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v. 2

Upper Colorado River Basin
Compact Commission.

Official record

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Records
v. 2

UPPER COLORADO RIVER BASIN COMPACT COMMISSION,

OFFICIAL RECORD

VOLUME II

Record of Commission Meetings No. 6-11, inclusive

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* * * * This Subject Index is prepared according to a code number system in this manner: 1:5:21; 2:6:34-40; 2:7:141-142. Interpreted, this code means: Volume 1, Meeting 5, Page 21; Volume 2, Meeting 6, Pages 34 to 40; and Volume 2, Meeting 7, Pages 141 and 142.

In brief, the code is:

First figure	=	Volume Number
Second figure	=	Meeting Number
Other figures in series	=	Page Numbers

* * * * *

Acre-foot

definition, art. ii 2:7:132,147; 2:8:43,63

Administrative commission

composition, art. viii 1:5:89,91-92,93,130; 2:6:27-28,73;
2:7:134,149; 2:8:48,66

definition, art. ii 2:7:147; 2:8:43,62

findings of fact, art. viii 2:6:29,71,74; 2:7:136,150; 2:8:50,67

organization 1:5:69,89-97; 2:6:26,33-39

organization meeting, art. viii 2:8:50,67

personnel, art. viii 1:5:69; 2:6:28,73-74; 2:7:135,149;
2:8:25,48,66

powers, art. viii 1:5:69,70,89-97; 2:6:28-29,33-39,74; 2:7:50,55,59,
81-83,135,149-150; 2:8:42,48-49,66-67

property rights, art. viii 2:6:29,75; 2:7:136,150; 2:8:49,67

records open to signatory states and U. S., art. viii 2:6:29,74;
2:7:135,150; 2:8:49-50,67

rule making, art. viii 1:5:69; 2:6:28,74; 2:7:135,150; 2:8:48,66

voting, art. viii 2:6:29,35,71-72; 2:7:136,150; 2:8:49,67

Administrative provisions, art. viii 1:4:19-20
audit, art. viii 2:6:28,73; 2:7:135,149; 2:8:10,19-20,25,48,66
budget preparation, art. viii 2:6:28,73; 2:7:136,150; 2:8:49,67
finances, art. viii 1:5:69,90,93; 2:6:26,28,29,73; 2:7:134-135,
149; 2:8:10,19-20,25,48,66; 2:9:9-10
financial reporting to states, art. viii 2:6:28,73; 2:7:135,149;
2:8:19-20,25,48,49,66,67
referred to Legal Advisory Committee 1:5:92-97
report, Legal Advisory Committee, Feb. 17, 1948 2:6:27-29 and
discussion 2:6:34-39

Apportionment

adjustment on state's failure to use, art. xvi 1:5:71; 2:6:9-19,
109-110; 2:7:31-32,39,92,134,153; 2:8:57-58,73
in perpetuity, art. iii 1:5:134; 2:6:12; 2:7:31,32,35,147;
2:8:43-45,63-64
to state or basin 1:5:71; 2:6:120-127
Apportionment methods and principles, art. iii 2:7:31,33; 2:8:17,23-25,
37,44,63-64
depletion at Lee Ferry theory 2:7:57-60,68
discussion by states:
 Arizona 1:5:133
 Colorado 1:5:68-86,89-105,106-126,141-167
 New Mexico 1:5:33-36,133-141
 Utah 1:5:129-133
 Wyoming 1:5:26-27,86-88
percentage basis or acre-foot 1:4:3,14-16,18; 1:5:72-85
provisions in Colorado River Compact 1:1:17; 2:7:46-47

Apportionment percentages

percentages offered by states:

 Arizona 2:7:98-99
 Colorado 2:7:63-64,95-97
 New Mexico 2:7:69-70,99-100

Bureau of Mines

statement of interests in compact 1:5:47-48

Bureau of Reclamation

Letter re development of river 2:8:28-29

statement of claims for projects 1:5:43; 2:7:9

Bureau of the Budget

correspondence 1:5:59; 2:6:25

Burnt Fork, art. xii 2:8:38-39,54-55;70;

Central Utah Project

letter from Bureau of Reclamation on adequacy of water supply 2:8:39-40

(Chairman see Upper Colorado River Basin Compact Commission -
chairman)

Channel Losses 1:4:10; 1:5:16

charges for 1:5:70; 2:6:59; 2:7:48

measurement 1:5:20,24-25,70

report, Engineering Advisory Committee, Aug. 31, 1946 1:2:8 and
discussion 1:2:9

report, Engineering Advisory Committee, Dec. 1, 1947 1:5:5

report, Engineering Advisory Committee, July 7, 1948 2:7:18-19

Channel Losses, salvaged 1:5:6,15-19,22-25; 2:7:31,33,43-48,52-53

by state, 1914-1945 (table) 2:7:21

Cheyenne, Wyo.

Commissioners' preliminary meeting, July 22, 1946 1:prelim:3-18

Governors' conference, July 22, 1946 1:prelim:1-12

meeting no. 4, Sept. 8, 1947 1:4:1-28

Civil Service

administrative commission personnel, art. viii 2:6:28,73-74; 2:7:135,
149; 2:8:25,48,66

Colorado

apportionment, art. iii 2:7:35,148; 2:8:24,44,63

Colorado (Cont'd.)

Conservancy District Act 1:3:46; 1:5:29-30

proposed depletion 2:7:63-64,95-97

state engineer alone empowered to administer public water 1:5:107

Colorado-New Mexico apportionment

La Plata River, art. x 2:6:110-112; 2:7:31,32,35-36,84-85,134,152;
2:8:25-26,51-52,69

San Juan River, art. xiv 1:5:69,74-76; 2:6:112-116; 2:7:141,143,
145,152-153; 2:8:7,14-15,34,56-57,72

Colorado River Basin

definition, art. ii 2:7:131,146; 2:8:42,62

Colorado River Compact

apportionment provisions 1:1:17; 2:7:31,32,35,46-47,55

definition, art. ii 2:7:131,147; 2:8:43,62

(definitions in see Definitions (Colorado River Compact))

interstate controversies 2:6:107-109

validity recognized, art. i 1:5:129; 2:6:101-104; 2:7:31,32,35,
83-84,131,146; 2:8:42,61-62

Colorado River System

definition, art. ii 2:7:131,146; 2:8:42,62

Colorado-Utah apportionment

Yampa River, art. xiii 2:6:118-120; 2:7:141,143,146,152; 2:8:6,
15,55-56,71

Colorado vs. Kansas 2:7:44

Colorado-Wyoming apportionment

Little Snake River and tributaries, art. xi 1:5:70; 2:6:115-117;
2:8:12-13,52-53,69-70

Commissioner of Reclamation

address 2:8:29-34

Committee coordination

engineering and legal committees 2:6:130-131

tributary basin committees 2:6:133-134; 2:7:103-104,118-121

(Compact see Colorado River Compact; Upper Colorado River Basin
Compact)

Comprehensive development

Colorado River Basin 2:8:28

Upper Colorado River Basin 1:5:24

Consumptive use 1:4:12,13; 1:5:130; 2:6:44-46; 2:7:34,76-81

(Controversies see Colorado River Compact - interstate controversies)

Corps of Engineers

Letter stating interests in compact 1:5:53

Credentials

Commissioners:

Arizona 1:1:4

Colorado 1:prelim:4-6; 1:1:2-3

New Mexico 1:1:5; 1:2:17-18; 1:4:2

Utah 1:prelim:7; 1:1:4

Wyoming 1:prelim:6; 1:1:3-4; 1:2:12

Federal Representative 1:prelim:3

Curtailement of water use, art. iv 2:7:34,76-81,132,148; 2:8:7,24,53,65

administrative commission to observe need, art. viii 2:7:76,135,150;
2:8:25,49,67

Little Snake River apportionment, art. xi 2:8:12,53,69

San Juan River apportionment, art. xiv 2:7:143,145; 2:8:7,56,72

Deadman's Bench 2:6:118-119; 2:8:15

Definitions (Colorado River Compact) 2:6:102-104; 2:7:31,32

Definitions (Upper Colorado River Basin Compact), art. ii 2:7:31,32,
86-87,131-132,146-147; 2:8:23,42-43,62-63

Denver, Colorado

meeting no. 5, Dec. 1-4, 1947 1:5:1-168

meeting no. 6, Feb. 17-21, 1948 2:6:1-134

meeting no. 9, Nov. 29-30, 1948 2:9:1-13

Department of Agriculture

letter stating claims to use of water 2:7:13-14

letter stating interests in compact 1:5:54

Department of the Interior

correspondence 1:5:42-43,48-49; 2:6:22-23; 2:7:9-10

press release on compact agreement 2:8:3-4

telegram of congratulations from Acting Secretary of the Interior
2:8:75

Department of War

letter stating interests in compact 2:7:8-9

Depletion at Lee Ferry theory 2:7:57-61,64,68

Depletions, streamflow

at state lines by principal streams (table) 2:7:25-26

depletion rates 2:6:44-45; 2:7:20

discrepancy between Engineering Advisory Committee and Bureau of
Reclamation figures 1:5:5-6, 11-15

Indian irrigation projects by state (table) 1:5:52

man made, art. iii 2:7:43-50,138-139; 2:8:37,44,63

man made depletion at point of use, state lines, and Lee Ferry
(table) 2:7:21
and discussion 2:7:53-54

man made depletion at sites of use, 1914-1945 (table) 2:7:21

natural depletion factors 2:7:51-52

report, Engineering Advisory Committee (temporary), Aug. 31, 1946
1:2:8

report, Engineering Advisory Committee (permanent), Sept. 17, 1946
1:2:19

report, Engineering Advisory Committee (permanent), July 7, 1948
2:7:19

salvaged 2:7:52-53

Diversion measuring devices, art. xii 2:8:38,55,71

Diversions from natural basins 1:3:54-57,66-67,90,91-92,94-95,97,114,121,
135,136,154,159

attitude of Fish and Wildlife Service 1:5:46

Henry's Fork, etc. apportionment, art. xii 2:8:38,54,70

inflow-outflow method 2:7:58,60-61,68

Little Snake River apportionment, art. xi 2:8:13,53,70

no charges for water imported to Upper Colorado Basin, art. xvii
2:7:140,153; 2:8:10,26,58,73

