in Congress at the same time a bill providing for river control were in Congress, it might you might find them trading as between the compact and the bill to the disadvantage of the public possibly.

MR. HOOVER: I would cut that down like this "through storage of its waters and the early protection of the lower part of the basin from floods."

MR. CALDWELL: Personally, I would like to have reference to the Imperial Valley if it will not endanger the passage of it through Congress.

MR. EMERSON: It would have a certain psychological influence in Wyoming to mention it, but I don't believe it would be the means of defeating the compact at all.

MR. MC CLURE: I think it was recognized fully and agreed to by California because the Paloverde suffered so last spring.

MR. CARPENTER: "Just to assure the agricultural development the storage of water and to encourage the early erection."

MR. HOOVER: That's weaker. We are only assuring by this compact that that will be done.

MR. EMERSON: It is expressed in here so as to attract the favorable attitude of the people in the southern territory.

MR. DAVIS: I like the latter language of this much better myself.

MR. SCRUGHAM: 'To protect the lower part of the basin from floods.'

MR. HOOVER: It sounds a little impressive - I tried to make it that way.

MR. NORVIEL: Why not add 'protection of lives and property.'

MR. HOOVER: Any other comment on this piece of oratory?

MR. HAMELE: Wouldn't it be a more accurate expression if the word 'through' would be changed to 'include'.

MR. HOOVER: It minimizes the strength of it if you say inclu

MR. CARPENTER: Why don't you strike 'through'?

MR. DAVIS: It weakens the sentence: put in the last three lines, which it seems to me are out of place. As a matter of arrangement they could go in before the "further equitable apportionment."

MR. HOOVER: "To establish the relative importance of the different beneficial uses of water and to make provision for settlement of future controversies among the seven states signatory to this compact in order to promote interstate comity, etc."

MR. NORVIEL: An apportionment of the waters to each of them.

MR. HAMELE: A portion of the water, or portions of water.

MR. HOOVER: An assignment of a portion, or something like that, why not say 'apportionment'.

MR. DAVIS: The implication being we are apportioning all, when we are not.

MR. HAMELE: The word 'unappropriated' might be changed to 'unapportioned.'

MR. HOOVER: Can we pass this now?

MR. NORVIEL: I hadn't seen this matter until now, but it looks fairly well, but I would like to have a chance to reach it over.

MR. CARPENTER: I will kick on "to this end".

MR. NORVIEL: I think the word "unappropriated" should be left there; it means what is intended.

MR. HOOVER: Unappropriated or unapportioned.

MR. DAVIS: I will vote for either.

MR. HOOVER: It will be unappropriated.

MR. EMERSON: It might mean something - we have a definition for "unappropriated."

MR. DAVIS: We use both words in the body, unappropriated and unapportioned, and consequently it seems a matter of indifference which one we use here.

MR. HAMELE: It might be defined to mean unappropriated waters under the laws of the different states. That would mean something entirely different than what we have in mind here.

MR. HOOVER: I suppose anybody reading it primarily will go back to the definition and see what we mean. I think we have agreed on this and will now take up the Title. Mr. McKisick has submitted a draft. "Pursuant to an Act of Congress of the United States, approved August 19, 1921, and to the acts of the several legislatures conforming thereto, the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming acting by and through the undersigned Commissioners, respectively appointed by the Governors of the States after suitable negotiations wherein the United States of America participated by and through Herbert Hoover, appointed by the President of the United States, have agreed upon a compact which has been approved by the representative of the United States, and which is in the words and figures following, to-wit:"

MR. DAVIS: I like the general tone of it. I was wondering about those two first lines. As a matter of fact the legislative acts preceded the congressional act.

MR. CARPENTER: I don't agree with that. There are some ideas that are good and others that might be improved on. If you don't put that on the front page, you have to typewrite the name under the signature at the back and designate who he is, and you accomplish the same thing easier the other way.

MR. NORVIEL: I would suggest the one I had in my compact if it had not met with such immediate resistance.

MR. DAVIS: You might have as good luck as I did.

MR. HOOVER: Mr. Norviel, Mr. Carpenter and Mr. Davis started alike, that is, to name the status first, because it is a state compact, instead of introducing the federal government. That was a co-incidence of mind.

MR. HAMELE: If you were to name the representative of the United States, you should also name the representatives of the states.

MR. HOOVER: That's provided here. The old one started off, "The states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact for the purposes herein expressed and acting under the Act of Congress of the United States approved August 19, 1921, (42 stat. ) and the respective acts of the legislatures of the said states, have appointed as their Commissioners:" Then naming them.

MR. EMERSON: I move the adoption of this form.

MR. MC CLURE: Seconded.

MR. NORVIEL: I think mine has some things in this should have.

MR. HOOVER: Mr. McKisick had some graceful phrases in his: "Acting by and through the commissioners appointed by the governors of the said states" is a good phrase.

MR. CARPENTER: I think the states appoint is as good as appointed by the Governors.

MR. HOOVER: You knock out the signing at the end and Mr. McKisick has nothing left. I will now entertain the original preamble with the comment setting out the federal representative in his proper person.

MR. NORVIEL: I would like to ask what is the subject of



"have appointed."

MR. EMERSON: Each state appoints their commissioners.

MR. NORVIEL: Doesn't it leave something unfinished to say the state appointed a commissioner.

MR. CARPENTER: When a Governor acts under legislative act it is the same as the state.

MR. HOOVER: All those in favor of this article, which I will not read again, please say Aye.

MESSRS. CARPENTER, NORVIEL, MC CLURE, DAVIS, CALDWELL: Aye.

MR. HOOVER: We now arrive at definitions. "When used in this compact: (a) The term "Colorado River System" means that portion of the Colorado River and all of its tributaries within the United States." Everybody agreed to that?

MESSRS. CARPENTER, NORVIEL, MC CLURE, DAVIS, EMERSON, CALDWELL Aye.

MR. HOOVER: "(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 to which the waters of the Colorado River may be beneficially applied."

MR. CALDWELL: I suggest "shall be beneficially applied."

MR. HOOVER: I think that's well taken. All those in favor of (b) with this amendment please say Aye.

MESSRS. CARPENTER, NORVIEL, MC CLURE, DAVIS, EMERSON, CALDWELL Aye.

MR. HOOVER: "(c) The term "Lee Ferry" means that point in the main stream of the Colorado River system about one mile below the mouth of the Paria River." Any comment?

MR. CALDWELL: I wonder if this wouldn't do as well and may

be a little more flexible - that point will be located somewhere where there is a measuring station. I wonder if we shouldn't say the term "Lee Ferry" means any point to be hereafter selected on the main stream of the Colorado River within one mile below the mouth of the Paria River."

MR. NORVIEL: How is that going to help?

MR. CALDWELL: I think a point ought to be established some time and there is no necessity in having it a mile, or about that.

MR. NORVIEL: The water gauge will be above the mouth of the Paria anyway - no doubt about that.

MR. CARPENTER: This isn't where the measuring gauge will be but the point of division. As to the clause "about a mile", you can ramble around a lot.

MR. NORVIEL: Why not make it one mile, then you know definitely where the point is.

MR. HOOVER: Some time there may be a gauging station but they would like a little latitude of about 200 feet.

MR. EMERSON: I think it is good the way it stands.

MR. NORVIEL: I think the word 'about' ought to be out.

MR. HOOVER: All in favor of paragraph (c), with 'about' taken out, please say Aye. (Accepted)

MR. HOOVER: "(d) The term "States of the Upper Division" means the states of Colorado, New Mexico, Utah and Wyoming." All those in favor, please say Aye. (Accepted.)

"(e) The term "States of the Lower Division" means the states of Arizona, California and Nevada." All those in favor, please say Aye. (Accepted.)

"(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from

which waters naturally drain and flow into the Colorado River System above Lee Ferry and also all parts of said states located without the drainage area of the Colorado River System which shall be beneficially served by waters diverted from the river above Lee Ferry." All those in favor, please say Aye. (Accepted.)

"(g) The term "Lower Basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain and flow into the Colorado River System below Lee Ferry and also all parts of said states located without the drainage area of the Colorado River System which shall be beneficially served by waters diverted from the river below Lee Ferry." All those in favor, please say Aye. (Accepted.)

"(h) The term "apportionment" or "apportioned" mean the division of waters of the Colorado River System for consumptive beneficial use." Any comment? If not, please say Aye.

MR. EMERSON: I don't get it.

MR. NORVIEL: I think 'to' should be changed to the "purpose of".

MR. EMERSON: What is the purpose of that definition?

MR. HOOVER: So you will know what we mean; otherwise you will have to put the whole sentence and phrase in and you use the word 5 times in the compact.

MR. EMERSON: Under the terms of the compact under the equation proposal, a certain amount of water will be allocated to one division or the other, as the case may be, presumably for consumptive beneficial use of the future.

MR. NORVIEL: Not presumably, but for.

MR. EMERSON: I will agree to that for the present.

MR. HOOVER: All in favor say Aye. (Accepted.) "(1) The term "appropriation of water" means its actual application to beneficial use."

MR. MC CLURE: Isn't "actual" unnecessary and overworked?

MR. HOOVER: It is only to emphasize the difference between paper appropriations and actual use.

MR. HAMELE: May I suggest that it will be made clearer by adding this clause "without relation to the date of any prior notice or of the construction of works."

MR. ELMERSON: Isn't it tied down now to beneficial use so it would eliminate the other considerations?

MR. HAMELE: It should be very clearly stated, it seems to me, and that clause would make it clearer.

MR. HOOVER: I think that rather improves it.

MR. CARPENTER: It is for this compact only.

MR. HOOVER: It only applies between basins here, and I think we ought to have some definition as to what happens, otherwise we have paper appropriations.

MR. NORVIEL: It applies throughout the division.

MR. HOOVER: Only in relation to each other.

MR. NORVIEL: I understand the actual appropriation of water in either basin has no relation particularly to the upper basin, but the same definition applies in both basins.

MR. CALDWELL: The term "Appropriation of water, as between the basins, means, etc." That's the big thing, we want to determine the appropriation between the basins.

MR. HOOVER: We only use it in that sense. We only use it in one paragraph when we come to equate. Are you in favor of that? (addressing Mr. Caldwell and Mr. Norviel) All those in

favor, please say Aye. (Accepted.)

We have now under discussion article 3 and 4. There is one more to be drafted, one that Judge Davis was to draft for us, covering the clause about appeals to the courts. We will leave the discussion of 3 and 4 until tomorrow morning. I have all those marked the whole commission agreed to. Then there is the wild Indian article. "Nothing in this compact shall be construed as effecting the rights of Indian tribes."

MR. SCRUGHAM: Why should such a paragraph be inserted.

MR. HOOVER: To protect the U. S. who have treaties with the Indians. Those treaty rights would probably exceed these rights anyway. We don't want the question raised, that's all. Has anyone any objection to it?

MR. NORVIEL: I never heard of it before.

MR. SCRUGHAM: I can't see any objection to its inclusion.

MR. HOOVER: All those in favor of this, please say Aye.

MESSRS. NORVIEL, CALDWELL, CARPENTER, SCRUGHAM, DAVIS, MC CLU  
Aye.

MR. EMERSON: I will reserve my decision on that. Is there any real necessity for that?

MR. HOOVER: The indian question is always prominent in every question of the west and you always find some congressmen who is endowed with looking after the indian, who will bob up and say, "What is going to happen to the poor indian?" We thought we would settle it while we were at it.

MR. EMERSON: I will withhold my decision.

MR. HOOVER: That leaves Arts. 3, 4, 10 and one to be drafted for discussion tomorrow.

ADJOURNMENT TAKEN UNTIL 10 O'CLOCK.

Preamble	O.K.
Article I	O.K.
Article II	O.K.
Article III	In suspense (Apportionment.)
Article IV	In suspense (Second Apportionment.)
Article V	O.K.
Article VI	O.K.
Article VII	O.K.
Article VIII	O.K.
Article IX	O.K.
Article X	In suspense (Indian Rights).
Article XI	In suspense (Courts)
Article XII	In suspense (Ratification and Exchange thereof.)

#### TITLE

#### PREAMBLE

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact for the purposes herein expressed and acting under the Act of the Congress of the United States approved August 19, 1921 (42 Stat. ) and the respective acts of the Legislatures of the said states; have through their Governors appointed as their Commissioners, respectively:

W. S. Norviel	Commissioner for the State of Arizona
W. F. McClure	Commissioner for the State of California
Delph E. Carpenter	Commissioner for the State of Colorado
J. G. Scrugham	Commissioner for the State of Nevada
Stephen B. Davis, Jr.	Commissioner for the State of New Mexico

R. E. Caldwell            Commissioner for the State of Utah

Frank C. Emerson        Commissioner for the State of Wyoming

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

ARTICLE I.

PURPOSES.

The major purpose of this compact is 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 and make provision for settlement of future controversies among the seven states signatory to this compact in order to promote interstate comity by removing causes of present and future controversies between them, and thus to assure the expeditious agricultural and industrial development of the Colorado River Basin through the storage of its waters and the early protection of lives and property in the lower part of the Basin from floods. To this end the Basin is divided into two divisions and an apportionment of the use of water made to each of them with provision that, at a subsequent time, a further equitable apportionment of the use of the remaining unappropriated waters may be made to correct inequities that cannot now be foreseen.

ARTICLE II.

DEFINITIONS.

When used in this compact,-

(a) The term "Colorado River System" means that portion of the Colorado River and all of its tributaries within the United States

(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 to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "Lee Ferry" means that point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(d) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(e) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain and flow into the Colorado River System above Lee Ferry and also all parts of said States located without the drainage area of the Colorado River System which shall be beneficially served by waters diverted from the river above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain and flow into the Colorado River System below Lee Ferry and also all parts of said States located without the drainage area of the Colorado River System which shall be beneficially served by waters diverted from the river below Lee Ferry.

(h) The terms "apportionment" or "apportioned" mean the division of waters of the Colorado River System for consumptive beneficial use.

(i) The term "Appropriation of water" means its actual application to beneficial use without relation to the date of any prior notice or of the construction of works.



## ARTICLE V.

PREFERENCE IN USE OF WATER.

(a) The uses of the waters of the Colorado River System for purposes of navigation shall be subservient to the uses and necessary consumption of such waters for domestic, municipal, agricultural, industrial and power purposes.

(b) The uses of the waters of the Colorado River System for purposes of generating electrical power shall be subservient to the uses and necessary consumption of such waters for domestic, municipal, agricultural, mining and milling and other industrial purposes and shall not interfere with or prevent the use of said waters for said dominant purposes. The terms municipal, mining, milling and industrial, shall not be taken to include generation of electrical power.

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

## ARTICLE VI.

COLLATION AND PUBLICATION OF DATA.

The official of each State charged with the administration of water rights, together with an official from each the United States Reclamation Service and the United States Geological Survey, shall co-operate, ex-officio:

(a) To promote the systematic determination and co-ordination 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 determination and publication of the annual flow of water in the Colorado River System at Leo Ferry.

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

## ARTICLE VII.

INTERNATIONAL RELATIONS.

The burden of supplying water of the Colorado River System from the United States of America to the United States of Mexico in fulfillment of obligations, if any, which may be established (?), shall be equally apportioned between and equally borne by the Upper Basin and Lower Basin and the States of the Upper Basin shall deliver at Lee Ferry a quantity of water over and above that provided in Article III which will enable the fulfillment of one-half of the amount required to satisfy such obligation.

## ARTICLE VIII.

INTERSTATE ADJUSTMENTS.

Should any claim or controversy arise between any two or more 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; or (d) as to the construction and operation of works to be situated in two or more States or to be constructed in one State for the benefit of another State, the Governors of the States affected, upon request of the Governor of one such State, shall forthwith appoint commissioners who shall 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 IX.

TERMINATION.

This compact may be terminated at any time by the unanimous agreement of the signatory states and the United States, but at such termination all rights then established under this compact are hereby confirmed.

## ARTICLE X.

INDIAN RIGHTS.

Nothing in this compact shall be construed as affecting the rights of Indian tribes.

• IN SUSPENSE.

## ARTICLE XII.

APPROVAL AND CONSENT.

This compact shall become operative when it shall have received the approval of the legislatures of each of the signatory states and the consent of the Congress of the United States. As soon as may be convenient thereafter notice of the approval by the legislatures of each state shall be given by the Governor of such 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 the consent of the Congress of the United States to this compact.

IN WITNESS WHEREOF, the respective 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.

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APPROVED:

MINUTES OF THE

21st MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 20, 1922  
10:00 A. M.

## MINUTES OF THE

## 21st MEETING

## COLORADO RIVER COMMISSION

The twenty-first meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Monday morning, November 20, 1922, at 10:00 A.M.

There were present:

Herbert Hoover, representing the U. S., Chairman	
R. E. Caldwell,	" Utah
Delph E. Carpenter	" Colorado
Stephen B. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Horviel	" Arizona
Col. J. G. Scrugham	" Nevada

In addition there were present:

Edward W. Clark, Advisor from Nevada  
 Charles P. Squires, Advisor from Nevada  
 Arthur . Davis, Director U.S. Reclamation Service  
 Ottamar Hamelo, Chief Counsel, " "  
 Richard E. Sloan, Advisor from Arizona  
 C. C. Lewis, Asst. State Water Commissioner of Arizona  
 McKisick,  
 Governor Sweet of Colorado  
 Mecker,  
 Vincent Carter, Deputy Attorney Gen. of Wyoming  
 Governor Carey of Wyoming  
 Keyes,  
 Governor Campbell of Arizona  
 Bannister

The meeting was called to order by Chairman Hoover.

CHAIRMAN HOOVER: I should think as a first matter this morning we might take up one or two of these subsidiary articles and see if we can clear them out of the way. I would suggest we take up Article X. That article reads:

"Nothing in this compact shall be construed as affecting  
 the rights of Indian tribes."

Perhaps it might be worth considering whether we put in there,

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

That is a separate obligation of the Federal Government.

MR. NORVIEL: "On Indian reservations" I should say. I don't know as that would make any difference.

CHAIRMAN HOOVER: It might limit it, I am not sure.

MR. NORVIEL: I think when they are off the reservation they take the same chance as the white man. I would like Mr. Hamel's views on that.

MR. HAMEL: I think that would be appropriate.

CHAIRMAN HOOVER: Have you any views on that, Mr. Emerson?

MR. EMERSON: No, I don't believe I have any objection this morning to the insertion of that clause. I don't believe it is necessary.

CHAIRMAN HOOVER: The purpose of it, Mr. Emerson, is to reduce all objection in Congress because the United States has a treaty with the Indian tribes affecting irrigation water and if we don't have some expression in here Congress will probably put a reservation on it in that particular.

(Thereupon the adoption of Article X having been put to a vote, the same was unanimously adopted in the following form)

"Article X.

INDIAN RIGHTS.

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

MR. DAVIS: I have Article XI ready whenever you want to take it up.

CHAIRMAN HOOVER: Have you got it there?

MR. DAVIS: Yes, sir. (Handing paper to Chairman)

CHAIRMAN HOOVER: The article drafted by Judge Davis reads:

"The remedies provided in this compact are cumulative only, and nothing herein contained shall be construed to prevent

or limit any state from instituting and maintaining any action or proceeding legal or equitable for the protection of any right or the enforcement of any of the provisions hereof."

MR. CARPENTER: It is too broad. What we are trying to do is to provide against litigation. This don't suspend any litigation.

MR. DAVIS: It was not intended to suspend any.

MR. EMERSON: May I have a definition of the word "cumulative?"

MR. DAVIS: Well, I think the legal meaning of the word "cumulative" is something like "concurrent." Two remedies running along together, one in addition to the other and not exclusive of the other. They are in addition to the remedies that may be provided by general law. In other words, it would cover your Wyoming situation. There you have a remedy under existing law. That remedy would continue and then the remedy provided here would be in addition.

CHAIRMAN HOOVER: I wonder if it is possible to use some other word than "cumulative." We would have that question raised by other laymen in the United States.

MR. DAVIS: We could leave out that part of it entirely and start with the word "Nothing."

MR. CARPENTER: Add after the word "right" in the next to the last line, "Under this compact."

CHAIRMAN HOOVER: Then it would read:

"Nothing herein contained shall be construed to prevent or limit any state from instituting and maintaining any action or proceeding legal or equitable for the protection of any right under this compact, or the enforcement of any of the provisions thereof."

MR. CARPENTER: "Of any of its provisions hereof."

MR. DAVIS: All right, "or the enforcement of any of its provisions hereof."

CHAIRMAN HOOVER: Any further comment?

MR. CARPENTER: This paragraph will have to be considered, of course in connection with the whole document. It might be temporarily approved.

CHAIRMAN HOOVER: I suggest we temporarily approve this paragraph until we have the whole document in front of us and see what its ramifications are.

MR. EMERSON: I am willing to approve of it as to principle, but it seems to me much more effective wording could be arrived at. This is rather an invitation in its present form it seems.

MR. NORVIEL: I think it should be held in suspension until we have more time to look at it.

CHAIRMAN HOOVER: Suppose we suspend that then for the moment and go on to Article XII.

"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 the approval by the legislatures shall be given by the Governor of each 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 the approval by the Congress of the United States."

I would suggest instead of using the word "approval" you use "consent."

MR. DAVIS: The word "approval" was used, Mr. Chairman, because it is the word in the Act of Congress.



CHAIRMAN HOOVER: The constitutional provision is "consent."

MR. DAVIS: We have consent by virtue of the original act of Congress.

MR. HAMELE: There is no consent of Congress to the Act now in existence under which we are negotiating. It is merely consent to negotiate. It is not approval of the final pact. Clause 3, paragraph 10, Article I of the Constitution provides that, among other things, "states shall, without the consent of Congress, enter into any agreement or compact with another state," and an action upon this pact by Congress is a consent and not approval.

CHAIRMAN HOOVER: My suggestion was merely to get the thing in conformity with the constitutional provision.

MR. DAVIS: My attempt was to keep it within the Act of Congress.

MR. HAMELE: I think the Constitution ought to prevail.

MR. DAVIS: I think, technically speaking, what would happen is this: Congress has given its consent to these states to proceed to enter into a compact with the limitation that that compact must be approved by Congress. The Act of Congress starts, "Consent of Congress is hereby given to the states to negotiate and enter into a compact or agreement." There, then, is your consent. Then at the end of the Act comes this language: "Providing, any such compact or agreement shall not be binding or obligatory upon any parties thereto unless and until the same shall have been approved by the legislature of each state and by the Congress of the United States" and what we are attempting to do now is comply with that proviso which requires the approval by Congress, its consent having already been given in that limited amount.

JUDGE SLOAN: Approval is a consent too.

MR. CARPENTER: The Supreme Court has held in some one or two cases that the subsequent approval is, after a compact has been entered into, an equivalent to consent in the first instance.

CHAIRMAN HOOVER: What is your answer to Judge Davis' statement, Mr. Ham-

MR. HAMELE: I think probably there has been some confusion of language in the Act of Congress, but the Constitution does not contemplate anything more than a consent to a compact of this kind and of course that can be changed by an Act of Congress. I think we should follow the language of the Constitution and make it a consent. The Act already passed is nothing more than a consent to negotiations.

MR. DAVIS: The language is a consent to enter into a compact. That is what the Act says.

CHAIRMAN HOOVER: The actual difference is not very material, because Congress has to act one way or the other, whether it acts by approval or by consent. Suppose Congress again consents by legislation it doesn't materially affect it, they themselves can reverse their own action if they like, can't they?

MR. HAMELE: They can.

MR. DAVIS: Have you any idea on that, Judge Sloan?

JUDGE SLOAN: I think you are quite right, Judge. I don't take it that the word "consent" is of such definite import that equivalent language may not express it. An approval is a consent always.

CHAIRMAN HOOVER: Consent is not necessarily approval, though.

JUDGE SLOAN: Consent is not necessarily approval. In the sense, though, of the constitution of the United States I think they are synonymous terms. It doesn't necessarily mean the Congress of the United States shall approve every form of it, to be sure, but if they do approve it, it is consent and the Act of Congress specifically provides for an approval.

CHAIRMAN HOOVER: I was wondering if some technologists get up in Congress and say "we don't approve this thing under the Constitution" how is it going to affect your pact?

MR. HAMELE: I think as Judge Sloan says, that the Congress in this Act used the word "approval" as a synonym of consent and that being true

I think it would be more accurate for us to use the language of the Constitution in this pact.

MR. DAVIS: I can see a chance for legal quibble if we don't follow the language of the Act of Congress. I can't see any possible objection to following that language inasmuch as it is in the proper form. "Approval" is broader than "consent." That is what the Act of Congress says.

MR. CARPENTER: You court criticism more frequently by changing and departing from the language of an Act than you do by following it.

MR. HAMELE: Where there is an apparent conflict between the constitution and an Act the rule is to follow the constitution.

MR. DAVIS: I think the difference between Mr. Hamelc and myself is that we don't construe the Act alike. I construe the Act according to its actual language; it says "the consent of Congress is hereby given these states to enter into this compact."

CHAIRMAN HOOVER: What would happen if Congress got technical and went back on its own Act? Is it going to vitiate this compact?

MR. DAVIS: No, if Congress consented to it I would say it would be all right. I would like to keep within the language of the Act because we may not have any question raised. Congress has reserved full power of approval there.

CHAIRMAN HOOVER: I assume Congress can do what it pleases when it gets to it.

MR. DAVIS: Absolutely.

CHAIRMAN HOOVER: Otherwise is there any comment?

MR. CARPENTER: I presume by the reading of this Act this Article could be construed to mean the compact became binding as of the date of the last approval?

MR. DAVIS: When it has been approved by the legislature.

MR. NORVIEL: That is what it means. No time limit.

CHAIRMAN HOOVER: Supposing one legislature disapproves of it? What happens there?

MR. DAVIS: No compact.

MR. NORVIEL: It goes on to the next.

MR. DAVIS: It could go on to the next, yes, but it would be no compact by, --

CHAIRMAN HOOVER: Could the compact be held open until that legislature reconsidered it?

MR. NORVIEL: Not that legislature, but the next legislature.

CHAIRMAN HOOVER: If some legislature refuses the first compact does it vitiate any other compact? Is it possible to revive it in the same state at a later date and restore the compact?

MR. NORVIEL: There is no time limit in it. It may run on indefinitely until some legislature that might refuse it the first time should finally approve it.

CHAIRMAN HOOVER: I thought possibly some legislature in the first instance might not agree and it might take some time and understanding before they came to it and we shouldn't put ourselves in the position that the whole of the thing is ruined by the action of one legislature.

MR. DAVIS: The time is indefinite.

CHAIRMAN HOOVER: All right, if that is clear it satisfies me.

MR. EMERSON: Could any state at a subsequent session of the legislature withdraw its approval?

MR. DAVIS: No, it would be, Mr. Emerson, just like an individual signing a compact. Suppose we seven were drawing up a compact for ourselves personally. Six may sign it today and the seventh one may say he would have to think it over and might not sign it for six months. Once it is signed it would be binding upon everybody.

MR. NORVILL: In the meantime might not one of these six withdraw?

JUDGE SLOAN: Yes, but with the consent of the others he may be restored.

MR. DAVIS: In other words, there is nothing binding until the seven have signed.

MR. EMERSON: Shouldn't there be some time limit? It might be possible that six legislatures would agree and sign the compact and that the seventh wouldn't. That condition shouldn't continue indefinitely whereby the seventh state possibly twenty years hence would come in.

MR. DAVIS: Anyone of the six, as you state, could withdraw up to the time that all seven have signed and Congress had approved.

CHARLES HOOVER: I am desirous to have a term in there if we can help it. If you put five years in there certain members might feel that this is going to be a long delayed process.

JUDGE SLOAN: It might be a purposeful delay.

CHARLES HOOVER: If there is no more comment,—

MR. EMERSON: I understand the word "approval" has been left?

CHARLES HOOVER: Yes. If there are no further comments, all those in favor of that Article please say "Aye."

(Thereupon Article XII was unanimously adopted in the following form)

"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 the approval by the legislatures shall be given by the Governor of each 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 the approval by the Congress of the United States."

MR. NORVILL: It remains as written, - no changes?

CHAIRMAN HOOVER: No changes. The witness clause on the end reads: IN WITNESS WHEREOF, the respective 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 of which a duly certified copy shall be forwarded to the Governor of each of the signatory states."

JUDGE SLOAN: Certified by whom? The Department of State?

MR. EMERSON: Is the Governor of the State the proper custodian of records and should he therefore receive the copies on behalf of the State?

MR. CARPENTER: Mr. Emerson, in my proposed draft I requested our Executive Secretary to make inquiry of the State Department, proper departments, both as to the keeper of the archives, and second as to the language which should be used in this particular paragraph, not being fully informed myself, presuming that the State Department was, I nevertheless left the words "Department of State" out. Upon investigation he advised me that he was informed that the Department of State was the official keeper of the archives of the United States of America, as our secretaries of state are keepers of the archives in our respective states, and that it had been suggested the words "Department of State" be inserted.

MR. EMERSON: That is in the case of the United States. It just occurred to me if the proper official or proper office should not be the Secretary of State of each individual state.

MR. CARPENTER: In that event you would have to make nine copies and sign them all, or you could designate some one state, but in view of the fact that the United States has a representative on this Compact Commission participating it was thought prudent and proper to deposit the document itself in the archives of the United States.

MR. EMERSON: Well, that is no doubt proper, Mr. Carpenter. My only question was, in sending your certified copies to the states, if, in sending

them to the Governor you were sending them to the proper custodian of the records.

MR. CARPENTER: It is presumed,- I think the custom is to send all documents of the United States given a state to the Governor of that state, who in turn cares for the depositing of the document in the proper place. Am I not right, Governor? (Addressing Mr. Sloan)

MR. SLOAN: That is my understanding.

CHAIRMAN HOOVER: Any other comment?

MR. NORVIEL: I just have this observation. Suppose a Governor who receives this would have serious objection to it and retain it in his own possession and not let it go to the Secretary of State nor to the legislature either?

CHAIRMAN HOOVER: The State Department can furnish certified copies to anybody who applies.

MR. CARPENTER: The legislature of a state could introduce and pass an Act ratifying this pact even though a certified copy were not officially before it.

CHAIRMAN HOOVER: What is more, I understand this compact doesn't need the approval of the Governor.

MR. CARPENTER: It may depend in that respect somewhat upon the constitutional provisions of each state. In most states your observation is correct. It may be that in others the approval of the Governor will be required.

JUDGE SLOAN: It could be approved by resolution instead of an Act.

MR. CARPENTER: Yes, unless there is some provision in the constitution requiring the Governor to approve the resolutions of legislatures.

CHAIRMAN HOOVER: If there is no further comment, all those in favor of that clause please say "Aye."

(Thereupon the certification was unanimously adopted in the following form)

"IN WITNESS WHEREOF, the respective 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."

MR. MC CLURE: Mr. Chairman, may I again open a matter which is considered very vital?

CHAIRMAN HOOVER: Certainly.

MR. MC CLURE: After prolonged consultation with representatives of our State, recognizing the need of not only a legal document allocating waters to the different divisions, but the need of sympathetic political interests by the various states in securing aid for the construction of control works which shall relieve the tension of the Imperial Valley particularly, it is their insistent expressed desire that some more emphatic declaration of approval shall be made in the compact to that end first, and second, that some provision shall be inserted whereby a compact shall not be effective until such control works are provided for.

CHAIRMAN HOOVER: What are your drafts?

MR. MC CLURE: The first draft is as follows:

"It would be to the interest of the states interested in this Compact that a dam be built in Boulder Canyon and that the terms of this compact do not become effected until such dam be constructed."

Second,

"This compact shall not be effective until the United States Government shall have constructed control works on the Colorado River for the protection of Imperial Valley in the State of California and other



lands in that state, and in the State of Arizona which are subject to floods of said river, such control works to be established below said point of division and at such location as shall be selected and approved by the Secretary of the Interior. The date of the Completion of said control works shall be fixed by certification by the Secretary of the Interior to the Secretary of State of the United States and to the Secretaries of State of the signatory states."

I will state that I do not agree with the text of either of those, but I think you will all recognize the force and effect of the express desire that some more emphatic declaration be secured in the compact, if possible.

CHAIRMAN HOOVER: May I hear from some of the other commissioners on that principle? The principle is in effect that this compact shall not become effective until a flood control works have been constructed. As a matter of question of pure physical situation, there will be no development of the Colorado River until flood control has been erected. That is, the first construction that will take place on the river is flood control. It doesn't make any difference whether it is erected as a dam at Flaming Gorge if it becomes flood control, or whether Glen Canyon, Boulder Canyon or Black Canyon or where and there can be no expansion of development of the river that does not imply that first step.

MR. CARPENTER: You mean physical conditions dictate that.

CHAIRMAN HOOVER: Dictate that as the first step of any development.

MR. CARPENTER: We realize the pressure and anxiety of the people interested in promoting the early construction of the flood control reservoir in the lower canyon. We also realize that at the present moment there are various investigations proceeding under the Government of the United States which are not yet complete and in that respect it would be unwise and ill advised to select any definite location for any structure in that river. It would seem that the instrumentality that will be in position to build

such a structure will be the United States of America by reason of its opportunity to secure adequate funds at an early date, but to predicate this whole compact upon the building of such a structure does not meet with favor, insofar as I am advised, within the upper states; not with the idea of attempting the construction, which we wish to facilitate, - we wish to hasten, - but in attempting to make it a condition precedent to operation of this compact it may result in the defeating not only of the compact but the early construction of the structure itself and it seems to me unwise and untimely and dangerous to the very adoption of this compact to incorporate any such provision.

I have previously stated that I see no objection to a general resolution, aside from the compact, (expressing my view at least) that the construction of flood control works somewhere for the protection of that lower country should proceed with all due dispatch, but to incorporate that as a condition precedent within this compact is something that I for my part would not care to consent to.