Out-of-state use not legal in Colorado 1:5:142-143

relative to Lee Ferry obligation 1:5:28-29

relative to states' apportionment of water in short years 1:5:26-32

secondary to water uses in natural basin 1:5:86,98

Domestic use

definition, art. ii 2:7:86,132,147; 2:8:43,63

Drafting Committee

appointed 2:7:74-75

authorized to determine order of articles approved for compact
2:7:143

report, July 20, 1948 2:7:130-137

report, Oct. 4, 1948 2:8:10-12

report, Oct. 5, 1948 2:8:22-27

report, Oct. 9, 1948 2:8:41-61

Drainage areas above Lee Ferry 1:5:5; 2:7:17

Echo Park Reservoir 1:5:142,148-149,150,154-156

Economic studies

discussion on relevance to criteria for allocation 1:1:28-44

Eminent domain, art. ix 1:5:142; 2:6:26,30,31,75; 2:7:133,171; 2:8:50,
68

Engineering Advisers

findings on state proposed apportionments 2:7:112-113

Engineering Advisers (Cont'd.)
report, July 12, 1948 2:7:115-116

to work out apportionment formula on basis of total potentialities
2:7:110-111

Engineering Advisory Committee (permanent)
appointed 1:2:12-16

authorized to outline needed gaging stations 2:7:143

memo., Oct. 4, 1948 2:8:5-9

report, Sept. 17, 1946 1:2:19-21

report, Dec. 1, 1947 1:5:4-7

report, Feb. 19, 1948 2:6:41-66

report, July 7, 1948 2:7:16-26

report, Final, Nov. 29, 1948 2:9:5-7

Engineering Advisory Committee (temporary)
appointed 1:1:44-45

personnel 1:1:46

report, Aug. 31, 1946 1:2:6-12

Engineering Data
discussion on relevant data 1:1:26-44

need for in determining apportionment 1:4:3-22; 1:5:33-39; 2:6:48-66

Excess use
art. iii 2:8:37;44,63-64

art. iv 2:7:34,76-78,132,148; 2:8:24,45,64

(Expenses of Commission see Administrative provisions - finances;
Blaney, H. F.; Upper Colorado River Basin Compact Commission -
expenses)

Extraterritorial jurisdiction 1:5:108

Facilities in one state for use in another, art. ix 1:5:69,70,99-103,
108-109,130,134,141-143; 2:6:26,29-31,36-38,81-84; 2:7:132-133,
151-152; 2:8:25,50-51,68-69

(Failure to use see Apportionment-adjustment on state's failure to use)

Farmington, N. M.

executive session, Nov. 2, 1946 1:3:127

meeting No. 3, Nov. 2, 1946 1:3:125-167

Federal Power Commission

Letter stating interests in compact 1:55-58; 2:6:23-25

Federal Representative 1:1:18-19,20,22

suggested potential depletions for states 2:7:123-124

Federal rights, art. xix 1:5:69,130; 2:6:75-81,89-90; 2:7:38-39,
87-91,136-137,153-154; 2:8:58-59,73

agencies with rights and interests in Upper Colorado River Basin
1:4:5,23-24; 2:6:6

Forest Service claims (table) 2:7:13

letters from federal agencies on rights to use of river
1:5:42-60; 2:6:21-25; 2:7:8-12,13-14

Federal-state relations

state police regulations, taxation, etc., art. xix 2:6:24-25,31,
75-77; 2:7:38-39,137,154; 2:8:59,73

Federal uses

charged to state where use made, art. vii 1:5:69; 2:6:90-92;
2:7:39,91-92,136,149; 2:8:25,47-48,65

Field meetings

Farmington, N. M. 1:3:125-167

Grand Junction, Colorado 1:3:36-81

Price, Utah 1:3:82-124

Rock Springs, Wyo. 1:3:1-35

Fish and Wildlife Service

statement of interests in compact 1:5:44-46

Flood Control

statement of Chief of Engineers 1:5:53

Gaging stations, art. viii 2:6:28,74; 2:7:34,40,48-49,54-55,135,143,150;
2:8:18,66

Gas, natural (see also Irrigation pumping)
development 1:3:143,151-154

Glen Canyon Reservoir 1:5:160

Governors' conference, July 22, 1946 1:prelim:1-18

Grand Junction, Colorado
meeting no. 3, Oct. 30, 1946 1:3:36-81

Green River
sufficient to permit use of for Wyoming allocation and Central
Utah Project 2:8:8

Henry's Fork, etc. art. art. xii 2:8:38-39,54-55,70-71
apportionment, Utah-Wyoming, art. xii 2:6:117-118; 2:8:38-39,54-55,
70-71

special commissioner to administer water in both states, art. xii
2:8:37-39,55,71

(Imported water see Diversions from natural basins)

Indian irrigation projects by state (table) 1:5:52

Indian rights, art. xix 1:3:138-148,152; 1:5:134,135-141; 2:6:26-27,
32-33,86,90-93; 2:7:38,87-91,136,153; 2:8:14,58,73

memos from Office of Indian Affairs 1:5:49-52; 2:7:10-11 and
discussion 1:5:61-64

San Juan agreement, art. xiv 2:7:106-108; 2:8:7,14-15,34-35,56,72

statement of Office of Indian Affairs 2:7:88-91

telegram from Department of the Interior 2:8:34

Industrial development

Utah 1:3:91-92,93,100,102,104,111-112; 1:5:131-132

Wyoming 1:3:4-6,16,17

Industrial use

defined 2:7:36

Inflow-outflow method, art. vi (see also Gaging stations) 2:7:36-37,
50-51,57,61,64,68,136,149; 2:8:47,65

International Boundary and Water Commission, U. S. and Mexico 2:7:81-82,
136,150; 2:8:49,67

correspondence re rights in upper basin 1:5:59-60; 2:6:22

Interstate priority schedule
art. xi 2:8:12,52,69

art. xii 2:8:38,54,70

(Interstate relations see Colorado River Compact-Interstate
controversies; Payments in lieu of taxation; Tributaries, interstate)

Irrigated areas by states, 1914-1945 (table) 2:7:19-20

Irrigated areas by states, 1935-1938 1:5:6

Irrigated areas, Indian lands, by states (table) 1:5:52

Irrigation pumping
natural gas, New Mexico 1:3:143,151-154

Land classification in Wyoming 1:3:9

Land limitation in Wyoming 1:3:7,14-15,33-34

La Plata River
apportionment, Colorado-New Mexico, art. x 2:6:110-112; 2:7:31,
32,35-36,84-85,134,152; 2:8:25-26,51-52,69

La Plata River Compact 1:3:144-145,147-148; 1:5:69; 2:6:110-112
validity recognized, art. x 2:7:31,32,35-36,84-85,134,152;
2:8:25-26,51-52,69

Lee Ferry
definition, art. ii 2:7:147; 2:8:42,62

historic contributions (table) 2:7:19

Lee Ferry obligations (see also Reservoir operations-Lee Ferry
obligations)
accounting of state contributions 1:5:111

default by a state 1:5:109-114

determination of formula for state obligations 1:5:130; 2:6:50-69;
2:7:31,33,34,36-37,64,68

measurement by percentage method or acre-foot 1:5:73-85

Lee Ferry obligations (Cont'd.)

Relation to apportionment of uses 1:5:114; 2:6:50-70

reporting by administrative commission on state deliveries and obligations, art. viii 2:6:28-29,74; 2:7:135,150; 2:8:49,67

state or basin obligation 1:5:70,77-80,98-103,106-126

ten year periods, art. iv 1:5:77-78; 2:7:34,47-48,49,77-81,132,148;
2:8:24,45,64

Legal Advisory Committee

appointed 1:3:127

instructed to begin formal drafting 2:6:132

report, Dec. 2, 1947 1:5:40-42

report, Feb. 17, 1948 2:6:26-27,33 and discussion 2:6:70-87

report, July 7, 1948 2:7:30-40
and analysis of articles of compact 2:7:76-95

Legal proceedings

state's right to institute legal proceedings 2:7:39,92-94

Linwood gaging station 2:8:7-8

Little Snake River and tributaries

apportionment, Colorado-Wyoming, art. xi 1:5:70; 2:6:115-117;
2:8:12-13,52-53,69-70

(Losses of water see Channel losses; Reservoir losses)

Lower Basin

definition, art. ii 2:7:147; 2:8:43,62

division under Colorado River Compact 1:1:17

Lowry-Johnson method

depletion rates 2:6:45,52

Maps

Engineering Advisory Committee (temporary) recommendations
2:2:6-7

Maybell gaging station 2:8:6,55,71

Mexican Water Treaty

correspondence from International Boundary and Water Commission
1:5:59-60; 2:6:22

effect of Lee Ferry depletion theory on 2:7:58-59

provisions covering drought or accident to irrigation system,
art. viii 1:5:71; 2:6:93-100; 2:7:34,81-82,135-136,150;
2:8:49,67

rights recognized, art. xix 1:5:104-105; 2:7:33,35,83,87-91,137,
154; 2:8:58,73

National Park Service

statement of interests in compact 1:5:43-44,48; 2:7:9

Navigation 1:5:161,163-166,167; 2:6:32,84-85; 2:7:38; 2:7:85

statement of Chief of Engineers 1:5:53

New Mexico

Allocation adjustment suggested by engineering advisers
2:7:112-117

apportionment, art. iii 2:7:35,148; 2:8:24,44,63

Proposed depletion 2:7:69-70,99-100

reserves rights as Lower Basin state, art. xviii 2:7:139-140,153;
2:8:58,73

New Mexico-Colorado apportionment

La Plata River, art. x 2:6:110-112; 2:7:31,32,35-36,84-85,
134,152; 2:8:25-26,51-52,69

San Juan River and tributaries, art. xiv 1:5:69,74-76; 2:6:112-116;
2:7:141,143,145,152-153; 2:8:7,14-15,34,56-57,72

Office of Indian Affairs

memos on Indian rights 1:5:49-52; 2:7:10-11

(Overdraft see Curtailment of water use)

Payments in lieu of taxation (federal-state), art. xix 1:5:143-153;
2:6:24,30-31,76-77; 2:7:38,87-88,137,154; 2:8:59,73

Payments in lieu of taxation (interstate), art. ix 1:5:142,143-153;
2:6:26,30-31,76; 2:7:133,152; 2:8:51,68-69

(Periodic review see Upper Colorado River Basin Compact-term of
operation)

Potential uses 1:2:8; 1:4:10,16-17,19-22,24; 1:5:135; 2:6:62-63

Power use, art. xv 1:5:130-133; 2:6:32,84-86; 2:7:38,39,85-86,134,
153; 2:8:57,72

apportionment no basis for allocation of power revenues, art. iii
2:8:40,44,64

Letters from Federal Power Commission re interests in upper basin
1:5:55-58; 2:6:23-25

revenues to pay for projects 1:5:21,134,150; 2:6:48; 2:8:8

Preferential uses, art. xv 1:5:70,86,130,161-167; 2:6:26,32,84-86;
2:7:33,38,39,85-86,134,153; 2:8:57,72

Present uses 1:4:10,16; 1:5:135; 2:6:70; 2:7:70,76

Press relations 1:prelim:17; 1:1:9-11; 1:5:15

Price, Utah

meeting no. 3, Oct. 31, 1946 1:3:82-124

(Project potentialities see Potential uses)

Rainbow National Monument 1:5:160

Rainfall 2:7:48,51-52

(Ratification see Upper Colorado River Basin Compact-
ratification; Upper Colorado River Basin Compact Commission-
ratification procedure)

(Reallocation see Apportionment-adjustment on state's failure to
use; Apportionment-in perpetuity)

(Reconstructed flow see Virgin flow)

Research in water supply

administrative commission duty, art. viii 2:6:28-29,74; 2:7:135,150;
2:8:49,66-67

Reservoir losses 1:4:13; 1:5:25; 2:7:116
administrative Commission reports to states, art. viii
2:6:28-29,74; 2:7:135,150; 2:8:49,67
charges to states, art. v 1:5:102,142,153-160; 2:6:31,35,37,48,
82-84; 2:7:31,33,37-38,64,68,71,113,134,146-149; 2:8:18-19,
46-47,64-65

Reservoir operations

accounting for state contributions and deficiencies
1:5:111,119-121

consumptive use priority over Lee Ferry obligation, art. v
2:8:8,9,16,46,65

Engineering Advisory Committee (permanent) report, July 7, 1948
2:7:22-23

Engineering Advisory Committee (temporary) recommends study,
Aug. 31, 1946 1:2:8

Lee Ferry obligations, art. v 1:5:21-22,70,100-104,130; 2:7:37,
66,70,133,148; 2:8:8-9,16,46-47,64-65

power considerations 1:5:21,130,134; 2:8:8

Reservoirs

holdover storage 1:5:30,102-103,116-121,130; 2:8:8

ownership 1:5:21,70-71,101,110,134

sites selected for low evaporation 1:2:9; 1:4:13; 1:5:121,130;
2:7:27-28,66-67

storage needs, Wyoming 1:3:8,11-12

Return flow 1:5:104-105,118; 2:6:56

Rock Springs, Wyoming

meeting no. 3, Oct. 28, 1946 1:3:1-35

Run-off

estimates, Art. viii 1:2:8,9,19; 1:5:5; 2:6:28,74; 2:7:135,150;
2:8:49,66

historic, at state lines, 1914-1945 (table) 2:7:17-18

Salt Lake City, Utah

meeting no. 1, July 31, 1946 1:1:1-48

meeting no. 10, Feb. 17-18, 1949 2:10:1-16

San Juan River and tributaries

apportionment, Colorado-New Mexico, art. xiv 1:5:69,74-76;
2:6:112-116; 2:7:141,143,145,152-153; 2:8:7,14-15,34-35,
56-57,72

Santa Fe, N. M.

meeting No. 2, Sept. 17, 1946 1:2:1-23

meeting no. 8, Oct. 4-11, 1948 2:8:1-85

(Secretary see Upper Colorado River Basin Compact Commission-
secretary

Sheep Creek, art. xii 2:8:38-39,54-55,70-71

Silt 1:3:117-118

States of the Lower Division

Definition, art. ii 2:7:147; 2:8:42,62

States of the Upper Division

definition, art. ii 2:7:147; 2:8:42,62

States rights 1:5:90-91,99,107; 2:7:89

Interference with state's right to regulate use within its
boundaries, art. xv 1:5:26-32; 2:7:38,39,134,153; 2:8:26,
57,73

interstate compacts 1:1:21-24

to institute legal proceedings 2:7:39,92-94

(State taxation of federal property see Federal-state relations;
Payments in lieu of taxation (federal-state))

(Storage see Reservoirs-holdover storage)

Streamflow

at key gaging stations (table) 2:7:4-10,24-25

measurement 2:7:48-51

Streamflow, historic

at Lee Ferry 2:7:65-67

at state lines (table) 2:7:17-18

Engineering Advisory Committee (permanent) report, Dec. 1, 1947
1:5:5

Engineering Advisory Committee (temporary) report, Aug. 31, 1946
1:2:7-8

Substantive provisions 2:6:10-11,13-14,15-18

Surplus water, art. iii 1:3:103; 1:5:83-85,114-116; 2:6:44,104-107;
2:7:35,50-51,59,148; 2:8:24,44,63,64

(Taxation see Federal-state relations; Payments in lieu of
taxation)

(Tentative allocations see Apportionment-adjustment on state's
failure to use; Apportionment-in perpetuity)

Tort liability 2:6:29

(Transmountain diversions see Diversions from natural basins)

Transpiration 2:7:51-52

(Transportation losses see Channel losses)

Tributaries, interstate (see also Committee coordination; Henry's
Fork, etc.; La Plata River; Little Snake River and tributaries;
San Juan River and tributaries; Yampa River)

apportionment by percentage 1:5:73-77,82

apportionment in one overall compact 1:5:86; 2:6:110-128

problems involved 1:5:69-70

shortage in one tributary relieved by another 1:5:76-77

upper state obligation to deliver to lower 2:6:122-125

U. S. Geological Survey

provisions in compact covering its services 2:7:9,94-95

statement of interests in compact 1:5:47

Upper Basin

definition, art. ii 2:7:147; 2:8:42-43,62

division under Colorado River Compact 1:1:17

Upper Colorado River Basin

comprehensive development 2:6:24

Upper Colorado River Basin Compact

adoption by articles 2:8:41-61

Upper Colorado River Basin Compact (Cont'd.)

- art. i 2:7:35,83-84,131,146; 2:8:23,42,61-62
- art. ii 2:7:31,32,86-87,131-132,146-147; 2:8:23,42-43,62-63
- art. iii 2:7:31,33,36,84,147-148; 2:8:7,9,10,16,17,23-25,26,37,43-45,
63-64
- art. iv 2:7:34,76-81,132,148; 2:8:10,24,45-46,64
- art. v 2:7:31,33,37-38,133-134,148-149; 2:8:9,16,18-19,25,46-47,
64-65
- art. vi 2:7:31,32,36-37,136,149; 2:8:25,47,65
- art. vii 2:7:33,39,91-92,136,149; 2:8:10,25,47-48,65
- art. viii 2:6:27-29,73-74; 2:7:34,36-37,40,59,134-136,149-150;
2:8:19-20,25,48-50,66-67
- art. ix 2:7:132-133,151-152; 2:8:25,50-51,68-69
- art. x 2:7:31,32,35-36,84-85,134,152; 2:8:25-26,51-52,69
- art. xi 2:7:145,152; 2:8:12-13,26,52,53,69-70
- art. xii 2:7:145,152; 2:8:26,36,38-39,54-55,70-71
- art. xiii 2:7:141,143,146,152; 2:8:6,15,26,55-56,71
- art. xiv 2:7:143,145,152-153; 2:8:7,14-15,26,34-35,56-57,72
- art. xv 2:7:33,38,39,85-86,134,153; 2:8:26,57,72-73
- art. xvi 2:7:31-32,39,134,153; 2:8:26,57-58,73
- art. xvii 2:7:140,153; 2:8:10,26,58,73
- art. xviii 2:7:139-140,153; 2:8:26,58,73
- art. xix 2:7:33,35,38,83,136-137,153-154; 2:8:26,58-59,73
- art. xx 2:7:33,39,94,137,154; 2:8:26,59,74
- art. xxi 2:7:137,154; 2:8:26,59-60,74
- California's amendment to proposed Congressional consent 2:10:13
- Drafting Committee report, July 20, 1948 2:7:130-137,146-154
and discussion 2:7:138-146
- final draft 2:8:61-74

Upper Colorado River Basin Compact (Cont'd.)

legal basis for compact 1:1:15-25
preamble 2:7:130,146; 2:8:23,41,61
purposes, art. i 2:7:131,146; 2:8:42,61-62
ratification, art. xxi 2:7:137,154; 2:8:59-60,74,76-77
ratification, state 2:9:12-13; 2:10:9-10
term of operation 1:5:69,86,130; 2:6:7-9; 2:7:31,32
termination, art. xx 2:7:39,94,137,154; 2:8:26,59,74
Vernal Draft 2:7:146-154