CHAIRMAN HOOVER: Mr. Carpenter, if you will allow me to become a Californian a minute instead of a Chairman, I would like to present one phase of this which we have never considered and it is, I think, the crux of the anxiety of the people in the lower river. At the present moment they are taking the whole of the low water flow of the Colorado River into their diversion. They feel that this pact will destroy any rights which they have for the maintenance of that minimum flow; that pending the period when storage is erected and there is protection for an even flow of water, there is here an inter-regnum by which they are deprived of any rights they might have as against the Upper Basin to maintain the present flow of water. In other words, if this pact should be ten years delayed, or five years delayed, - if the construction should be also delayed of adequate storage or control works, there would be a period in

which the beneficial use of water might be extended in the Upper Basin or in any other part of the Basin to the prejudice of their present rights and they would be helpless to secure even the maintenance of the amount of water they now receive, which is inadequate for their supply.

I think that is the crux of their entire anxiety and I believe they have there a temporary situation that warrants consideration. I agree with you as to the extreme difficulty of predicating a compact on any kind of engineering construction. The difficulty of stating where and when and at what time a legal enforcement becomes dependent on the progress of construction. It would be difficult, for instance, to date it at a date when appropriations were made by Congress. One cannot assume Congress necessarily must construct it. It might be private construction. You couldn't state at the date construction work began because that might be

When you come to stating it must be at the completion of construction you must define what construction and how much and when you begin to define what flood control may mean by way of engineering construction you are in a thousand difficulties because of disputes as to proportion of flood control, etc., etc., but on the other hand the point as to denuding them of their right of relief to maintain a flow of water pending the relief in other directions seems to me worth serious consideration, whether they could be accomplished by some provision that they should not be deprived of the right of a minimum flow of water which they now receive.

MR. CARPENTER: That right under the very decision upon which they predicate their reasoning carries with it more than an obligation on the states of origin. It carries a heavy obligation on the beneficiary states below to make provision, at least, reasonable provision, for the storage of water that passes so that that phase comports with the idea of leaving that matter entirely within the keeping of the people themselves. But I agree

with you that it is a matter that should be discussed fairly and frankly as any other matter that has come before this committee. It is the thought of all of us that any possible diminution that may take place within the upper territory in the near future will be negligible with respect to the present minimum flow of the river. In my own state the last and lowest great structure that can go in on the Grand River, which is the Colorado now, has already been completed and is in operation, which is the Grand Valley Canal, built by the Reclamation Service. Physical limitations prohibit the building of anything lower. The same is true on the lesser streams. If the time is ripe for the building of large works at all at any time in the future, the conditions in the lower valley will probably dictate that it is most prudent to build those structures below. But if we interweave in this compact the idea of predicating it upon flood control someplace, I am free to say that many earnest advocates of construction first and wholly upon the headwaters will immediately enter the arena and present very persuasive arguments in behalf of their plan of development.

CHAIRMAN HOOVER: My proposition only leads to this extent. That nothing in this compact shall deprive the people in the lower Basin of the present minimum flow.

MR. CARPENTER: We wouldn't care to agree to that. They are letting millions of feet rush by unused.

MR. DAVIS: Wouldn't the 4,000,000 minimum in the compact take care of those?

CHAIRMAN HOOVER: No, because that doesn't take care of the situation of minimum flow in the short season. They are entirely dependent on short season flow. 4,000,000 might be entirely satisfy one months flow of the flood and at the same time denude them of their current supply. I don't see, - and I am not speaking as Chairman now, I don't see that the upper

states or any other of the states would be damaged by a provision that the minimum flow of the river, say over the last five years, should not be decreased because the erection of any form of storage will immediately protect the upper states as to maintaining that flow.

MR. DAVIS: It seems to me if they have the right there to any kind of a flow we are not affecting those rights by this pact anyway.

CHAIRMAN HOOVER: I think seriously you are.

MR. DAVIS: I don't think we would have the right to do it.

CHAIRMAN HOOVER: Well, an equitable division of the river between the two basins would seem to me to inhibit them from bringing an action in the courts against the upper states for such continued development as might affect their minimum flow.

MR. NORVIEL: Mr. Chairman, listening to Mr. Carpenter's observations, recognizing the necessity of some control at the river, and having in mind too the California view as nearly as I understand it, I agree with Mr. Carpenter in part that we should not incorporate in this compact any definite statement of where the control should be, but I do think, and have thought all along, that this compact should contain some recognition of this necessity, as Mr. Carpenter suggested, therefore I offer this statement to follow the preamble, whether in another clause of another article, it makes no difference.

MR. MC CLURE: May we hear from the other northern states?

CHAIRMAN HOOVER: What do you think, Mr. Caldwell:

MR. CALDWELL: I have been listening to the discussion with a very great deal of interest, Mr. Chairman. If you want my impression at this time, it is this. I noticed in the draft that was read by Mr. McClure they considered it very important, the Imperial Valley people consider it very important that they have the sympathetic co-operation of the signatory

states. I have made the remark a good many times since coming to this meeting that I think it is very necessary that they have the sympathetic co-operations of the states, not only necessary for them, but it is necessary for us, for all of the states are going to progress as we should and as we are entitled to progress. I think that I can say, so far as I know the temper of the people I have met from the northern states, that they are very willing and very anxious to bring about some condition whereby the river may be controlled directly for the advantage of the lower river, and secondarily perhaps for all of the river, and I believe that a compact written so it will specifically declare for any one specific project for the control of the river or any one specific plan that anyone may have for the control of the river, will bring from the upper states the most sympathetic cooperation with the lower states in the construction of such works as are necessary to control the river. I am quite sure that if the compact is limited to a question of control of the river at some point, and until the control is had at some point, that it would be very difficult to get it past the legislatures that I am more familiar with. I also believe that such a clause as that would probably hinder the compact so far as the congress of the United States is concerned. So far as my inclination goes at the present time there are some government agencies that are disagreeing on the proper way to control the river. The people on the outside are divided into ever so many groups as to how the river should be controlled and if we by this compact stir up an argument as to what the plan of development shall be, it will endanger the compact.

It is entirely conceivable in my mind that there may be pending in congress at the same time this compact and a bill providing for some development of the river and on the bill there may be perfectly honest differences of opinion, some for and some against it, some wishing to have

the bill modified, some wishing to have it modified one way and some another. I can conceive that proponents of the bill as it may be presented would even attack the passage of a compact if they could not have their bill passed as they concede it should be passed. To my mind there are a great many dangers surrounding the injection into this compact of any measure which confines the means of getting together and protecting the people on this river. I may add that so far as the state of Utah is concerned - she is very seriously concerned, honestly concerned - with the protection of the lower river I am not authorized in any way by any act of legislature or by any instruction to me from any representative citizens or the governor, to enter into a discussion of the plan whereby the river shall be developed.

CHAIRMAN HOOVER: Mr. Emerson?

MR. EMERSON: Upon the two features that are brought up for consideration by this presentation by Mr. McClure I can pass upon the one rather definitely and finally I believe right now and that is in regard to the endorsement by this commission of any special project. I cannot conceive that Wyoming would agree to anything of that nature. The other factor appears to be as to whether or not this compact should be based as to operation in time upon the provision for certain storage. From my viewpoint there is decided objection to any provision of that kind. In the first place, it will make the matter rather indefinite, as outlined by the chair, in that it would be difficult to set any time for the enforcement of the compact. The question would arise as to whether it should be an appropriation by Congress, the starting of construction, the completion of construction, or what not, but generally in this connection it again comes to my mind that the lower states by their repeated commitments are impressed with the great importance of their own situation. I have attended meetings at Riverside, San Diego, Los Angeles and other points at which there has been more or less of a discussion among

themselves or the lower states of the pressing importance of their own problems. The upper states are well impressed with the need for relief in certain ways upon the lower river, but we certainly are not going to lose sight of the importance of our interests upon the other side. Through this compact we will be able to give our active and strong support to any proper plan of relief in the lower basin, not through the particular commitments as to special projects, but that this compact will remove from our minds the fear that there will be improper interference with the reasonable development of one of our greatest natural resources, a development to which we think we are fully entitled.

Now I would like to refer again in this connection to the Wyoming-Colorado case. This was accepted with great gusto by the lower states as a great point in their favor and the representative of the Imperial Valley shortly after his arrival assured me that they could go right up to Wyoming and stop any further development up there. Anyone that knows the Wyoming-Colorado case I think will come to the conclusion that that is not altogether true. While I am not a lawyer, I have had enough practical experience so far with that case to know that in reality it is more against the interests of the lower states in respect to low water flow than it is for it. Wyoming certainly would not want to make any guarantee as to the maintenance of any lower water flow for any year over any period of years. Great volumes of water rush by the Imperial headgate every year unconcerned and there appears no good reason why the upper states should be restricted in development by reason of suitable storage upon the lower river. The Supreme Court decision surely places the burden of a reasonable storage of water upon the lower division, irrespective of whether it is junior or senior to rights above. It appealed to me that in our discussion last night the present clause as entered into the article on purposes was broad



enough to take care of the situation.

We are treating a great problem here in a broad and comprehensive way and I do not believe it is our function to go to any material expense in commitment as to special projects or special problems upon any section of this river, but rather confine ourselves to broad interests on the river as a whole. I was inclined to object to the clause concerning flood protection yesterday, but I can see that that might have a very proper part in our purposes so long as it does not confine itself to particular projects.

At the present time I cannot conceive Wyoming committing itself to the endorsement of the special projects and special problems of others, while we have very important problems and interests of our own upon which we might also ask a commitment.

CHAIRMAN HOOVER: Mr. Scrugham?

MR. SCRUGHAM: In view of the very copious comment already made on the subject I think we are wasting time to discuss it any further. The upper states apparently do not wish to endorse any further endorsement of the lower canyon development. A separate resolution I think would be quite appropriate to be presented after the compact is disposed of.

CHAIRMAN HOOVER: Well I think it is apparent the upper states do not care to endorse any kind of an engineering project in the compact, or make the compact conditional upon it. On the other hand, there is another phase of it which I had raised and I have written out here something that covers that phase: "Nothing in this compact shall limit the legal rights of any state in the lower basin to maintain a minimum flow of the Colorado River during the low water season at an average of the past 5 years, measured at Laguna Dam." Now this is not a guarantee, it just simply does not deprive them of such right as they may have to secure that minimum flow. It is not dependent upon construction. It is obvious that the minute there

...age in the river that minimum flow will be maintained without any legal action.

MR. CALDWELL: Off hand it seems very reasonable to me Mr. Chairman.

CHAIRMAN HOOVER: It simply does not put them in a position where they are deprived of a right which they today possess.

MR. DAVIS: I wouldn't object to a declaration that we were not effecting whatever legal right the Imperial Valley or any state may have. I don't know that I exactly like that language because that language rather implies there is a legal right to maintain that flow at an average of what it has been in the past 5 years. I would not object to recognizing whatever rights they have.

MR. CARPENTER: Of course there should be no further encroachments below either.

CHAIRMAN HOOVER: Of course I have been thinking along the lines of Judge Davis. This is not a deprivation of any rights which they possess.

MR. EMERSON: Now, Mr. Chairman, if such a clause as that would satisfy the lower states, it might be seriously considered but if we consider such a thing and it is still not satisfactory to them and they want to go further than that I would feel inclined to object to it.

MR. CARPENTER: That clause should terminate some place, it shouldn't be a sort of Damocles over the river from now to eternity. There are many objections that might be raised.

MR. EMERSON: Coming back to the point, you are giving special consideration to the lower river valley.

CHAIRMAN HOOVER: We are giving a great deal of consideration to the problems in each locality.

## SECOND PART OF 21st MEETING

MR. EMERSON: Yes, but you are not, as a whole, applying yourselves so especially to special problems. I want to state again it makes considerable difference in my mind whether we go that far, - far enough to satisfy them or not.

MR. HOOVER: Judge Davis, how would you frame such a thing?

MR. DAVIS: Well, I would have to have a few minutes to do it, - a little time to do it, - I don't know that I could do it right off hand.

MR. HOOVER: Someone has suggested such a right as that based on certain storage construction, and it might be possible to make it wide open, - that nothing in this compact should limit any state in the lower basin to maintain its rights in the flow of the Colorado River at low water, - in existing rights, but that such rights shall not be asserted if and when a minimum of six million acre feet of storage has been provided on the main stem of the Colorado River.

MR. DAVIS: My general idea would be to say nothing more than, - I am not trying to dictate, now, whatever legal rights have vested in the flow of the river in the lower division are not excluded by this pact.

MR. CARPENTER: Then the compact is useless because rights have vested in Boulder Canyon.

MR. DAVIS: I said I was not trying to dictate.

MR. HOOVER: One practical result, unless these people are given some protection, that they will suspend confirmation of this compact until such time as they do have such assurance. We will get back action of the whole process. In other words, if they are deprived of their rights that they now have, they will suspend action --

MR. DAVIS: To which I will say we are not depriving them of those rights.

MR. CARPENTER: On the other hand, you have got five or six above.

MR. CALDWELL: I understand your statement referred only to the lower water rights, the Imperial Valley.

MR. HOOVER: Yes, you can limit it to present appropriations to get away from Mr. Carpenter's objection.

MR. EMERSON: Mr. McClure do you think such a clause would remove the objections of the people you represent, on that phase anyway?

MR. MC CLURE: It would on that phase perhaps, but I still very earnestly request a postponement of the subject until we have an assurance,-

MR. CALDWELL: Of course, the fact is we may not be able to satisfy our people, or my people,- we have got to satisfy ourselves here as to what we will do. Personally, I am willing to come to some conclusion for the people that I represent.

MR. MC CLURE: I should like to inquire if we may anticipate such a resolution as Mr. Carpenter mentioned.

MR. CALDWELL: I didn't understand Mr. Carpenter mentioned a resolution, or proposed a resolution.

MR. MC CLURE: I think he used the words "resolution outside of the pact."

MR. CARPENTER: Resolution outside of the pact.

MR. MC CLURE: That is what I referred to.

MR. CARPENTER: It would be, of course, much the type mentioned by the Chairman in his remarks, but could deal with matters even more specifically than the compact would, because it would not require ratification of the legislatures. For my own part, so far as the river control is concerned, - so far as my own state is concerned, it is a matter of indifference to us where the structures are put, or by whom built, so long as we get results; that is true in respect to all the lower river structures. If, however, we are to enter upon a program of suspension of the contract

until storage works are built, we must have in the compact that the storage works be built either in the upper or lower division. There will probably be a demand to spread the construction over all of the area, - something we have had to contend with in our own country. It is said by eminent engineers that they can build flood control structures for the Colorado River more economically and with more effectiveness by building all reservoirs in the upper territory, and they argue with great force and with great persuasiveness. It has been my thought that we should proceed to stem the tide, and I am willing to forego the arguments of those men and resolve that the structures be put on the lower river, some place, where I care not and by whom I care not, so long as they are done speedily and effectively.

MR. NORVIEL: Do I gather from your statements you are willing to recognize the necessity of a control in the lower river to protect the valleys along the lower river from flood menace, and also to protect them in their further development?

MR. CARPENTER: I am willing to recognize broadly the necessity for flood control on the whole river. I am willing to yield, in a resolution, but not by compact, immediate construction of reservoirs above in order to facilitate the construction of reservoirs below, but if it has to come as a matter in the compact, then I must insist that the matter of reservoir construction be distributed over the entire basin, because when it becomes a matter of compact it must go back to the legislatures of these several states for ratification. I am personally willing to make a resolution taking more responsibility than it would be wise to incorporate in the compact.

MR. NORVIEL: But you go further than my question. My question was are you willing to recognize the necessity of flood control of the lower river, - just merely that. I understood you to say it mattered not to you where the control was.

MR. CARPENTER: Why yes, as a part of the whole problem, yes.

MR. NORVIEL: Are you willing to express that in the compact?

MR. CARPENTER: It is already expressed.

MR. NORVIEL: Where?

MR. CARPENTER: In the purposes.

MR. EMERSON: Mr. Chairman, it seems to me the lower states keep coming back for a consideration of some further concessions, you might say, from the upper states. We have had an agreement on one point, very definitely stipulated in plain English, and when we come to write the compact finally, we have to have a reconsideration of it and a further concession from us to the lower states, and we now have more this morning. I believe they ought to come in and finish their requests. If we grant this and that it looks as though we might continue to make concessions on additional matters before we reach the final agreement.

MR. CARPENTER: Mr. Chairman, I don't feel that any matter of this kind is improper before this commission. It should be taken up and discussed, but I do feel most earnestly that it should not have this effect, - because we take up and discuss those matters, there should be a penalty then placed upon us by which, at the last, we are forced to jam things through hurriedly. I am willing, so far as I am concerned, to stay as long as we are required to do a rounded out and completed task, but I have a feeling that some of the members are getting restive, and if we take these matters up and discuss them it brings us nearer the day when that spirit of impatience may maintain. I am willing to say that I am willing to stay and be as patient as occasion requires for an indefinite period, but I don't want the rest of us to have that visited as a penalty upon us. I don't say that in any other spirit than the utmost good will.

MR. EMERSON: I wish to maintain my point, - it seems to me the

time has about approached when new matter should be presented, or not at all, because every time these matters come up there is not the greatest amount of harmony, and if we allow that course to continue, - it seems to me that they should get their new matter before us.

MR. HOOVER: I sympathize with that, but on the other hand, one must take account of the human factors which flow around any matters coming up as the pact develops, - it brings up these new matters which we will have to take up and dispose of.

I would like to suggest, on this point, Mr. McClure, that Judge Davis should draft something on the legal side; that perhaps it might be possible to meet the intrinsic points and not deprive them of their legal rights below, which could not develop, of course, until the pact was more or less formulated, and therefore were not possible of discussion. I have drafted a little clause here which might be worth consideration and satisfy that difficulty. That is the only way we can get it before the Commission, is to get it down on paper, and perhaps if Judge Davis might draft something, we might take Judge Davis' draft and something of this kind, - in discussion, and see if we have not a possible basis, and if you like we might limit our discussions to those propositions, and not consider any further new matters at present.

MR. EMERSON: I think that would be wise. There is danger, as I see it, of creating quite a little feeling in these new matters, and it is not in the interest of harmony to have them arise.

MR. NORVIEL: Mr. Chairman, there comes to me this thought, and I am wondering if we have been thinking in two different ways, the upper and lower basins, and the result of that thought is whether or not there is objection, - there will be objection, by the upper basin states, to a control of the river in the lower part of the river. I didn't so understand

from the explanations that were given by the representatives of the upper states, and yet it seems to me the thought comes that they want the control of the lower river, - controlled some place in the upper basin.

MR. CALDWELL: Mr. Chairman, as for me I would like to dissent for myself of that view.

MR. CARPENTER: It is not desired that the control be placed in the upper basin in this compact. Our upper development will have to take the hazards you do. But if it is stated in the compact where the control is to be placed you merely open the question for the onslaught of arguments.

MR. NORVIEL: Then we arrive at this point, - it is the basins, - it is the lower basin that is in dire necessity of control of the river, both from protection from floods and further development, and with that idea it seems to me that, - suppose the lower river control should be assumed by the upper states, and they refuse to build such control works in the upper states, or allow us to, the compact is of no value.

MR. MC CLURE: I don't get any such attitude in the minds of the upper states.

MR. NORVIEL: I thought they had reached the conclusion that they were willing to recognize the necessity of flood control.

MR. CARPENTER: I told you that, speaking for myself, I was willing to concur in a resolution to be based on the urgent early necessity of flood control for the lower river, I don't care where it is, or by whom built so long as the object is accomplished, but that I didn't see the necessity for injecting anything in the compact as to where it is to be placed, I think it unwise and imprudent to do it.

MR. NORVIEL: Would you be willing to put it in plain words that we recognize the necessity of early control of the lower river?

MR. CARPENTER: I thought it was in there now, - in the purposes.



MR. NORVIEL: I don't think so —

MR. CARPENTER: In article I, Purposes:

"The major purpose of this compact is 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 and make provision for settlement of future controversies among the seven states signatory to this compact in order to promote interstate comity by removing causes of present and future controversies between them, and thus to assure the expeditious agricultural and industrial development of the Colorado River Basin through the storage of its waters and the early protection of lives and property in the lower part of the Basin from floods.\*\*\*

MR. CALDWELL: Mr. Chairman, I would like to submit a draft of Article I, Purposes, which covers, in a way that I think we could agree to, the matter of protection from floods, that may be satisfactory to all demands:

"Article I.

Purposes.

The major purposes of this compact are (a) to provide for the equitable division and apportionment of the use of the waters of the Colorado River System among the seven states signatory to this compact; (b) to promote interstate comity by removing causes of, and for present and future controversies among and between them; (c) to assure the expeditious agricultural and industrial development of the Colorado River Basin through storage of its waters and early protection within the Basin against menacing and damaging floods. To these ends the Basin is divided into two divisions and an apportionment of the use of the waters made to each of them with provision that at a subsequent time a further equitable apportionment of the use of the remaining unappropriated waters may be made to correct the inequity that cannot now be foreseen; and the relative importance of different beneficial uses may be established and provision made for settlement

of future controversies."

MR. HOOVER: This includes very much the statement that we had last night. The whole point before the Commission, however, is whether some provision can be put in the compact that maintains the present rights in the minimum flow of the lower basin, or as an alternative makes the obligations of the compact dependent upon some sort of river control. I would like to have Judge Davis draft something in regard to the legal phase, and Mr. McClure may then, I think, with the consent of all of us, raise the question again properly, but for the moment I propose that it be passed over, with the discussion we have had, and wait for something more definite, Mr. McClure, until after he has had an opportunity to formulate something.

MR. DAVIS: I would be glad to try to frame something along that line, but I would like a little time to do it in.

MR. HOOVER: Is that satisfactory Mr. McClure?

MR. MC CLURE: It is satisfactory.

MR. HOOVER: I think we can dismiss that for the present then. And I would suggest that we take up the question of Article III and Article IV, and I should like to make this plain statement with regard thereto. I think we can look at the matter in this way: We agreed to the basis or principles of these two articles. Mr. Norviel found he had misunderstood the basis or foundation for that agreement, and has felt that it is necessary for him to ask for the entire revision of certain portions of those two articles; that we have to start practically afresh on that subject. It is obvious that no compact here is possible without unanimity of agreement, and that without going into the reasons for the development of that agreement, or the figures lying behind, or basis of compromise by which we arrived at it, we may as well get to the main issues, and I

understand Mr. McClure and his colleagues have suggested some alterations, and I think we might make better progress if we got to an immediate consideration of those matters. I would like to suggest, if I may, that one of the first things we turn our attention to is a consideration of the method of handling these particular questions, and a discussion as to the relative prospects of the upper and lower basin, - the relative requirements in figures. At one time we revolved around the problem of a fifty-fifty division. We finally reached, in effect, this general conclusion as to the form of the compact, and that was that none of the figures and data in our possession, or within the possibility of possession at this time were sufficient upon which we could make an equitable division of the waters of the Colorado River, - -

MR. MC CLURE: In perpetuity.

MR. HOOVER: In perpetuity, - that we, therefore, came to this basis, not perhaps expressed by a general consensus of opinion, that there should be made by us a preliminary division to be followed by a revision at some subsequent date, - not a revision as to the preliminary quantity, just a renewed or further equitable division. That we make now, for lack of a better word I may call a temporary equitable division, reserving a certain portion of the flow of the river to the hands of those men who may come after us, possessed of a far greater fund of information; that they can make a further division of the river at such a time, and in the meantime we shall take such means at this moment to protect the rights of either basin as will assure the continued development of the river. I think that is the area within which we are endeavoring to find a solution.

MR. NORVIEL: Mr. Chairman, that is practically what I have had in mind in this method of a draft of the compact, and reference has been made to my misunderstanding, and it must have been my misunderstanding of the arguments carried on here, because I went immediately to my room after the

meeting and made a draft of a compact as I understood the agreements here, and when I submitted that draft it did not agree at all with that which was brought in, and the basis, I may say, upon which we are laying the foundation for this division was a tabulation made by Mr. Davis, which left out of consideration the Gila and the Little Colorado rivers in our state, but only included the proposed irrigation from the stem of the Colorado itself, and the best data that we could use, I take it, is that furnished by the Reclamation Service. A revision of this table has been made to include the omission of the Little Colorado and the Gila in the State of Arizona, and taking the revised table, and basing the needs of the lower basin and the needs of the upper basin upon the best known information that we have makes a division of the reconstructed river in the upper division 44.5 less per cent, and in the lower division 55.5 plus per cent. Now if the division can be constructed upon that basis, or with that in view, we will be very glad to give it due consideration.

MR. DAVIS: I understood, Mr. Chairman, that Mr. Norviel would have something definite in writing to submit today. May I ask if it has been prepared?

MR. NORVIEL: No.

MR. DAVIS: Is it not possible for you to prepare something definite for our consideration?

MR. NORVIEL: Judge, I fear not. I could prepare it, but I feel it would not be given consideration. I suggest that the upper states submit something.

MR. DAVIS: So far as I am concerned I would rather have something come from the other side.

MR. NORVIEL: I suggest the statements of the chairman be reduced to a definite form, if it is alright.

MR. CARPENTER: Do I understand that table is reconstructed to include the Little Colorado and the Gila?

DIRECTOR DAVIS: This table was constructed by me last night.

MR. HOOVER: Your conclusion is that including the Gila and the Little Colorado, that the southern basin, for its present and prospective projects, as you view them, require seven million six hundred and eighty thousand feet?

DIRECTOR DAVIS: In the aggregate.

MR. HOOVER: And of course we do get into the realm of figures again, and I was suggesting to Mr. Norviel that our best method of finding a solution is to figure out equities that satisfy the majority, and that we arrive at what is, as I have stated, a temporary method that will satisfy the needs of both sides, and that we throw the greater emphasis on the future than we have on the past. It does appear to me that Mr. Norviel's figures have raised the percentage somewhat.

MR. NORVIEL: Pardon me, they are not my figures. I simply worked out the percentage from these figures.

MR. HOOVER: Governor Scrugham has been giving a great deal of thought to this, and he has suggested two or three methods of approach.

"1. Permanently appropriate to each division 7,500,000 acre feet beneficial consumptive use, by the present compact, same to cover present acreage as well as future development.

"2. That both divisions proceed with their development until one of the divisions reaches a total consumptive beneficial use of 8,500,000 acre feet (including the present and future development), with the understanding that rights vest to all additional development in excess of 7,500,000 acre feet in each division up to the time of the call, but in no event to exceed a total of 8,500,000 acre feet in either division.

"3. No provision to be made in this compact for equalizing between the

two divisions when the maximum of 8,500,000 acre feet has been reached in one division, the one having the lesser development to be left to present its claims for any difference in amount of development (in excess of 7,500,000 acre feet) to the new commission in its allocation of the remaining waters of the river."

Again that is a variation on the matters of maximums. And still another:

"1. Block of 7,500,000 acre feet to be allocated in perpetuity to both upper and lower. In addition title may vest in lower basin to one million acre feet additional consumptive use, at which time another conference may be called by either party to allocate any unappropriated waters up to the limit required. No waters shall be withheld or diverted except for beneficial use."

Now, one of the fundamental things in safeguarding the proper normal development of the basin is the principle of what we have designated, for lack of a better term, equation. I think that principle is proper because, if we did not have it, we simply would have a race between the upper basin and lower basin for accumulation of appropriation rights. And if we can decide on the principles first, that we thrust the equitable division of the river on some future period, second, that we temporarily establish some basis of maximum and, third, that we establish the principle of equation, we reduce the entire problem to one, i. e., the solution of the maximum. That brings within these three problems, - that these three problems are variations of the maximum. There is still another device that might be worth consideration, that we maintain, first, the principle of throwing the fundamental equity of the division upon the future; second, that we maintain the principle of equation, and, third, that we make the time when equation takes place such a time as may be demanded by either basin and thus avoid the notation of any figures of the maximum. In other words -

MR. CARPENTER: Which involves the contest of speed.

MR. HOOVER: No. If I might state it in another form, - that appropriations may continue unrestricted in either basin until such a time as one basin or the other may claim a further equitable division of the waters of the river, but at the moment when that notice is given there is automatically an equation between the two basins and that equation absorbs appropriated waters and the unappropriated waters are to be considered as a surplus over and above that equation. Now, the weakness of that idea is that the southern basin might claim an equation within a few months, and, therefore, fix the northern basin at that figure, and an equitable division on that foundation, and such a formula as that will require a time period. In other words, suppose you say that at any time after the end of thirty years, - that we have thirty years of unrestricted development and appropriation in each basin, and that at any time after that date either basin may claim an equation of acre feet and a further equitable division. That avoids the notation of any figures of maximum to either basin.

MR. CARPENTER: Then we have three suggestions before us?

MR. HOOVER: You have about four.

MR. CARPENTER: Yes, four.

MR. SCRUGHAM: Would it be proper to have these referred to the drafting committee to work something out?

MR. DAVIS: I would like to know, as a preliminary matter, if say of the four are acceptable in principle to the southern division?

MR. MC CLURE: We do not maintain that they are of sufficient definiteness to be accepted at this time.

MR. EMERSON: If we could have this note written up of the last address of the Chairman, -

MR. HOOVER: Probably it could be gotten up in a much more reduced form

than that. I do think if I might suggest that the southern basin having asked for the alterations of the basis in which there was an agreement does owe a slight obligation to the upper basin to make the proposed change in that proposition. I do not think I am too insistent or too hard on the southern basin in view of the fact that we thought we have come to an agreement that they should make the proposed change.

MR. MC CLURE: I think, Mr. Chairman, that all of the commissioners present feel that rather than have nothing come from our meetings, such consideration had better be given - not necessarily for me to particularize why I feel compelled to present matters as I have this morning for the record.

MR. CARPENTER: We all understand, Mr. McClure.

MR. SCRUGHAM: Mr. Chairman, I believe that it would be proper to refer the drafting of the third article to the drafting committee, and have a representative of both divisions on the drafting committee.

MR. CARPENTER: May I anticipate, - unless the southern states have given these matters due consideration they might want to confer together. I know that we want to.

MR. DAVIS: I suggest that Judge Sloan be appointed by the drafting committee to represent the southern division.

MR. MC CLURE: I accept that for myself.

JUDGE SLOAN: You mean to consult with the representatives of the upper division as to a determination of such proposed alterations.

MR. DAVIS: Yes, or to write an entirely new article - anything that we can agree upon when it comes before us. I make that as a motion, Mr. Chairman.

MR. MC CLURE: I second the motion.

MR. EMERSON: Mr. Chairman, I believe there is still hopes of.



staying with at least the original hypothesis upon which we started that matter of apportionment, and if it resolves itself into a matter of quantities we now have injected in it an entire new plan of procedure.

MR. HOOVER: Not very vitally different in principle.

MR. CARPENTER: Do I understand all four plans are in writing.

MR. DAVIS: No; none are in writing.

MR. HOOVER: There are three of them, or four - four here, and I can add one more to it, but I don't understand - these were furnished by Mr. Scrugham. I don't understand they came from the southern division, therefore I thought it proper they formulate something themselves as they have asked for a variation of the agreement. It was moved and seconded that Judge Sloan should be asked to confer with the drafting committee and prepare a variation of the proposal, or any other proposal from the southern division for presentation to the commission.

MR. EMERSON: Before that motion is put I would like to consult with the representatives of the upper division for a minute.

(Thereupon the Commission recessed to allow such consultation.)

MR. CALDWELL: I do not know that this should be considered as an amendment. It is now suggested - the thought is that we should agree to appoint one member from the northern states to meet with one member from the southern states to draft some sort of a proposition, or propositions, that look feasible or possible, and that after the southern group has agreed to one or more of these drafts then present it to the commission for consideration.

MR. MC CLURE: If I might suggest that the chairman sit with them.

MR. CALDWELL: With the chairman of course.

MR. SCRUGHAM: I second Mr. Caldwell's motion.

MR. HOOVER: Do you accept that amendment Judge Davis?

MR. DAVIS: Yes sir.

MR. NORVIEL: I would like to know - what I understand is that when one or two or three of these have been agreed upon by the southern states and not agreed upon by the northern, is that the idea?

MR. SCRUGHAM: That they be presented subsequently to the northern group for their consideration; that is what it amounts to. We get the first crack at them under this motion of Mr. Caldwell, and I think it is alright.

(Thereupon the motion having been put it was unanimously adopted.)

MR. HOOVER: I think the committee might meet here at two o'clock.

Whereupon the meeting adjourned to the call of the chairman.

MINUTES OF THE

22nd MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 22, 1922  
10:30 A. M.

PAGE

135

MISSING

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Art. 3 and Art. 10. Art. 3 in regard to apportionment and Art. 10 in regard to Preservation of all Rights. On the other articles I took the liberty of appointing an editing committee of Mr. McKisick, Judge Davis and myself, who have been through and edited the grammar and tried to make these articles more expressive. Of course they are all subject to final review at some later time, and I suggest that we take up Art. 3 on which we have had a great deal of discussion.

I had a draft of Art. 3 which was gotten out yesterday and I am not certain as to what changes may have been made in this draft by the two groups, if any. How will it do if I read it through and we can write in any suggestive changes as we go along.

### "ARTICLE III

#### APPORTIONMENT

"The beneficial consumptive uses of the waters of the Colorado River System are hereby divided and apportioned between the upper basin and the lower basin as follows:"

I would like to say I feel we will need some consideration at a later date of the technical meaning of "consumptive" but I don't we need go into it now.

MR. NORVIEL: I might ask why the word "basin" is used instead of "division", if there is any reason for it.

CHAIRMAN HOOVER: "Between the upper basin and the lower basin"?

MR. NORVIEL: Yes.

CHAIRMAN HOOVER: The division we confine purely to a political division and the basin to a physical division.

(Further reading as follows:)

"(a) There is hereby apportioned in perpetuity to each basin, for its exclusive beneficial consumptive use, 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."

Is there any comment on that paragraph? If not, we will pass it temporarily until we come to the whole article at the end.

(Further reading as follows:)

"(b) The lower basin is given the right to increase its beneficial consumptive use by the further quantity of one million acre feet per annum."