Upper Colorado River Basin Compact Commission

chairman (permanent) 1:prelim:7; 1:1:5-6

chairman (temporary), Governor's Conference, July 22, 1946
1:prelim:2

Commissioners' preliminary meeting, July 22, 1946 1:prelim:13-18

compact, reproducing of 2:8:26

compact, signing of 2:8:83-84

compact, official, copies needed 2:8:11,27

executive session, Nov. 2, 1946 1:3:125-127

expenses 1:1:13; 1:2:16,22; 2:10:14-15

named 1:prelim:11-12; 1:1:9

ratification procedure 2:8:77-78; 2:9:9-13

recommends Congress limit legislation to consent 2:10:14

record of proceedings 1:1:6-8,13-14

record of proceedings, copies needed 1:prelim:17; 1:1:13-14;
2:9:4-5; 2:10:12-13

record of proceedings, reproduction 2:8:76-78

record of proceedings, reproduction costs 2:9:5,7-8; 2:10:10-12

requests for funds from state legislatures 2:8:77

Upper Colorado River Basin Compact Commission (Cont'd.)

resolution expressing appreciation to Bureau of Reclamation
2:8:79-80

Secretary (acting temporary), Governors' conference, July 22, 1946
1:prelim:10-11

Secretary (permanent) elected 1:1:89

Senate report no. 8 2:10:8

Senate report no. 9 2:10:8-9

telegram of congratulations from Acting Secretary of the Interior
2:8:75

telegram of congratulations from Governor of New Mexico 2:8:75

voting 1:1:45 (see also Administrative commission-voting)

Upper Colorado River System

definition, art. ii 2:7:147; 2:8:43,62

Utah

allocation adjustment suggested by engineering advisers
2:7:112-113,115-116

apportionment, art. iii 2:7:35,148; 2:8:24,44,63

industrial development 1:3:91-92,93,100,102,104,111-112; 1:5:131-132

proposed depletion 2:7:68,97-98

reserves rights as Lower Basin state, art. xviii 2:7:139-140,153;
2:8:58,73

Utah-Colorado apportionment

Yampa River, art. xiii 2:6:118-120; 2:7:141,143,146,152;
2:8:6,15,55-56,71

Utah-Wyoming apportionment

Henry's Fork, etc. art. xii 2:6:117-118; 2:8:38-39,54-55,70-71

Vernal, Utah

meeting no. 7, July 7-21, 1948 2:7:1-155

Virgin flow 1:2:9; 2:7:43-50

at Lee Ferry (tables) 2:7:22,23

definition, art. ii 2:7:138-139,147; 2:8:43,63

(Voting see Administrative commission-voting; Upper Colorado River Basin Compact Commission-voting)

Water rights (see also Federal rights; Indian rights)
art. iii 2:7:35,148; 2:8:24,37,44,64

art. iv 1:5:129; 2:7:34,76-81,132,148; 2:8:10,24,45,64

Henry's Fork, etc., art. xii 2:8:38,54,70

Little Snake River and tributaries, art. xi 2:8:12,53,69

San Juan River and tributaries, art. xiv 2:8:7,56,72

(Water supply studies see Research in water supply)

Water year

Definition, art. ii 2:7:147; 2:8:23,43,63

Watermaster of stream 2:6:36-38,50-51

Wyoming

apportionment, art. iii 2:7:35,148; 2:8:24,44,63

Objects to depletion at Lee Ferry principle 2:7:57-61,67-68

proposed depletion 2:7:67-68,100-101

Wyoming-Colorado apportionment

Little Snake River and tributaries, art. xi 1:5:70; 2:6:115-117;
2:8:12-13,52-53,69-70

Wyoming-Utah apportionment

Henry's Fork, etc., art. xii 2:6:117-118; 2:8:38-39,54-55,70-71

Yampa River

apportionment, Colorado-Utah, art. xiii 2:6:118-120; 2:7:141,143,
146,152; 2:8:6,15,26,55-56,71

UPPER COLORADO RIVER BASIN COMPACT COMMISSION

OFFICIAL RECORD OF MEETING NO. 6

February 17 , 18, 19, 20 and 21, 1948

Shirley-Savoy Hotel

Denver, Colorado

MEETING NO. 6
 Denver, Colorado
 Feb. 17-18-19-20 and 21, 1948

	Vol.	Mtg.	Page
Appearances	2	6	1
Call to Order	2	6	3
Introduction of Members of Arizona Interstate Stream Commission Suggested Agenda for Meeting No. 6	2	6	3
Consideration of Report of Legal Advisory Committee	2	6	6
Delay in Presenting Legal Committee Report	2	6	6
Chairman Bashore's Report on Contacts with Various Federal Agencies	2	6	6
Com. Stone's Explanation of Suggested Agenda	2	6	6
Motion by Com. Carson to Proceed with Agenda Submitted by Colorado; Seconded by Com. Wilson	2	6	7
Question called; Vote taken (Carried)	2	6	8
Discussion on "Shall Compact Operate for Fixed Term of Years or for Perpetuity?"	2	6	8
Comments by Mr. Breitenstein	2	6	8
Comments by Com. Stone	2	6	8
Motion by Com. Watson that Compact Shall Operate in Perpetuity; Seconded by Com. Bishop	2	6	8
Roll Call (Carried)	2	6	9
Discussion re Future Adjustments of Water Allocations for Beneficial Consumptive Use	2	6	9
Comments by Mr. Breitenstein	2	6	9
Comments by Com. Watson	2	6	10
Comments by Com. Stone	2	6	10
Comments by Mr. Giles	2	6	11
Comments by Mr. Rollins	2	6	12
Comments by Com. Bishop	2	6	12
Comments by Mr. Bliss	2	6	12
Comments by Com. Carson	2	6	12
Comments by Mr. Clyde	2	6	13
Colorado's Position, Analyzed by Com. Stone	2	6	13
Comments by Chairman Bashore	2	6	14
Comments by Mr. Wehrli	2	6	15
Comments by Mr. Howell	2	6	16
Motion by Com. Bishop to Go on Record as Opposing (b); Seconded by Com. Watson	2	6	18
Comments by Com. Wilson	2	6	18
Question called; Vote taken (Carried)	2	6	19
Motion by Com. Carson to Defer Consideration of Subsection (c) of Agenda; Seconded by Com. Bishop	2	6	19
Question called; Vote taken (Carried)	2	6	20
Motion by Com. Watson to Adjourn to Afternoon of February 18, 1948; Seconded by Com. Wilson (Carried)	2	6	21
February 18, 1948 (Afternoon) 4 p.m.			
Consideration of Federal Agencies' Communications	2	6	21
Motion by Com. Stone that Federal Agency Letters be Made Part of the Record; Seconded by Com. Watson	2	6	21
Question called; Vote taken (Carried)	2	6	21

	Vol.	Mtg.	Page
Federal Communications Inserted into the Record.	2	6	22
International Boundary and Water Commission	2	6	22
Secretary of the Interior.	2	6	22
Federal Power Commission.	2	6	23
Bureau of the Budget.	2	6	25
Consideration of Report of Legal Advisory Committee.	2	6	25
Comments by Com. Carson	2	6	26
Text of Legal Committee Report.	2	6	27
Comments by Com. Wilson	2	6	34
Comments by Mr. Wehrli.	2	6	34
Comments by Mr. Clyde	2	6	35
Comments by Judge Howell.	2	6	36
Comments by Mr. Breitenstein	2	6	36
Motion by Com. Watson to Accept Legal Committee Report and Place It on File for Further Study and Consideration.	2	6	39
Objection by Com. Stone re Intent of Motion	2	6	39
Second to Com. Watson's Motion by Com. Wilson	2	6	40
Com. Watson motion Re-interpreted; Vote taken (Carried).	2	6	40
Distribution of Copies of Wyoming Plan to Expedite Commission Procedure (Mr. Wehrli).	2	6	40
Motion by Com. Stone to Adjourn to 9:30 a.m., Feb. 19, 1948; Seconded by Com. Watson (Carried)	2	6	41
February 19 (Forenoon) 9:30 a.m.			
Call to Order.	2	6	41
Informal Report by J. R. Riter, Chairman, Engineering Advisory Committee.	2	6	41
Comments by Mr. Merriell.	2	6	42
Comments by Mr. Wallace.	2	6	43
Comments by Com. Watson	2	6	44
Remarks by Mr. Riter.	2	6	44
C. L. Patterson's Resignation from Engineering Committee	2	6	47
Discussion of Engineering Data as Prerequisite of Writing Compact	2	6	48
Comments by Com. Watson	2	6	48
Comments by Mr. Riter.	2	6	48
Comments by Mr. Rollins	2	6	49
Comments by Com. Bishop	2	6	50
Comments by Mr. Breitenstein.	2	6	50
Comments by Mr. Wallace	2	6	50
Comments by Mr. Wehrli.	2	6	53
Comments by Com. Stone.	2	6	53
Noon Recess.	2	6	58
February 19 (Afternoon) 2 p.m.			
Call to Order.	2	6	58
Wallace Inquiry on Facts Needed for Compact.	2	6	58
Comments by Mr. Breitenstein.	2	6	58
Comments by Com. Watson	2	6	59
Comments by Com. Stone.	2	6	59
Comments by Mr. Clyde	2	6	60
Colorado Viewpoint, Analysis by Com. Stone	2	6	60

	Vol.	Mtg.	Page
Review of Engineering Committee Assignment.	2	6	61
Comments by Com. Watson.	2	6	62
Comments by Mr. Clyde.	2	6	62
Comments by Mr. Riter.	2	6	62
Comments by Mr. Howell.	2	6	63
Motion by Com. Watson to Name Representatives from Each State to Meet with Mr. Riter to Decide Expansion of Assignment to Engineering Committee; Seconded by Com. Bishop.	2	6	64
Com. Stone Comment on Howell Views.	2	6	64
Question called; Vote taken (Carried).	2	6	65
States to be Represented in Conference by More than One Conferee, If Desired.	2	6	65
Selection of Conference Personnel, By States.	2	6	66
Motion by Com. Stone to Adjourn; Seconded by Com. Bishop (Carried).	2	6	66

February 19 (Evening) 7:30 p.m.

Call to Order.	2	6	66
Report by Mr. Riter on Conference to Discuss Engineering Assignments.	2	6	67
Motion by Com. Bishop to Adopt Riter Report; Seconded by Com. Watson.	2	6	67
Comments by Com. Stone	2	6	67
Comments by Mr. Wehrli	2	6	67
Comments by Chairman Bashore	2	6	67
Comments by Com. Wilson.	2	6	68
Amendment Suggestion by Com. Carson (Accepted).	2	6	68
Question called; Vote taken on Amended Motion (Carried).	2	6	68
Comments by Mr. Clyde.	2	6	68
Comments by Com. Stone	2	6	68
Comments by Mr. Wehrli	2	6	69
Comments by Com. Wilson.	2	6	69
Comments by Chairman Bashore	2	6	69
Comments by Mr. Riter.	2	6	69
Motion by Com. Carson to Proceed with Agenda; Seconded by Com. Stone (no vote)	2	6	70
Motion by Com. Bishop to Approve Commission Expenses on a "Pro-rata Basis by States"; Seconded by Com. Watson.	2	6	70
Comments by Com. Stone	2	6	70
Comments by Chairman Bashore	2	6	70
Question called; Vote taken (Carried).	2	6	70
Motion by Com. Bishop to Specify That Commission Action be by "Concurrence of a Majority of the Members of the Commission"; Seconded by Com. Watson.	2	6	71
Comments by Com. Carson	2	6	71
Question called; Vote taken (Motion fails by 2-3 vote)	2	6	72
Motion by Com. Stone to Approve Article "Administrative Commission", as Amended and Changed; Seconded by Com. Bishop.	2	6	72
Question called; Vote taken (Carried)	2	6	72
Text of Amended Article on "Administrative Commission".	2	6	73

	Vol.	Mtg.	Page
Consideration of Article II of Legal Committee Report.	2	6	75
Comments by Mr. Breitenstein.	2	6	75
Text of Article II.	2	6	75
Recommendations of Federal Power Commission on Compact Language.	2	6	76
Comments by Com. Stone.	2	6	77
Comments by Mr. Wehrli.	2	6	77
Motion by Com. Stone to Reword Motion by Using Phraseology "xxx Subject to Conditions Hereinafter Stated xx";			
Seconded by Com. Watson	2	6	78
Comments by Mr. Saunders.	2	6	78
Comments by Mr. Breitenstein.	2	6	78
Question called; Roll Call (Carried).	2	6	78
Motion by Com. Bishop to Rephrase Article on States' Rights Within Another State, by Use of Words "to receive and use water"; Seconded by Com. Watson	2	6	78
Question called; Roll Call (Carried).	2	6	80
Motion by Com. Bishop That Article II as Amended be Approved;			
Seconded by Com. Watson.	2	6	80
Comments by Mr. Clyde.	2	6	80
Comments by Mr. Breitenstein.	2	6	80
Restatement of Motion, with Amendment Suggested by Mr. Wehrli; Seconded	2	6	81
Question called; Roll Call (Carried)	2	6	81
Text of Amended Portion of Article II, as Adopted	2	6	81
Consideration of Article III, Legal Committee Report.	2	6	82
Text of Article III.	2	6	82
Motion by Com. Bishop to Adopt Article III; Seconded by Com. Watson.	2	6	82
Comments by Mr. Breitenstein	2	6	82
Comments by Com. Carson.	2	6	82
General Discussion on Suggested Rewordings	2	6	83
Recess.	2	6	83
Substitute Motion by Com. Stone to Delay Commission Action On Clause Relating to Reservoir Losses; Seconded by Com. Carson.	2	6	83
Question called; Roll Call (Carried)	2	6	84
Motion by Com. Stone to Adjourn; Seconded by Com. Watson (Carried).	2	6	84
February 20 (Forenoon) 10 a. m.			
Call to Order	2	6	84
Consideration of Article IV, Legal Committee Report.	2	6	84
Text of Article.	2	6	84
Comments by Com. Stone.	2	6	85
Motion by Com. Stone to Refer Article IV Back to Legal Committee; Seconded by Com. Watson.	2	6	85
Question called; Roll Call (Carried).	2	6	85
Comments by Mr. Merriell.	2	6	85
Consideration of Article V, Legal Committee Report.	2	6	86
Text of Article V.	2	6	86
Motion by Com. Bishop to Adopt Article V; Seconded by Com. Watson.	2	6	86
Question called; Roll Call (Carried)	2	6	86

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Com. Stone for Duplicate Copies of All Articles Adopted, or Re-referred to Legal Committee; Seconded by Com. Watson.	2	6	87
Question called; Roll Call (Carried)	2	6	87
Discussion of Blaney Contract	2	6	88
Motion by Com. Stone That States Be Billed \$250 Each for Blaney Expense Fund; Seconded by Com. Watson	2	6	88
Question called; Roll Call (Carried)	2	6	88
Motion by Com. Carson to Defer Remaining Agenda Until Legal Advisory Committee Can Report; Seconded by Com. Stone.	2	6	88
Question called; Roll Call.	2	6	89
Consideration of Rights and Obligations of the United States.	2	6	89
Comments by Com. Stone.	2	6	89
Motion by Com. Stone to Defer Action on United States' Rights and Obligations Until All Federal Agencies Have Responded to Correspondence; Seconded by Com. Watson.	2	6	90
Question called; Roll Call (Carried).	2	6	90
Consideration of How to Charge Water Uses to the United States or Federal Agencies.	2	6	90
Statement by Mr. Breitenstein.	2	6	90
Comments by Mr. Wehrli.	2	6	91
Comments by Mr. Riter.	2	6	91
Comments by Mr. Clyde.	2	6	92
Motion by Com. Wilson to Defer Action on Sections of Group II of Agenda, but Not Foreclose Discussion; Seconded by Com. Bishop.	2	6	92
Question called; Roll Call (Carried)	2	6	93
Consideration of Group III Items of Agenda.	2	6	93
Text of Sub-item (a)	2	6	93
Comments by Mr. Wehrli.	2	6	93
Comments by Com. Wilson.	2	6	93
Comments by Mr. Riter.	2	6	93
Comments by Com. Stone	2	6	94
Motion by Com. Watson to Defer Action on Items (a) and (b) Until Lee Ferry Obligations Have Been Determined; Seconded by Com. Wilson (no vote).	2	6	94
Substitute Motion by Com. Stone That Commission Recognizes Contingent Liability at Lee Ferry for Mexican Water Deliveries, and That Matter be Referred to Legal Advisory Committee; Seconded by Com. Bishop.	2	6	94
Comments by Com. Watson.	2	6	95
Comments by Mr. Clyde.	2	6	95
Comments by Mr. wehrli	2	6	95
Comments by Com. Carson.	2	6	95
Comments by Com. Stone	2	6	95
Comments by Com. Wilson.	2	6	97
Comments by Mr. Howell	2	6	97
Comments by Mr. Rollins.	2	6	98
Rephrasing of Com. Stone Motion, Relating to Compact Language for Lee Ferry Deliveries for Mexican Water Obligation; Seconded by Com. Bishop.	2	6	98
Comments by Mr. Wallace.	2	6	99
Question called; Roll Call (Revised motion carried).	2	6	99

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Com. Watson to Answer Item (b) Regarding Drought Situations in Affirmative, and Refer Subject to Legal Advisory Committee; Seconded by Com. Bishop.	2	6	99
Comments by Com. Wilson.	2	6	99
Comments by Mr. Breitenstein	2	6	99
Question called; Roll Call (Carried)	2	6	100
Motion by Com. Bishop that Meeting No. 6 Adjourn February 21 at 4 p. m. or earlier; Seconded by Com. Carson	2	6	100
Question called; Roll Call (Carried)	2	6	100
Noon Recess.	2	6	101

February 20 (Afternoon) 1:30 p.m.

Call to Order.	2	6	101
Consideration of Item (a), re Recognition of Colorado River Compact.	2	6	101
Motion by Com. Bishop for Provision in Upper Basin Compact Recognizing Validity and Applicability of Colorado River Compact, and Instructing Legal Committee to Draft Such a Provision; Seconded by Com. Stone.	2	6	101
Question called; Roll Call (Carried)	2	6	101
Consideration of Item (b) of Group IV, re Incorporating Colorado River Compact Definitions in Upper Basin Compact.	2	6	102
Texts of Definitions.	2	6	102
Comments by Mr. Wehrli	2	6	102
Comments by Com. Stone	2	6	103
Comments by Com. Wilson.	2	6	103
Comments by Com. Carson.	2	6	103
Motion by Com. Carson That Compact Article Relating to Definitions Be Considered Last After Other Compact Articles Have Been Decided; Seconded by Com. Bishop	2	6	104
Question called; Roll Call (Carried)	2	6	104
Consideration of Item (c) of Group IV, re Apportionment of Unapportioned Water.	2	6	104
Texts of Paragraphs (f) and (g) of Article III of Colorado River Compact	2	6	104
Comments by Mr. Breitenstein	2	6	104
Comments by Chairman Bashore	2	6	104
Comments by Com. Carson.	2	6	105
Comments by Com. Wilson.	2	6	105
Comments by Com. Stone	2	6	106
Comments by Mr. Wehrli	2	6	106
Motion by Com. Wilson That Legal Committee Be Instructed to Draft Appropriate Language Dealing with Paragraphs (f) and (g) of Article II of the Colorado River Compact, and Report Back to Commission; Seconded by Com. Stone.	2	6	107
Question called; Roll Call (Carried)	2	6	107
Consideration of Item (d) of Group IV, re Possible Controversies Between Two or More States.	2	6	107
Text of Article VI of Colorado River Compact.	2	6	107
Comments by Chairman Bashore.	2	6	108
Comments by Mr. Breitenstein.	2	6	108
Comments by Com. Carson.	2	6	108