MR. NORVIEL: That means one million acre feet of water does it?

CHAIRMAN HOOVER: Yes, I presume so. Put in the words "Of water." Any further comment on that paragraph? If not, we will pass it temporarily until we get through with the whole thing.

MR. NORVIEL: Would it hurt it in any way if we should prefix the words "In addition to the waters apportioned in (a)" to the words "the lower basin is given the right". I don't want to disturb anything now but if that would clarify it in any way I think I would like to have it.

CHAIRMAN HOOVER: My impression is that it does not alter the sense materially.

MR. DAVIS: I see no reason to object to it.

JUDGE SLOAN: That is the way it was originally.

CHAIRMAN HOOVER: Mr. Carpenter have you any views?

MR. CARPENTER: No objection.

CHAIRMAN HOOVER: I think you would want to take out the word "further" in order to make it grammatical. I think if you are going to make it read smoothly you can take out "further quantity".

MR. DAVIS: Yes "of one million acre feet per annum".

CHAIRMAN HOOVER: Any further comment on that article?

MR. NORVIEL: I would like to think about it then with these other eliminations. May we pass it for the present?

CHAIRMAN HOOVER: Alright, I would suggest that in order to keep it in tune with Art. (a) you should say "the lower basin is hereby given the right." If there is no further comment we will go on to (c).

(Further reading as follows:)

"(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 the waters of the Colorado River System, such waters shall first be supplied from the surplus water after the above amounts have been satisfied; and if such surplus shall prove insufficient for this purpose, then the deficiency shall be equally apportioned between and equally borne by the upper basin and the lower basin, and the states of the upper division shall deliver at Lees Ferry one half of the deficiency so recognized in addition to that provided in paragraph (b)."

MR. DAVIS: After the word "deliver" the third line from the bottom, I suggest the insertion of the words "whenever necessary", so that we will not be compelled to furnish Mexico any in addition to its needs.

MR. NORVIEL: I think that is understood, if such surplus shall prove insufficient.

MR. DAVIS: I think it is understood but I think it adds clarity.

MR. NORVIEL: We certainly don't want to give any -

MR. DAVIS: Perhaps it should come after the word "shall".

MR. MC KISICK: I think it should follow after the word "and" the third word in the third line from the bottom.

MR. NORVIEL: Perhaps while this is not the time to bring it up I think we should have some definite way of stating Lee Ferry.

CHAIRMAN HOOVER: That is covered in the definition. On the map it is known as Lee Ferry.

MR. CARPENTER: On the new maps. On all the old maps it is Lee's Ferry.

MR. CALDWELL: You may as well call it Lee's Ferry because everybody will call it Lee's Ferry.

MR. CARPENTER: The geographical society have decided to drop all apostrophes and 's' off all names. For instance, Long's peak will be Long Peak.

CHAIRMAN HOOVER: I think we might stick to Lee Ferry. We have battled that out once.

MR. EMERSON: (c) takes the place of the original Art. 7.

CHAIRMAN HOOVER: Yes, put it in order to get it logical. Also we thought that rather minimized the importance of it perhaps.

MR. EMERSON: It does.

CHAIRMAN HOOVER: (reading) "(d) The states of the upper division agree that they will not cause the flow of the river at Lee Ferry to be depleted below and aggregate of 75 million acre feet for any period of ten consecutive years reckoned in continuing progressive series, beginning with the first of July, next succeeding the ratification of this compact, nor below a flow of 4 million acre feet for anyone of such years."

Any comment on that paragraph?

MR. EMERSON: Hadn't "the" ought to go before "July"?

MR. DAVIS: I have no objection.

CHAIRMAN HOOVER: Any further comment? If not, clause (c) reads: "all of the states further agree, however, that the states of the upper division shall not withhold, and the states of the lower division shall not require, the delivery of water which cannot reasonably be applied to beneficial, agricultural or domestic uses."

MR. CARPENTER: I think that was originally intended to apply to low streams, low years.

MR. SCRUGHAM: Didn't we agree to make the first classification include



mining, milling and so on. Is there any necessity for putting that in at this point?

CHAIRMAN HOOVER: I think we might get at that by a definition. I think the editing or drafting committee might consider whether we want to define what the first class is.

MR. NORVIEL: I thought it was decided to cut the "however". I can't see any tie that calls for it.

CHAIRMAN HOOVER: I don't see any need of the word "however".

MR. EMERSON: It just adds the force of the usual expression.

CHAIRMAN HOOVER: You can cut out the whole first line and you will get the whole import of the condensation.

MR. NORVIEL: Cut the first line out?

CHAIRMAN HOOVER: Yes.

MR. EMERSON: It seems to me there is a real force in line one and I don't like to see it lost.

MR. SCRUGHAM: What do you mean? It is more vigorous?

MR. EMERSON: Yes, I do. It means the water shall not be withheld or demanded without just cause.

CHAIRMAN HOOVER: If there is any objection to taking it out it really makes no fundamental difference leaving it in.

MR. NORVIEL: I can't see it helps it by leaving it in.

CHAIRMAN HOOVER: I was simply editing it down.

MR. EMERSON: I don't want to edit it down and sacrifice the force you wish to give to certain things.

CHAIRMAN HOOVER: We concede that line to Mr. Emerson.

MR. MC CLURE: Cutting the word "however" or leaving it.

MR. EMERSON: Leave it in.

CHAIRMAN HOOVER: Paragraph (f) reads: "Further equitable apportionment of the beneficial uses of the waters of the Colorado River unapportioned

in paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after July 1st, when either basin shall have reached the total beneficial use set out in paragraphs (a) and (b) above."

Aside from the intrinsic question of the date I would suggest "when" in the second line from the bottom of the paragraph should be "if".

MR. NORVIEL: I suggest "if and when" be both included.

MR. DAVIS: I think after the word "beneficial" in the next line the word "consumptive" should appear.

MR. NORVIEL: Is there any objection to making it read "if and when".

MR. DAVIS: Not on my part.

CHAIRMAN HOOVER: We will have it read "if and when" and put in the word "consumptive". Shall we go on through before we go back to the date?

MR. SCRUGHAM: Yes.

MR. NORVIEL: I suggest we do.

CHAIRMAN HOOVER: (reading) "(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, or any state acting through its governor and the United States acting through the president, may give joint notice to the governors of the other signatory states and to the President of the United States, if he does not join in such notice of such desire, and it shall be the duty of the governors of the signatory states, and of the President of the United States to immediately appoint representatives with like powers to those of the present commission whose duty it shall be to further divide and apportion equitably between the upper basin and lower basin the beneficial use of the unappropriated waters of the basin as described in paragraph (f), subject to the legislative ratification of the several states and the Congress of the United States to the same extent as is this compact."

MR. DAVIS: The second line from the top on the last page the words "of such desire" seem to me out of place. They should probably come after "notice" on the last line on the first page. "May give joint notice of such desire to the Governors." In the fourth line from the bottom I think the word "unappropriated" should be "unapportioned" under paragraph (f).

MR. NORVIEL: I think that is the proper word perhaps. What is the duty of this Commission?

CHAIRMAN HOOVER: We have kept the word "unappropriated" out of this whole paragraph III. It is all based on apportionment, not on appropriation.

MR. NORVIEL: Now what shall this Commission do when it is appointed by the President and Governors? What is the purpose of the Commission?

CHAIRMAN HOOVER: "Whose duties shall be to further divide and apportion between the Upper Basin and Lower Basin the beneficial use of the unappropriated water of the Basin as secured under paragraph (f), subject to legislative ratification. (f) States "further equitable apportionment of the beneficial uses of the water of the Colorado River unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after July 1st."

MR. EMERSON: Does that confine their duties to the particular matter of apportionment? They should have power to consider any other matters relative to the whole question.

CHAIRMAN HOOVER: We cover that in a subsequent paragraph, don't we? Where we state the thing is subject to unanimous amendment.

MR. DAVIS: Also saying it is with like powers to those of the present Commission.

MR. EMERSON: That would cover the point all right, but there is no doubt but what they would want to go beyond. For instance, if it were

found 75,000,000 acre feet at Lee Ferry were in excess of the amount needed there would want to be a reconsideration of that, surely.

CHAIRMAN HOOVER: They can do anything by unanimous agreement.

MR. NORVIEL: I think that would be a very good thing to put that in and also if there is too much water hold back, that ought to be also.

MR. MC CLURE: The powers of the Commission seem to cover it.

CHAIRMAN HOOVER: Anything you agree on unanimously will alter this agreement anyhow.

MR. NORVIEL: At that time?

CHAIRMAN HOOVER: Sure.

MR. EMERSON: As far as one paragraph is concerned, the right to function of the Commission is based on apportionment.

CHAIRMAN HOOVER: I don't know that it would do any harm, it might be worth a moments discussion. By unanimous agreement they would have power to amend it in any way they like. I don't know what you would think about that, Mr. Carpenter. You can always do anything by unanimous agreement, legislative action.

MR. DAVIS: The only power of this Commission is to divide and apportion the water equitably between the states. Now we provided that also shall be the power and duty of the new Commission. It strikes me that language is broad enough to cover practically anything they may want to do.

MR. CARPENTER: I think so.

JUDGE SLOAN: Isn't it true nothing should be put in there that might be implied as power in the new commission to interfere with rights that may have been approved in the meantime?

CHAIRMAN HOOVER: As it stands here all they can do is to work with unapportioned water. They can't interfere with the apportioned water.

JUDGE SLOAN: No, but the suggestion as to amending the present compact,

MR. NORVIEL: (Interrupting) If the word left was "unappropriated" that would cure the evil.

MR. EMERSON: No, but the word is "unapportioned," Mr. Norviel, by reason of paragraph (a).

MR. NORVIEL: It is your purpose then to make a hard and fast thing that the apportioned waters shall never be changed. Is that the idea?

MR. DAVIS: The Commission can change it if they unanimously agree on it.

CHAIRMAN HOOVER: They can change anything if they unanimously agree.

MR. NORVIEL: I believe you stated, Judge, our business here is to divide water between or among the states?

MR. DAVIS: I think I said that.

MR. NORVIEL: Are we doing that?

MR. DAVIS: I think we are.

MR. EMERSON: As long as this article settles definitely on apportionment, to my mind that would be broad enough and an amendment can be had by unanimous consent, so it is agreeable to me.

CHAIRMAN HOOVER: It is provided the agreement may be terminated by unanimous consent. That Commission could sit down and unanimously terminate the contract and all rights bestowed and start again if they want to.

MR. NORVIEL: I think they ought to be given that freedom.

CHAIRMAN HOOVER: We come back to the discussion of the date. I would like to hear any suggestions from either side.

MR. CALDWELL: I suggest July 1st, 1968, Mr. Chairman.

MR. MC CLURE: I raise the question, Mr. Chairman, whether, in the event a compact be not approved by the various states and the Congress for a few years, it may not be better to insert a period 45 years beyond the first day of July after its final adoption?

MR. NORVIEL: I don't think we ought to hunt trouble. We are assuming we are arriving at something that will be agreeable.

MR. SCRUGHAM: I prefer a definite date.

MR. EMERSON: I believe it ought to be tied down more definitely.

MR. MC CLURE: Suggestion withdrawn.

MR. SCRUGHAM: I second Mr. Caldwell's motion of July 1st, 1968.

CHAIRMAN HOOVER: That is 45 years. (Thereupon, a vote being taken on the motion of Mr. Caldwell, the following voted "aye."

Mr. Emerson, Mr. Caldwell, Mr. McClure, Mr. Carpenter, Mr. Davis and Mr. Scrugham.

MR. NORVIEL: I think, Mr. Chairman, I am a little confused on paragraph (g).

CHAIRMAN HOOVER: This provides that there shall be no further apportionment until after this time.

MR. NORVIEL: Oh. Well, I was misreading (g). I think that was at any time. Well, then, I don't like the date of 1968 under these circumstances that ties it down to a definite date before anything may be done and that is too long a period. I had overlooked that reading into (g) that there was a provision there that it might be taken up at any time upon the notice of two Governors or a Governor and the President.

CHAIRMAN HOOVER: No, it reads as it stands here, it reads very clearly no notice can be given before that date, and after that date whenever you get the maximum.

MR. NORVIEL: Well, then, that time is too far in the future. I don't think we have any right to bind ourselves so long as that and I suggest a period of thirty years then, if that is to be the first date any change is possible, because 45 years is too long for me to wait.

CHAIRMAN HOOVER: You vote "no" on the previous question?

MR. NORVIEL: Yes, I will have to vote "no" on that. I had misunderstood.

CHAIRMAN HOOVER: Do you move thirty years?

MR. NORVIEL: I move a thirty year period.

CHAIRMAN HOOVER: (No second having been received to the above motion.)

They don't second it, but in any event this has to be unanimous, whatever it is.

MR. SCRUGHAM: Would you accept 1960 as a compromise?

MR. NORVIEL: No, I think thirty years is long enough before anything may be done. That is practically a generation.

MR. SCRUGHAM: I don't think it is a very vital point.

CHAIRMAN HOOVER: The intrinsic position is that the northern states wish a sufficient period, I imagine, to enable their development to come up to approximately this figure.

MR. CARPENTER: Our position is briefly this. We have no desire to be arbitrary in this matter at all, but we feel that we should either have an equating at an earlier period, which seems to have been overlooked, or be protected by a longer period, the reason being this; we are in accord with the idea of flood protection below that will stimulate the growth down there because the works will have to be paid for. It will give the incentive to early development down there and our works will in the meantime lie dormant instead of being stimulated and our projects will get

under way, not in a year or two or three or four or five, but drag along.

Now we do not have the unusual stimulus that will be given to the lower country by the necessary development down there. - the condition might be a little different, - but we feel that we should have sufficient time elapse for our development to proceed to that degree that by the time a new apportionment or further apportionment occurs we will be in position

to get fair play and be in a fair position to present our case and know our conditions at that time.

We have no desire to arbitrarily prolong the date, but still, at the same time, having lent our hand to the stimulus below, we feel we are either entitled to stimulus above or an opportunity to work out our own salvation before we are penalized by being brought to a reckoning before our development has really reached its probable future, -

MR. SCRUGHAM: All that in view of the fact you have a permanent guaranty of 7,500,000 acre feet?

MR. CARPENTER: Yes, but this is further apportionment. We have already allowed a million here, so we feel now we have allowed sufficient latitude that entitles us to a date reasonably long as to the future.

MR. NORVIEL: I think Mr. Carpenter is unduly excited over the stimulus that would be given to the lower division. It is true, of course, that the necessities are very urgent for flood protection, but I can see no reason why at the present time the complete development should go any faster or be arrived at any sooner in the lower division than that in the upper division.

CHAIRMAN HOOVER: Isn't this the thing that is likely to happen, no matter where the date is; that if the southern states shall have exceeded their maximum developments will not stop. Persons who undertake diversions would undertake them with notice that they have no title as against the Upper Basin to such diversions, but they will undoubtedly proceed anyhow, knowing that there is unallocated water yet to come at the hands of a Commission and knowing that they will have the moral position, and extremely strong moral position, of having actually developed their lands and homes before such a Commission, so that the southern group will be in such a situation that if there is any unappropriated water at all morally it will go to the people who have actually applied it and therefore a deferment of the



date for a considerable period might even be to the advantage of the southern group. The northern group might at the same time have developed its up to its seven and a half million, but the moral pressures are in favor of the southern group at that date.

MR. SCRUGHAM: May I ask for a conference of the southern delegates for a few moments on that particular point?

MR. NORVIEL: I agree with the Chairman on that particular statement, but if I were as cautious as Mr. Carpenter is I would say our earlier development will be the easier development until we probably may reach the amount allocated and the surplus would be necessarily taken upon very expensive or difficult problems to finance and unless there was an absolute right that might be obtained to the water for such projects, I doubt whether we would be able to finance and put the water to the beneficial use the Chair has just suggested. If we could, the argument would be sound.

MR. SCRUGHAM: Would you mind coming in and having a little discussion on that in detail, with the southern states?

MR. NORVIEL: On the question of the period of time?

MR. SCRUGHAM: Yes.

MR. NORVIEL: I am ready if we may be excused.

(Thereupon the representatives of the southern states withdrew for a conference upon the above matter.)

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After the conference of the southern states as above, the following proceedings were had:

CHAIRMAN HOOVER: What is the result of the caucus.

MR. SCRUGHAM: All right.

MR. NORVIEL: Mr. Chairman, I think Arizona will agree to the period as stated before.

CHAIRMAN HOOVER: I compliment the caucus on a quick decision. Now

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are we prepared to accept this paragraph as a whole?

MR. CARPENTER: I move its adoption.

MR. EMERSON: I second the motion.

MR. NORVIEL: I think we better put in the word "amount."

CHAIRMAN HOOVER: I think you should use the words "in addition to the apportionment in paragraph (s)."

MR. CARPENTER: As I understand it, the words in the last line in (e), "to beneficial agricultural or domestic uses" are to be smoothed up in the revision?

CHAIRMAN HOOVER: Yes, I think we all accept that the editing committee may go over these. The editing committee makes it a point to not change the meanings.

(Thereupon, a vote having been taken upon the adoption of Article III, the same was unanimously adopted in the following form)

### "ARTICLE III

"The beneficial consumptive uses of the waters of the Colorado River system are hereby divided and apportioned between the Upper Basin and the Lower Basin as follows:

(a) There is hereby apportioned in perpetuity to each basin, for its exclusive beneficial consumptive use, 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 by one million acre feet of water 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 the waters of the Colorado River System, such waters shall first be supplied from the surplus water after the above amounts have been satisfied; and if such surplus shall prove insufficient for this purpose, then the deficiency shall be equally apportioned between and equally borne by the Upper Basin and the Lower Basin and when necessary the states of the upper division shall deliver at Lee Ferry one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division agree that they 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 the July next

succeeding the ratification of this compact, nor below a flow of 4,000,000 acre feet for any one of such years.

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

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in Paragraph (g) at any time after July first 1968, if and when either Basin shall have reached the total beneficial consumptive use set out in paragraphs (a) and (b) above.

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, or any state acting through its governor and the United States acting through the President, may give joint notice of such desire to the governors of the other signatory states and to the President of the United States, if he does not join in such notice, and it shall be the duty of the governors of the signatory states and of the President of the United States to immediately appoint representatives with like powers to those of the present Commission whose duty it shall be to further divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Basin as described in paragraph (f), subject to the legislative ratification of the several states and the Congress of the United States to the same extent as is this compact."

CHAIRMAN HOOVER: Article V now becomes Article IV; Article VI on the Collation and publication of data is now Article V. The Article on International relations goes out. The Article on Interstate Adjustment becomes Article VI. Indian Rights becomes Article VII. Article VIII isn't here. Article VIII is still to be drafted and the Article as the Preservation of Rights is yet to be adjusted. That will be Article VIII, so that the termination becomes Article IX. We have before us the question of Article VIII.

MR. DAVIS: Does that have to be redrafted for presentation?

CHAIRMAN HOOVER: It has to be redrafted. I would suggest we might make progress if we had Mr. McClure, who is considerably interested, and Judge Davis and Mr. Carpenter, if the Commission doesn't mind, to try and draft something for consideration.

MR. EMERSON: I would like to see Mr. Caldwell on that as an engineer. I would like to relieve one of our attorneys and put in Mr. Caldwell.

CHARLEEN HOOVER: I think it would be a fine idea. Mr. Caldwell will be put on that committee.

There is a question we were discussing last night which is at my raising, over the preferential use of water and the treatment of the navigation question. I raised this point because I feel that as we have it drafted we are likely to create a stumbling block with congressional ratifications and I was wondering whether or not there was something to be done about it. I had suggested two processes, one deletion and the other that it might be possible to get some device in the wording by which Congress could act on that paragraph without upsetting the whole pact. There were one or two questions in it that became pretty involved and that is that this navigation question may have an international phase and we may have all of those people who have little understanding of the practicalities of the situation insisting that the United States should never give up its navigation right on anything, etc., etc., and obviously a certain group will feel that by holding a preferential right the government has some advantage to the whole of the states, etc., etc.

I only mention those ideas as indicating there may be opposition; the question as to whether it is desirable to raise that question, also the question whether or not if Congress gave consent to this pact that clause in any way diminishes federal interest anyhow. In other words, whether the states amongst themselves can make an agreement to take away a federal act.

MR. DAVIS: Have you drafted something, Mr. Chairman, along your lines, something concrete?

CHARLEEN HOOVER: No, I haven't had an opportunity to discuss it with Mr. Hamble. I was wondering if we introduced the words into that paragraph, Mr. Hamble, "if upon specific approval of Congress," whether that would cure it?

MR. HAMBLE: Mr. Chairman, I am strongly of the opinion it ought to be

left out. I don't see just how it could be very well cured by a proviso.

CHAIRMAN HOOVER: It is perfectly possible to go on with a sentence there to the effect that disapproval of this paragraph by Congress should not effect the other portions of the pact, or something of that kind if you want to.

MR. HAMELE: Yes, that could be inserted. I think probably there ought to be a provision in the compact somewhere, a general provision, regarding the effect of consent by Congress with reservations; a provision that even though the consent by Congress is made with reservations, that that will not prevent the carrying out of the compact by the states.

MR. DAVIS: These are pretty broad. We don't know what the reservations might be.

MR. CARPENTER: It is going to encourage legislatures of the states to think they have the same powers as Congress.

CHAIRMAN HOOVER: One thing that I think, one has to bear in mind that the United States as distinct from the states has no particular interest except the interest of all the states. There are great tendencies on the part of the states to rely on the federal government from time to time for protection from the other states. It brings up a question as to whether or not a general reservation of federal rights wouldn't cover the whole question at one time, once and for all, and how far that would damage the compact in the interest of the different states, and I should like to suggest to you that that is well worthy of consideration.

MR. SCRUGHAM: How would it do to suggest a committee be appointed to work on this particular paragraph relating to navigation, in addition to the one you just appointed, and have it report back to this convention, then we will have something definite and concrete in the way of language. Personally I would prefer to have the thing remain as it is.

MR. EMERSON: I think we had better have the sentiment of the Commission expressed.

MR. DAVIS: I think Colonel Scrugham's idea is a very proper one, except I suggest the Chairman himself work this out himself with such assistance as he desires so that we may have something definite before us and that can be done while the other committee is working out the other clause.

MR. NORVIEL: Mr. Chairman, I confess I didn't like this before, but voted for it for the sake of harmony, as it didn't appear to particularly affect Arizona. There is no doubt in my mind but that if the river is a navigable stream at all the navigation right in it belonging to the government is absolutely paramount to every other right in the river insofar as navigation is concerned, and that Congress may absolutely control the diversion of any water from the river if it affects navigation and it is the desire of Congress to maintain the navigation right in the river. Then I think this suggestion is unfortunate in that the states undertake to make a paramount right of the government servient to all other rights on the stream and probably would provoke discord among the Congressmen when it comes before them.

MR. EMERSON: Mr. Chairman, I am diametrically opposed to the position of Mr. Norviel in this, —

MR. NORVIEL: (Interrupting) And in all things else.

MR. EMERSON: To all practical intents and purposes the river is not navigable so why try to hold this club over this river. The idea that we might build up great properties upon the water supply and then at some time in the future the government come along and depreciate the value of our properties upon the right of navigation is something that I don't look upon with any pleasure and I for one think we should take the bull by the horns and give Congress at least a chance to pass upon this question. It seems to me in fairness as it has no practical purposes for navigation they might be well willing to say so and remove this everlasting cloud as you might call it,

to title to water for other purposes.

I am not averse to a reservation in there such as you have suggested whereby Congress might approve, or at least an article might be so drafted that the failure of Congress to approve in regard to the paragraph on navigation would not vitiate the entire compact, but I certainly believe that Congress ought to have a chance to pass upon the question.

MR. NORVIEL: I think if it is omitted altogether, if the navigation portion of it is omitted altogether and Congress passed it why we should be satisfied.

MR. CARPENTER: I fear not. I fear it would defeat the very thing all of us want. I feel it would still leave the matter hanging in the air and defeat the very purposes that we all of us want to accomplish and that is the utilization of the river for agriculture.

MR. NORVIEL: If they ratify this compact that is what they do, isn't it?

MR. CARPENTER: I doubt it unless there is some reference to navigation in the compact.

MR. NORVIEL: It seems to me if Congress gives us the right to divert and use the water in the river then they have almost done the very thing that you are aiming at.

MR. CARPENTER: By inference, yes, that might be true, but they are prone to hold that such rights are not surrendered except by express language.

MR. NORVIEL: Wouldn't it be express if they permitted us to use all the water in the stream?

CHAIRMAN HOOVER: Supposing I endeavor to present something concrete to the conference after lunch on the subject.

While we are here I would like to have Mr. Hamble illuminate the

question of the reservation of federal rights generally in this compact. I don't think we ought to drop the subject without consideration.

MR. HAMELE: Mr. Chairman, I would propose to the full Commission an article for this compact which as a member of the drafting committee I presented to that committee, which was rejected by the drafting committee. It will be entitled, "Rights of the United States," and would read as follows:

"This compact is made subject to all existing rights of the United States, which rights shall not be affected by the consent or approval of this compact by the United States, anything herein to the contrary notwithstanding."

Members of the Commission have often suggested the advisability of following with fidelity the act of Congress of August 19, 1921, and I would call attention to the fact that this statute expresses with certainty the following: that the United States has valuable interests in the Colorado River Basin which must be protected in the proposed compact. The Act authorizes a substantial appropriation and the naming of a representative to provide for the protection of those interests.

If the United States has in fact no interests in the Basin which should be protected in the proposed compact, then the federal appropriation and the federal representative are but idle gestures from a national standpoint. It seems to me to follow that if we are to carry out the plain intent of Congress this compact must contain an article protecting those interests which the statute directs shall be protected. The compact as now proposed contains no such article.

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The United States is the largest land owner within the Colorado River Basin, also it is the largest owner of irrigable land therein, for the reclamation of which this compact is proposed. It has already constructed in the Basin irrigation works of the value of many millions of dollars and proposes the expenditure for irrigation purposes of many millions more. These operations are carried on, not to the derogation of the states involved,



but to their direct advantage and lasting benefit, and upon urgent appeals therefor made by the representatives and citizens. In fact, the greater part of the future irrigation development which the proposed compact seeks to secure must come through monies advanced for twenty years without interest by the United States for the benefit of the states. Incidentally these federal operations are of no direct benefit to the National Government.

The United States stands in the peculiar relation of having no interest adverse to the states, or any of them. This is not true of any other party represented here. The exercise by the federal government of its rights within the Basin can give rise to no valid objection. The United States stands in the position not only of a donator to the states, but also of an impartial judge without selfish interests of any kind to further.

The proposed article imposes no burden, nor does it take away any right from any state. It merely preserves that which the statute directs shall be preserved.

There may be dispute as to some of the rights claimed by the United States, but if in any such dispute the states are right, what harm can result to them from this article. It merely preserves the present statutes. On the other hand, what is the consideration running to the government for the abandonment of any such right.

I assume all members of the Commission desire to secure the final consent of Congress to the work which has been carried on at such large effort and expense. What ground is there for believing such consent may be secured if the present direction of Congress be ignored? So far as I know the objections made to this article are merely naked negative. I have heard no reasons given and for the purpose of illuminating the record upon this important subject I respectfully ask that such reasons as members of this Commission may have against the inclusion of this article in the

proposed compact be expressed.

CHAIRMAN HOOVER: Would you state, Mr. Hamelc, what you consider the federal rights are specifically? Enumerate them?

MR. HAMELE: Why the federal rights are first, the paramount right of navigation, which affects flood control. The United States also has the ownership, I believe, of all of the unappropriated water of the Basin. It has an interest in the building of irrigation works under the national irrigation act. It has rights under the Federal Water Power Act that possibly don't conflict with anything in this compact, but there are possibilities we could conceive of by which that Act could be amended so that those right might become in conflict with this compact unless they were reserved. It also has rights in connection with its treaties with the Indian tribes. I believe that in a general way covers all of the rights that might be claimed by the federal government.

MR. CARPENTER: In other words, doesn't amount to this; that you claim everything except the water that is now passed to private citizens?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: I would like to have it clear first as to navigation. I assume that the consent of Congress to this compact is a recognition of that. That is a matter which would come squarely up for consideration. As to unappropriated water, just to get it clear for the record, it is my understanding the rights of the federal government have never been established. Is that true?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: Either by legislation or by court decision?

MR. HAMELE: Not directly so. That claim was presented by the United States in the Wyoming-Colorado case, but it was not passed upon by the Supreme Court.

MR. CARPENTER: It has been frequently argued in other courts to the same effect, has it not?

MR. HAMELE: Not with any great frequency.

MR. CARPENTER: The federal court of Nevada had a case in which that same argument was presented and which turned it down, did it not? The Carney Case? Or just waved it aside saying it served as useful purpose?

MR. HAMELE: I don't think it was decided in that case.

CHAIRMAN HOOVER: As to irrigation works, in what way could this compact interfere with the progress of irrigation works construction?

MR. HAMELE: It might be argued from the compact that the United States was required in the construction of federal irrigation works to follow implicitly the direction of each state. It will be subject to the whims of each state. For instance, if it desired to make an appropriation of water, to take a case that has already been passed upon, showing the attitude of the states, an appropriation of water in Southern Colorado that couldn't be used in the State of Colorado but it could be beneficially applied in the State of New Mexico. Under this compact the government would be at the mercy of the State of Colorado as to that diversion.

CHAIRMAN HOOVER: Would it be any more so than it was before?

MR. HAMELE: Well, I think so, yes, because assuming that this compact gives up the claim of the United States to the unappropriated waters of the basin it would be.

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CHAIRMAN HOOVER: But it would rest on that claim, would it not? It would rest upon the question of the ownership of unappropriated water.

MR. HAMELE: That would be always an important factor.

CHAIRMAN HOOVER: And have you any idea where the federal Water Power Act would be infringed by this?

MR. HAMELE: As the federal water power act now stands I don't think

there would be any infringement. I don't see any at this moment.

CHAIRMAN HOOVER: The Indian question we have clearly set out, I think, settled that.

MR. HAMELE: That has been specifically referred to in the proposed compact.

MR. SCRUGHNI: Mr. Chairman, I think any paragraph in any way sanctioning the claim of the federal government to all the unappropriated waters would cause the compact to be defeated in all the intermountain states.

MR. HAMELE: This proposal doesn't sanction that claim.

MR. CARPENTER: It would include it.

MR. HAMELE: It only preserves existing rights.

CHAIRMAN HOOVER: Existing or established.

MR. HAMELE: Well, existing as I have written it.

MR. CARPENTER: You claim that is a right. You claim that by your present right, don't you?

MR. HAMELE: Yes.

MR. CARPENTER: Therefore, if it were later decided on presentation of that that you are right, then this clause would include all unappropriated waters of the river, wouldn't it?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: It would seem to be a very doubtful necessity to make this compact, wouldn't you think Mr. Hamole, for these states to attempt to divide the water at 45 years hence, the unappropriated water, if the federal government had powers to do it?

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MR. HAMELE: That is true; if that right were unquestioned and undisputed. If the federal government so desired it could apportion these waters without reference to the states that would be a most desirable end, if that were feasible. It would be a happy solution of all these difficulties. It would be a perfect solution of it in fact. Mr. Hoodenpylc's proposition is the

scientific proper way of solving all these difficulties. It would be a perfect solution of it.

MR. EMERSON: I think that is according to who is passing as the question.

CHAIRMAN HOOVER: I find myself a little confused. I come here under a specific act of Congress which provides a compact shall be made, or may be made, by the states for the division and apportionment of the water, - I forget the exact language, - and if that authority rests in the federal government it would seem an anomaly for Congress to have passed an act directing such a conference as this and any federal delegate to it.

MR. HAMELE: As I view it, Mr. Chairman, it is an attempt in a practical way to work out this solution without a fight and that that is all it is as far as the federal government is concerned. The federal government doesn't desire to take a drop of water from any of these states. It has no use for it as a government. The uses will be taken care of within the states.

CHAIRMAN HOOVER: Haven't we amply secured that question by providing that this division and apportionment of the water shall be subject to the approval of the Congress of the United States, and equally that any further apportionment shall be subject to the approval of the United States? It seems to me we have amply protected that particular right.

MR. HAMELE: I understand from expressions of members of this Commission that it is their thought that the compact as proposed amounts in substance to a quit claim deed of all the rights of the United States which have been referred to, except those that are reserved.

CHAIRMAN HOOVER: I don't believe, Mr. Hamelc--

MR. HAMELE: (Interrupting) And that they will so argue.

CHAIRMAN HOOVER: I don't believe that there is any such statement

Pages

161 & 162

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## SECOND PART, 22nd MEETING

MR. HAMELE: The Federal Government should have the power to do that if that were true, but there would be no reason for its asserting that power; the only reason for asserting any powers would be for the benefit of those states, - it is going to be the biggest single investor. This development is to a large extent going to be made by the United States, and it is only right, it seems to me, that the United States should have such rights in connection with the use of those waters that it may efficiently handle the matter as to the seven states in an impartial way.

MR. HOOVER: There is another argument that might be brought forward. Suppose the Federal Government claimed all of the unappropriated water, - a claim against each state. This is not a division between states, - it is a division between two groups, and if that could hold it could still apply without any of the negotiations of this pact.

MR. HAMELE: It might also be urged, - but there is uncertainties in all of these propositions. I only want to get it very clear for the record.

MR. MC CLURE: I cannot refrain from raising this question as a practical question mentioned by Mr. Hamel, viz: that if at any time the Federal Government had injected its interest in the Sacramento River a very great development would have been hindered. As a matter of fact we have been permitted unstintedly to remove water from that river, which is actually a navigable stream, and never yet have we been interfered with.

MR. HOOVER: Mr. Hamel has raised five phases of the Federal interests on navigation. I think we should give the matter more consideration. I understand there is no confliction the Indian lands, - we have made provision for that. Have you anything to say on this whole question.

MR. CARPENTER: I think it has been very well expressed by the Chair. We are acting under special, direct authority by Congress, which, in my

judgment, is adequate to dispose of the main object, and this objection, - this specifically protects the federal rights.

MR. HOOVER: Yes. The act is wide enough to cover government appropriations of water for use for navigation, subject, of course, to congress's concurrence in such division.

I should like to present this to Congress in such form as does not vitiate the compact. However, we will see if we can formulate something in that direction.

Before we adjourn I want to raise one broad question on this pact, - in Article III, the whole paragraph relates to the minimum flow of water, seventy five million acre feet, and the four million minimum, seems to me to be worth more or less discussion in the interest of both the upper and lower basin. You will recall, in our discussions we originally started in an endeavor to work out a division of the water on the basis of a percentage, and as one corollary of that percentage, we would say from a minimum which was not an appropriation. A percentage of delivery at Lee Ferry. Now, we have changed the entire basis of the pact to allocations of quantities. I might say that in general we have come back to Mr. Norviel's original proposition, except that we have made the division between groups instead of individual states. I think that is considerably of a compliment to Mr. Norviel's perspicacity. And in so doing we now have a situation where a different allocation of water has been made to the upper states, and a different allocation, for a period of years, to the lower states.

As a matter of actual realism, that minimum supply will come to the lower states, because it is less than the surplus allocation made to the upper states, and it has this concrete disadvantage, as I see it, to both sides, - it establishes an obligation to control a great river on the part of the northern states, which will be difficult to drill into the heads of laymen



as an obligation capable of performance, and as to the lower states its complexion is of giving a less amount of water to those states than they will actually receive; but if it were entirely omitted, - the entire paragraph, all discussion in the lower states would revolve around the flow of the Colorado River, not on the minimums here set down, as these minimums have been made less than the normal and expectant flow of the river in order to give security to the upper states in their ability to deliver, and we are directly clouding the mind of the public as to the volume of water with which we are dealing. In other words, it would seem to me, if I were to go before the legislatures of the different states I would rather have the whole paragraph out. By discussion would then be hinged upon the seven and a half million consumptive use confined to the upper states, and the normal flow of the reconstructed river, the twenty-two million feet of water, and I think it would make it much less difficult, and intrinsically lose no water to the lower states. Now, I present both sides of that, as I believe, as being of equal importance to the north and to the south, and ask you to give it a little further consideration. I don't ask any alterations. I haven't the power to do that, but just ask your consideration.

MR. DAVIS: I think as to those facts we discussed them among ourselves and felt that to be very valuable to us. Nevertheless we will be very glad, between now and noon, to consider the matter of the elimination of that clause

MR. HOOVER: Otherwise than that, the one other point which I would like to bring up is the definition of consumptive beneficial use; the words which we apply to the definition of appropriation need to be made very clear that this includes power.

MR. DAVIS: I think, Mr. Chairman, that definition has got to be entirely revised, - the definition of appropriation.

MR. HOOVER: "Apportionment" we may never use at all in the completed pact, but the definition of the word "apportionment" is one which needs some

consideration. It might be contended in the present definition of consumptive beneficial use that we have included power, and that, therefore, power rights might run wild on the river, and again it may be said there is no consumptive use in power, and it would be a disadvantage to both basins.

MR. DAVIS: Yes, it would be better that both of those be worked over between now and the afternoon session.

MR. HOOVER: As I pointed out, in the northern basin it may be perfectly possible for power companies to be organized who would, not having consumptive use, insist on controlling the water as not to give the maximum flow to the lower basin, and vice versa.

MR. NORVIEL: I am very glad to hear that comment as to the beneficial use because it approaches what I wanted.

MR. HOOVER: I was complimenting you on getting on to your own ground.

MR. NORVIEL: No, this is not my ground at all, but I agreed to the proposition because it approaches, - not reaches, but approaches an equitable division.

MR. HOOVER: With those comments I would like to ask Judge Davis to consider the question of the definition of appropriation of waters, - or rather the apportionment, and Mr. Hamble and I will think about the question of navigation. Mr. Carpenter and Mr. Caldwell and Mr. McClure will endeavor to work out paragraph IX, - paragraph IX I think it is, and in that paragraph I think that that portion of the draft of Judge Davis, which opens to the states the right to go to court for the enforcement of this compact, should be preserved. Last night, as drafted we had left it out, and I think if possible it should be stated, as it is a right the states have anyway.

MR. NORVIEL: In the event any of us should discover an omission of some point which should be included I suppose we have the right to suggest it at least.

MR. CARPENTER: I want to make one suggestion, that is, your titles are dangerous. Unless those titles are clear they are likely to be misinterpreted on the question of intent. I am not certain that it is necessary to have those titles.

MR. HOOVER: I think, - suppose we hear from Judge Davis as to whether it is necessary to have titles or not.

MR. DAVIS: I don't know that there is any necessity.

MR. CALDWELL: With those same arguments may we not cut out the article on Purposes?

MR. HOOVER: I feel the article on "Purposes" has a clear psychological value.

MR. CARPENTER: They have a psychological value, and those articles, as drawn, may be later revised and improved, and if there is any question as to what the intent of the drafters of the compact was, they will turn to the article on "purposes" to try to find a guide to that intent, - I think there is great danger in leaving that out. It is not alone a preamble, - it is, if I may so term it, a declaration of principles. It is a guide to the intent of the framers, and as such it must be very, very carefully drafted in the final compact if it is to remain.

MR. HOOVER: On Mr. Norviel's remark, I would like to state that if we are to make any progress we should forego any discussions except for the matters which we have under observation and discussion, Article 8, Navigation, a re-drafting of our definitions, a consideration ~~as to whether or not~~ "Purposes" should again be made a part of the preamble, or some other consideration of that kind; that new point which is not based on this draft of the compact should not be raised.

We have not, as yet, edited, as a commission, the compact itself. We have got to go over it word for word and get it in the best possible form.

Was there something you had in mind?

MR. NORVIEL: There was nothing I had in mind to change in the compact.

MR. HOOVER: With these remarks, suppose we adjourn until two o'clock.

(Whereupon the Commission adjourned.)

Colorado River  
Compact  
Negotiations  
Part ~~II~~ S  
169-306

MINUTES OF THE

23d MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 22, 1922  
3:45 P. M.

## 23rd MEETING

OF THE

## COLORADO RIVER COMMISSION

The 23rd meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Wednesday afternoon, November 22, 1922, at 3:45 P.M.

There were present:

Herbert Hoover, representing the U. S., Chairman	
R. E. Caldwell	" Utah
Delph E. Carpenter	" Colorado
Stephen B. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Norviel	" Arizona
Col. J. G. Scrugham	" Nevada

In addition, there were present:

Richard E. Sloan  
Gov. M. C. Mecham  
Mr. McKisick  
C. C. Lewis  
Edward W. Clark  
Charles P. Squires  
Mr. Nickerson  
Ottomar Hamelc  
A. P. Davis

The meeting was called to order by Chairman Hoover.

MR. HOOVER: We have before us the Drafting Committee's form of Art.

MR. MC KISICK: It isn't quite correct, Mr. Chairman. The word "thereafter" should be changed to the words "shall have" in the 7th line.

MR. HOOVER: (reading) "Present valid and perfected rights to the beneficial use of the waters of the Colorado River System shall constitute the first charge upon the waters hereby apportioned to the basin in which they are situated. All uses which may be perfected subsequent to the effective date of this compact shall be satisfied exclusively from the remaining waters hereby apportioned to the basin wherein they may be situated, and shall have

no claim upon any part of the water apportioned to the other basin.

Whenever works of capacity sufficient to store 5,000,000 acre feet of water have been constructed on the Colorado River within or for the benefit of the lower basin, any rights which the owners of works located in the lower basin may now have in or to the use of the waters hereby apportioned to the upper basin shall be satisfied thereafter from the waters so stored.

Nothing in this compact shall be construed to prevent or limit 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."

For the word "basin", we should say that "division of the basin", because the basin is taken here to apply to the whole basin under our definitions.

MR. EMERSON: The 4th line from the end of that paragraph, why shouldn't you repeat the "valid and perfected rights". That's leaving the field open again.

MR. DAVIS: It is better that way.

MR. HOOVER: The only point about the last 2 or 3 lines of paragraph 1 is that they are hard for the laymen to understand. "Any rights which the owners of works might have in or to the use of waters hereby apportioned to the upper basin". Why don't you simply say "against the upper basin shall be satisfied thereafter from the waters so stored."

MR. DAVIS: It is the broadest term.

MR. HOOVER: Somebody will say there is an unexplained reservation in those words.

JUDGE SLOAN: Then you eliminate the natural flow.

MR. HOOVER: How would you express it?

JUDGE SLOAN: I would say "thereafter be satisfied from the waters

so apportioned to the lower basin."

MR. HOOVER: That isn't the point I am getting at. The third line from the bottom of the first paragraph: "any rights which the owners of works located in the lower basin may now have in or to the use of the waters, etc." Somebody will think there is some limitation in it. There is none in reality but this is a paragraph written for laymen.

MR. NORVIEL: Is there anything that gives them any right to any of the water apportioned to the upper basin?

MR. HOOVER: I don't know whether they have claims against that water now. Their claim is against the upper basin. Why not say "users of water," or "appropriators of the streams."

MR. EMERSON: Is it any more against the upper basin or anyone divertin above?

MR. HOOVER: That don't exclude the lower tributaries.

MR. NORVIEL: I can't understand it.

MR. EMERSON: We have a certain definition for the term of "upper basin and that confines itself to the geographical.

MR. HOOVER: It should be against the waters of the upper basin.

JUDGE SLOAN: Not against the waters.

MR. HOOVER: It is against the users of water. Strike the words in the 3rd line from the bottom and substitute "against the users of water in the upper basin, etc."

MR. NORVIEL: That restricts the lands now having a vested right to the waters of the basin within which it is situated.

MR. HOOVER: Gives them a first claim on the apportioned water.

MR. NORVIEL: It has it anyway. I don't know why we should hand it out this way.

MR. CARPENTER: It is the lower basin that you are concerned about and



your protection is contained in the last sentence.

JUDGE SLOAN: "owners of works". Why limit it to owners of works? That don't include appropriators.

MR. DAVIS: We should adopt the word "appropriators".

MR. HOOVER: We have everywhere we could.

MR. NORVIEL: Our folks I don't think would like it that way.

JUDGE SLOAN: Any existing rights you mean - you want it to apply to individuals and companies, don't you?

MR. HOOVER: What they want to limit it to, and I think properly, is to actual beneficial use now going on so as to get rid of all the paper stuff.

MR. CARPENTER: This clause has to include everything.

MR. MC KISICK: You will accomplish it better by saying in line 4 from the bottom of that paragraph, make it read "which the users of water in the lower basin may now have against the users of water in the upper basin".

MR. NORVIEL: Isn't that in conflict with the first period? "present valid and perfected rights to the beneficial use of the waters of the Colorado River System shall constitute the first charge upon the waters hereby apportion to the division of the basin in which they are situated."

MR. HOOVER: No conflict there, except this is an extension of right.

MR. NORVIEL: In either basin.

MR. HOOVER: They have that in law anyway. We are not adding anything to anybody's rights here, I assume.

MR. NORVIEL: And we shouldn't take any away.

JUDGE SLOAN: I think it is possible to do that to the extent of requiring users of water to look to an available source other than what they might otherwise be provided to enjoy, if that source be sufficient

for their needs.

MR. CARPENTER: That's why the amount is fixed at 5 million acre feet. I would rather have one million.

MR. NORVIEL: You would have the lower reservoir only one million?

MR. CARPENTER: Because it is that much less for us to climb over up above.

MR. NORVIEL: If you were living in the lower, would you rather have one million?

MR. CARPENTER: I say that's why we agreed on the 5 million. From our standpoint, I would rather have a million.

MR. HOOVER: You can cure Mr. Norviel's point in the word "moreover" or "in addition". He is afraid they are being limited.

MR. NORVIEL: All I had in mind was this: I don't think it makes much difference: all present rights have a vested right as against all the basin are limited in this to the lower basin.

MR. HOOVER: This is solely put in there to comfort the Imperial Valley.

MR. MC CLURE: Is it agreed that that suggestion of Mr. McKisick will be adopted?

MR. NORVIEL: Yes.

MR. HOOVER: Where do we get to now?

MR. CARPENTER: The third line from the bottom, the word "now" should come out.

MR. EMERSON: In the first line "present valid and perfected rights" what is the virtue of the word "and". I think we should strike out "and".

MR. HOOVER: You couldn't have an invalid perfected right, could you?

MR. DAVIS: You can have an invalid right. The word "valid" is entirely unnecessary.

MR. MC CLURE: Why not leave out both.

MR. HOOVER: Any other comment. The paragraph now stands: "Present perfected rights to the beneficial use of the waters of the Colorado River System shall constitute the first charge upon the waters hereby apportioned to that division of the basin in which they are situated. All uses which may be perfected subsequent to the effective date of this compact shall be satisfied exclusively from the remaining water hereby apportioned to that division of the basin wherein they may be situate, and shall have no claim upon any part of the water apportioned to the other division of the basin. Whenever works of capacity sufficient to store 5,000,000 acre feet of water have been constructed on the Colorado River within or for the benefit of the lower basin, any rights which the users of water in the lower basin may have against the users of water in the upper basin shall be satisfied thereafter from the waters so stored."

Nothing in this compact shall be construed to prevent or limit 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."

MR. MC CLURE: I move we adopted it.

MR. EMERSON: Seconded.

MR. HOOVER: All those in favor say Aye. Accepted.

MR. DAVIS: I still object most strenuously to the last clause of 2nd sentence. - No, I think the first two sentences are alright, and ~~the third sentence I object to in principle and I think it is extremely~~ unwise in policy. If this was a matter of majority vote, I would vote no, but I don't care to tie up the entire compact, and I therefore vote Yes, but at the same time expressing my decided opposition to it.

MR. HOOVER: You would strike out the whole of the second sentence?

MR. DAVIS: Inasmuch as I am alone in that opinion, I am willing to

yield to the opinion of the remainder.

MR. EMERSON: I think it is true the upper states as a whole are not pleased with this declaration. We are simply yielding to the point of this, in my estimation.

MR. DAVIS: I am unable to see any advantage to it for the upper division and I am equally unable to see the slightest advantage to it for the lower division or any part of it.

MR. EMERSON: From a practical standpoint the advantage goes to the lower division.

MR. HOOVER: It is up to Mr. McClure to define his paragraph.

MR. MC CLURE: I think the Commissioners understand the situation and we need not argue with the Imperial Valley people.

MR. DAVIS: I will vote "Yes" on the paragraph with the statement I made, for it will result in a source of extreme embarrassment to Mr. McClure, instead of extreme assistance, speaking frankly.

MR. HOOVER: I would say not. In the negotiation about this paragraph it was originally suggested from the upper states they would be content with such paragraph if the 4 million were limited - or it was suggested by some member of the upper states - and I spoke to the lower states on that subject. I don't know whether you care to pursue it now.

MR. MC CLURE: Does that have any bearing on that idea.

MR. DAVIS: I think you (addressing Mr. McClure) are unwise in wanting that provision, but I recognize it is your business and not mine, and I therefore vote for it.

MR. MC CLURE: Still keeping in mind why we are asking for it.

MR. DAVIS: Yes. If I were in your position, I wouldn't want it.

MR. HOOVER: If there is nothing more on that, we have completed all of the articles and are now at the point where we want to review the entire compact.

MR. EMERSON: You suggested we might think about the condition of that provision in Art. 3, concerning the minimum flow. Do you wish to follow that out?

MR. HOOVER: I don't know whether the two divisions have come to any conclusion about it.

MR. MC CLURE: Without committing myself, I think that that provision should be omitted.

MR. HOOVER: That is provision (d) of Article 3. Your motion is to exclude the minimum flow of 4 million acre feet?

MR. MC CLURE: Yes.

MR. HOOVER: Do I hear any second to that?

MR. CALDWELL: I second it.

MR. HOOVER: That would mean striking out all the words in that sentence beginning "nor below a flow of 4,000,000 acre feet for any one of such years."

Judge Sloan requests permission to consult with other members of the commission in regard to it before it is voted upon, which permission is given.

MR. HOOVER: While we are waiting for these people, Mr. Nickerson, do you think that section we have just passed here, the one just adopted, Art. 3, will be satisfactory to you?

MR. NICKERSON: The last one just passed on?

MR. HOOVER: Yes.

MR. NICKERSON: Yes, it is satisfactory to me, but the majority of the people down there, won't understand it. They will think we are taking something away from them. This does make them think they are getting something.

MR. HOOVER: So you think it is of value and it covers points raised

by Mr. Rose and those gentlemen?

MR. NICKERSON: I think so.

MR. HOOVER: Mr. Nickerson, I suggest you get Mr. Yeager in line on that paragraph. You better announce a victory on it. (Mr. Nickerson leaves to consult with Mr. Yeager.)

MR. MC CLURE: I withdraw my motion about the 4 million acre feet. Just leave it in.

MR. EMERSON: It is seconded.

MR. HOOVER: There is no further discussion on that point. There is another small point on Art. 3. I made the suggestion it might be more agreeable to both sides if the term mentioned in Art. 3 be reduced to 5 years.

MR. SCRUGHAM: That's alright.

MR. HOOVER: Emerson, do you object?

MR. EMERSON: No.

MR. CALDWELL: Not if it will please anyone.

MR. HOOVER: We will reduce this term to 40 years. Is that agreeable to everybody?

MR. DAVIS: It is to me.

MR. HOOVER: Alright, we will pass that. I think we might review the whole document. Some paragraphs have been added and some have not. The editorial committee has worked on the preamble and it now reads: "The states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact for the purposes herein expressed, under the Act of the Congress of the United States approved August 19, 1921, (42 stat. )" Mr. Davis, did you get that number?

MR. DAVIS: No, I didn't.

MR. HOOVER: (continuing) "and the acts of the Legislatures of the said states have, through their Governors, appointed as their Commissioners:"

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

I think before we start, we should omit titles to all paragraphs.

MR. SCRUGHAM: I move that we do.

MR. EMERSON: Second it.

MR. HOOVER: All those in favor please say Aye. (Accepted)

Do you want a title for this compact.

MR. CARPENTER: It isn't necessary unless we want it.

MR. HOOVER: Why not just arrive at "Colorado River Basin Compact." That doesn't involve anything or anybody.

MR. EMERSON: "Colorado River Compact."

MR. HOOVER: Is there any dissent from that? (none). Then it is accepted. (re-reads the paragraph.)

MR. EMERSON: Shouldn't there be "respective" put in before the word "commissioners"?

MR. DAVIS: That was cut out.

MR. EMERSON: I move we put in "respective".

MR. HOOVER: The list of gentlemen mentioned is sufficient if each one agrees his name is properly expressed.

MR. DAVIS: Did we agree the "United States of America" should be used?

MR. HOOVER: It is perfectly good to say "The President" with a capital "the", and leave out "of America." Then we come to Art. 1, which reads: "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 assure interstate comity by removing causes of present and future controversies, thereby promoting the expeditious agricultural and industrial development of the Colorado River Basin through the storage of its waters, and the early protection of lives and property from floods of the lower river. To these ends the Basin is segregated into two divisions, and a partial apportionment of the use of water made to each of them with the provision that further equitable apportionments may be made hereafter to correct inequities that cannot now be foreseen."

MR. NORVIEL: I understand this is a definite apportionment of a part of the water rather than a partial apportion of the use of the water.

MR. CARPENTER: You are right.

MR. NORVIEL: I suggest it read "Apportionment of the use of part of the water of said Colorado River System is made."

MR. EMERSON: I don't like the end of the first sentence starting with "to establish". It is accomplishing a lot more than that, and the inference is that the agricultural and industrial development is expedited only through the two things, because of the storage of its water and the protection of lives and property. It goes much further than that.

JUDGE SLOAN: That is a very good criticism.

MR. HOOVER: The drafting committee put "thereby" in and that is what caused the difficulty.

MR. CARPENTER: In line 3, "to establish the relative importance of different, etc." why not say "to establish the dominant and servient beneficial use of waters."

MR. NORVIEL: Those words are too big.

MR. DAVIS: The word "rank" would be the right word.

MR. NORVIEL: What do you mean by rank?

MR. HOOVER: Priority.



MR. DAVIS: Take out "relative importance" and put in "reference" and you would have it.

JUDGE SLOAN: That's consistent.

MR. EMERSON: I don't think it's well said. I do object to the next clause.

MR. HOOVER: We are still on the question of "importance" do you wish to change that to "preference."

MR. DAVIS: I am willing to let it go.

MR. CARPENTER: Put in "servient."

MR. HOOVER: If there is no objection we will keep "importance".

MR. MC CLURE: Can't you consider "preference" between beneficial use?

MR. HOOVER: It isn't quite as forceful. We are now down to "assure interstate comity." Do you still worry about that comma?

MR. EMERSON: No, I don't.

MR. HOOVER: We could say "and the storage of its waters" and strike out "of the lower river." We can stop after "floods". It now reads: "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 assure interstate comity, to remove causes of present and future controversies; to promote the expeditious agricultural and industrial development of the Colorado River Basin and the storage of its waters, and to protect the lives and property from floods."

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MR. CARPENTER: Doesn't it include much more than that? I don't want you to limit yourself.

MR. HOOVER: (reading) "To these ends the Basin is segregated into two divisions, and a partial apportionment of the use of the water made to each of them with the provision that further equitable apportionments

may be made hereafter to correct inequities that cannot now be foreseen".

MR. DAVIS: There ought to be a period after "hereafter."

MR. HOOVER: I don't like to drop "inequities."

MR. CALDWELL: "inequities that may then exist."

MR. EMERSON: "That may arise."

MR. HOOVER: It doesn't quite - the apportionment is solely for the purpose of correcting inequities.

MR. DAVIS: It covers other matters in the compact.

MR. MC CLURE: May "hereafter be made necessary."

JUDGE SLOAN: Wouldn't that imply a revision of this compact.

MR. CALDWELL: Isn't it enough to meet at that time for the equitable apportionment of the remainder of the river.

MR. CARPENTER: Wouldn't it make a further equitable apportionment - it is assumed they will take into the consideration all the factors.

MR. HOOVER: We are writing here for laymen - this isn't final, and if there is anything wrong it can be fixed up later. I think Mr. Carpenter's point lays too much emphasis on it.

JUDGE SLOAN: That wouldn't be quite fair; for it would mean the revision of this whole compact.

MR. CARPENTER: Inequitable apportionments will come in the next compact. To make a further equitable distribution, whatever it is, of the remainder of the waters of the river and thereby correct the inequities.

MR. DAVIS: No, that won't do. You get too many words in.

MR. CARPENTER: I might suggest "to meet inequities we might not now foresee."

MR. SQUIRES: For the sake of harmony "apportionments may be made hereafter and inequities that cannot now be foreseen corrected."

MR. DAVIS: I think Mr. Squires idea covered that.

MR. HOOVER: We might change it to "inequities that cannot now be foreseen be established."

MR. DAVIS: That would be alright.

MR. HOOVER: I don't like these two be's.

MR. SCRUGHAM: "Considered" is a better word than "established."

MR. CARPENTER: "unforeseen" is an adjective. I think that the clause implies the correction of inequities.

MR. DAVIS: Make a period after "hereafter."

MR. EMERSON: I think you ought to strike out all after "equitable apportionments."

MR. CALDWELL: All out after "hereafter."

MR. SCRUGHAM: I think that covers my point of view. I move that we strike out all after "hereafter."

MR. HOOVER: Strike out everything after "made." Any further comment on the paragraph as a whole?

MR. EMERSON: I would like to hear it again.

MR. HOOVER: (reading) "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 assure interstate comity; to remove causes of present and future controversies; to promote the expeditious agricultural and industrial development of the Colorado River Basin through the storage of its waters, and to protect the life and property from floods."

MR. EMERSON: I think "conservation" is better than "storage."

MR. HOOVER: (continued reading the article through) Any further comment on that? It will stand. I want to warn you this is probably the last time you will have it read.

MR. EMERSON: I want to go back to the word "conservation". I think it is much better than "storage."

MR. MC CLURE: May I ask that you read the sentence beginning "to promot

MR. HOOVER: (reads same.)

MR. HAMELE: Regarding the use of the word "expeditious". Isn't "efficient" a better word?

MR. CARPENTER: What do you want the adjective at all for?

MR. HOOVER: We want to give the impression this will hurry things up.

MR. SCRUGHAM: "expeditious" is the proper word.

MR. HOOVER: Any further comment on that. If not, we will go on to "definitions." (reading) "When used in this compact: (a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States." We should add "of America."

MR. CARPENTER: I wonder if we couldn't avoid all that and say "the following terms mean as follows:"

MR. SCRUGHAM: I like the other best.

MR. HOOVER: We will go on to (b) if there is no more comment on (a). "(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 beneficial applied."

MR. CARPENTER: Territory within the United States outside of the basin

MR. HOOVER: That covers the whole show. Any change wanted on that?

MR. CARPENTER: I think the word "shall" should be changed to "may."

MR. SCRUGHAM: "May" is the better word.

JUDGE SLOAN: "Shall" is better. It doesn't become a part of the basin

MR. HOOVER: It isn't a part of this definition until it is applied.

If there is no comment we will go to (c).

MR. CARPENTER: How about "supplied" should that be "served."

MR. HOOVER: "Applied is sort of final and it is only done when applied. Are we going to leave that as it is? (accepted)

MR. HOOVER: "(c) The term "Lee Ferry" means that point on the main stream of the Colorado River one mile below the mouth of the Paria river."

MR. DAVIS: "a point" is better than "that point."

MR. SCRUGHAM: I think that's well taken.

MR. HOOVER: Alright. "(d) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming." I trust everyone will agree with that.

MR. CALDWELL: Did we decide this morning that that was Lee's Ferry or Lee Ferry?

MR. HOOVER: You can have whatever you like.

MR. EMERSON: Lee Ferry is proper.

MR. HOOVER: No objection to (d), I will read (c) "The term "States of the Lower Division" means the States of Arizona, California and Nevada."

MR. HAMELE: Wouldn't it be better to call them the upper states of the lower and upper basin.

MR. CARPENTER: No, they don't correspond.

MR. SCRUGHAM: "Division" is a much better word.

MR. HAMELE: That is, to leave the definitions just the same - the states of the upper basin means those states. You introduce a new synonym and that is a bit confusing?

MR. HAMELE: If those terms are retained, shouldn't they be given a name rather than a proper name?

MR. HOOVER: We endow them with a position by giving them a proper name.

MR. CARPENTER: Expressing a political group.

MR. HOOVER: Any changes on that, if not, we will go the next: "(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or may hereafter be beneficially served by waters diverted from the river above Lee Ferry."

MR. DAVIS: As a matter of grammar and following the chairman's suggestion, why not change "said" states to "those" states. I don't think we have used the word "said" anywhere else.

MR. CALDWELL: "May" should be changed to "shall".

MR. HOOVER: I think that's good. We go on to (g). "The term "lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or may (shall) hereafter be beneficially served by waters diverted from the river below Lee Ferry."

MR. CARPENTER: "Said" is better in both instances.

MR. HOOVER: (reading) (h) The terms "apportionment" or "apportioned" mean the division of waters of the Colorado River System for consumptive beneficial use."

MR. EMERSON: Was the matter safeguarded where a diversion might be above Lee Ferry to serve the lower division? I thought that point had been considered and possibly it had been covered.

MR. HOOVER: It is Mr. Carpenter's wording and I leave it to him to define it.

MR. CARPENTER: "Those parts of the territory within and from which the

waters naturally flow."

MR. HOOVER: We now come to (h) (Re read)

MR. HOOVER: (reading) (i) "The term "appropriation of water" means its actual application to beneficial use without relation to the date of any prior notice or of the construction of works."

MR. DAVIS: I have redrafted that and redrafted it to conform to part of Article III, but I am not entirely satisfied with it. I would like to have it passed for the moment.

MR. HOOVER: I think we should strike out (i) because we have provided for appropriation. We have not used the word "appropriation." Now we come to Article III. "The beneficial consumptive uses of the waters of the Colorado River System are hereby divided and apportioned between the Upper Basin and the Lower Basin as follows:

(a) There is hereby apportioned in perpetuity to each Basin, for its exclusive beneficial consumptive use, 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."

Any objection?

MR. DAVIS: I have rewritten that in accordance with the instructions of this morning, but I don't want to submit it.

MR. HOOVER: All right, we will pass it.

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

Any comment? (Accepted)

"(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 the waters of the Colorado River System, such waters

shall first be supplied from the surplus water after the above amounts have been satisfied; and if such surplus shall prove insufficient for this purpose, then the deficiency shall be equally apportioned between and equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry one-half of the deficiency so recognized in addition to that provided in paragraph (d)."

MR. HAMELE: Is that supposed to have the same status as the lower Basin share under (a)?

MR. HOOVER: I presume it has - do you think anything needs to be done?

MR. HAMELE: If it is intended to have the same status we should use the same language regarding the right.

MR. HOOVER: We better wait until we see (a) and we will suspend (b).

MR. EMERSON: I suggest in paragraph (c), fifth line, we make "water" plural.

MR. HOOVER: I don't think there is any such thing. Any further comment on (c)? (Accepted)

"(d) The States of the Upper Division agree that they 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 the July next succeeding the ratification of this compact, nor below a flow of 4,000,000 acre feet for any one of such years."

~~MR. NORVIEL: Who is the author of this paragraph.~~

MR. HOOVER: I don't know, this is the old one.

MR. NORVIEL: I would like to know "for any period of ten consecutive years" reckoned in ten progressive series." I take it there is no place set down but the points keep moving.

MR. HOOVER: Yes.



MR. EMERSON: I would like to inquire if it has been definitely decided that the minimum flow should be changed.

MR. CARPENTER: I move we strike out the Imperial Valley clause.

MR. HOOVER: There was an understanding that if the Imperial Valley was put in that that would be cut out.

MR. EMERSON: Wyoming is the only one that seems to insist on keeping it in. I wonder if there is any chance of Arizona changing its mind.

MR. HOOVER: I think it is about psychology. I don't believe physically you get a drop more water by leaving it in.

MR. EMERSON: I think Arizona ought to consider this again this evening and see if they cannot consent to the provision of the annual minimum flow.

MR. CARPENTER: Arizona's apprehension is expressed in paragraph (c). That was, we might willfully withhold water above and thereby unreasonably damage the country below. That's all from low flow. I think paragraph (c) was put in with idea of correcting the possibility of that and thereby avoids the necessity of minimum flow as stated.

MR. NORVIEL: What do you mean by would not unreasonably damage the lower Basin?

MR. CARPENTER: There would always be some damage by reason of drought, - not only injury imposed by nature, but injury imposed by man.

MR. MC CLURE: I don't see why you object to that.

MR. CARPENTER: That was the objection raised at the time the minimum flow was considered. In paragraph (c) you have cured the objection.

MR. HOOVER: Paragraph (c) gives all the protection for the irrs in paragraph (d). You are physically not going to get more water than they have got. You are curtailing development within 75,000,000 acre feet.

MR. CARPENTER: It will reach 4,000,000 a year as far as we are

concerned.

MR. NORVIEL: May I ask a question? Mr. Carpenter do you anticipate approaching a beneficial use of 7,500,000 acre feet?

MR. CARPENTER: Yes, some day.

MR. NORVIEL: When that day arrives and you have a consumptive use of 7,500,000 acre feet in the Upper Basin and there should be a flow in the river say of 10,000,000 acre feet for two or three years, and you take out your 7,500,000 acre feet.

MR. CARPENTER: Theoretically that might be true. The stabilized stream from that much irrigation, - the stabilization by that flow of water on the land during fat years prolongs itself on the stable flow in the lean years, not only for one, but for a series.

MR. NORVIEL: You will take it up and use it and after it goes to the river below there will be no return flow from your irrigation.

MR. CARPENTER: We are not irrigating along the lower river. We are irrigating back of the arms that reach out from the lower river where the return is gone and cannot be recovered.

MR. NORVIEL: It is recovered at Grand Junction.

MR. CARPENTER: The development on the Grand has already taken place. The other development will be towards San Juan where you might say it is used and then the return is gone as far as we are concerned, because it drops into the lower river.

MR. NORVIEL: Some parts, I will admit. If there was that much water available you would use it practically always.

MR. CARPENTER: In theory, yes, but we would not because there would be the come back from previous years.

MR. NORVIEL: You have picked that up.

MR. CARPENTER: I wouldn't want to delay this progress by raising an

objection, but I would be glad to talk this over on the outside.

MR. DAVIS: I dislike that minimum clause too, not because of the effect on any rights we have, but because of the implication that the rivers can get down to that point.

MR. HOOVER: I think we will agree it disburses all over the Basin.

MR. NORVIEL: I dislike 4,000,000 acre feet. I think I started in with six and was borne down to 4,000,000.

MR. DAVIS: If I thought it would do you any good I wouldn't dissent at all.

MR. NORVIEL: Then I might be squashed clear out.

MR. EMERSON: May I repeat that Arizona consider this again with those states who favor cutting out the minimum flow from this section? One state objects and I think that state ought to consider again.

MR. HOOVER: I think they should consider after supper and let us know. (Reading)

"(e) All of the States further agree, however, that the States of the Upper Division shall not withhold, and the states of the lower division shall not require, the delivery of water which cannot be reasonably applied to beneficial agricultural or domestic uses."

MR. SCRUGHAM: I wanted to put in something else and am wondering if it really counts, - it is important, but I won't hold up this paragraph.

MR. NORVIEL: "The beneficial agricultural and domestic uses," is fully set out in paragraph (b) article IV.

MR. HOOVER: Any cross references that are not necessary is that much added difficulty in construing the document. So far as Colorado is concerned, this is not going to affect them as far as I can see. This will affect the lower basin.

MR. HAMELE: The first line of that paragraph isn't in harmony with

the other part of the compact.