	Vol.	Mtg.	Page
Comments by Mr. Wehrli	2	6	108
Motion by Com. Bishop to Exclude Similar Article to Article VI of Colorado River Compact from Upper Basin Compact; Seconded by Com. Watson	2	6	109
Question called; Roll Call (Carried)	2	6	109
Motion by Com. Stone to Refer Suggested Language on Relinquishment of Water to Legal Committee to Study, Revise and Report Back to Commission; Seconded by Com. Wilson	2	6	109
Question called; Roll Call (Carried)	2	6	110
Recess	2	6	110
Consideration of Item (a) of Group V, re Rights and Obligations Arising Out of or Affecting Interstate Tributaries	2	6	110
Comments by Mr. Breitenstein	2	6	110
Comments by Mr. Wehrli	2	6	110
Comments by Com. Stone	2	6	110
Consideration of Item (b) of Group V, re La Plata River Compact	2	6	110
Comments by Com. Stone	2	6	111
Comments by Com. Wilson	2	6	111
Motion by Com. Stone That Recognition and Validity of La Plata Compact Be Protected by Appropriate Language in Upper Basin Compact; Seconded by Com. Wilson	2	6	111
Comments by Mr. Wehrli	2	6	111
Comments by Com. Carson	2	6	111
Question called; Roll Call (Carried)	2	6	112
Consideration of Item (c) of Group V, re San Juan River	2	6	112
Comments by Com. Stone	2	6	113
Comments by Com. Wilson	2	6	113
Comments by Mr. Wallace	2	6	113
Comments by Mr. Wehrli	2	6	114
Comments by Chairman Bashore	2	6	114
Comments by Com. Watson	2	6	115
Comments by Mr. Barlow	2	6	115
Comments by Com. Bishop	2	6	116
Comments by Mr. Breitenstein	2	6	116
Motion by Com. Wilson to Refer Paragraph (c) of Group V to Representatives of Colorado and New Mexico for Later Report to Commission on Adjustments Desired for Inclusion in Upper Basin Compact; Seconded by Com. Watson	2	6	116
Question called; Roll Call (Carried)	2	6	116
Consideration of Item (d) of Group V, re Little Snake River	2	6	117
Motion by Com. Bishop That Representatives of Colorado and Wyoming Confer on Apportionment of Little Snake River Waters and Report Recommendations Back to Commission; Seconded by Com. Stone	2	6	117
Question called; Roll Call (Carried)	2	6	117
Appointment of Mr. Wehrli to Represent Wyoming in Colorado-Wyoming Conferences	2	6	117
Consideration of Item (e), re Green River Tributaries	2	6	117
Motion by Com. Watson that Representatives of Utah and Wyoming Confer on Apportionment of Green River Tributaries' Waters and Report Back to Commission; Seconded by Com. Bishop	2	6	117
Question called; Roll Call (Carried)	2	6	118

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Appointment of Mr. Wehrli and Mr. Person to Represent Wyoming in Conferences.	2	6	118
Appointment of Mr. Clyde and Mr. Roskelley to Represent Utah in Conferences.	2	6	118
Consideration of Item (f) of Group V, re Colorado and Utah Interstate Stream Agreements.	2	6	118
Comments by Com. Stone.	2	6	118
Comments by Com. Watson.	2	6	118
Comments by Mr. Breitenstein.	2	6	118
Comments by Mr. Merriell.	2	6	118
Comments by Mr. Wallace.	2	6	118
Motion by Com. Watson That Colorado and Utah Appoint Representatives to Confer on Interstate Problems on Yampa, White and Dolores Rivers, and Report Back to the Commission; Seconded by Com. Stone.	2	6	119
Comments by Com. Carson.	2	6	119
Comments by Mr. Breitenstein.	2	6	119
Question called; Roll Call (Carried)	2	6	120
Conferees' Appointments Delayed.	2	6	120
Consideration of Item (g) of Group V, re Specific Allocations to Tributary Drainage Basins.	2	6	120
Motion by Com. Wilson That Allocations Be Made to States, and Not to Basins; Seconded by Com. Bishop.	2	6	120
Comments by Mr. Merriell.	2	6	121
Comments by Com. Stone.	2	6	121
Comments by Chairman Bashore.	2	6	121
Comments by Mr. Riter.	2	6	121
Further Discussion on (g) Delayed.	2	6	122
Consideration of Item (h) of Group V, re Obligation of Upper State to Deliver Specific Amount of Water From Any Tributary to Lower Basin State.	2	6	122
Comments by Mr. Wehrli.	2	6	122
Comments by Com. Carson.	2	6	122
Comments by Com. Wilson.	2	6	122
Comments by Com. Stone.	2	6	123
Comments by Chairman Bashore.	2	6	123
Comments by Mr. Riter.	2	6	123
Motion by Com. Watson to Adjourn; Seconded by Com. Stone.	2	6	125
Vote taken (Carried)	2	6	125

February 21 (Forenoon) 9:30 a. m.

Call to Order.	2	6	125
Resumption of Discussion Items (g) and (h), Group V.	2	6	125
Comments by Com. Wilson, withdrawing His Motion Made Previous Day.	2	6	125
Motion by Com. Wilson That Allotments of Water be Made to States; Seconded by Com. Watson.	2	6	126
Comments by Mr. Wehrli.	2	6	126
Comments by Com. Stone.	2	6	126
Comments by Com. Watson.	2	6	126
Comments by Chairman Bashore.	2	6	126
Comments by Com. Bishop.	2	6	127
Question called; Roll Call (Carried).	2	6	127

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Colorado (Com. Stone) That Upper Basin Compact Include Articles on Rights and Obligations of Various States Arising Out Of or Affecting Interstate Tributaries of Upper Colorado River; Seconded by Com. Bishop.	2	6	128
Question called; Roll Call (Carried).			
Consideration of Group VI, Item (a), re Definition of Term 'Beneficial Consumptive Use'.	2	6	128
Motion by Com. Stone That Drafting of Definition be Referred to the Legal and Engineering Committees; Seconded by Com. Watson.	2	6	129
Comments by Mr. Wehrli	2	6	129
Question called; Roll Call (Carried)	2	6	129
Consideration of Item (b), Group VI, re Method of Measuring Beneficial Consumptive Use	2	6	129
Comments by Com. Stone.	2	6	129
Motion by Com. Watson that Items (b), (c), (d) and (e) Be Taken Up When Further Information From Engineering Committee Is Available; Seconded by Com. Stone	2	6	130
Question called; Roll Call (Carried).	2	6	130
Consideration of Article 6, re Means of Correlating Work of Engineering and Legal Committees.	2	6	130
Comments by Com. Stone.	2	6	130
Instructions from Chairman for Two Committees to Confer and Work Together.	2	6	130
Consideration of Article 7, re Time Schedule for Preparation and Completion of Draft of Upper Basin Compact.	2	6	130
Simultaneous Discussion of Article 8, re Time and Place of Next Meeting	2	6	130
Motion by Com. Stone That Next Meeting be at Vernal, Utah, July 7, 1948; Seconded by Com. Watson.	2	6	131
Questions called; Roll Call (Carried).	2	6	131
Comments by Com. Carson.	2	6	131
Comments by Com. Stone	2	6	131
Insertion of Meeting No. 6 Agenda Into Minutes.	2	6	132
Motion by Com. Bishop That Legal Advisory Committee Be Not Bound by Specific Instructions of Commission, But Free to Submit Other Items Deemed Essential for Compact Making; Seconded by Com. Stone.	2	6	132
Question called; Roll Call (Carried).	2	6	132
Discussion of Interim Work Program.	2	6	133
Comments by Stone.	2	6	133
Comments by Mr. Breitenstein	2	6	133
Motion by Com. Stone re Interim Work Program; Seconded by Com. Watson	2	6	133
Question called; Roll Call (Carried).	2	6	133
Statement of Appreciation to Press.	2	6	134
Motion by Com. Carson for Commission Meeting to Edit Minutes; Seconded by Com. Stone.	2	6	134
Vote taken; carried.	2	6	134
Motion by Com. Stone to Adjourn; Seconded	2	6	134
Vote taken; carried.	2	6	134

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UNITED STATES GEOLOGICAL SURVEY:

M. T. Wilson	District Engineer, Salt Lake City, Utah.
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PROCEEDINGS

The meeting was called to order by Chairman Bashore at ten o'clock a.m., Tuesday, February 17, 1948, in the Colorado Room of the Shirley-Savoy Hotel, Denver, Colorado.

THE CHAIRMAN: Gentlemen, the meeting will come to order. The Chair observes that the members of the Arizona Interstate Stream Commission are present with us and as it is my understanding that it is a relatively new group, I would like Mr. Carson to introduce these gentlemen.

COM. CARSON: Mr. Chairman, Arizona has recently created an Interstate Stream Commission composed of seven members. Four of them are here. I want to introduce Mr. Wayne M. Akin, Chairman; Mr. R. H. McElhaney, Vice-Chairman; Mr. Barry M. Goldwater, Member; and Mr. Jay M. Gates, Member.

THE CHAIRMAN: Thanks, Mr. Carson.

(Com. Stone distributes, "Suggested Agenda, Meeting No. 6, Upper Colorado River Basin Compact Commission," which is as follows:)

- No. 6.
 1. Determination of schedule of session of Commission for Meeting No. 6.
 2. Consideration of agenda for Meeting No. 6.
 3. Consideration of report of Engineering Committee.
 4. Consideration of report of Legal Advisory Committee.
 - (a) Administrative provisions.

(b) Provisions relative to projects constructed in one state for the benefit of another state or for the common benefit of all states.

(c) Provisions relative to apportionment of losses of water incidental to reservoir operations.

(d) Provisions relative to preferential uses of water.

(e) Method of treatment of water uses by Indians.

5. Consideration of factors suggested by states at Meeting No. 5 and not heretofore discussed by Commission.

Group I.

(a) Shall the compact operate for a fixed term of years or for perpetuity.

(b) Shall the allocation of beneficial consumptive use be subject to future adjustment in the event that any state does not make full beneficial consumptive use of its allotted share within a stated period.

(c) Provisions for periodic review of compact terms and conditions.

Group II.

(a) What provisions shall be incorporated in the compact to define the rights and obligations of the United States.

(b) How shall water uses made by the United States or any of its agencies be charged.

(c) Provisions relative to uses of water by Indians.

(d) Provisions relative to navigation.

(e) Provisions relative to flood control.