MR. HOOVER: Mr. Emerson requested to have it left in this morning.

MR. EMERSON: And I still request it.

MR. DAVIS: And I still think it belongs out.

MR. HOOVER: This doesn't affect the upper basin at all.

MR. CARPENTER: The language in "agricultural and domestic uses" ought to be more amplified in some way without loading it down. I don't know why it isn't all right to say, - if you make a definition of agricultural and domestic use and say its so and so.

MR. HOOVER: Then let's do it right now. Would you rather have a definition or explain it every time?

MR. CARPENTER: A definition is agreeable to me if you use it several times.

MR. EMERSON: This is the only place the question now arises.

MR. CARPENTER: The dominant uses are expressed in paragraph (d) of Article IV.

MR. SCRUGHAM: I approve of it that way.

MR. EMERSON: I will not insist on my suggestion.

MR. HOOVER: Very well, we will pass that.

(reading) "(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after July first, 1963, if and when either Basin shall have reached the total beneficial use set out in paragraphs (a) and (b) above." Any comment on that, - all right.

"(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, or any state acting through its governor and the United States of America

acting through the President, may give joint notice of such desire to the governors of the other signatory states and to the President of the United States, if he does not join in such notice, and it shall be the duty of the governors of the signatory states and of the President of the United States to immediately appoint representatives with like powers to those of the present commission whose duty it shall be to further divide and apportion equitably between the Upper Basin and the Lower Basin the beneficial use of the unapportioned water of the basin as described in paragraph (f), subject to the legislative ratification of the several states and the Congress of the United States to the same extent as is this compact."

MR. DAVIS: I suggest we say in the tenth line, "To divide further" instead of "further divide." I think the word "further" ought to go out. Now, Mr. Chairman, I don't want to raise a question that has been discussed on the general scope of this compact, but I don't like the idea of calling on the President of the United States to join with the governors for notice. The United States is not a party and yet we say that the United States acting through the President should give that notice. It seems to me it is out of harmony.

MR. HOOVER: I think it is.

MR. SCRUGHAM: I think it is.

JUDGE SLOAN: Then you would prevent any one state from calling it.

MR. NORVIEL: Suppose only one state is hurt.

MR. DAVIS: I didn't contemplate that.

MR. HOOVER: Then that should go out. That paragraph is now completed except for the redrafting of paragraphs (a) and (b).

MR. CALDWELL: In the first line where you say "further apportionment" shouldn't "equitable apportionment" be in there?

MR. CARPENTER: That is already stated.

MR. HOOVER: "Article IV. (a) The use of the water of the Colorado River System for purposes of navigation shall be subservient to the uses and necessary consumption of such waters for domestic, municipal, agricultural, industrial and power purposes." Continuing the conversation which I delivered this morning, I would like to suggest for your consideration the addition of these words: "Provided that specific consent to this paragraph shall be made by Congress."

MR. CARPENTER: Why not put it in the negative, that they may specifically withhold consent?

MR. SCRUGHAM: I think that's an invitation to withhold.

MR. EMERSON: Then the act of Congress would have to refer specifically to this.

JUDGE SLOAN: Provided that Congress may specifically withhold its consent.

MR. HOOVER: That's an invitation also for them to withhold.

MR. NORVIEL: Any sort of reference would be an invitation to withhold their consent.

MR. HOOVER: Suppose we start the paragraph "upon the specific approval of congress the use of the waters of the Colorado River System, etc."

MR. DAVIS: Why not say "If Congress shall assent thereto?"

MR. CARPENTER: That is longer.

MR. NORVIEL: Why not say "subject to the approval of Congress."

MR. HAMELE: What would that amount to? What kind of approval?

MR. NORVIEL: Approval of these paragraphs.

MR. HAMELE: That would require specific reference to it.

JUDGE SLOAN: Isn't it wise to leave it in such form - the approval of the compact as a whole is an approval of that paragraph.

MR. HOOVER: Supposing Congress put a reservation on that, then you might have to recommend your legislation in every state?

MR. NORVIEL: I think we should cut it out altogether.

MR. HAMELE: Would this accomplish it? "Upon the specific approval of Congress?"

MR. HOOVER: Suppose they disapprove? What I am trying to do is simply narrow this thing down so this paragraph doesn't make it necessary to get to the entire machinery.

MR. SCRUGHAM: I would be tempted to fight it out with the Senators and Congressmen if they disapprove it on that ground.

MR. HOOVER: One phase of this is, the States enter into a compact to take something away from the Federal Government and the Federal Government consents I suppose.

MR. HAMELE: The question of that being an invitation to Congress isn't important because Congress won't overlook the question.

MR. HOOVER: If it is put in in an invitational form it looks as if the people at this table had some serious doubts about it and we don't want to give it that complexion.

MR. MC CLURE: If you say "upon the approval of Congress" that's an assumption that they are going to approve it.

MR. DAVIS: I like "consent" rather than "approval".

MR. HAMELE: "Upon the specific consent of this paragraph by Congress".

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MR. DAVIS: That was my thought.

MR. HAMELE: It is apt to be left uncertain unless you are specific in this paragraph.

MR. DAVIS: "This paragraph shall not effective until approved by Congress" - plenty of ways of expressing the idea.

MR. HOOVER: Providing Congress assents.

MR. SCRUGHAM: That's better still.

MR. HOOVER: It is clear that if Congress dissents it will not invalidate the whole compact.

MR. CALDWELL: If we decide that we want to reword the whole paragraph.

MR. HOOVER: No, I merely give the suggestion to you. It is up to you to decide whether you want it or not.

MR. CALDWELL: If we decide we want it in we can get the wording.

MR. HOOVER: Suppose we leave that question open until after dinner. Otherwise the paragraph stands without amendment.

MR. EMERSON: Couldn't we get an expression right now?

MR. DAVIS: I am in favor of saying "on Congress's approval."

MR. SCRUGHAM: "Congress assents" or something of that sort.

MR. DAVIS: I was wondering if it would help to make a statement of an existing fact that the river is actually unnavigable.

MR. CARPENTER: That the prohibition of it for navigation would prevent its development for other purposes.

MR. DAVIS: I think we should pass it for the present. My preference is for some kind of reservation.

MR. HOOVER: "(b) The use of the water of the Colorado River System for purposes of generating electrical power shall be subservient to the uses and necessary consumption of such waters for domestic, municipal, agricultural, mining and milling and other industrial purposes, and shall not interfere with or prevent the use of said waters for said dominant purposes." The terms municipal, mining, milling and industrial, shall not be taken to include generation of electrical power."

MR. EMERSON: Why is the word "electrical" introduced before "power?"

MR. HOOVER: I haven't the remotest idea, somebody wanted it.



MR. SCRUGHAM: I think electrical is well taken.

MR. HOOVER: Any further comment on that? We will go on to (c).

(reading) "The provisions of this article shall not apply to, or interfere with the regulation and control by any State of the appropriation, use and distribution of water within its limits." We don't have to define that appropriation.

MR. CARPENTER: That paragraph is a little weak, but let it go. I had a good paragraph until some drafter got hold of it.

MR. HOOVER: We saved 42 words on Carpenter by taking out courts, equities, rights, by-laws, and so forth. If there is no further comment on this, we will consider it as completed. (reading) Art. 5 "The official of each State charged with the administration of water rights, together with an official from the United States Reclamation Service and one from the United States Geological Survey shall co-operate, ex-officio. (a) To promote the systematic determination and co-ordination 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." Any objection?

MR. EMERSON: The first line - "the official of each state, etc." There are several officials in each state that are charged with the administration of water rights. It should be the 'state engineer' or some official.

MR. NORVILL: Say any office.

MR. HOOVER: Chief official. I was wondering whether or not we should not say "together with the Director of the U. S. Reclamation Service and the Director of the U. S. Geological Survey". Don't you think we should specify that.

MR. DAVIS: I think it will be more explicit.

JUDGE SLOAN: May I raise the question whether it is proper to say "charged with the administration of water rights?" We have none in Arizona. We have an official charged with the determination of water rights but not with the administration.

MR. DAVIS: We have no determining official in New Mexico.

JUDGE SLOAN: Does he have administration rights?

MR. EMERSON: He does in Wyoming. There must be some official charged with the administration of water rights.

JUDGE SLOAN: The statute may be repealed, leaving no officer charged with the administration of water rights.

MR. HOOVER: Then there would not be any official within the state.

MR. CARPENTER: Any man appointed by the Governor.

MR. MC CLURE: Anyone administering our laws.

MR. CALDWELL: I think we ought to have something like Mr. Carpenter suggests. The chief official of each state, or some person appointed by the Governor.

MR. DAVIS: Wouldn't it solve the problem by saying "water laws" instead of "water rights", and if there was no other official, it would be the Governor. There is somebody charged with the administration of laws in every state.

MR. DAVIS: Charged with the enforcement, rather than administration.

MR. HOOVER: I think it is clear what is intended - it is mostly intent.

MR. EMERSON: With the exception of one state, it is the state engineer.

MR. HOOVER: We might simply say the state engineer, or similar official

JUDGE SLOAN: But such a law might be repealed --

MR. DAVIS: If we take care of the present, the future can look after itself.

MR. CARPENTER: If you say such person who may be appointed by the

Governor, then you have a conflict of jurisdiction.

MR. DAVIS: I would rather say the officer to be named by the Governor. My judgment is to leave it as it is.

MR. EMERSON: It ought to work automatically, without any appointment whatever. Wouldn't it be sufficient to say "state engineer" or "chief official."

MR. CARPENTER: Suppose they are both.

MR. DAVIS: I think the clause is alright as it stands under the existing laws of every state. If we contemplate the appeal of these laws, we will get ourselves into needless difficulty.

MR. HOOVER: If it is agreeable, we will let it stand. Then we come to (b) (reading) "To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry."

MR. HAMEIE: Why not ascertain and publish.

MR. HOOVER: We rather like "to secure", because we don't want to put the duty on this man to ascertain and publish.

MR. DAVIS: (b) is absolutely provided in (a).

MR. HOOVER: We have to make a special provision for Lee Ferry in view of Art. 3.

MR. HOOVER: (reading) (c) "To perform such other duties as may be assigned by mutual consent of the signatories from time to time." We leave the word 'signatories' because we want to include the federal officials - that it was indefinite they could be embraced.

MR. NORVIEL: I don't know what it means, but I am for it.

MR. HOOVER: (reading) "Art. 6. Should any claim or controversy arise between any two or more states: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; Anything to say on (a)?"

(cont. reading) "(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; or (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, the Governors of the States affected, upon request of the Governor of one such state, 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."

MR. NORVIEL: I should be much relieved if we could add after "of another state", on the 10th line, "or the diversion of water in one state for the benefit of another state."

MR. DAVIS: Norviel is shooting at me, but I will stand for it. I suggest "upon request of one Governor" instead of the request of the Governor of one such state.

MR. HAMELE: Some of the agreements under this article might require the consent of the U. S.

MR. DAVIS: This compact gives the consent.

MR. HAMELE: It is at the jeopardy of the states. I merely suggest this is a possibility. ~~It might require the consent of the U. S. to any agreement between the states.~~

JUDGE SLOAN: The Purposes consider that and make provision for it.

MR. NORVIEL: Then you have that the Governor who isn't in the least affected will call for the conference.

MR. CARPENTER: "Upon request of one of said Governors."

MR. HOOVER: About 20 I expect. The last paragraph of this is alright then? (accepted) (reading) Art. 7 "Nothing in this compact shall be construed as affecting the obligations of the United States of America to the Indian tribes". (accepted) Art. 8 re-read.

MR. CALDWELL: I would like the privilege of consulting my attorneys during the dinner hour about one point. It may not be at all important.

MR. NORVIEL: In the 7th line it says "All uses which may be perfected subsequent to the effective date of this compact shall be satisfied exclusively from the remaining water hereby apportioned". Wouldn't that be from the water remaining from the water hereby apportioned, that which is hereby apportioned? The way it reads the remaining water is hereby apportioned. We don't apportion the remainder.

MR. DAVIS: I don't like that word "apportion."

MR. HOOVER: I don't see why we can't take out "hereby".

MR. NORVIEL: Put "not" in before "apportioned" and you might reach it.

MR. HAMELE: The reference is uncertain, for the reason that we have 3 basins defined. The Colorado River, upper and lower.

MR. DAVIS: But there are only two divisions.

MR. CARPENTER: We are not speaking of a division, what we are intending to say is upper and lower basin.

JUDGE SLOAN: Why not say "all uses" or "all subsequent use in any basin shall have no claim on waters apportioned to the other basin."

MR. DAVIS: Let each basin take care of itself.

MR. SCRUGHAM: "Apportioned to that division in which they are situated." Why put "basin" in?

MR. HOOVER: The division means the political division. The only way you can do it is to put in upper and lower basin.

MR. SCRUGHAM: I would object to that, because we are taking in a good part of these other states.

MR. HOOVER: The apportionment of the water is in the basin as distinguished between the divisions.

MR. SCRUGHAM: Why have divisions?

MR. CARPENTER: Explains above and below Lee Ferry.

MR. SCRUGHAM: Is the water divided between the upper and lower basin or upper and lower division?

MR. HOOVER: At Lee Ferry.

MR. DAVIS: In Art. 3, the waters are apportioned between the upper and lower basin.

MR. HOOVER: That Basin might refer to the whole Colorado River Basin and that would take you to the political division.

MR. DAVIS: We have apportioned by divisions.

MR. HOOVER: We have apportioned by Basins, that's my impression and that's why I left the wording before. Simply say "to that Basin."

MR. SCRUGHAM: Does that imply that isn't apportioned but that may be available to use is unlawful or prohibited?

MR. DAVIS: This is dealing with only present rights.

MR. NORVIEL: All ought to be permitted to take and use it and get what is understood as a perfected right.

JUDGE SLOAN: Why say "remaining water" at all? You first said "the old rights shall be the first rights and then you are attempting to define the uses subsequently apportioned to it. Why limit it."

MR. DAVIS: Your idea would be to take out "remaining water."

JUDGE SLOAN: Why say "apportioned."

MR. HOOVER: If they are not going to confine them to their own bases,

JUDGE SLOAN: There is no claim under the other.

MR. HOOVER: You might let them have all the water they want.

MR. CARPENTER: I wouldn't want it implied that each could get a title.

MR. NORVILL: They can get it and use it until the next Commission comes in and settles it.

MR. CARPENTER: We may want to switch over the same as the other fellow.

MR. DAVIS: That should read "no use which may be perfected subsequent to the date of this compact shall have any part of the water apportioned" etc.

MR. HOOVER (reading) "Whenever works of capacity sufficient to store 5,000,000 acre feet of water have been constructed on the Colorado River within or for the benefit of the Lower Basin, any rights which the users of water in the Lower Basin may have against the users of water in the Upper Basin shall be satisfied thereafter from the waters so stored." I would suggest that you put in the word "present." Mr. Carpenter, do you want that word "present" in or leave it wide open?

MR. CARPENTER: Leave it as it is.

MR. HOOVER: All right, I have no objection. (reading) "Nothing in this compact shall be construed to prevent or limit 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." The question is, whether that last paragraph should be moved to the next article.

JUDGE SLOAN: Then you better use the word "present" in the Upper Basin.

MR. HOOVER: You can't say they have any right against any other - they have a right against a junior applicant. Any further comment on that?

DIRECTOR DAVIS: It may have been noticed, but it has not been mentioned that the diversion of 5,000,000 acre feet would be entirely exhausted by following that system in 55 years, and the present needs are 2,500,000 so a reservoir of that size would be reduced below the required storage in about 30 years.

MR. HOOVER: I don't think it would disturb the people for 30 years. They would be satisfied.

MR. HOOVER: I would like to have some discussion as to whether the last paragraph in the previous article comes over.

MR. DAVIS: I would put the last paragraph in a separate article.

MR. HOOVER: Then we will call it Article IX. (reading) "Article X This Compact may be terminated at any time by the unanimous agreement of the signatory states and the United States, but at such termination all rights then established under this compact shall continue unimpaired."

MR. HAMELE: I think "the United States" might be omitted from that.

MR. NORVIEL: Why should they be permitted to abrogate when they can't enter into it.

MR. DAVIS: If you enter into a new one you have to get the consent of the United States.

MR. HAMELE: It would not be of the nature that would require the consent of the United States.

MR. HOOVER: Well, let's accept article X. Now we come to 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 the approval by the legislatures shall be given by the Governor of each 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 the approval by the Congress of the United States."

MR. HAMELE: I suggest the first sentence be changed to read as follows: "This compact shall become effective as to the signatory states, and each of them, when it shall have been approved by all of their respective legislatures; it shall become effective as to the United States when the Congress shall have given its consent thereto."

MR. DAVIS: I think I would be willing to accept that if the act did not say that the Congress had to approve it.

MR. HAMELE: It can't relate to anything else because that's all the United States is interested in.

MR. HOOVER: There is a certain value in making a certain contract binding.

MR. CARPENTER: Don't all legislative acts provide for that.

MR. DAVIS: Only become effective on approval by Congress.

MR. HOOVER: (Addressing Mr. Davis) What is your feeling about it?

MR. DAVIS: I think the present language should stand.

MR. HOOVER: How do the rest of you feel?

(accepted)

MR. CARPENTER: Was this to be obligatory on the date of its signature?

MR. HOOVER: Then comes the question of whether you can make this ratification. In that case you have a lot of people who will be wondering what is going to happen to them during the period of famine.

MR. HAMELE: How about the various statutory provisions suggesting effectiveness when approved?

JUDGE SLOAN: It doesn't state.

MR. CARPENTER: What is the congressional wording?

MR. DAVIS: I think his obligatory is copied from the Act as I

remember. I am inclined to think it should be left as it is and takes effect when it is finally approved, and takes effect as of that date.

MR. HOOVER: Art. 11 stands then. The last paragraph is "In witness whereof, the respective 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."

We now have to deal with redrafting paragraphs a and b of Art. 3 the definition of apportionment, and we have to consider the question of paragraph a, Art. 4. The drafting committee will meet tonight to get these things drafted and let Mr. Stetson distribute them tonight.

ADJOURNMENT TAKEN UNTIL 9:30 A. M. TOMORROW.

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**MINUTES OF THE**

**24th MEETING**

**COLORADO RIVER COMMISSION**

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**Bishop's Lodge  
Santa Fe, New Mexico**

**November 23, 1922  
9:45 A. M.**

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## MINUTES OF THE

## 24th MEETING

## COLORADO RIVER COMMISSION

The twenty-fourth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Thursday morning, November 23rd, 1922 at 9:45 A.M.

There were present:

Herbert Hoover, representing the United States, Chairman	
R. R. Caldwell	" Utah
Delph E. Carpenter	" Colorado
Stephen H. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Norviel	" Arizona
Col. J. G. Scrugham	" Nevada

In addition, there were present:

Edward W. Clark  
 Mr. Bannister  
 Charles P. Squires  
 Ottomar Hamele  
 Mr. Nickerson  
 Richard E. Sloan  
 Mr. McKisick  
 Thomas Yager  
 A. P. Davis

The meeting was called to order by the Chairman.

MR. HOOVER: In Article II, Definition "i" this definition has been drafted: "The term domestic use shall include the use of water for household stock, municipal, mining, industrial and other like purposes, but shall exclude the generation of electrical power." This, as drafted here gets rid of a lot of questions we have discussed. No objections?

MR. EMERSON: Read it again please.

MR. HOOVER: "The term domestic use shall include the use of water for household, stock, municipal, mining, industrial and other like purposes, but shall exclude the generation of electrical power".

MR. CARPENTER: Does the word "exclude" mean to exclude, - for instance, the uses mentioned?

MR. HOOVER: Yes, it does, and that was the agreement.

MR. CARPENTER: I was just thinking out loud, - how some fellow might look at it.

MR. NORVIEL: Have you changed your mind this morning?

MR. CARPENTER: No.

MR. HOOVER: Suppose we let that go until somebody finds trouble with it.

MR. EMERSON: It is a new definition alright, I will say.

MR. CALDWELL: It is hardly a definition as expressed here for the purposes of this paragraph.

MR. EMERSON: I don't like it.

MR. CALDWELL: Lots of things I don't like about this I have discovered.

MR. NORVIEL: Would it help it any to say "The term domestic use, as used in this compact, shall mean the use of water, -

MR. HOOVER: The trouble was there, domestic use does not mean these things; "as used in this compact shall include" would be alright. This is not necessarily expressed, because we -

MR. NORVIEL: In other words, this is not a definition?

MR. HOOVER: No, merely a determination of what we mean.

MR. NORVIEL: It is just for the purposes of this compact, "domestic use shall include", -

MR. EMERSON: Alright.

MR. HOOVER: Article III we are holding up for the first of that paragraph.

MR. DAVIS: I made no change in this paragraph, Mr. Chairman.

MR. HOOVER: I understand it has now been agreed that we take out

of "d" the last clause "nor below a flow of 4,000,000 acre feet for any one of such years."

MR. NORVIEL: I guess I was the only objector, so I will withdraw.

MR. HOOVER: That comes out. In clause "c", in view of the definitions "The States of the upper division shall not withhold, and the states of the lower division shall not require, the delivery of water which cannot be reasonably applied. "

MR. CARPENTER: Couldn't the word "be", reasonably be applied?

MR. NORVIEL: "Be" should go next to apply.

MR. HOOVER: "Reasonably be applied." I thought we would clean up matters which we had under discussion.

MR. NORVIEL: Will you read "c"?

MR. HOOVER: The States of the upper division shall not withhold, and the states of the lower division shall not require, the delivery of water which cannot reasonably be applied to the dominant uses specified in paragraph "b" of Article IV."

MR. SCRUGHAM: Wouldn't it be better to put first agricultural, then domestic?

MR. NORVIEL: Domestic, agricultural is the way it reads.

MR. HOOVER: It doesn't matter to me, you can have it that way.

MR. NORVIEL: I think that is better. Is it use or uses?

MR. HOOVER: Uses I guess.

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The next that was worrying us yesterday, in reference to paragraph IV, the first paragraph, and in view of the definition we can now cut out the words "municipal and industrial uses."

MR. CARPENTER: And make "domestic, agricultural".

MR. EMERSON: "Domestic, agricultural and power.

MR. HOOVER: Well, the clause "Provided the congress assents" was not

agreed to yesterday.

MR. EMERSON: "Provided the" or "provided that"?

MR. STETTON: "Provided the". Have you "the" in the notes?

MR. SCRUGHAM: Mr. McKisick had another form.

MR. HOOVER: Yes, Mr. McKisick drafted that clause over.

MR. SCRUGHAM: Clause "a"?

MR. HOOVER: "a" "Inasmuch as the Colorado River has ceased to be navigable in fact, it is hereby agreed that (as between the signatory states) the use of its waters for purposes of navigation shall be subservient to the uses and necessary consumption of such water for agricultural and domestic purposes. In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the remaining provisions of this compact."

MR. SCRUGHAM: I think that is alright.

JUDGE SLOAN: He left out "power" in that one.

MR. CARPENTER: That embodies, - the thought is embodied, - the reasons for a specific clause in the compact. Now, if that be true, then the greater reason is the fact that should they attempt to maintain a navigable river, and would attempt to destroy the rest of the river for any other purposes.

MR. NORVIEL: If large dams were made and the river stabilized in flow, it would benefit navigation.

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MR. DAVIS: The parenthesis around the words "as between the signatory states", - those parenthesis are mine, on this theory: it seemed to me if we were expressly providing that the clause only becomes effective when approved by Congress, that we would not need to limit the navigation between states, but if we make it dependent upon approval by Congress we should make it as broad as possible.

MR. EMERSON: I agree with you.

MR. CARPENTER: This clause we are now discussing, does it destroy navigation, or simply make it subservient to these other rights? It seems to me the effect is to bring about a larger recognition of navigation than now obtains.

MR. DAVIS: If the words "as between the states" were stricken.

MR. CARPENTER: Yes.

MR. HOOVER: It would read "Inasmuch as the Colorado River has ceased to be navigable, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses and necessary consumption of such water for domestic, agricultural and power purposes. In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the other provisions of this compact." It doesn't seem to me, - "It has ceased", - the reason is that it should cease in order to allow the waters to be used for these purposes.

MR. DAVIS: That is what I, - not what I had in mind, but what I presume Mr. McKisick had in mind, is the fact that irrigation dams does destroy the navigability of the river above that point. That statement might cause an issue with the War Department, who said that the river is navigable, and in this we state that it is not now navigable.

MR. NORVIEL: I fear that the words "should cease" might be objectionable.

MR. DAVIS: I rather like the idea of using the present condition than to suggest that the condition might be changed by something we do.

MR. EMERSON: All we wish to do is to make it subservient.

MR. CARPENTER: The clause does not make it obligatory to force the approval of congress; Congress may approve it if she wants to, but if she does not approve of the compact as a whole, - if this one clause is not



approved then the rest of the compact may be.

MR. EMERSON: It seems to me that paragraph as it now stands in Article IV is concisely stated. We do not need to state the reasons why, - congress is going to inquire into all of these matters, and it seems to me it says what was intended clearly and to the point.

MR. CALDWELL: It is not clear to me, Mr. Chairman, that we should even add the provision in regard to Congress assenting.

MR. HOOVER: Well, you may have the pact held up for years.

MR. CALDWELL: If I may make a statement which may explain my position a little better: Of course, I believe it is generally admitted and understood that Congress does not want to retain the river strictly for navigation. What they do want to do is to retain some rights for the United States, maybe because it is considered to be a navigable river. We are not asking that the river be considered navigable. The river is still as navigable as it ever will be hereafter. Under this paragraph all we are asking is that it be made subservient, - navigation be made subservient to the end that if we build irrigation works, or works for any other purpose on the river to get the use of the waters of the river, that navigation shall not interfere with it. Now, any real rights that the United States has are in reference to navigation, and they are still retained to the United States. Obviously that is all that the United States wants. I think that the states ought to object very seriously to the United States retaining any right in the river which permits the United States to destroy or interfere with any works which are now constructed for irrigation, or which may be constructed hereafter for irrigation, and as to that I am sure Congress can have no objection, and will have no objection under this paragraph, to any other rights incident to this provision.

MR. EMERSON: I don't believe it is altogether true that Congress will

have no objection, - I think we are going to have many of them,

MR. HOOVER: I have a suggestion to make to meet your side, in other words, we have the declaration "Inasmuch as the Colorado River has ceased to be navigable in fact, and navigation will seriously limit the development of the basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes." Now, we have still stricken out the clause as to approval of Congress.

MR. CALDWELL: I don't know whether I made myself clear or not, I probably have not. If we leave this paragraph out, - the proviso, Congress, under this pact, would retain such incidental rights as they have, regardless of this paragraph, and that is all they want to maintain. Now, what I do want is just what you have read in the first part of that proposition, that Congress shall agree not to interfere with works constructed for any other purpose than navigation. That is all we have got in this pact.

MR. HOOVER: If they do not have that proviso in the pact, then Congress might reject the whole pact and delay the whole matter of the pact.

MR. CARPENTER: Mr. Caldwell, I take it, has this in mind, in the language of the reservation it should not only say that navigation should be subservient, but also, say in express words that maintenance of navigation should not interfere with other purposes.

MR. CALDWELL: What I have said is that the United States will have all rights which it gets from the fact that this is a navigable river. Now, then if we say navigation rights shall be subservient, we do not destroy the navigability in theory or in fact. All we do say is that they shall not interfere with other works built for other purposes on the river.

MR. HOOVER: That is what is stated in the paragraph.

MR. CALDWELL: And this is still a navigable river, at least in theory.

MR. CARPENTER: We do not destroy the navigability in toto.

MR. HOOVER: That is the statement here; the only difference between this and that is that we make a statement here which tends to convince Congress on the fact of it that they cannot do it. They cannot safely make a reservation on this clause.

MR. SCRUGHAM: Read it again.

MR. HOOVER: "Inasmuch as the Colorado River has ceased to be navigable in fact, and inasmuch as the reservation of its water for navigation would seriously limit the development of the Basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes.

MR. CALDWELL: I think we should stop there.

MR. SCRUGHAM: Then you invalidate the whole thing.

MR. DAVIS: The first statement I was very much in favor of, the statement that the river is not navigable, I find in checking up I doubt, - when General Beach appeared before the committee he stated that in his judgment the river is navigable up to the Gila, and therefore, I think, rather than make an issue out of it, which would arise. On the face of it I think that statement should be cut out, the statement that it is not navigable now. In other words, you would have a straight issue with the War Department on it.

MR. HOOVER: "It has ceased to be navigable" perhaps that is not a fact, but it is a matter of practice.

MR. DAVIS: Yes sir.

MR. HOOVER: Can you say it ceased to be commercially navigable?

MR. DAVIS: Practically navigable, something like that.

MR. HOOVER: It is no longer an avenue of commerce. Of course we

can get up and down, but it is not commercially navigable.

MR. NORVIEL: I would prefer some phrase, "almost wholly" or almost, - some word, - some phrase rather than narrowing it down to a single word.

MR. DAVIS: How about practically.

MR. CARPENTER: Practically, yes. What I want was to avoid the necessity of presenting facts before the committee, and having the War Department come in and take the attitude and we take the other.

MR. HOOVER: You limit yourselves in the word "practically" they could come in and ask you to give proof on that. Isn't it a little better to say "navigable commercially".

JUDGE SLOAN: Could you say "Cease to have any —

MR. HOOVER: Cease to be navigable for commerce.

MR. DAVIS: Cease to be valuable for navigation.

MR. MC CLURE: I do not like the words "The river has ceased to be navigable". I believe in many respects that is not good.

MR. EMERSON: I don't believe it is necessary to argue the case in this article, and I can say the representatives from Wyoming will present the case to Congress with the reservation, - you can depend on the men from Wyoming making their argument.

MR. CARPENTER: The most illuminating memoranda that I have been able to find on this subject of navigation, or a lack of the navigability of the Colorado River was that filed by Judge Phil. D. Swing, now a congressman, and read later to the committee, at the 66th Congress, first session, and incorporated in the record of the hearing before that committee when an All-American Canal project was under discussion, in which he demonstrated to a conclusive degree that the navigability of the Colorado River, as we understand the term in its connection with commercial uses, and the uses of the river for the floating of boats, never did exist, and even if it be said

that it did exist what it has long since ceased.

MR. HOOVER: That is only one man pinned to the mast.

MR. EMERSON: All the more reason why we don't need argument in this compact.

MR. CARPENTER: Merely cut out the clause.

MR. EMERSON: We have been cutting out the matter of argument in different places.

MR. HOOVER: That is your suggestion, that the argument be left out?

MR. SCRUCHAM: I am in favor of the statement presented by Mr. McKisick.

MR. EMERSON: Any time you think Congress is not going to get all the arguments there are, you are mistaken.

MR. HOOVER: I think it has this value: A lot of people will be considering this pact outside of Congress, and they will jump right on that, not knowing anything about the river, and they will say "My God, we must preserve the rights of the United States to protect the navigation of this river." Whereas, by that means you have convinced all of those people at the outset.

MR. EMERSON: It seems to me that argument might apply to lots of parts of this compact.

MR. CARPENTER: That is true, of course.

MR. EMERSON: I am willing to let her go.

MR. DAVIS: Will you read that reservation?

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MR. HOOVER: "In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the other provisions of this compact."

MR. DAVIS: I don't believe I quite like the language "shall not affect any of the other provisions of this compact."

MR. HOOVER: How would you frame it Judge Davis, just to get it

formulated and in front of us?

MR. MC CLURE: Judge Sloan, what is your slant on that?

JUDGE SLOAN: I think it wise, as a matter of prudence, to put something on the end that would permit of the assent of Congress being made, without impairing the compact as a whole.

MR. NORVIEL: I was wondering if a saving clause might be added at the end of the whole compact, in the event any part should be objected to, so that it would not vitiate the compact, - something that would not be too broad.

MR. HOOVER: That would open the door for each state to take its goods out.

MR. DAVIS: I have expressed it this way: "If Congress shall withhold its consent to this paragraph, the other provisions of this compact shall, nevertheless, remain binding upon the signatory states."

MR. NORVIEL: You might take the word "states" out, leaving it "signatory".

MR. HOOVER: You might omit the word "withhold", simply say "If Congress does not consent."

MR. EMERSON: Should that not be "signatories"? "If Congress shall not consent to this paragraph, the other provisions of this compact shall, nevertheless, remain binding upon the signatories"?

MR. CARPENTER: Why not simply say "signatories"?

MR. EMERSON: That is better.

MR. DAVIS: The only thing I had in mind is to use the same term through the compact.

MR. HOOVER: "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 the basin" take out the second "inasmuch" and

simply say "reservation of its waters for navigation would seriously limit the development of the basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes"?

MR. NORVIEL: That would eliminate --

MR. CARPENTER: The second "inasmuch" in the second line.

MR. SCRUGHAM: Just make it frame the determination.

MR. HOOVER: Then how would it do to say "Provided Congress assents to this paragraph."

MR. CARPENTER: It should be so worded that it will not be necessary to introduce any special arguments to secure that assent, but simply shall be interpreted to mean that in the event Congress wishes to consider that particular paragraph out, it can do that on its own motion, then it may do so.

MR. HOOVER: Then go back to Judge Davis's wording.

MR. SCRUGHAM: Congress might well approve the whole pact, without discussion, then there would be no need to raise the issue.

MR. HOOVER: Because the reservation is purely a matter of discussion, and because Mr. Caldwell has still a reservation in his mind about it, we would better clear up the matter.

MR. CALDWELL: I think I had better say, Mr. Chairman, that I hesitate to bind the State of Utah by my action in any way to a pact the provisions of which are such that the United States may prevent the construction of necessary works on the river for any and every right other than navigation, or prevent the construction and maintenance of such works in the river for those purposes. I never feel quite safe. I am free to confess, from the whims of bureaus such as we have in connection with our government. Now, I don't want to say that this river shall be henceforth considered, in

fact, to be an unnavigable, or an innavigable river, and I believe that that is the only thing in which Congress will have any grave concern. I believe Congress will readily consent or assent to the proposition that it will not interfere, or seek to interfere with the construction of large irrigation or control works on the river, or the maintenance or perpetuity of those structures in that river for that purpose. Now, I have said that largely because I want to get into the record and be understood as clearly as I can be. It is not in my mind, Mr. Chairman, to say that I shall not subscribe to this pact insofar as I may be considered a signatory, if the provision is made that Congress may withhold its assent to this article, or this paragraph in Article IV. I shall vote against, however, any motion which is put to modify the substance of that paragraph wherein it may give the right to Congress, or to the Government, or to any bureau thereof, to destroy or remove any works that may be placed in the river for the benefit of the so-called dominant uses. I think that is all.

MR. HOOVER: Then do you dissent from having any reservation there?

MR. CALDWELL: Yes sir.

MR. DAVIS: The difficulty Mr. Caldwell finds here, at least in my view, is likely this: I would very much rather have the clause without any reservation at all, but that is one thing if we put in the clause in that way, and then in the improbable event that Congress should not assent to that clause, one of two things would happen: Congress would reject the pact in toto, which would end everything for some time to come, or would approve it, with a disapproval of that particular clause, which means we would all have to go back to our legislatures again for a new approval.

MR. CALDWELL: I think that is very clear, Judge Davis, I don't believe I am laboring under any misapprehension. If I could get the cooperation of my fellow commissioners in this matter, - I shall put up just another pro-



position, that Congress should not at any time, now or hereafter, interfere with such works as you have described, or the maintenance of them, and I should like to record my vote here as "no" on giving to Congress any opportunity to retain to itself the right to do these things. If I can't get the cooperation of the commission, as I have said, it is not my present intention to destroy the pact.

MR. EMERSON: It seems to me whether or not this reservation is made, this will be voted out, and you can depend upon the legislatures of most of those states will finally adopt the idea that navigation shall be subservient, but it does seem desirable to have that first clause whereby it would not be necessary to send this back to every state to be ratified if Congress reserves that right, - it is simply the case of a safety device; but in addition it does not preclude that thing from being absolutely considered on its merits.

MR. HOOVER: It is not a question of destroying, it is a question of insiduously preventing new works, because the bureaus would simply call up and say "we never have desired anything like that."

MR. CALDWELL: Judge Davis, in his remarks just now said it was improbable that Congress would withhold assent, with which I agree. As I say, Mr. Chairman, I don't care to burden the record with many remarks from me on this proposition. I shall be as agreeable as I can after I have voted.

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MR. CARPENTER: The elimination of this paragraph puts the compact back for further action by the states.

MR. DAVIS: In order to get the poll, I move the paragraph stand as at present presented.

MR. NORVIEL: Which one is that?

MR. DAVIS: Article 4, paragraph a, as we have it in this draft.

MR. HOOVER: Without the reservation?

MR. DAVIS: No sir. It will read like this: "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 the Basin it is hereby agreed that the use of its waters for purposes 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 upon the signatories hereto."

MR. CARPENTER: I like "signatory states" better.

MR. EMERSON: Wouldn't that --

MR. CARPENTER: Alright, say "signatories". My point was this, the United States is not a signatory.

MR. SCRUGHAM: I second the motion.

(Whereupon a vote having been taken, the result was as follows:

Ayes: Mr. Norviel, Mr. Davis, Mr. Scrugham, Mr. Emerson, Mr. McClure.

Nays: Mr. Caldwell, Mr. Carpenter)

MR. CARPENTER: This is tentative?

MR. HOOVER: No, final. Final on this paragraph.

MR. CALDWELL: Mr. Chairman, I don't like to be stubborn, - I don't want to be and don't intend to be. I value the opinion of the members of this Commission on that, and value the opinion of the Chairman most highly, but in principle I dissent, and I am quite sure that the fact should not be overlooked that the dissent of one legislature to this pact is just as important as the dissent of congress. I am quite sure the legislature of the State of Utah will not overlook that paragraph, but in order that the progress of this commission may not be hindered, and for reasons that I have heretofore stated, I am willing to change my vote from "no" to "aye".

MR. CARPENTER: For the same reasons I vote "aye".

MR. HOOVER: Then the paragraph is carried.

2nd Part  
24th Meeting

CHAIRMAN HOOVER: We now come to paragraph (b), Article IV. As the paragraph stands, in view of our definition we can make certain changes. In the fourth line, we can cut out the words "municipal, agricultural, mining milling, and other industrial purposes."

MR. SCRUGHAM: Before that is done would the terms "mining and milling" in the preceding line -

CHAIRMAN HOOVER: (Interrupting) We don't need to cut out "agricultural Cut out "mining, milling and other industrial purposes." And in the third line at the end of the paragraph we can cut them all out. That paragraph then would read thus: "The use of the water of the Colorado River System for purposes of generating electrical power shall be subservient to the uses and necessary consumption of such waters for domestic and agricultural purposes, and shall not interfere with or prevent the use of said waters for said dominant purposes."

We have another problem that has come up here and has been discussed in connection with this wording. It doesn't necessarily follow that it has to - that this has to be rewritten. In other words, we can leave it stand as we have already agreed to it and the other problem that has arisen in which the other drafting was attacked, is that no where in this compact do we make any reference to the use of the water for power purposes. We get no specific control of the water for power and where we have limited this pact, as we have all through it, for the necessary consumptive uses, etc., we have probably by draft eliminated the control of power from the pact. It will bear that construction, and therefore it is necessary for us to put into the pact a control of power specifically, so that there can be no question raised as to what the interpower rights are between the two Basins. We have all gone on the assumption that power was limited by the expressions that we

have used; but I think the serious consideration of this by Judge Davis, Mr. Carpenter and others to whom I have mentioned it, has created in their minds the doubt that the pact as it stands does give this proper control of power and that we must make some specific mention in order to bring power under control of the pact.

We have given a great deal of thought to that and we concluded that this paragraph here would very materially limit the power rights, but not wholly, because a power right in the Upper or Lower Basin might be construed in control of either basin within this limitation. In other words, it might give it a further expansive right, and we need something in here that limits specifically, power in its rights to each of the basins. Judge Davis drafted a paragraph last night, redrafting this particular section to include that idea. Have you got it there, Judge?

(Judge Davis' draft was thereupon read by Chairman Hoover, as follows:)

"Subject to the provisions of this compact" (Hoover: to be substituted for Article (b), "the water of the Colorado River System may be impounded and used for the generation of electrical power."

(By those expressions we thought we would put "power" into the pact as being a rightful and proper use, and also we would make it subject to the control of Article III.) "But such use shall be subservient to the use and necessary consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes. And such impounding and use in one Basin shall not create any right effective beyond that Basin nor affect the flow of waters in the other Basin."

The essential difference here is simply the last sentence.

JUDGE DAVIS: I think the affirmative statement that water may be used for power purposes is valuable.

CHAIRMAN HOOVER: I think it is valuable; otherwise, it might look as if we were trying to avoid the power use.

JUDGE DAVIS: It is something like Mohammed's coffin, left floating somewhere between heaven and earth, and no one knows where. And I should like to have something specific. I am not at all certain that the last sentence is necessary. I am not at all sure but what the paragraph is sufficient with the elimination of that last sentence.

MR. EMERSON: As I understand, that has a dual purpose of really referring to power.

CHAIRMAN HOOVER: Of affirmatively referring to it.

MR. EMERSON: Yes. At the same time putting a further limitation probably upon the use of the water for power as affecting the two divisions. It is very desirable - the first is, and probably the second.

CHAIRMAN HOOVER: I think it is desirable. As the Judge says, we have left it practically hanging between heaven and earth.

MR. CARPENTER: The use of power should not only be confined to the divisions, Mr. Emerson, but should be subservient above.

MR. EMERSON: As far as the flow, or states, is concerned?

MR. CARPENTER: As far as present development is concerned. For example, as far as the Glen Canyon development is concerned. The compact should never interfere with agricultural or domestic development above. To put it broadly it should only be entitled to what is left after the higher and more dominant uses have been satisfied. That matter was discussed more or less in the committee and it was thought the words "dominant" and "subservient" would cover that phase. The right of power; on the other hand, should not attach to the surplus of the river which is unapportioned in such a way that it might embarrass the future commission in its further apportionment between the two basins into which the basin is divided. And it is the

hope that this clause would cover that phase as well, by making - by confining the water to the water of the particular basin. The future commission should not be embarrassed by finding itself confronted with enormous plans for the use of the surplus water for power within the Lower Basin which it cannot rid itself of and which it might be claimed had vested to such a degree that they could not be disturbed. And that feature should be carefully considered in the wording of this paragraph. In other words, there should be nothing in there that would prevent the utilization of the electrical energy obtained from the flowing of the water that passes by the wheels. But no permanent right should attach that would embarrass the future apportionment of water because at that time the electrical power phase may have developed to such a degree that it would be of prime importance.

JUDGE DAVIS: Mr. Carpenter made a very clear statement of the situation and I am very glad to be able to agree with him.

CHAIRMAN HOOVER: This splits itself into two parts - this paragraph - and we might take it in two parts. We can cut this into two parts, and we might consider the first sentence first.

"Subject to the provisions of this compact, the water of the Colorado River System may be impounded and used for the generation of electrical power," (that is an affirmative statement of the power position in the basin;) "but such use shall be subservient to the use and necessary consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purpose."

JUDGE DAVIS: The word "necessary" shouldn't be in there.

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MR. CARPENTER: "Use and consumption."

CHAIRMAN HOOVER: "Consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes." There is, except for the declaration, that is the wording of paragraph (b) as we have already agreed to it. Well, now, I think we might take the sense of the commission on that part of the para-

graph, which narrows the discussion down to the second part. The fact is we have already agreed to it except for this affirmative declaration about power. Is there any comment on that first sentence.

MR. CALDWELL: On the first part, Mr. Chairman?

CHAIRMAN HOOVER: Yes.

MR. CALDWELL: If it won't overtax the patience of the Commission, I would like a little time to think about that before I give my consent. I am willing to consider the second sentence.

CHAIRMAN HOOVER: You wouldn't review a paragraph as already agreed upon.

MR. CALDWELL: If we have agreed on that and that is binding on us, there is no use discussing it.

CHAIRMAN HOOVER: I was just wondering -

MR. CALDWELL: (Interrupting) I only have this thought in mind, that possibly I might want to offer a suggestion for its improvement, that is all, and in harmony with the general idea of it.

CHAIRMAN HOOVER: All right then, on the second sentence.

JUDGE DAVIS: I assume that is satisfactory to everybody else, then.

CHAIRMAN HOOVER: Is it satisfactory to everybody else?

(All the remaining members of the commission answered in the affirmative.)

CHAIRMAN HOOVER: The second sentence:

"And such impounding and use in one basin shall not create any right effective beyond that basin nor affect the flow of waters in the other basin."

MR. NORVILL: I think we shall have to object to that. This just came to our notice a moment ago. We had no prior information as some of the others had, but it seems to me that there is something in there that would make it very objectionable to the Lower Division.

MR. SCRUGHAM: I object to the second sentence on the ground that it would be only provocative of controversy and for no purpose.



CHAIRMAN HOOVER: In other words, your feeling is that in making power subservient, that it is subservient all the way through.

MR. SCRUGHAM: Yes.

MR. NORVILL: We all hope some time to build a large dam at Glen Canyon within the State of Arizona, but as the divisions are created, not only the dam, but the reservoir would be within the Upper Basin. And it appears from this that it would be under the control of the Upper Basin to the use of the waters - the flow of the water - and all of that, when it has gone beyond the control of the use of the Upper Basin for any other purpose than of power. And I think there is something in that that would be objectionable.

CHAIRMAN HOOVER: I have a feeling that the situation is covered by the first sentence. That is my instinct about it, because it is the most drastic expression that we have been able to think of as to subserviency, and as it follows right through the compact, I think it cures itself automatically.

JUDGE DAVIS: I wrote the clause, Mr. Chairman, last night, and at that time thought that it really was advisable. Since that time I have thought the matter over and my own judgment is that the paragraph is better with the elimination of that last sentence.

CHAIRMAN HOOVER: That any reservation that -

MR. CARPENTER: (Interrupting) Does that clearly extend to the whole flow of the river? My answer off hand is "yes."

MR. EMERSON: Isn't the Upper Basin protected by the guarantee of delivery at Lee's Ferry. It has no further demand about it.

MR. CARPENTER: The second sentence was put in with the idea that we should not be compelled by virtue of some power, to increase the flow at Lee's Ferry to the detriment of agricultural development above.

MR. ELLERSON: That is taken care of in the first sentence.

CHAIRMAN HOOVER: I think so. It takes care of the limited flow at Lee's Ferry. That is my impression.

JUDGE DAVIS: I move the last sentence be eliminated, Mr. Chairman.

MR. NORVIEL: I second the motion.

CHAIRMAN HOOVER: It has been moved and seconded that the last sentence be eliminated; those in favor say "aye."

(Thereupon a vote having been taken, the motion was unanimously carried.)

MR. NORVIEL: Is this a substitution of the other (b).

CHAIRMAN HOOVER: Yes.

MR. CARPENTER: Mr. Caldwell and I want to talk over this whole article a little further before assenting.

CHAIRMAN HOOVER: Then we will temporarily have to suspend that.

MR. EMERSON: The present effect of that paragraph, as I understand, is to bring the matter of power out of thin air and give it some standing, and does not in any way vitiate the true intent and meaning of the old paragraph (b).

CHAIRMAN HOOVER: It specifically brings power under the provisions of paragraph 3.

MR. CARPENTER: Recognizes power and brings it under the provisions of the entire compact.

CHAIRMAN HOOVER: We have now a re-draft of (a) which we might read and see if we can settle on that:

"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 the Basin it is hereby agreed that the use of its waters for purposes 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 upon the signatories hereto."

If there is no further comment on that, we will let it stand. Is there any change in paragraph (c) of Article IV.

MR. CARPENTER: I think the words "within its limits" at the close of the sentence should be inserted after the word "state" in the second line from the bottom, making it then read "control by any state within its limits of the appropriation, use and distribution of water." As it stands, it might be ambiguous.

CHAIRMAN HOOVER: All right, if there is no objection, we will do that. Any further comment on that paragraph.

MR. CALDWELL: I would like to hear reasons why we shouldn't add to this something to the effect that this regulation and control reserved to the state should not be for its benefit as provided by its local laws.

MR. CARPENTER: The control of any subject matter by a state derives its source from its people, expressed in its constitution, the laws enacted by its legislature and the decisions of its courts interpreting both the constitution and the laws. That is the only way a state may regulate and control. It is the thought evidently of those who drew this paragraph that that being the fact, the state's constitution, laws and decisions of its courts might be eliminated as coming within the general term "regulation and control by a state." It is customary to speak of regulation and control in terms of the constitution, laws and decisions of courts. But it was evidently thought by those who had this, -- the final draft of this paragraph in hand, that such words were surplusage and a repetition of the words "regulation and control". There is some advantage by putting in the words "constitution, laws and decisions of its courts" in that it is more understandable probably, and comports more to the general

views of the local citizens of any state. It is my opinion that the words "regulation and control" by a state mean what they say - what they imply rather - that is that the instrumentalities by which that regulation and control takes place are all included in the general terms.

MR. SCRUGHAM: Mr. Chairman, will you permit the reporter to read the first part of Mr. Carpenter's statement?

(Assent was given and the statement was read as follows:)

"The control of any subject matter by a state derives its source from its people, expressed in its constitution, the laws enacted by its legislature and the decision of its courts interpreting both the constitution and the laws."

MR. EMERSON: It has been amended so it looks all right to me and I think does include all that Mr. Caldwell suggests might be added.

CHAIRMAN HOOVER: It was considered that if we began to put in a dissemination of state powers - constitution, laws, court regulations, etc., - we got into deep water for fear we wouldn't include them all, and we made it all inclusive for fear we might leave something out.

There is a little question in my mind as to whether we should use the word "boundaries" instead of "limits."

MR. CARPENTER: I like it much better.

MR. SCRUGHAM: That is a much better word.

CHAIRMAN HOOVER: If there is no objection to that paragraph, it stands with the change of the word "boundaries" and the transposition of a phrase there.

(The paragraph as finally adopted is as follows:)

(c) (ARTICLE IV.) 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."

CHAIRMAN HOOVER: Has the Imperial Valley got its notions clear as to

what - as to Article VIII.

ARTHUR P. DAVIS: We have agreed upon the text of that paragraph but it isn't yet typewritten, unless that is it.

CHAIRMAN HOOVER: This draft reads as follows:

"Rights heretofore vested shall remain unimpaired by any provision of this compact. Until storage is created as hereinafter mentioned, no new diversions of water shall be made during the months of August, September, October and November of each year for use without the drainage area of the Colorado River System, except for the uses of the City of Denver. Whenever works of capacity sufficient to store at least 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, the present users of water in the Lower Basin who can be served therefrom shall be satisfied thereafter from the waters apportioned to the Lower Basin and shall have no further claim upon the waters apportioned to the Upper Basin. Inchoate rights heretofore initiated but not vested prior to the effective date of this compact, and all rights initiated subsequent to such effective date, shall be limited by the provisions of this compact and shall be satisfied from the waters apportioned to the Basin in which they may be situate and shall have no claim upon any part of the waters apportioned to the other Basin."

MR. CARPENTER: To which we cannot assent.

MR. CALDWELL: I don't see much resemblance between that and Article VIII, although are both marked the same at the head.

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MR. CARPENTER: No new diversions shall be made during the months of August, September, October and November no matter what the state of the river, no matter how much water is going to waste to the sea, no new diversions could take place in the Upper territory.

MR. ARTHUR P. DAVIS: That is for use outside of the basin. It doesn't

limit anything inside the basin, nor the construction of any works for a diversion in any other months, outside the basin.

CHAIRMAN HOOVER: My objection to it is that when you begin to specify diversion of water you have supplied the necessity for an interstate police.

MR. EMERSON: It seems to me that the second sentence makes a mountain out of a molehill, and the protection afforded by that sentence is quite insignificant. It just raises a point for attack of the legislatures in the upper states. It gives them nothing and it opens up a great field for adverse discussion in the upper basin.

CHAIRMAN HOOVER: If rights heretofore vested shall remain unimpaired by any provision of this compact, you don't require one word more than that.

MR. CARPENTER: You leave the gate wide open for everlastingly injecting controversy along the whole river unless that is specifically toned down by the provisions which follow. The whole theory of this compact is this: That the water apportioned to each basin is adequate not only for all of its present uses, but for the increase of development within each basin.

CHAIRMAN HOOVER: The only question at stake here is that the present uses of the southern basin are not over three and a half million acre feet all put together. Here is a provision for eight and a half million feet in perpetuity. They are covered three times over today by this compact, and the one substantial ground for complaint on the part of the users of the lower water is that until they have storage, the low water flow might be jeopardized by any influence that they were limited to by this compact. They have one ground for complaint which is just, and that is that this compact might limit the low water flow. When that low water flow is taken care of they have no other complaint. That is cured by storage.

MR. CARPENTER: And when that storage occurs any possible claim from the upper territory should at once cease.

CHAIRMAN HOOVER: They haven't a claim on the upper territory; they have a claim on the water. That is, a claim on the flow of the Colorado River immediately above their headgates, and after that claim is satisfied, they have no claim on the upper river at all.

MR. CARPENTER: The first statement is a little too broad: "shall remain unimpaired by any provision of this compact."

CHAIRMAN HOOVER: Get the court to satisfy the people in the lower basin by deciding the validity of the 14th Amendment to the Constitution, and giving the further comfort that storage was in contemplation in this compact, etc. I don't see how this commission can go outside of that ground.

MR. CARPENTER: Well, what is a vested right.

CHAIRMAN HOOVER: Whatever it is, it is protected under the constitution.

JUDGE DAVIS: There is one substantial objection to that as framed that there is an implication that rights heretofore vested do not come within the amount of water apportioned to the two divisions, the entire idea being of that of rights to come within that amount.

CHAIRMAN HOOVER: There is an implication here that after eight and a half million feet have been provided, they still have a claim for more.

ARTHUR P. DAVIS: I do not suppose anybody -

MR. CARPENTER: (Interrupting) It is open to that interpretation.

CHAIRMAN HOOVER: I would suggest, perhaps, in order to make progress that we leave this and let me sit down with the California people and ~~see if we cannot evolve something that will be more nearly practicable.~~

MR. SCRUGHAM: May I suggest that those in the northern group that want to consult, meet and formulate their ideas.

CHAIRMAN HOOVER: We will dismiss that article for the moment. I don't know whether overnight anybody has thought of any changes in the remaining articles. Have we any changes with regard to the preamble.

MR. CALDWELL: I would like to get right on this proposition. I sat for several hours reading this and marking it up to suit myself. I believe that the commission is pretty clear as to what it wants to accomplish. I do not believe that the pact is nearly so clear as to the views of the commission. I am just arising to inquire whether or not it is the intention to put this pact into the hands of some person or persons competent to edit it and make it say what it means or are we passing it now up to the engrossing clerk.

CHAIRMAN HOOVER: No, we are not passing it up. We are simply trying to get everybody's ideas before us at all times and I thought by taking it in detail we might get it, - until we get them all.

MR. EMERSON: I thought we had an editing committee in the drafting committee.

CHAIRMAN HOOVER: The drafting committee has passed it up to the commission unless you want to refer it back.

MR. EMERSON: It seems impractical to put it in the hands outside of those who have been studying this problem for the last two weeks.

MR. CARPENTER: Mr. Caldwell, I would like to talk over with you what suggestions you have in mind. Last night I was not able to read this compact as prepared, and I would like to discuss with you any suggestions. Could you do so during noon hour.

MR. CALDWELL: I feel this way about this thing. We are trying to settle everything here in the meeting, and editing in a meeting is a very difficult thing it seems to me and there is a lot of wasted words because everybody wants to express his views and you can't object to that either. But I think that such things as I would want to say could be easily sat down on by an editing committee, and get me out of the way pretty quickly if I am not right; and I would be very glad if we could have a little more time than we have outside of the meetings to do some of these things.



CHAIRMAN HOOVER: Supposing we have a meeting of the editing committee after lunch with Mr. Caldwell, and go over it.

JUDGE DAVIS: And receive any suggestions from anybody else.

CHAIRMAN HOOVER: Yes.

(The meeting thereupon adjourned, the editing committee to meet at 2:00 P.M., and the commission to reconvene at the call of the chair.)

Preamble	O.K.
Article I	O.K.
Article II	New Definition (domestic use)
Article III	Page 2 rewritten (new paragraph (a))
Article IV	New paragraph (a)
Article V	O.K.
Article VI	O.K.
Article VII	O.K.
Article VIII	To be considered.
Article IX	O.K.
Article X	O.K.
Article XI	O.K.
WITNESS CLAUSE	O.K.

## 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 assure interstate comity; to remove causes of present and future controversies; to promote the expeditious agricultural and industrial development of the Colorado River Basin and the storage of its waters and to protect 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 "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(d) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(e) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without 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 terms "apportionment" or "apportioned" mean the division of waters of the Colorado River System for consumptive beneficial use.

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

### ARTICLE III

The beneficial consumptive uses of the waters of the Colorado River System are hereby divided and apportioned between the Upper Basin and the Lower Basin as follows:

(a) There is hereby apportioned in perpetuity to each Basin, for its exclusive beneficial consumptive use 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 feet 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 apportioned between and 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 agree that they 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 July next succeeding

the ratification of this compact.

(e) The States of the Upper Division shall not withhold, 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 in paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after July 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 Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives with like powers to those of this Commission 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 Basin as described in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

(New Article IV, adopted at 24th Meeting held November 23, 1922 A.M. Mr. Carpenter and Mr. Caldwell reserve right to adopt (a). Substitute for old page,)

#### 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 the Basin it is hereby agreed that the use of its waters for purposes 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 upon the signatories hereto.

(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 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.

#### ARTICLE V.

The chief official of each 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 cooperate, 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.

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#### ARTICLE VI

Should any claim or controversy arise between any two or more 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

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herein provided; or (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 for 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 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, but at such termination all rights then established under this compact shall continue unimpaired.

#### ARTICLE XI.

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of such 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.



## MINUTES OF THE

## 25th MEETING

## COLORADO RIVER COMMISSION

The twenty-fifth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Thursday evening, November 23rd, 1922, at 7:30 P.M.

There were present:

Herbert Hoover, representing the United States, Chairman	
R. E. Caldwell,	" Utah
Delph E. Carpenter,	" Colorado
Stephen B. Davis,	" New Mexico
Frank C. Emerson,	" Wyoming
W. F. McClure,	" California
W. S. Norviel,	" Arizona
Col. J. G. Scrugham,	" Nevada

In addition there were present:

Edward W. Clork  
Mr. Bannister  
Charles P. Squires  
Ottomar Hamole  
Mr. Nickerson  
Richard E. Sloan  
Mr. McKisick  
Thomas Yager  
A. P. Davis

The meeting was called to order by the Chairman.

Thereupon the draft of the Colorado River Compact submitted to the Commission at its twenty-fifth meeting was taken up for consideration and the Preamble read in open meeting by the Chairman.

On motion duly seconded and unanimously carried a comma was inserted  
after the word "States" in the fifth line and the comma removed after the word "have" and the word "Governors" in the sixth line.

CHAIRMAN HOOVER: Any further comment?

There being no further comment, the preamble was thereupon unanimously adopted in the following form:

## "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
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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:"

CHAIRMAN HOOVER: (Reading) "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 assure interstate comity; to remove causes of present and future controversies; to promote the expeditious agricultural and industrial development of the Colorado River Basin, and the storage of its waters and to protect life and property from floods."

MR. SCRUGHAM: Mr. Squires suggested two minor changes in there that might be advantageous. To "promote" interstate comity. How can you "assure" interstate comity?

MR. DAVIS: ~~You can assure interstate comity better than you can~~  
"secure" expeditious agricultural development.

MR. SCRUGHAM: Instead of "promote" the expeditious, make it "secure" the expeditious agricultural and industrial development.

MR. DAVIS: In line five change "assure" to "promote" and in the next line change "promote" to "secure."

CHAIRMAN HOOVER: You can save some "ands" in that sentence and make

it a little more smooth. If you strike out the "and" after "Colorado River Basin" in the line about half way down, "to secure the expeditious agricultural and industrial development of the Colorado River Basin" comma "the storage of its waters and to protect life and property from floods."

MR. DAVIS: I would say "to protect" should be changed then to "the protection."

MR. SCRUGHAM: "and the protection of."

MR. DAVIS: "The storage of its waters and the protection of life and property."

CHAIRMAN HOOVER: (Further reading) "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."

MR. CARPENTER: I don't want to be captious, but up there before the word "secure" that should be "and to secure", leaving the semi colon there.

CHAIRMAN HOOVER: Any further comment?

MR. NORVIEL: I think the semi-colon should be a comma there.

CHAIRMAN HOOVER: If there is no objection that is passed finally.

(There being no objection, Art. 1 was unanimously passed in the following form:)

"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.

Paragraphs (a) and (b) inclusive of Art. 2 were thereupon read by the chairman.

MR. HAMELE: Shouldn't that be "and" instead of "or" Mr. Chairman?

CHAIRMAN HOOVER: Yes, you can have "and" (referring to par. (b).)

MR. CALDWELL: That "apportionment" is an apportionment of something else. I think we should change that a little.

JUDGE SLOAN: We are not dividing the consumptive beneficial use of waters.

CHAIRMAN HOOVER: This is Mr. Squire's proposal, in order to bring this definitely into tune with Art. 3. It would read "the terms "apportionment" and "apportioned" mean the division for consumptive beneficial use of the waters of the Colorado River System."

JUDGE SLOAN: I think he meant the division of the consumptive beneficial use of water.

CHAIRMAN HOOVER: He wants to get it in tune with Art. 3. He wants a division of the beneficial consumptive use of the waters of the Colorado River.

MR. EMERSON: But it isn't that.

MR. CARPENTER: Division of the waters for beneficial consumptive use is what it says.

MR. EMERSON: I think the error is in Art. 3 rather than in the definition.

MR. DAVIS: I raised the point this afternoon and I again raise it. As I have run through the compact I don't find that that word is used anywhere except in Art. 3.

CHAIRMAN HOOVER: Apportionment?

MR. DAVIS: Apportioned, unless it says "hereby."

CHAIRMAN HOOVER: In Art. 8 any way we draft it we are going to use it two or three times.

MR. DAVIS: Without the use of the words "hereby apportioned." Outside of Art. 8 there is no necessity for that definition at all. What Art. 8 may have I don't know.

CHAIRMAN HOOVER: Let's suspend it. (Thereupon Par. (i) of Art. 2 was read by the chairman.

MR. SCRUGHAM: I ask for the term "milling." The milling use is far greater than the mining use, and I would like to have that in there.

CHAIRMAN HOOVER: Any further comment?

MR. HAMELE: Wouldn't it be a more logical order if the definitions for the basins came before the definitions for the states of the division, just change the order.

CHAIRMAN HOOVER: Any comment on that suggestion?

MR. NORVIEL: I think not.

MR. SCRUGHAM: What is the advantage of the change?

MR. NORVIEL: The first thing we did was to divide the basin into two divisions and after that settled on the basin.

CHAIRMAN HOOVER: Logically Lee Ferry ought to be down below the division of the states, then it would follow alright.

MR. CARPENTER: Lee Ferry is used in (f) and (g), is the only thing I was thinking of and you should define Lee Ferry before you use it there.

CHAIRMAN HOOVER: Suppose we move Lee Ferry down to below (e).

MR. CARPENTER: That is the point of division and then you divide the basin I was thinking of.

MR. EMERSON: I think (c) should be "The term "Upper Basin" (d) "Lower Basin" then divisions and then Lee Ferry.

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MR. DAVIS: You should define Lee Ferry before you use it.

MR. EMERSON: I think Mr. Hamble's suggestion is well taken, that (b) relates to the Colorado River Basin, then it would be very proper for the upper and lower basin to follow that.

MR. CARPENTER: Why don't we have the Colorado River Basin then the point of demarkation, then the basin and then the division.

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CHAIRMAN HOOVER: You would move the division clear down then would you?

MR. CALDWELL: I move that we pass it, Mr. Chairman.

CHAIRMAN HOOVER: We have already changed Lee Ferry to (e) as a compromise on everybody's criticism and put it in immediately above (f).

Thereupon Art. 2 was unanimously adopted in the following form:

"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.
- (e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.
- (f) The term "Upper Basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.
- (g) The term "Lower Basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said states located without 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 terms "apportionment" and "apportioned" mean the division of waters of the Colorado River System for beneficial consumptive use.
- (i) The term "domestic use" shall include the use of waters for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power."

Thereupon Art. 3 was read by the Chairman.

MR. CARPENTER: I should say "The waters of the Colorado River System for beneficial consumptive use are hereby divided and apportioned."

MR. NORVIEL: That is agreeable.

CHAIRMAN HOOVER: We are into trouble right here. You cannot divide the water. You are dividing the use of the water. You are using this water over and again two or three times. That is my argument.

MR. EMERSON: You are blocking out certain amount of water, not the use.

MR. CARPENTER: For beneficial consumptive use.

MR. DAVIS: I move we take a vote and the majority control.

MR. CALDWELL: I second the motion.

(Thereupon, the motion of Mr. Davis having been put to a vote, the same was unanimously passed.)

CHAIRMAN HOOVER: Now we are in a position to vote.

MR. CARPENTER: I move you that be changed to read as follows:

"The waters of the Colorado River System are hereby divided and apportioned for beneficial consumptive use between the Upper Basin and the Lower Basin as follows:"

Thereupon, the motion of Mr. Carpenter having been duly seconded by Mr. Emerson, the result was as follows:

Ayes: Mr. Norviel, Mr. Emerson, Mr. Caldwell, Mr. Carpenter, Mr. Davis.

Nays: Mr. Scrugham and the Chairman.

CHAIRMAN HOOVER: It means you have got to go on changing your pact now.

MR. DAVIS: You have got to change two more paragraphs.

CHAIRMAN HOOVER: You are changing here from the basis of use of water to actual division of water. It is a very vital change you are making and you will find it will be a very important thing at some date. You keep on perfectly safe ground as long as you divide use. When you begin to divide the water you get into trouble.

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MR. MC CLURE: I didn't vote on either of those I guess.

MR. SCRUGHAM: I change my vote and ask for a reconsideration.

MR. DAVIS: I don't think the legal effect is any different between the two expressions.

MR. NORVIEL: That settles it as far as I am concerned.

MR. SCRUGHAM: I move the vote be reconsidered.

MR. NORVIEL: I second the motion.

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(Thereupon, the motion of Mr. Scrugham having been put to a vote, the same was unanimously passed.)

MR. EMERSON: It seems to me you are setting out a certain definite block of water for use under each division. You are not setting out any block of use, you are setting out a block of 7,500,000 acre feet in paragraph (a) for use.

CHAIRMAN HOOVER: What becomes of it after you use it?

MR. NORVIEL: They give it to us then.

CHAIRMAN HOOVER: They give it to you and somebody else uses it so you don't set out the use of it.

MR. CARPENTER: It is set apart for consumptive use.

MR. MC CLURE: Judge Sloan, does it make any difference in the language?

JUDGE SLOAN: I favor the retention of the words there. Principally because it means a redrafting of two paragraphs.

MR. DAVIS: (a) is inconsistent with the way we have the introduction now so if you change the introduction, (a) becomes inconsistent. Your introductory clause as written now apportions use, while (a) apportions 7,500,000 acre feet of water, so the language is inconsistent as the language is written at present. (f) would have to be changed if the introductory clause is changed.

MR. NORVIEL: How would it do to change the first word "the" to "for"? "For beneficial consumptive use", cut out the "of", "the waters of the Colorado River System are hereby divided", and so on.

MR. DAVIS: That is changing the order of the phrase. Then in paragraph (g) at the end you would again have to change to conform.