(f) Provisions relative to silt control.

(g) Provisions relative to cooperation with such United States agencies as Bureau of Reclamation, United States Geological Survey, International Boundary and Water Commission, and possibly others.

Group III.

(a) Shall compact contain any provision relating to the delivery of water at Lee Ferry for the use of Mexico in the event there is not sufficient surplus water to supply the Mexican share.

(b) Should the compact contain any provision relative to extraordinary drought in order to take advantage of the applicable provisions of the Mexican Water Treaty.

Group IV.

(a) What general provision should be incorporated in the

Upper Basin Compact to recognize the validity and applicability of the Colorado River Compact.

(b) Should the definitions contained in Article II of the Colorado River Compact be incorporated without change in the Upper Basin Compact.

(c) Should paragraphs (f) and (g) of Article III of the Colorado River Compact relating to the apportionment of unapportioned water be carried over into the Upper Basin Compact.

(d) What if anything, should be done with relation to Article VI of the Colorado River Compact pertaining to controversies between two or more states.

.....

Group V.

(a) Should the compact endeavor to encompass rights and obligations arising out of or affecting interstate tributaries.

(b) What provision shall be made with relation to the existing La Plata River Compact.

(c) What adjustment must be made between Colorado and New Mexico in connection with the use of San Juan River water.

(d) What adjustment must be made between Colorado and Wyoming with relation to the uses of the water of Little Snake River.

(e) What adjustment must be made between Wyoming and Utah with respect to the uses of the water of Green River tributaries arising in Utah.

(f) What adjustment must be made between Colorado and Utah with respect to uses of water on the main stream of the Colorado River, the Yampa River, the White River and the Dolores River, and other interstate streams tributary to either the Green River or the Colorado River.

(g) In the allocation of beneficial consumptive use of water shall there be specific allocations to tributary drainage basins in each state.

(h) Shall an upper state be required to deliver to a lower state any specific amount of water from any tributary.

Group VI.

(a) Definition of the term "beneficial consumptive use".

(b) Method of measuring beneficial consumptive use.

(c) Consideration of the method of treatment of conveyance losses.

(d) Consideration of the method of treatment of so-called salvage water.

(e) The determination of general type of formula for defining obligations of states to make Lee Ferry deliveries.

6. Discussion of means of correlating the work of the Engineering and Legal Committees.

7. Discussion of a time schedule for the preparation and completion of a draft of the compact.

8. Determination of time and place of next meeting.

THE CHAIRMAN: We shall first take up Item No. 4 on the agenda as laid before the Chairman and that is, "Consideration of report of Legal Advisory Committee." Is the Chairman of that Committee prepared to report?

CGM. CARSON: Yes, Mr. Chairman. The Legal Advisory Committee met all day Sunday and Monday of this week and arrived at a report which will be mimeographed today and ready for presentation to this Compact Commission as soon as it is completed. We have prepared a report on all matters referred to the Legal Advisory Committee but we prefer to wait until that mimeographed copy is available to all Commissioners and its being offered for consideration of the Commission.

THE CHAIRMAN: Thank you, Mr. Carson. We are glad to hear that the Legal Advisory Committee has made progress, and of course in the absence of the written report we will have to pass over that matter.

At the last meeting the Commission instructed the Chairman to communicate with the various Federal agencies and ascertain the answers to two questions. The Chairman carried out those instructions and communicated with the various interested agencies and has received replies from the International Boundary and Water Commission, the Federal Power Commission, the Bureau of the Budget, and an acknowledgment from the Department of the Interior. Those letters have been turned over to Mr. Ray E. Peterson of the Colorado Water Conservation Board and he is now having copies prepared--about 35 copies I believe--and they will be distributed when they become available so that you may study them.

Generally speaking, the communication from the International Boundary and Water Commission I think is quite satisfactory, and the communication from the Federal Power Commission was rather helpful.

I mention that at this time so you may know that the matter will receive attention before we get through here with this Meeting No. 6.

Judge Stone, at this juncture would you like to make a statement in regard to Item No. 5 on the agenda, which is: "Consideration of factors suggested by states at Meeting No. 5 and not heretofore discussed by Commission."

CGM. STONE: Mr. Chairman, Colorado in anticipation of what might be considered at this meeting, prepared a suggested agenda. We have copies available for all members of the Commission and their advisers. It is a mere suggestion and designed to expedite the work of the Commission and to bring to the attention of the Commission many matters which in our judgment will have to be considered. It is Colorado's position that pending a final engineering report, we should dispose of many questions which in the judgment of Colorado must be considered

before a compact is negotiated. If it is agreeable with the Chairman and the members of the Commission we are prepared to pass out this suggested agenda.

THE CHAIRMAN: Please do that, Judge.

(Suggested Agenda distributed generally to advisers and others present.)

THE CHAIRMAN: Does Colorado wish to make an opening statement in regard to the question of whether the compact shall operate for a fixed term of years or for perpetuity? Item (a) under Group I.

COM. STONE: Do I understand that this agenda is acceptable to the Commission, that we proceed under it?

THE CHAIRMAN: I haven't heard any objection. Is this agenda satisfactory to the members of the Commission?

COM. STONE: I might make this explanation, Mr. Chairman: We have made an attempt on page 1 under Paragraph 5 to pick up from the statements of all of the states items which were submitted by the various states but which were not discussed at the last Compact meeting. We reviewed the statements submitted by each and all of the states at Meeting No. 5 and incorporated here those items which had not been discussed at Meeting No. 5, placing them here on the proposed agenda for discussion. There have been added other items which were not submitted at the last meeting.

It is evident that there are items toward the last of the suggested agenda which cannot be discussed, fully at least, until the engineering report is in; but there is a big program of work here if the Commission wishes to proceed with these items or any other items which any state may have to suggest in addition to those suggested by the states at the last meeting. Colorado does not wish to be in the position of proceeding with any agenda that isn't acceptable to all of the states.

THE CHAIRMAN: Well, it seems to the Chairman, Judge Stone, that Colorado has done exactly what you relate and that it was to bring all these factors that have been thrown into the hopper together here and placed them on the agenda. They have been talked about and it is time to make some disposition of them, either decide they have a place in the compact or not, and why not or why they should be in. Is there any objection from any member of the Commission in regard to proceeding on the basis of the agenda prepared by Colorado? The Chair hears no objection.

COM. WATSON: This outline should be followed, we should complete it as soon as we can within reason, and that will lead to the main question we are here for, namely, dividing the water.

THE CHAIRMAN: Very well. Thank you, Mr. Watson. Are there any further remarks on this agenda? (No response.) Are we ready to proceed with the discussion of the items on the agenda? (No response.) Apparently there are no fixed opinions on this matter one way or the other. Do I hear a motion to proceed with the agenda?

COM. CARSON: I move we proceed with the agenda.

COM. WILSON: Second the motion.

THE CHAIRMAN: You have heard the motion and the second. Is there

further discussion? (No response.) (Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

Now, will Colorado discuss subitem (a) of Item 5, Group I: "Shall the compact operate for a fixed term of years or for perpetuity."

COM. STONE: In accordance with the method followed at the last meeting I shall call upon Mr. Breitenstein to open the discussion on behalf of Colorado on subitem (a) of Item 5, Group I, of the agenda.

MR. BREITENSTEIN: Mr. Chairman, that raises a question of the length of term of the compact. Shall it be a compact which operates in perpetuity? Or shall it have a fixed term of years? We feel that that is a problem which should be decided now rather than to wait until the end of the compact negotiations. We have at times run up against the proposition that after everything else is determined, somebody has the idea that perhaps the compact should operate for a fixed term of years rather than perpetuity.

Speaking personally, it seems to me that what we are trying to do here is to make a permanent allocation of the waters of the Colorado River between the Upper Basin States which shall be good for all times.

We have had presented to us a plan or a report of the Bureau of Reclamation. As I understand it the Bureau says that carrying out that plan or that report is dependent upon the allocation of water between the states. It would seem obvious to me that if that allocation is not permanent but is one which is good for only a fixed term, then further questions can be raised as to whether or not a water supply is available for particular projects.

The only argument that I can think of in favor of having it operative for a fixed term of years is that none of us can foresee what will happen in the future and conditions might change so as to make the allocation unwise under future conditions. It would seem to me that can be taken care of by some provisions of the compact which would not disturb its permanent character.

THE CHAIRMAN: Thank you, Mr. Breitenstein.

COM. STONE: Supplementing what Mr. Breitenstein has said and as Colorado's Compact Commissioner, it is the view of Colorado that this compact should operate in perpetuity.

COM. WATSON: I move that this compact shall operate in perpetuity.

COM. BISHOP: I second the motion.

THE CHAIRMAN: Are there any remarks on the motion as made and seconded? (No response.) Question is called for. Thereupon a vote is taken on Com. Watson's motion.)

THE CHAIRMAN: It seems everyone is very reluctant about raising his voice this morning on these votes so the Chair, in order to make sure he hasn't failed to hear the vote, is going to call the roll by states on this motion on Item (a). Utah?

COM. WATSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: I vote yes on the motion. I would like to make this explanation: I think it is obvious that any compact that is negotiated should be in perpetuity; but there will be suggestions made, as has been discussed in the Legal Advisory Committee, that provision should be inserted that on the request of two or more states signatory to the compact, they may either make a new one or amend an old one to iron out any inequities that may be found to exist. On that basis I would like to have a final, perpetual compact.

COM. STONE: I might say that the suggestion made by Mr. Wilson is well taken and that item is covered under subsection (c) in this list.

THE CHAIRMAN: Colorado?

COM. STONE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Will Colorado now open the discussion on subitem (b), Article 5, Group I: "Shall the allocation of beneficial consumptive use be subject to future adjustment in the event that any state does not make full beneficial consumptive use of its allotted share within a stated period."

COM. STONE: I again ask Mr. Breitenstein to open the discussion on subitem (b) of Item 5, Group I.