MR. EMERSON: I would like to know, Mr. Chairman, where you see difficulty in the future with the changing of that expression?

CHAIRMAN HOOVER: I have doubts as to the ability of the Commission



to divide the water. You can divide the use of the water, but I don't believe you can divide the water itself. That is the assumption of an ownership in the body of the water, not the use of water and I think there are essentially different legal principles if I understand anything about it. I will ask Mr. Hamble what he thinks about that.

MR. HAMELE: That is true, Mr. Chairman. There is no property right in running water and there couldn't be any division in a compact of this kind of the actual water, because it is only the use that is in question. It passes on, goes down and the very water that is used in the upper division is used again in the lower division.

MR. EMERSON: Isn't this 7,500,000 acre feet consumptively used by the upper division?

MR. HAMELE: As a matter of fact it isn't used, for part of it goes down.

MR. DAVIS: If we were saying there is hereby vested in each division the ownership of so much water I would say the criticism is well founded, but where we are making a physical division of so much water for a certain purpose I think there is a distinction.

MR. CARPENTER: You are apportioning the water for use, for a purpose, and that purpose is beneficial use.

CHAIRMAN HOOVER: When you get over to these other places you are going to have discussions on water rights in the sense of use.

MR. EMERSON: Based upon the use of certain amounts of water.

MR. DAVIS: The federal act uses a still different expression; provides for an equitable division and apportionment among the states of the water supply of the Colorado River. "Equitably divide and distribute the water supply of the Colorado River." You can follow that language if you choose.

The Arizona Act says, "The further utilization of the waters."

California says "use and disposition."

Colorado says "utilization and disposition of the waters."

Nevada says "to equitably settle and define the rights of the states in the waters of the Colorado River and its tributaries."

New Mexico says "the rights of the States in and to the use, benefit and disposition of the waters."

Utah says "fixing and determining the rights of the states in and to the use, benefit and disposition of the waters."

Wyoming, "determining the rights of the states in and to the use, benefit and disposition of the waters."

I am going to change my opinion, Mr. Chairman, and stick to "use" in order to conform to the acts.

MR. CALDWELL: I don't think it conforms to the acts.

MR. SCRUGHAM: We have a motion before us, seconded by Mr. Norviel, that we retain the word "use".

(Thereupon a vote having been taken upon the motion of Mr. Scrugham, the result was as follows:)

Four ayes and three nays.

MR. CALDWELL: I move that we make it unanimous.

(The motion of Mr. Caldwell having been duly seconded, the same was unanimously passed.)

MR. DAVIS: In paragraph (a) "There is hereby apportioned in perpetuity to each Basin" the "exclusive beneficial consumptive use" of. Strike out "for its" and say "the." After "use" strike out the comma and use "of."

MR. CALDWELL: I can't vote for that. I tell you I would like a block of water up there. I don't want a block of uses.

MR. DAVIS: We have to adopt either one plan or the other and follow it through.

CHAIRMAN HOOVER: Mr. Bannister has handed me a note of several court

decisions that what is divided is not the water, but the use of it and he quotes several authorities:

Wyatt v Lerimer & Weld Irr. Co. 13 Colo. 298;  
 Palmer v Railroad Commission, 167 Calif. 163;  
 Bear Lake & River Water Works Co. v Ogden, 8 Utah 494.

He goes on to say, "for the water itself while in the river belongs to no person, no state and not to the Federal Government. It is like air, - ownerless. After the water is taken out into ditches it then becomes owned. Until then the thing that is owned is a right to use.

MR. EMERSON: The constitution of several states declare that the water of the natural streams is the property of the state.

MR. CARPENTER: There is no difference in the expression anyhow, the blocking out of waters for consumptive use and consumptive use of water, it is just another way of stating the same thing.

MR. DAVIS: I agree with Mr. Carpenter about that. All I want to do is to make this section in harmony with the other. I make the motion it be changed.

(Thereupon a vote having been taken on the motion of Mr. Davis, the result was 6 ayes, 1 nay by Mr. Caldwell.)

Paragraph (b) of Article III was thereupon read by the chairman and there being no comments, the same was unanimously adopted as read.

Paragraph (c) of Article III read by the Chairman.

MR. DAVIS: Mr. Chairman, I would like to suggest a change.

"The burden of such deficiency shall be equally apportioned." There we use the word "apportioned" and not in the sense of the definition which we now have so that as to that word "apportioned" the definition is certainly unnecessary. I suggest that we strike out the words "equally apportioned between and" so that it reads, "the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin."

CHAIRMAN HOOVER: Any objection to that change?

MR. NORVIEL: None at all.

(Thereupon a vote having been taken upon the adoption of paragraph (c), Article III as amended, the same was unanimously adopted.)

Paragraph (d) article III read by the Chairman.

MR. HAMELE: Strike out the last three words in the first line, "agree that they."

(A vote having been taken on the amendment to paragraph (d) offered by Mr. Hamel, the same was unanimously adopted as amended.)

Paragraph (c), Article III read by the Chairman.

JUDGE SLOAN: I think the word "delivery" ought to be eliminated.

CHAIRMAN HOOVER: This refers to 75,000,000 feet. It is in the sense of a delivery.

MR. DAVIS: I don't like the word "delivery" very much.

CHAIRMAN HOOVER: You could change it to flow.

MR. CARPENTER: I don't know how the upper states could withhold the use of water on its way.

MR. DAVIS: I think "flow" is better than "delivery."

MR. CALDWELL: Just cut out the word "delivery."

JUDGE SLOAN: That changes the whole meaning.

MR. DAVIS: The word "delivery" is not the right word. I think either one of two things: either strike out those words or put in "a flow of water." I think it is better to strike out the words.

CHAIRMAN HOOVER: All those in favor of strike out the words "the delivery of" please say aye.

Ayes: Mr. Emerson, Mr. Caldwell, Mr. McClure, Mr. Davis, Mr. Scrugham

Nays: Mr. Carpenter, Mr. Norviel

MR. DAVIS: My thought on it, Mr. Chairman, is this. The words

"withhold," if you withhold something you withhold something physical. The only thing you can withhold is the water. To withhold something it must be an entity.

MR. CARPENTER: "The States of the upper division shall not withhold and the states of the lower division shall not deliver" comma, "water which cannot be."

CHAIRMAN HOOVER: You agree, then, to putting the comma after "deliver"?

MR. NORVIEL: After "of."

MR. DAVIS: Cut out the comma after "require."

MR. CALDWELL: I don't want to appear stubborn,-

CHAIRMAN HOOVER: What do you suggest, Mr. Caldwell?

MR. CALDWELL: If you want the right thing you better say "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." It simply means the removal of the commas.

MR. NORVIEL: I think that means the same thing and would be correct.

CHAIRMAN HOOVER: You would now agree on the removal of the commas?

JUDGE SLOAN: And insert the word "water" after "withhold."

CHAIRMAN HOOVER: A comma after the first "water" and a comma after the second "water."

MR. EMERSON: I move its adoption in that form.

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(The motion of Mr. Emerson having been duly seconded, the same was unanimously carried.)

Paragraph (f) of Article III read by the Chairman.

MR. CALDWELL: I think the words "and when" should come out.

MR. EMERSON: Wouldn't that word better be "by" than "in" in the third line?

MR. HAMBLE: Wouldn't "under" be preferable?

MR. DAVIS: I would rather see "by."

(There being no objection to the strike out of the word "in" and the insertion of the word "by," paragraph (f) of Article III was unanimously adopted as amended.)

Paragraph (g) of Article III read by the Chairman.

MR. HAMELE: Is the clause "with like powers to those of this Commission" necessary?

MR. DAVIS: It is the only clause which says what their powers shall be.

CHAIRMAN HOOVER: I don't think it makes the slightest difference whether it is in or out.

MR. HAMELE: The powers of this Commission are more or less uncertain under this act, they are very inconsistent.

MR. DAVIS: I move to strike that out.

(The motion of Mr. Davis having been duly seconded the same was unanimously carried.)

MR. CALDWELL: I would like to suggest that we might say "with similar powers to those of this commission", then if they don't know what they are, I really think the intent of this pact is to make some sort of apportionment in some such way as we are trying to do now. I don't want to bind any further Commission.

MR. DAVIS: My thought is the wording is really a limitation and we might as well leave them to see what the powers should be.

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MR. CALDWELL: Suggestion withdrawn.

MR. NORVIEL: In the second line on the last page the word "Basin" ought to be "The Colorado River System."

MR. CALDWELL: We are attempting to bind the Commission to apportion waters between the upper and lower basin. They may find some better way

of doing it and it might be better to leave out the words "between the upper basin and lower basin," and just let them apportion the waters.

MR. NORVIEL: I am agreeable to that, very.

MR. CALDWELL: "whose duty it shall be to divide and apportion equitably the beneficial use of the unapportioned water of the Colorado River System."

MR. DAVIS: I am agreeable to that.

CHAIRMAN HOOVER: Unapportioned water would be water unapportioned between the two basins. I don't know what sort of a division they could make on it. They probably would find themselves in that position, that is all.

MR. SCRUGHAM: It might be desirable to apportion it between the states at some future period.

CHAIRMAN HOOVER: I don't see any reason for binding them at all.

MR. DAVIS: The wording is a limitation. I think their powers ought to be just as broad as possible when they meet.

MR. NORVIEL: To be thoroughly consistent I think it should be thoroughly consistent as it is.

MR. MC CLURE: I move its passage without the change.

(Thereupon a vote having been taken the Chair announced the paragraph to have been passed with the amendments striking out the words "with like powers to those of this Commission" on the first page, striking out the words "basin as described" on the second page and inserting in place thereof the words "Colorado River System as mentioned.")

Thereupon, Article III was adopted in the following form:

The beneficial consumptive use of the waters of the Colorado River System are hereby divided and apportioned between the Upper Basin and the Lower Basin as follows:

(a) There is hereby apportioned in perpetuity to each Basin 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 feet 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 July 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 July 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 Governors 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 described in paragraph (f). Subject to the legislative ratification of the signatory states and the Congress of the United States of America."



## 2nd Part

## 25th Meeting.

MR. HOOVER: Article IV. (a) (reading) 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 the Basin, it is hereby agreed that the use of its waters for purposes 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 upon the signatories hereto."

MR. DAVIS: I suggest that "upon the signatories hereto" be cut out for this reason. We want the compact binding to the extent that it may be upon the states and the U. S. The U. S. is not a signatory.

MR. HAMELE: In the 4th line, you might cut out "it is hereby agreed that."

MR. HOOVER: We will cut out "it is hereby agreed that."

MR. EMERSON: Let's put a comma after "basin."

MR. DAVIS: I say yes to that.

MR. HOOVER: Shall we put in "Colorado River Basin"?

MR. CARPENTER: You say "Colorado River Basin" above, why not say "it's basin."

MR. HOOVER: Alright, any further comment?

MR. SCRUGHAM: I move it be adopted. (Seconded and passed.)

MR. HOOVER: (reading) (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 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."

MR. SCRUGHALI: I suggest you insert "impounding and" before use in the third line.

MR. MC CLURE: I move its adoption.

MR. HOOVER: All those in favor of this paragraph with the insertion "impounding and", please say Aye. (Passed.) (reading) (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." Any comment? All those in favor please say Aye. (Passed.) (reading) Art. 5. The chief official of each 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 cooperate, ex-officio:

(a) To promote the systematic determination and co-ordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the inter-change 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."

MR. EMERSON: Before state, I suggest we insert "signatory."

MR. HOOVER: Put in "signatory," then we will be sure who it is. Any

other comment?

MR. EMERSON: I move its adoption.

MR. MC CLURE: Second it. (passed)

MR. HOOVER: (reading) Art. 6. Should any claim or controversy arise between any two or more 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; or (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 for 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."

MR. CARPENTER: I think there should be the letter (c) inserted before "for the diversion" with (;) after state.

MR. ELMERSON: In the 10th line there should be a 'comma' after states, and in the second line we should insert "of the signatory" before "states."

MR. DAVIS: In order to make (c) consistent with the other sub-paragraph I would change 'for' to 'as to.'

MR. HOOVER: (re-reads with changes.)

MR. NORVIEL: Moves its adoption. (seconded and passed.)

MR. HOOVER: (reading) Art. 7. Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

MR. NORVIEL: I move its adoption. (seconded and passed.)

MR. HOOVER: (reading) Art. 8 is skipped for the present. Then we come to Art. 9. 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.

MR. EMERSON: I move its adoption. (seconded and passed)

MR. HOOVER: (reading) Art. 10. This compact may be terminated at any time by the unanimous agreement of the signatory States, but at such termination all rights then established under this compact shall continue unimpaired.

MR. CALDWELL: I would like to raise the question if we shouldn't say "all rights established" and leave out "under this compact."

MR. HOOVER: Suppose we change "this compact" to "it."

MR. EMERSON: Wouldn't that paragraph be better in 2 sentences, with a period after 'states,' and say "In the event of such termination."

MR. DAVIS: "all rights then established" - "then" fixes the time.

MR. HOOVER: Well, how do you want it? (re-reads)

MR. NORVIEL: It seems to me "then" fixes the time of the establishment at the end of the period.

MR. CARPENTER: Why not take out "then"?

MR. HAMELE: Is that an accurate statement? The rights established under it - part of them are taken away by termination.

MR. DAVIS: Not if they are rights established.

MR. MC CLURE: I move its adoption. (seconded and passed)

MR. HOOVER: (reading) Art. 11. 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.

MR. EMERSON: I move its adoption.

MR. SCRUGHAM: Seconded (passed).

MR. HOOVER: (reading) IN WITNESS WHEREOF, the respective 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.

MR. DAVIS: I suggest we strike out "respective" in the first line.

MR. HOOVER: Any further comment?

MR. MC CLURE: I move it be adopted. (seconded and passed.)

MR. HOOVER: That completes the matter except Art. 8.

MR. MC KISICK: In Paragraph (g) of Art. 3 the context is not quite right. It reads "as described in paragraph (f)" and there is no description in that paragraph and it evidently is an error.

MR. HOOVER: There is the statement of what the unappropriated water is. It needs that for grammatical purposes. If there is no objection we will adopt it. (passed) As we left it last, it read (re-reads.) Since there are so many objections to that Art. 8, we may as well begin it all over again and re-draft it. It is desirable at some point in this compact to get in some declaration with regard to the rights now existing. The great difficulty is to make such a statement that will not lead to difficulties. Judge Davis solved a paragraph to which there is also some objection. That must be carefully safeguarded no doubt, but if we could get that declaration we will have accomplished a very material point. Mr. Carpenter has been working on the question of terms. I wonder if you (addressing Mr. Carpenter) have not drafted something.

MR. CARPENTER: Not worthy of presentation. I think it should be

limited to all perfected rights, and one thing I want to ask is whether or not the reservoir in the canyon is still desired.

MR. HOOVER: We have some expression that that might be helpful. I have a telegram from the Imperial Valley Association that just came in which shows what is going on. (reads telegram) Such rights as the lower states have in the matter only apply to maintenance of the low water flow, it does not apply to the creation of storage of 9 million acre feet. The way to approach it is for us to make as flat a statement as we can to the present rights. The difficulty lies in inchoate rights and the fact that these rights are likely to be dated as vesting at the time they are filed. We must at least make a declaration about perfected rights.

DIR. DAVIS: Is there any difference in the term "perfected rights" and "beneficial use"?

MR. DAVIS: My thought was this. I am merely talking, you understand, present rights to the beneficial use of water shall not be impaired.

MR. HOOVER: I think you have a useful basis there. The rights to the beneficial use of water of the Colorado River System now enjoyed shall remain unimpaired by this compact.

MR. CARPENTER: Isn't a right enjoyed, even though it isn't perfected?

## Third Part

## 25th Meeting.

MR. EMERSON: Mr. Chairman, that last paragraph in the draft we now have under consideration is to make these rights effective when seven and a half million acre feet have been stored.

MR. HOOVER: I should think they could probably be satisfied with five million. They don't want the pact down there at all to go into force, but I don't see that you can limit this pact until seven and a half million are stored. Otherwise the quarrel will go on and on —

My suggestion of this pact would be "(a) Rights to the use of waters for beneficial — Rights now enjoyed to the waters of the Colorado River shall be unimpaired by this compact.

(b) When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims for rights by holders in the Lower Basin against users of water in the Upper Basin, shall be transferred to water so stored and to the apportionment as set out in Article III hereof."

MR. DAVIS: The very words that have been causing the trouble is "rights." We have been having difficulty with vested rights. We thought by using the words "beneficial use" we would get away from the word "rights". I think you could start the sentence with "The beneficial use" and you would perhaps obviate any discussion along that line. You might say "all beneficial use" or something like that.

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MR. HOOVER: Well, just to get something on paper: "All beneficial use of waters now enjoyed in the Colorado River System shall be unimpaired by this compact. When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims for rights by holders in the

Lower Basin against users of water in the Upper Basin shall be transferred to the waters so stored and to the apportionment as set out in Article III hereof."

How does that strike you?

MR. DAVIS: If we are going to say anything about rights I would rather use "vested rights." I don't object to the first clause -- "beneficial use." I don't like to say "the rights now enjoyed" because the words "now enjoyed" may go back to rights in and to the water. I still don't like the second clause at all, but I don't like to strike it out.

MR. SCRUGHAM: Why not say "rights of the present users of water"?

MR. DAVIS: I wouldn't object to that.

JUDGE SLOAN: Doesn't that cover it "The rights of present users of water."

MR. DAVIS: You don't want the word "beneficial" in there?

MR. HOOVER: There would be this trouble you would run into down there, you have got this situation, you have got a right to a larger amount than they now get.

MR. SQUIRES: I think you should have "all water rights now perfected and in use."

MR. HOOVER: How about the Imperial Valley? Have you perfected rights there for ten thousand feet?

MR. NICKERSON: No sir, they have not applied that much, about seven thousand diverted in the summer, and in the fall about five thousand, now they are taking about three thousand five hundred.

MR. DAVIS: Judge Sloan, what do you say to the words "Present beneficial use" instead of "Rights now enjoyed"?

JUDGE SLOAN: Well that possibly describes it. I don't know why the effort has been made so strongly to keep away from the use of the term



"Owners and holders."

MR. DAVIS: I have tried to keep away from it --

MR. HOOVER: Wouldn't this get what you have got, and get it even more simply, -- I don't know whether you have seen this or not (referring to Draft 9 of Article IIX).

"The rights now enjoyed of beneficial use of waters in the Colorado River System shall be unimpaired by this compact. When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims by users in the Lower Basin against users of water in the Upper Basin shall be satisfied from the waters so stored and from the apportionment as set out in paragraphs (a) and (b) in Article III."

This brings you right back into the pact just as soon as storage is provided.

MR. CARPENTER: How are you going to have them unimpaired and have them satisfied? I don't wish to be impertinent, but I don't think you can have them unimpaired and then turn right around to something else --

MR. HOOVER: You can use the word "but" in there then.

MR. CARPENTER: Or instead of "be" "shall remain unimpaired by this compact until --" I submit this: (Referring to Draft 10)

"The waters necessary to supply any present perfected beneficial uses within either basin shall not be diminished by this compact but shall be satisfied from the water apportioned to the basin in which such beneficial use is now enjoyed, and no claims shall be made on behalf of any such uses in one basin against the water supply by this compact apportioned to the other basin, provided, however, that any such perfected beneficial uses within the Lower Division shall not be required to rely exclusively upon the water apportioned to said Lower Basin until such time as works of a capacity

sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the lower Division."

MR. EMERSON: I have prepared a draft here:

"Present perfected rights to the beneficial use of the waters of the Colorado River System shall be unimpaired by this compact. Whenever the storage of water by the construction of a reservoir or reservoirs to a 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 any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall cease. The waters stored as provided in this paragraph shall be a charge against the apportionment of water to the Lower Basin as set forth in Article III of this compact."

Draft No. 12 was then presented by Mr. Hoover:

"The rights at present enjoyed in the beneficial use of the waters from the Colorado River System shall not be affected by this compact, but when reservoirs of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims by users in the Lower Basin against users of water in the Upper Basin shall be satisfied from the water so stored and from the apportionment set out in paragraphs (a) and (b) in Article III."

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Mr. Hamele submitted Draft No. 14, which is as follows:

"(a) Present perfected rights to the beneficial use of the waters of the Colorado River System shall not be affected by this compact except as provided by paragraph (b).

(b) Whenever the storage of water by the construction of a reservoir or reservoirs to a 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 any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall cease. The water stored as provided in this paragraph shall be a charge against the apportionment of water to the Lower Basin as set out in Article III of the compact.

Whereupon Mr. Emerson submitted Draft No. 15.

MR. HOOVER: This last draft, 15, comes nearer the point. (reading)

"Present perfected rights to the beneficial use of the waters of the Colorado River System shall be unimpaired by this compact. Whenever the storage of water by the construction of a reservoir or reservoirs to a 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 any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall attach to and be satisfied from the waters so stored and from this apportioned to the Lower Basin in Article III of this compact."

JUDGE SLOAN: That is alright but wouldn't it be better if we used "are" instead of "shall be" in the second line.

MR. HOOVER: That would be better, and it would read: "waters of the Colorado River System are unimpaired by this compact."

Whereupon Draft No. 16 was submitted and read by Mr. Hoover, as follows:

"Present perfected rights to the beneficial use of the waters of the Colorado River System are unimpaired by this compact. Whenever storage of a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River, for the benefit of the Lower Basin, then any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall be attached to and satisfied from the waters so stored from the apportionment to the Lower Basin in Article III of this compact."

ADJOURNMENT TAKEN UNTIL 9:30 A.M. TOMORROW.



MINUTES OF THE

26th MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 24, 1922  
10:00 A. M.



## MINUTES OF THE

## 26th Meeting

## COLORADO RIVER COMMISSION.

The twenty-sixth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Friday morning, November 24th, 1922, at 10:00 A.M.

## There were present:

Herbert Hoover, representing the United States, Chairman	
R. E. Caldwell	" Utah
Delph E. Carpenter	" Colorado
Stephen B. Davis	" New Mexico
Frank C. Emerson	" Wyoming
W. F. McClure	" California
W. S. Norviel	" Arizona
Col. J. G. Scrugham	" Nevada

## In addition there were present:

Richard E. Sloan  
 R. I. Meeker  
 Ottomar Hamele  
 A. P. Davis  
 Mr. McKisick  
 Thomas Yager  
 W. F. R. Mills  
 Mr. Nickerson  
 Mr. Bannister  
 Edward W. Clark  
 Charles F. Squires  
 M. C. Mechem  
 Charles A. May

The meeting was called to order by the Chairman.

The redraft of Article VIII as finally submitted at the previous meeting was read by Chairman Hoover, as follows:

"Present perfected rights to the beneficial use of the waters of the Colorado River System are unimpaired by this compact. Whenever storage of a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for the benefit of the Lower Basin, then any claim of rights by appropriators of the water in the Lower Basin against appropriators of water in the Upper Basin shall be attached to and satisfied from the water so stored from the apportionment to the Lower Basin in Article III of this compact."

I would suggest that the word "appropriators" be changed to "users" because there are some small riparian users of the river who will bob up.

MR. EMERSON: However, there is another consideration there, I believe, Mr. Chairman, and that is since water users are not appropriators, the right is not in there.

CHAIRMAN HOOVER: "Appropriators or users."

MR. EMERSON: That is better.

CHAIRMAN HOOVER: And I would suggest that it would be more clear instead of saying "so stored from the apportionment" to say "out of the apportionment." It makes it very clear.

JUDGE SLOAN: Wouldn't it be "the water apportioned to the Lower Basin in Article III that should be impounded."

MR. EMERSON: Not necessarily.

CHAIRMAN HOOVER: Not necessarily.

JUDGE SLOAN: The other wording is just the same in fact, is it not? There is no difference it seems to me, "be satisfied so far as may be from the water apportioned."

CHAIRMAN HOOVER: It might. I think that we must limit it to that right. Otherwise, it is no relief.

JUDGE DAVIS: I think "be attached to " would be better if it said "shall attach to."

CHAIRMAN HOOVER: "Shall attach to and be satisfied" is that right?

JUDGE DAVIS: Yes. It is a matter of English, that's all.

MR. HAMELE: Wouldn't it be better to cut out the words "water so stored from the."

CHAIRMAN HOOVER: No, that wouldn't carry the meaning. We are doing here what is perfectly possible, not to deny a man's right by giving him another source of supply. His right runs right up against the place where he makes his diversion. If you give him a source of supply above that point, you do not disturb his right.



MR. NORVIEL: I would like to see after the word "basin" in the third to the last line, added the words "affected by such storage." The storage being on the main Colorado, the large acreage in the southern basin would not be affected by such waters.

JUDGE DAVIS: You mean the Gila.

NORVIEL: Yes, that is one.

CHAIRMAN HOOVER: That would allow people outside of that to have claims against the basin. It is perfectly possible that they should but this shouldn't prevent them doing it.

MR. CARPENTER: I understood all along, the only matter we are concerned about is distributing the low flow of the river for the projects below the canyon. And that even as to them when certain storage takes place they and all others in that whole basin shall look to that basin's apportionment for their water supply and the same above.

CHAIRMAN HOOVER: That is true.

MR. CARPENTER: And Article VIII should definitely state that fact not only as to the present vested, but all others.

CHAIRMAN HOOVER: I thought perhaps you would raise that question, Mr. Carpenter, and I had this suggestion to follow after the next paragraph. "Unperfected rights" (we have dealt with perfected rights) "are not affected by this compact except that they should be solely satisfied from the water apportioned to the basin in which they are situate."

MR. CARPENTER: I would just simply say - just not mention unperfected rights at all - just say all rights.

CHAIRMAN HOOVER: Then you get into the area as to whether or not these perfected rights haven't got pending storage. We could add something to the effect that in such event all rights shall be satisfied from the water appropriated to that basin in which they are situate.

MR. CARPENTER: I wouldn't want that to be interpreted.

CHAIRMAN HOOVER: That is why I gave you that original wording.

MR. CARPENTER: I think I am responsible for the words "for the benefit of the Lower Basin" and thereby am entitled to raise a question of a doubt as to just what they really do mean.

CHAIRMAN HOOVER: I think in a broad sense it is pretty clear, that it is a benefit to them if it increases their low water flow or anything of that kind.

MR. EMERSON: May I have that last suggestion of yours, Mr. Chairman, again now,

CHAIRMAN HOOVER: "Unperfected rights shall be solely satisfied from the water apportioned to that basin in which they are situate."

JUDGE SLOAN: That is to be attached to the first sentence.

CHAIRMAN HOOVER: No, put it on the end of the whole thing. We have dealt with perfected rights, then we come to unperfected rights.

JUDGE SLOAN: Put that in the second sentence.

CHAIRMAN HOOVER: That would seem to limit the first. I don't know, it wouldn't do any harm, - just the flat sentence.

JUDGE DAVIS: Is it necessary to use those words "against the appropriators of water in the Upper Basin." Wouldn't it read better if you say "any claim of rights by users or appropriators of water in the Lower Basin shall be attached to and satisfied by the water so stored." Has anybody any fondness for the words "against the users of the Upper Basin"?

CHAIRMAN HOOVER: Except that it makes clear what it is talking about.

JUDGE DAVIS: I am not insisting on it, but I would like it better with that clause out. As far as I am concerned if the Lower Basin wanted it in, I wouldn't object to it, but I think the clause is much better with those words out.

CHAIRMAN HOOVER: You might make it read then, "claims, if any, of rights by users of water in the Lower Basin against users or appropriators of water in the Upper Basin." That is no admission.

JUDGE SLOAN: Would it tone it down a little if you put in "all claims of rights that may be asserted by appropriators in the Lower Basin against the appropriators in the Upper Basin shall be restricted wholly to the Lower Basin," etc., "may be asserted."

JUDGE DAVIS: I will withdraw the suggestion since there seems to be so much opposition to it.

CHAIRMAN HOOVER then dictated the paragraph in discussion. It was typewritten, and read as follows:

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage of a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for the benefit of the Lower Basin, then claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin, shall attach to and be satisfied from the water so stored out of the apportionment to the Lower Basin in Article III.

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

CHAIRMAN HOOVER: Are there any further suggestions on that paragraph?

MR. CALDWELL: I would like to suggest, Mr. Chairman, that looking at the last two lines in the first paragraph "Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the water so stored out of the apportionment to the Lower Basin in Article III," Cut out the "water so stored out of the apportionment to the Lower Basin."

JUDGE SLOAN: May I ask if the intent by the use of the word "claim" is to cover asserted claims or merely valid claims.

MR. EMERSON: Claims, if any.

JUDGE SLOAN: Of course, there may be asserted claims, then the word "attach" would hardly be proper. If you are dealing with perfected rights:

then before the word "rights" should be the word "such"; "then claims, if any, of such rights" would make it plain if that is the intent.

JUDGE DAVIS: In reference to the second paragraph, you say the "other rights" which is apparently in counterdistinction to the preferred rights mentioned in the first paragraph. That was the thought I had.

CHAIRMAN HOOVER: It might be better in that sense. It might give clarity.

MR. NORVIEL: I think the word "such" ought to go before "claims" and cut out, "if any."

JUDGE SLOAN: "Claims of such rights " would be better. That would involve the idea of valid claims, of course.

MR. NORVIEL: And cut out the "if any."

JUDGE DAVIS: No.

CHAIRMAN HOOVER: Put in the "if any" after "rights."

JUDGE DAVIS: "Claims of such rights, if any" would read better, yes."

MR. EMERSON: In that second paragraph, I think we ought to repeat the words "of the Colorado River System" in order to make it clear.

MR. CARPENTER: That last line is rough for me. I don't understand myself what it means and I fear others won't. This is the thought, I supposed, wished to be expressed, that the waters so stored shall be waters due the Lower Basin on its apportionment; but it seems to me the thought of stored water is more or less confused with the idea of apportionment - that the water so stored is a part of the apportionment to that Basin.

JUDGE DAVIS: It seems to me under the previous articles of the compact that water stored must be within the apportionment anyway.

MR. EMERSON: Wouldn't this language cover it "from the water apportioned in Article III that shall be so stored."

MR. CARPENTER: I am keeping in view the fact that the water stored

CHAIRMAN HOOVER: (Interrupting) Then would you reduce the flow by whatever amount was held up in storage.

MR. CARPENTER: No. That would be a credit to be at Lee's Ferry as it passes over.

JUDGE DAVIS: Whether they use it directly or through storage makes no difference in the amount they get. I would put a period after "stored" and cut out the rest if I was writing it.

CHAIRMAN HOOVER: What I have thought by way of reference to Article III was that to avoid all of the complex discussion of the conditions involved in Article III. You have a great number of different events following in sequence in that Article and they might claim that part of it had to go to Mexico; etc., and if it just refers back to Article III it covers all those contingencies.

MR. NORVIEL: Isn't what is meant by Article III is, our apportionment is not perfected until the water passes Lee's Ferry and no claim could be made that the fulfillment of that apportionment has been had until the water does so pass. Mr. Carpenter seems to think that if the storage is made in the Upper Basin it is already a part of the apportioned water.

MR. CARPENTER: No, that wasn't my thought. I just wanted to say word this that the storage - the making of the storage on the river, Mr. Norviel, shall not be limited to either Basin. Anything in the main stem of the river in the storage there would accomplish this objective. The matter of crediting to us will, of course, be that passes Lee's Ferry. If you can assist in finding language that will express this well and good.

MR. NORVIEL: I can, and it would be definite, certain, without any equivocation, and that is to fix the storage in the Lower Basin then seek for a draft on that to our own heart's content, so long as the storage is there and the water is so stored.

MR. CARPENTER: We shouldn't be bound by the place where the storage is made if it runs to the benefit of the lower territory.

MR. NORVIEL: The water doesn't belong to the Basin until it has passed Lee's Ferry.

MR. EMERSON: You construct a reservoir above Lee's Ferry for your benefit. It seems as though you ought to have the right to do so if the conditions are proper.

MR. NORVIEL: Regulation and control of the storage should be absolutely in the control of the Lower Basin no matter where it may be.

CHAIRMAN HOOVER: I think that is pretty well protected.

MR. NORVIEL: But the condition "solely" - "solely for the benefit of."

CHAIRMAN HOOVER: Well, I wouldn't like that because any storage in the Lower Basin shall be for the help of the Upper Basin.

MR. NORVIEL: After the water passes Lee's Ferry their obligation is finished. I think the whole trouble is in the thought of the storage in the Upper Basin and if they could realize that thought and allow the idea of storage in the Lower Basin, the difficulty would be over.

MR. CARPENTER: I do not believe you want us to do that for your own sake, Mr. Norviel.

CHAIRMAN HOOVER: I don't think we should preclude Lee's Ferry from the satisfaction of this because obviously the engineering sense of the whole situation isn't entirely complete. Didn't our original wording here cover all of the points that we have really had in discussion "stored out of the apportionment to the Lower Basin in Article III." I think it covers -

MR. NORVIEL: I think it does not.

MR. CARPENTER: Should that be from the water or any water.

CHAIRMAN HOOVER: From the water so stored out of the apportionment. I can't but think that covers the whole point.

MR. EMERSON: It isn't quite covered. "And shall be a charge against." If it has to be a charge against that apportionment, it wants to be said so conclusively.

CHAIRMAN HOOVER: You might say "shall be stored as a part of the apportionment to the Lower Basin," - might use the word "part" instead of "apportioned," as Mr. Carpenter suggested. Get away from the reiteration of "apportioned and apportionment." How does that strike you, Carpenter.

MR. EMERSON: There are two thought there, Mr. Chairman. You are trying to put them in the same sentence without a conjunction. Two separate and distinct thoughts. The first idea is that you are going to provide a certain storage here and whatever rights the Lower Basin may have against the Upper Basin are going to be transferred to this storage, and it is so stated here. That is one thought. The second definite thought is that any amount of water for satisfaction of the Lower Division under any condition shall be a charge against the apportionment to the Lower Basin. To my mind, there are those two distinct thoughts and they cannot be expressed without a new sentence or at least a conjunction. "The water so stored" is correct that far, "and the water so stored shall be a charge against the apportionment to the Lower Basin as set forth in Article III."

CHAIRMAN HOOVER: You really mean included in apportionment, don't you, the same thing.

MR. EMERSON: Part of it. It is a charge against it. I don't know any more expressive term than that it is a charge against that apportionment a charge against that account.

CHAIRMAN HOOVER: I am only afraid of the fellow that will get up and say, we had seven and a half million this year, had to put five million in the reservoir and that only leaves us two and a half million.

MR. EMERSON: He is arguing from a fallacious standpoint. He is con-

cerned about the low water flow and it don't require the storage of seven and a half million to take care of the low water flow.

CHAIRMAN HOOVER: I recognize that. I was just trying to get away from fallacious arguments.

JUDGE DAVIS: I can't get away from the thought that this is a tempest in a teapot. We have said clearly in Article III that there is apportioned to the Lower Basin a certain amount of water for all uses. Now here we have a clause which is not apparently intended to cover the apportionment at all, but is simply saying that when a certain amount of water is stored, certain things shall result. It seems to me absolutely unnecessary to say anything in this clause beyond that fact, that when that storage occurs those rights attach to it.

CHAIRMAN HOOVER: You are right, because we have a statement in paragraph 3, saying specifically that all rights are included in this apportionment, haven't we.

JUDGE DAVIS: If you will put a period after "storage" and cut out the rest of your sentence you will do away with this argument.

CHAIRMAN HOOVER: I believe you are entirely right. If you go back to Article III, you will confirm it.

MR. EMERSON: Yes, I agree with that, Mr. Chairman. If it is not necessary there is no use in putting it in at all.

CHAIRMAN HOOVER: At the end of (a), "which shall include all water necessary for the supply of any rights which may now exist." There is a specific statement there.

MR. EMERSON: And the last paragraph would be unnecessary.

CHAIRMAN HOOVER: The last paragraph has rather a different import. Mr. Carpenter needed that as against inchoate rights spreading themselves from one basin to another. May we now return to the new draft.



(The draft was then read as follows:)

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage of a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for the benefit of the Lower Basin, then claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the water so stored.

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

MR. CALDWELL: Mr. Chairman, I am not satisfied on the point here. It might be better if I could be satisfied on it before we go to the question of voting, rather than to have me vote "no" at that time. I am not interested in the storage in the Lower River. All I am interested in is the capacity which is provided down there. I think this paragraph should read that "when storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for or running to the benefit of the Lower Basin, then claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the apportionment to the Lower Basin in Article III."

Now they can store it or do anything they want to with it but the capacity is there. But what we want to do is attach it to the apportionment. That may be another tempest in a teapot but that is what I think. The only answer to my suggestion that I made a while ago on that proposition was that some legal opinion had been rendered to the effect that it was more satisfactory with that in.

MR. CARPENTER: We should cut out the words "of a."

CHAIRMAN HOOVER: Well, of course, I was rather impressed with the legal opinion given that we were setting up something here that strengthened the legal defense of the Upper States against claims of the Lower Basin. If that has no validity, I haven't any opinion on it at all; but when you set up another source for water in order to satisfy an appropriator, it ought to be

made clear that such a source is provided to him.

MR. CALDWELL: The source, Mr. Chairman, so far as I can see now, is the apportionment made to the lower Basin stored or unstored.

CHAIRMAN HOOVER: Well, the distinction is that the source, so far as his rights are concerned, isn't water in storage; his rights are unimpaired and to give him another source you wouldn't impair his rights. His rights run regardless of any apportionment which we may make. The re-apportionment of the river doesn't give him a source for his water supply. He has that already. We give him another source for his rights by giving him storage. We are setting up a further defense for the Upper States by sticking to the terms which you want to exclude. It also makes clear to the lower states the source from which they are to receive this transfer to their rights.

MR. CALDWELL: It is limited, however, Mr. Chairman, to the apportionment to the Lower Basin, isn't it?

CHAIRMAN HOOVER: You can't limit an unimpaired right. You have to transfer it to something else.

MR. CALDWELL: What I am trying to do is some time or other to bring them within their apportionment down there. If that is not what we are trying to do, I am on the wrong track. I think they should be brought within their apportionment some time.

CHAIRMAN HOOVER: That is what we are trying to do, but we are trying to do it by a method. Mr. McKisick, what is your opinion on that?

MR. MC KISICK: Mr. Chairman, and gentlemen. I think that it would be very proper and right to include the words "so stored." The underlying reason for the clause as it now stands is precisely as you have stated it. Assuming that there are rights in the Lower river which must be satisfied this Commission has no power to impair those rights. You have to provide another source from which the necessary waters may be supplied. You have

not impaired the right, but I think it should be clearly stated in the compact that the stored water is a substitute to be drawn upon in lieu of the right to pursue the waters across Lee's Ferry into the Upper Basin, and you have a clear line of demarcation there, and taking the last of the present clause as it now stands, in conjunction with paragraph (a) of Article III, you do have a very clear and distinct line of demarcation. This stored water is a part of the water apportioned to the Lower Basin, although it may be situated in the Upper Basin. The moment it is released and comes down past Lee's Ferry, it is to be counted as a part of the 75,000,000 acre feet annually and the Lower users cannot complain because there is an additional source from which he may satisfy his demand. You have provided in the article there drawn, storage exceeding the present annual consumption of the Lower Basin. He is not hurt if he can go to the stored water and satisfy his needs. We haven't divested any right he now possesses.

MR. EMERSON: Would it be storage or storage capacity? Would it be the actual storage at all times of 5,000,000 acre feet of water or would it be storage capacity to that amount made available.

CHAIRMAN HOOVER: It seems to me that the obligation should end whenever a certain capacity is made available.

MR. CALDWELL: At the present reading whenever storage of a capacity of 5,000,000 is made leaves the inference that forever there would be 5,000,000 acre feet to draw upon. That isn't what we really mean. We mean that this obligation shall cease whenever storage capacity to that amount is available.

MR. MC KISICK: I don't know how you could make it any more definite because you have to rely upon nature to do her part, and you assume that the storage reservoir -

MR. EMERSON: (Interrupting) In the draft I originally prepared, I stated definitely when a reservoir or reservoirs to a capacity of 5,000,000

acre feet are constructed, such and such a thing shall happen, and I believe that is the idea that should be retained. We can't guarantee the total amount of storage of 5,000,000 acre feet at all times. It is the storage capacity that we agree to make available. We agree to await the time until that shall be available. I would make this suggestion, as an amendment: When storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for the benefit of the Lower Basin, claims of such rights, if any, by appropriators or users in the Lower Basin against appropriators or users in the Upper Basin, shall attach to and be satisfied from the storage so made available.

JUDGE DAVIS: Such storage.

MR. EMERSON: It isn't the storage made available. "From storage so made available," and "from such storage capacity." That is it.

CHAIRMAN HOOVER: I do not think we can take a legal right and transfer it to the walls of a reservoir. You have to transfer it to the water if you are going to get any release in the North from such claims. You will have to attach it to the water.

MR. CALDWELL: This is not only storage capacity provided, but it is such storage capacity as is for the benefit of the Lower Basin. When that capacity is available, if you get the water right down below, we expect it to use that capacity, and that water that goes into that storage is to come out of the apportionment made in Article III.

MR. MC KISICK: I don't think there is any difference in opinion about that because if you read paragraph (a) of Article III in conjunction with this present provision, you will clearly see that the water which may be stored for the benefit of the Lower Basin is a part of the water apportioned to it.

MR. EMERSON: Mr. McKisick, if they had left the reservoirs the way

I had them constructed last night, it would state that the right shall attach to and be satisfied from the water stored in such reservoir or reservoirs.

CHAIRMAN HOOVER: You can add right here, the water so stored.

MR. EMERSON: Yes, it is just as if you were going to keep that much water in the reservoir at all times.

MR. MC CLURE: I don't so read it Mr. Emerson. Everybody realizes the water will fluctuate. If you take a normal season, the assumption is that at the beginning of the low water flow, the reservoir will be full, or measurably full and there will be stored in it a quantity of water for consumptive use of the Lower Basin, and having that quantity of water in normal years, the appropriators and users of the Lower Basin will not be injured by being directed under this compact to look to the stored water instead of attempting to go upstream and interfere with any users that might be in operation in the Upper Basin.

MR. EMERSON: I agree with you absolutely on the principle, but I do not believe it is properly expressed in the present wording.

JUDGE DAVIS: Emerson would this cover your idea "that may be," "from the water that may be stored."

MR. EMERSON: Yes, that would do it.

CHAIRMAN HOOVER: Has anybody any objection to introducing the words, "water that may be so stored."

MR. CARPENTER: Say, for the benefit of what you want in there, "Is available to or for the benefit of the Lower Basin."

JUDGE DAVIS: I said "from the water that may be stored."

JUDGE SLOAN: "That may be stored," or "so stored."

JUDGE DAVIS: "So" is all right.

MR. EMERSON: "From the water made available by such storage."

CHAIRMAN HOOVER: That is all right. You want "water that may be made

available from such storage."

MR. EMERSON: Capacity.

CHAIRMAN HOOVER: Well, supposing it isn't available. You haven't done anything to stop his right.

MR. EMERSON: That is just what I am trying to get away from.

CHAIRMAN HOOVER: What I am trying to do is to stop the proceeding.

MR. EMERSON: That is what I wish done, but I don't want to condition it upon the fact that we have to store 3,000,000 acre feet there.

MR. CALDWELL: Mr. McKisick, I think you might be able to get me clear on this provision. The intent of everybody is that this water - that is, the water right, which the Imperial Valley people are seeking to protect here, shall in the event of this storage attach to the apportionment made in paragraph (a) of Article III. Is that right?

MR. MC KISICK: I think so.

MR. CALDWELL: Now, why cannot that right attach to that apportionment just as well as it can attach to a part of that apportionment stored. That is what I don't see.

MR. MC KISICK: Well, the practical answer to that question is this, Mr. Caldwell. That if a difficulty ever arises between the lower users and the upper users, it will arise at a time of deficiency when there is not water in the lower river sufficient to meet the diversions of the lower users. Unless they are relegated to the storage, that 75,000,000 acre feet provided to be supplied by the provisions of paragraph (b) of Article III will have passed down and they will have nothing - nobody will have storage. That is the present condition. Article VIII is made contingent upon the creation of storage until the storage is created the right continues as at present.

MR. CALDWELL: Would "storage capacity" do as well as "storage."

MR. MC KISICK: I don't see that there is any real distinction between the two.

MR. CALDWELL: Yes, there is a very real distinction.

MR. EMERSON: To my mind there is a very definite distinction.

MR. MC KISICK: I can see that looking at it in one way, there might be a distinction. You might have an empty reservoir.

CHAIRMAN HOOVER: In which case, if you have an empty reservoir, his unimpaired right comes into action against you, whereas if you put his right in the reservoir he has ended his right against you.

MR. CALDWELL: We will suppose an empty reservoir is there. What I want in this article is something which will say that it is incumbent upon the Lower Basin to use that storage, to store the water out of its apportionment, and if it doesn't have any reason to use that capacity, it is no fault of the Upper Basin.

MR. EMERSON: I can see now that if the reservoir with a capacity of 5,000,000 acre feet is provided and that is once filled, that then this changing condition will immediately take place and that it would not be, as I was arguing before, a necessity upon our part of continuing a maintenance of 5,000,000.

CHAIRMAN HOOVER: No, you only have to keep up  $7\frac{1}{2}$  million a year.

MR. CALDWELL: If you attach this to the minimum flow and mean that there shall only be a call against the Upper Basin sufficient to fill that reservoir once and let that remain as a guaranty against their low water, while we keep the water from the Upper Basin running past Lee's Ferry to the extent of 75,000,000 in ten years, I say the language does not show that that is what is meant.

CHAIRMAN HOOVER: I think you would cut out all of your trouble if you would cut out the word "so".

MR. EMERSON: That would remove my objections.

CHAIRMAN HOOVER: Their apportionment comes under Article III.

MR. CALDWELL: Well, if that is confined to "within" that is where I want to corral it.

CHAIRMAN HOOVER: Then are you satisfied with the statement "from the water that may be stored."

MR. CALDWELL: I don't know that I am.

CHAIRMAN HOOVER: Mr. Emerson, Judge Sloan suggests that it might also help you if we cut out the words, "and be satisfied."

MR. EMERSON: I don't want to see that taken out. I think I am satisfied so far as I am concerned, with the words "storage capacity" written out and "from the water that may be stored."

CHAIRMAN HOOVER: Does that satisfy you, Mr. Caldwell, "attach to and be satisfied from the water that may be stored."

MR. CALDWELL: "From the apportionment to the Lower Basin," would satisfy me.

CHAIRMAN HOOVER: Well, you are just repeating the pact and you are making it more difficult.

MR. CALDWELL: Why not concede that to me, Mr. Chairman.

CHAIRMAN HOOVER: There is an intrinsic objection to that and that is that the storage may be made from the surplusage that none of us possess. Why add that difficulty to the people in the south in swallowing what is going to be a difficult thing to swallow anyhow.

MR. NORVIEL: And I don't understand that that 7½ million acre feet is going to be branded and labelled so that we are going to know whether it is that particular water or not.

MR. CALDWELL: I think I will make another concession, Mr. Chairman, and cut out those last words,



CHAIRMAN HOOVER: Well then the thing stands in this wording:

"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 in the main Colorado River for the benefit of the Lower Basin -

MR. CALDWELL: (Interrupting) May I ask to have inserted there "on the main Colorado River for or running to the benefit of the Lower Basin."

CHAIRMAN HOOVER: I do not see any objection.

MR. NORVIEL: No, I will object to that.

MR. JEMERSON: What is the objection.

CHAIRMAN HOOVER: It is one of those things that looks like it had more to it than it really has. It excites suspicion on Mr. Norviel's part.

MR. CALDWELL: Well, we have a lot in there that excites suspicion on our part.

MR. NORVIEL: I think it would remove all suspicion if we cut out everything after the first period. Then there wouldn't be anything suspicious left

CHAIRMAN HOOVER: Mr. Caldwell, I don't think "for or running to" accomplishes anything. It is for the "benefit" in any event. It is a more inclusive term than "running to."

MR. CALDWELL: I admit that my thought was more or less technical. The reservoir may be built anywhere for any purpose, but if the benefit runs to the Lower Basin it would only be what we are trying to say, that is all. If the benefit runs to the Lower Basin, although the reservoir may be built for power purposes or other purposes, I think it would avoid misunderstandings in the future.

CHAIRMAN HOOVER: It immediately excites suspicion that you intend to erect reservoirs in the Upper Basin. Then also all that sort of discussion comes in.

MR. CALDWELL: Well, another concession.

CHAIRMAN HOOVER: (reading) "for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water 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."

"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."

. Is there any further comment?

MR. CARPENTER: The word "Basin" there; you think that is enough.

MR. EMERSON: We have used it in the same way in different places.

MR. CARPENTER: I think myself it is.

CHAIRMAN HOOVER: I think it is. We have it pretty accurately defined. Any further comment? If not, I will entertain a motion for the adoption of the clause.

MR. EMERSON: I move the adoption of the clause.

MR. NORVIEL: I second the motion.

CHAIRMAN HOOVER: It has been moved and seconded that we adopt the clause as it now stands. Those in favor say "aye."

(Upon vote, the motion was carried.)

JUDGE DAVIS: I will register my vote as "yes" on that Article. I do it only because to my mind it is the least objectionable of the attempts that have been made to frame the idea expressed in it, and not because I approve of it.

MR. EMERSON: I concur in the statement of Judge Davis, having the same feeling in the motion.

MR. NORVIEL: I think I would be willing to second that.

MR. MC CLURE: I think that idea is unanimous.

CHAIRMAN HOOVER: In other words, this is a compromise to which neither

side is content. But we have compromised the matter and the clause is adopted.

MR. EMERSON: Can we refer briefly now, to the matter of the time of year. We have it in Article III, paragraph (f) in one place. It is first in (a) of Article III in the next to the last line of the paragraph, the first day of October, Article III, paragraph (d).

CHAIRMAN HOOVER: It is moved and seconded, I assume, that we change the dates in Article III.

MR. EMERSON: October instead of July.

CHAIRMAN HOOVER: All those in favor say "aye."

(The motion carried unanimously.)

Are there any other questions on the pact as settled?

MR. CALDWELL: Mr. Chairman, it seems to me that in the article which was supposed to cover definitions, I believe it is Article II, that there was a matter left in suspension there with respect to whether or not we needed to use the definition of "apportionment" or "apportioned."

CHAIRMAN HOOVER: I agree with you, we have no longer any use for the definition. All in favor of striking out definition (h) say "aye."

(The vote was unanimously in favor of striking out the said definition.)

Any other questions? Are you ready for a vote on the entire compact?

MR. MC CLURE: I move its approval.

JUDGE DAVIS: I think the motion should be for engrossing.

MR. MC CLURE: I accept that amendment.

CHAIRMAN HOOVER: The motion is that the compact shall be adopted for engrossment.

JUDGE DAVIS: I second the motion.

CHAIRMAN HOOVER: Any discussion?

MR. CALDWELL: Mr. Chairman, I am not at all satisfied with Article III; but perhaps it has gone too far, and if so I am entirely out of order. That

is the matter of the manner of dividing, or apportioning, either uses or water, and I don't know whether there is any use of discussing it or hope of changing it or improving it; but if so I would suggest that we do. If not, I will pass it up.

MR. EMERSON: I believe we should have a motion to re-consider and see how the different members feel about it. This is a matter where more than one are not satisfied with the compact the way it now stands. The nearer we can come to unanimous satisfaction, as well as unanimous consent, the better for us all.

CHAIRMAN HOOVER: Will you make such a motion.

MR. EMERSON: I move we reopen Article III for the purpose of discussion.

CHAIRMAN HOOVER: Do you want to make it the whole article, or link it to the discussion of the beneficial use?

MR. EMERSON: It is more as to whether we are dividing uses or whether we are dividing water.

MR. CALDWELL: I second it.

CHAIRMAN HOOVER: It has been moved and seconded that we reconsider Article III in the light of whether we are dividing uses or water. Those in favor say "aye."

(The motion carried by unanimous vote.)

MR. CALDWELL: Well, I am not going to make much of an argument about this proposition except as a matter of common sense. I may say that so far as I have been able to canvass the states, the lawyers do not agree, so for that reason I may be in disagreement myself.

MR. CARPENTER: I think the trouble comes more in the manner of expression than any other feature.

MR. CALDWELL: Mr. Carpenter, I will defer to you in this matter, and if you conclude that this is only a matter of a different way of expressing

the same thing I don't care to go any further with the question. If there is a difference between one and the other, I should like to have the matter clear if you can make it clear.

MR. CARPENTER: I think the - if I may so state - that the motion I made last night covers the opposition offered; that was that the preamble read, "The waters of the Colorado River System are hereby divided and apportioned for beneficial consumptive use between the Upper Basin and the Lower Basin, as follows:"

MR. CALDWELL: If that is all, I am not quibbling on language.

MR. CARPENTER: We are apportioning the water for consumptive, beneficial use.

MR. EMERSON: That is what we are trying to do.

CHAIRMAN HOOVER: Are you apportioning the use of the water, or are you apportioning the water?

MR. EMERSON: We are apportioning the water for use.

MR. CARPENTER: This is not a matter between irrigators. It is a matter between states of apportioning the water of this river for a certain purpose.

CHAIRMAN HOOVER: In other words, you divide the water itself. Is that your idea?

MR. CARPENTER: Yes, for a certain purpose.

MR. CALDWELL: I think for a practical matter we are almost making two rivers out of one in the Colorado River, to meet a practical situation. We are dividing it at Lee's Ferry, keeping part of it above and part of it below and I believe that would be the popular conception of it at least, and I believe it is the accurate conception.

MR. CARPENTER: I believe the manner in which it is expressed will meet with very serious opposition, by many students of the question and the manner of my expression will meet those objections.

MR. EMERSON: I know by the way the preamble and Article II reads it will meet opposition in Wyoming.

CHAIRMAN HOOVER: Well, I suppose we will have to have some legal argument on this thing. I will call on all the lawyers present.

MR. NORVIEL: In Article I we have used the word "apportionment" as one of the several things we are undertaking to do - the commission proposed to do, and we have a definition of "apportionment" and then we concluded that we hadn't used the word at all, we hadn't done as we intended to, and we struck it out.

(First part of meeting held Friday, November 24, 1922, at 10 A.M.  
Concluded.)

MINUTES OF THE

27th MEETING

COLORADO RIVER COMMISSION

Bishop's Lodge  
Santa Fe, New Mexico

November 24, 1922  
2:30 P. M.

## MINUTES OF THE

## 27th Meeting

## COLORADO RIVER COMMISSION.

The twenty-seventh meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Friday afternoon, November 24th, 1922, at 2:30 P.M.

There were present:

Herbert Hoover,	representing the	United States,	Chairman
R. E. Caldwell,	"	Utah	
Delph E. Carpenter,	"	Colorado	
Stephen B. Davis,	"	New Mexico	
Frank C. Emerson,	"	Wyoming	
W. F. McClure,	"	California	
W. S. Norviel,	"	Arizona	
Col. J. G. Scrugham,	"	Nevada	

In addition there were present:

Richard E. Sloan  
 A. P. Davis  
 Mr. Nickerson  
 W. F. R. Mills  
 R. I. Mecker  
 Mr. Bannister  
 Charles A. May  
 Charles P. Squires  
 Edward W. Clark  
 Mr. McKisick  
 Thomas P. Yager

The meeting was called to order by the Chairman.

The first item taken up was the question of printing the records of the hearings of the Commission, which were held in the Spring of 1922. It was stated by Mr. Stetson, the Secretary of the Commission, that the cost of printing the records had been estimated as follows:

for 1,000 copies	\$ 2,493.47
for 1,500 copies	2,721.56
for 2,000 copies	2,947.49
for 2,500 copies	3,173.31

Chairman Hoover then asked for an estimate of the cost of mimeographing the said records, and such estimate was given by Mr. Stetson at \$700.00.



The final decision of the Commission was that in case of hearings being held on the questions which had come before the Commission, the records should be mimeographed.

The next item taken up for disposal was an appeal to the Commission from Mr. Jay Turley. This was filed for future reference.

Mr. Stetson then presented to the Commission for its consideration a letter written by the acting Director of the United States Geological Survey, with reference to Gauging Stations and containing information on the various gauging stations already established and proposed to be established. It was stated by Chairman Hoover that since the Geological Survey would automatically come into possession of this letter and the information contained therein some years hence, it was best to let the matter rest.

The minutes of the 9th and 10th meetings of the Commission held in Phoenix, Arizona, and in Denver, Colorado, never having been approved, Chairman Hoover made a brief statement of the matter contained therein, and entertained a motion for their confirmation. Upon motion made by Mr. Carpenter and seconded by Judge Davis, the minutes of the 9th and 10th meetings were unanimously approved.

Upon suggestion by Chairman Hoover, it was resolved by unanimous vote that the Commission submit to the management of the Bishop's Lodge a resolution of thanks for the kind attention received during the meetings held at that place, such resolution to be written by the Secretary.

Chairman Hoover stated that Mr. Norviel had a question which he wished to present to the Commission dealing with the Girard project. Mr. Hoover stated: "I had this suggestion about that: that I doubt whether the Commission wishes to express any particular view on any particular project and it might desire to express the view that it doesn't feel that it has come within its purview to make recommendations with regard to particular

projects on the river. It might go further than that and state that it trusts that in all power permits granted by the Federal Power Commission, they should be made subject to this compact whether the compact dates from this moment or not. Do you think so, Mr. Norviel?

MR. NORVIEL: Yes, I do. I have a little preliminary statement here I would like to state, Mr. Chairman. I do not know whether this should go into the minutes or not because this, I deem it, would be rather extraneous.

(It was decided that Mr. Norviel's statement should not go into the minutes.)

At the close of his statement, Mr. Norviel said:

"I suggest that either a short resolution or statement be made that this Commission and its individual members have no objection to the granting of the license to Mr. Girand at any time when it appears to be necessary or proper under all the circumstances.

MR. SCRUGHAM: Would you put that after the ratification of the compact.

MR. NORVIEL: Outside and aside from the ratification of the compact.

MR. SCRUGHAM: We would withdraw all objections after the ratification of the compact.

MR. NORVIEL: If the Commission does not want to express itself in a resolution, I suggest that the statement be made to the Federal Power Commission, simply that this Commission and its individual members have no opposition to the granting of a license to Mr. Girand of this kind, that we can use in our state and it will be a very great help in obtaining the ratification.

MR. MC CLURE: Mr. Chairman, I have very great sympathy for the position in which Mr. Norviel finds himself and should be pleased, if I know how, to give him some assistance. Mr. Girand is in an unfortunate position also. Following our Spring meetings in the early part of the year I wrote the

Secretary of the Interior, Commerce and Agriculture, stating that I was not writing as a member of the Colorado River Commission at all but as an officer of California stating that in my judgment it would be unwise at this time to grant a license to Mr. Girand or any other person for the erection of works for generating power. I have not made that statement to any one of these commissioners heretofore. I thought it need not be made; but I do not care without further enlightenment as to what may occur in the future, to change my attitude as an officer of the State of California.

JUDGE DAVIS: My judgment on it is -

MR. NORVIEL: (Interrupting) Just a moment. I would like to ask Mr. McClure to state his reasons for assuming that attitude.

MR. MC CLURE: Due program at a time, as Colonel Scrugham suggested. After this matter is out of the way, then we can approach the next program. I do not consider that it is our province at all to pass on the matter of the application for a project for power.

CHAIRMAN HOOVER: Judge Davis?

JUDGE DAVIS: The very last remark that Mr. McClure made, I think states my attitude. I feel that we are met here under very definite powers and at the same time under very definite limitations of power. We have one duty and that I think we have already accomplished. It is not within the province of this commission to determine the value of any particular project on the river whether it is for irrigation or power or anything else. If it were not for the fact that the Federal Power Commissioner has written to us a letter I should say that we should take no action whatever regarding the matter. But since we have received the letter, I think it should be answered. Do answer it by saying the matter is beyond our jurisdiction and personally I would be willing to go one step more and say the matter is beyond our jurisdiction and therefore we have no objection to the issuing

of the permit but I can see where that second clause might be debatable, but beyond that I do not think we have power to go and do not think we should go.

MR. NORVIEL: I would like to hear from each one.

CHAIRMAN HOOVER: It rather appears to me that the easiest way to handle the situation without doing injury is this: Address the note in these terms from the secretary: "In respect to your letter of \_\_\_\_\_ I am requested to inform you that the Commission does not feel that the matter you raise is within its jurisdiction, and is therefore unable to express its views in the matter." (Or you can leave that off.) The commission earnestly requests of the Power Commission that all power permits granted within the Colorado River drainage shall be made subject to this compact, copy of which is enclosed herewith."

JUDGE DAVIS: That would get my ideas, Mr. Chairman.

CHAIRMAN HOOVER: Do you think that would take of any difficulty so far as this Commission is concerned, Mr. Norviel.

MR. NORVIEL: Yes, I think it would. It would help materially.

CHAIRMAN HOOVER: I think, Mr. Girand has been lead into a position of a good deal of expense by the action of the Power Commission. The Power Commission has some responsibility to Mr. Girand, that power is not our particular province.

MR. NORVIEL: I realize that and I also think that he has a perfect right to demand a license. But I believe the general objections if the full facts were known to all should be raised to the Girand Project because as I look at it now the main objection was that it would take away the market for power that might be necessary for any larger project constructed by the river. I do not believe that that argument is sound now under the whole broad situation and perhaps will gradually give way. Of course, I would very much like to have home and use but if I can't have it -

CHAIRMAN HOOVER: (Interrupting) I think it would relieve the minds of the commissioners a great deal if the governor when he has an opportunity to see the pact, and see that it doesn't contain the fatal pitfalls, it would have a great influence on the minds of the other commissioners with regard to the Girand project.

JUDGE DAVIS: I move the adoption of the form which the chairman suggested.

Chairman Hoover then dictated the following letter, which was typewritten and read:

"In respect to your communication of March 3, I am requested by the Commission to inform you that it doesn't feel that this matter lies within its jurisdiction.

"The Commission earnestly requests that all power permits that may be granted on the Colorado River Drainage, should be made subject to the terms of the compact, copy of which is enclosed herewith."

CHAIRMAN HOOVER: Mr. Stetson suggests that we cut out the last word "herewith."

MR. NORVIEL: I think that might be omitted.

CHAIRMAN HOOVER: All in favor of that letter being dispatched, say "aye."

(The motion was unanimously carried upon a vote being taken.)

Chairman Hoover then read the following resolution:

"The Colorado River Commission has had constantly before it the great menace by annual floods to the lives and property of the people of the Imperial and Palo Verde Valleys in California, and the Yuma Valley in Arizona:

"Therefore, the Colorado River Commission in session at the Bishop's Lodge, Santa Fe, New Mexico, earnestly recommends and urges the immediate

construction by the Government of the United States of a dam or dams on the Colorado River, of sufficient size to impound at least the average annual flow of the river, to control the floods and permanently avoid the menace."

There followed a general discussion, after which the resolution was adopted in the following form:

"The members of the Colorado River Commission have had constantly before them the great menace by annual floods to the lives and property of the people of the Imperial and Palo Verde Valleys in California, and the Yuma Valley in Arizona, and the anxiety of their thousands of citizens:

"Therefore, they earnestly recommend and urge the early construction of works in the Colorado River to control the floods and permanently avoid the menace, such construction to be made subject to the Colorado River Compact."

On behalf of the members of the Colorado River Commission, Mr. Delph E. Carpenter made the following remarks:

"We have about completed the task assigned to this Commission, which is the first exemplification of interstate diplomacy in the history of the United States on so large a scale. Each member may take home with him and reserve unto himself all the credit that is due, and a large measure of the credit is due to each of the members of this Commission. In fact, it has been frequently remarked in my presence that it would be a rare occurrence indeed to again find a Commission composed of members who possessed the peculiar qualities and qualifications that each of the members of the Commission does: so that each of us may take what credit we wish and not feel we have overdone the measure.

"But I feel as a member of this commission that our whole proceedings would look something if we did not say that to our Chairman is due the great measure of the credit for making possible this successful conclusion. Through all the days of our toil our Chairman has been kind and generous and patient.

We have come to respect you, Mr. Chairman, not only for your ability but for your personality; and as we are about to enter upon the concluding chapter I am designated by the other members of the commission to express to you not only our admiration, but our love and esteem. And we assure you that wherever you may go, whatever you may do, you will carry through life the fond esteem and admiration and love of all of us; and if any of us survive you, ours will be a fond recollection."

To which Mr. Hoover replied:

"I am much overcome by that kind expression.

"I realize perhaps more than you the difficulties of these sorts of Conferences. I have had, perhaps, more experience with them than you have had. This conference has stood out in my mind as different from all the rest because of the fact that we are dealing here with honest men. It has not been necessary in this conference to discount the truth and character of its members, and it is the only conference of important character where I haven't before the conference come to have a complete conviction of dishonesty on the part of somebody. And it is a monument to the men who have been here that they have been straight and honest straight through the conference.

"What is more, it has been one of the problems of more extreme complexity than will ever be appreciated by the outside world; and in the sense of service, and in the sense of restraint and in the willingness to compromise, it also has a striking character. Had it not been for that character in the men who have been here, there would have been no compact.

"I look at it as an incident that we can all treasure because the days of romance in the West are gone, and the job of western men is one of construction, and that we have possibly made here, I don't know, one of the most constructive steps that has been taken in the West. It will take time

to prove it, but it is possible that this will stand out as one of the landmarks of Western development.

"Now the Commission has had a unique blending, as you mention, of talent. The engineers have had more hard things to say about the lawyers than the lawyers have been able to say back. But I think the engineers will agree that we would have got nowhere if it hadn't been for the lawyers. I am not going to make the reverse compliment because I belong to the other side. But in any event it has been a very happy combination - a very happy association, and the most valued thing from a personal point of view that can come out of these associations is the feeling that you have left behind - a sense of friendship as well as accomplishment."

Mr. Scrugham then made the following remarks:

"On behalf of the Commission, I desire to insert in the record an expression of our appreciation of the splendid services of our executive secretary, Mr. Stetson. He has faced the difficult task of recording and harmonizing the complex statements presented before this Commission, and his task has been accomplished in a most efficient and highly satisfactory manner.

Upon motion duly made and seconded, the Commission unanimously adopted the Compact as engrossed.

It was then moved, seconded and unanimously carried, that the Commission adjourn and proceed to the City of Santa Fe, where the compact should be signed.

Colonel Scrugham then made the following statement:

"On behalf of the Commission, I desire to insert in the record an expression of our appreciation of the splendid services of our Executive Secretary, Mr. Stetson. He has faced the difficult task of recording and



harmonizing the complex statements presented before this Commission, and his task has been accomplished in a most efficient and highly satisfactory manner."

In reply Mr. Stetson said:

"It is difficult for me to express how really appreciative I am of the remarks which Colonel Scrugham has made on behalf of the Commission. It has been a rare privilege for me, an Easterner, to have had this unusual opportunity of intimate association with the members of this Commission, Westerners, and to have worked with them on the difficult problems with which they have had to deal, - problems the present solution of which, I feel certain, will lead to the early opening of the portions of the Southwest yet undeveloped.

"I shall always treasure the remembrances of those last few months as the happiest in my life and will store away as the greatest compliment which I ever received, the remark made to me by one of the Commissioners, when I reached civilization after my trip down the Colorado River, "You are now a real Westerner."

"During this period I have learned much which will be of value to me in the years to come and will take back with me to the East at least this constructive principle, - that friendly, straightforward discussions prompted by an earnest desire for co-operation rather than dispute bring with them progress and development."