MR. BREITENSTEIN: Of course that is tied in with (a) on which the Commission has just acted. While it is well for the compact to operate in perpetuity, nevertheless there may be a situation whereby or wherein it is necessary to change some of the allocations of water. We do not know whether or not any one of the states may in the future completely use the water which is allocated to it. Now, in the event conditions arise which result in a state being unable for some reason to utilize its full share of the water, then it would seem reasonable that that water be available for use in some other Upper Basin State.

You all recall that in the Colorado River Compact there is a provision that the Upper Basin shall not withhold and the Lower Basin shall not demand water which cannot be beneficially used in the Basin. It seems to me that we should take advantage of that here and if within a fixed time or whatever condition you want to place on it, it is found that the water allocated to one state is not going to be used in that state, then the water ought to be available for another state because there is no need of letting this water run down to the Gulf of California unused. We want to utilize every bit of it that we can.

It would seem to me that there should be some flexible provision in the compact which would take care of a situation resulting from the failure or inability of one state to utilize its share of the water. We do not know now in whose favor such a provision might operate or to the detriment of what state it might operate. But it seems to me, having regard to the complete utilization of the water, it is essential that there be some such provision in the compact.

Judge Stone suggests that in considering (b) we might at the same time

consider (c). That is a provision for periodic review of compact terms and conditions.

In the Rio Grande Compact there is a provision for periodic review of compact terms and conditions which are not of a substantive nature. That provision permits review at the end of each five-year period after the effective date of the compact. At the end of the first five-year period, New Mexico made a request for review of the provision of the compact relating to the schedule of water deliveries at San Marcial, New Mexico. That matter has been considered for a year and a half or two years by an engineering committee. They made a report and their report is going to be considered by the Rio Grande Commission at its meeting this month. What will come of that I do not know. But that illustrates the method in which the Rio Grande Compact provision has operated.

It is possible, as we all realize I am sure, that no matter how hard we work on this, some inequities may develop in the passage of the years. Now we all want to iron out those inequities I am sure. We don't want one state to have an unfair advantage over another state. It would seem to me that careful consideration should be given to some compact provision which would take care of the matters referred to in (b) and (c).

COM. WATSON: Mr. Chairman, wouldn't it be well to refer to the Colorado River Compact and see what language is used in the Colorado River Compact and ascertain whether we can go along with that language or whether we have to modify it, because the same idea is covered in the Colorado River Compact.

MR. BREITENSTEIN: May I answer that, Mr. Chairman?

THE CHAIRMAN: Certainly.

MR. BREITENSTEIN: I have given that consideration and it is my judgment at the present time that we cannot utilize the same scheme as is found in the Colorado River Compact.

COM. STONE: I should like to make the further remark that we ought to use experience and not necessarily be bound by provisions made over twenty years ago. Conditions have changed. I think we ought to apply to this subject a fresh outlook and not permit ourselves merely to fall back on conclusions of twenty years ago.

I should like to add one other thing which I believe ought to be kept in mind in considering (b) and (c). I believe there would be no difference of opinion on this proposition that provisions of a substantive nature in a compact cannot be changed except that such changes are effectuated in the same manner that the original compact is made, that is, by ratification of the states and approval by Congress. Provisions under (c) contemplate terms and conditions which are not of a substantive nature and which may be reviewed and adjustments made by an administrative body set up under the compact.

That general principle it seems to me must be kept in mind in considering (b) and (c). We must recognize that there is a distinction there which is fundamental. Yet the mere fact that substantive provisions can be changed only in the same manner that the compact is made does not foreclose this Commission from incorporating flexible provisions for adjustment to meet conditions in the future which we do not foresee now.

MR. BREITENSTEIN: The matter covered by subdivision (c) here was

discussed by the Legal Advisory Committee. My view of the work of the Legal Advisory Committee is that it merely puts down in appropriate language decisions which are made by the Compact Commission. I think it is not proper for the Legal Advisory Committee to make the decisions. The lawyers are just the working boys who prepare the language to carry out the wishes of your Commission.

Now, when we discussed a matter, which is the same as (c) here, I believe we all came to the conclusion that it would be presumptive on our part to try to work out anything in advance of having a specific direction from the Commission itself. In my mind it is not proper to merely refer a matter such as (b) and (c) to the Legal Advisory Committee and say, "You come in here and show us something to cover these items." I think that the policy decisions as to what will be encompassed by a compact provision must be made in the first instance, not in the second instance, by the Commission itself.

Referring specifically to (c), in the Rio Grande Compact the provisions for periodic review are strictly confined to those that are not of a substantive nature. One thing that has arisen to cause differences of opinion is, what is meant by a substantive provision? What provisions are substantive and what are not?

Now it seemed to me that the Commission should decide in the first instance whether or not it wants to confine periodic review to substantive provisions or nonsubstantive provisions or both and you should tell the Legal Committee what you want to say on that, and of course the same remarks are applicable to (b). In other words, I think it is unfair to the Legal Committee to expect it in the first instance to make the decisions for subsequent criticism by the Commission.

MR. GILES: Mr. Chairman, I am not a member of the Commission but I would like to make this observation, that it is rather difficult for me to conceive of a state binding itself at this time in this compact to release any of its allocated water within a stated period. It is rather difficult to foresee conditions that would make a state come to that conclusion. It seems to me it would be a dangerous procedure to bind yourself to a re-allocation of water to another state if you don't use it within a stated period yourself. If it can be done it would probably be a good thing to do but I wouldn't want to be a party to that myself.

COM. STONE: I think Mr. Giles raises a very pertinent question here. The question is: In making allocations do you want to make those permanent so that they could not be changed except in the same way the original compact is made? Or, do you want to put into the compact agreements whereby under such conditions it could be made?

That raises the question of policy which Mr. Breitenstein refers to. That points up the question. There could be put into this compact provisions which would initiate procedure whereby recommendations could be made to the respective legislatures and for the approval of Congress for any change; or we could make it more flexible and permit future adjustments as to allocations of water. Mr. Giles points up the question and says that that should not be done. Well, that is just one of the questions which this Commission should decide here.

MR. GILES: Well, Judge, I don't go that far. I think it is possible to make your compact flexible enough to re-allocate under conditions that point the way for re-allocation. But what I had in mind was, at this time to have a provision in your compact that within a given number of years if a state hasn't used its allocated water it shall give it up--

COM. STONE: You can always re-allocate under a compact, under another compact that could be made the same as this one.

MR. GILES: That is right.

COM. STONE: The point is whether we shall lay the basis for review and the procedure for that.

MR. ROLLINS: Mr. Chairman, may I say a word?

THE CHAIRMAN: Yes, sir.

MR. ROLLINS: What I say may not be the opinion of our Commissioner and may not be the opinion of his advisers but it seems to me that inasmuch as the 7,500,000 acre feet is allocated to the Upper Basin States in perpetuity, that this Commission should take a similar stand and all allocations that are made in this compact should be in perpetuity. If we do determine here that a review can be taken at some future date, it should be so far ahead that it would give every state ample opportunity to get all of its projects completed.

I can remember back a long time and we in Wyoming have been talking about projects for the last fifty years and yet we haven't any. It may be fifty years before we will have all our projects; it may be longer than that. I for one certainly wouldn't want to bind Wyoming to any compact which could be reviewed again in a few years even if it was done in the manner in which we are negotiating at this particular time. I would want a hundred years if we are going to make any decision on it.

COM. BISHOP: Mr. Chairman, we would like to see the allocation in perpetuity the same as the allocation to the Upper Basin is in perpetuity. We are at a higher elevation than the states lower down and naturally will be longer developing our water resources. I would like to have all the time that is necessary. I wouldn't want any change ever to be made except with our consent.

COM. WATSON: Do you mean, Mr. Bishop, by that that the entire 7,500,000 acre feet will be divided, or a major portion of the 7,500,000 and a surplus left to allocate at some future date as was provided for in the Colorado River Compact?

COM. BISHOP: I believe, Mr. Watson, we agreed at the last meeting that we would make the division of 7,500,000 acre feet of water on a percentage basis, in which case if there isn't that much available we will get our percentage. If there is more than that, of course we will come under the terms of the Colorado River Compact which provides at a certain time we can ask for allocation of the surplus water. I don't think we should try to divide the surplus in this compact.

MR. BLISS: Mr. Chairman, it would seem to me that Mr. Bishop has more or less answered his own question. Any action that the Commission would take would necessarily have to be unanimous and no state would have to give up any right unless they were convinced in their own mind they could not use their allocated share of the water. It seems to me that would take care of itself in any substantial change in the compact.

COM. CARSON: Mr. Chairman, it seems to me it should be in perpetuity and that this (b) and (c) are not necessary now to go into any compact but should be covered by a provision that we discussed in the Legal Advisory Committee--but we didn't feel justified in proceeding with it--and that would

simply be a provision that on the request, as Judge Wilson said, of two states, or some other number, whatever the Commission should decide, the governors of the signatory states would appoint members of the Commission to review, and let it go at that. Then it would be decided in the light of the then condition instead of now as to all of these readjustments.

COM. WATSON: Mr. Chairman, may I ask Mr. Carson a question? That review would have to be unanimous?

COM. CARSON: That would have to be made in the same way this compact would be made. In other words, the same power that made it could alter it, ratified by the legislatures of the various states and approved by the Congress.

MR. CLYDE: I would like to make just one comment. Under Article III, Section (e), of the Colorado River Compact, the Upper Division has already bound itself not to withhold water that it cannot use, using the word "cannot." If the Upper Basin in dividing the water among the states of the Upper Basin allocated water to one state in a quantity above that which it can use, then under our already existing contract with the Lower Basin they are going to get that water because we say we will not withhold it if we cannot use it.

I think that the Upper Basin States ought to leave--and I think the method ought to be somewhat as Mr. Carson suggests--should leave the matter open so that if we do through insufficient data now make allocation beyond that which can be used by any Upper Basin States, it can be reconsidered. Otherwise, under Article III, Section (e), of the existing compact, it is going to go to the Lower Basin because all that we cannot use we agree we will not withhold. And if we allocate to Utah more than it can use, then under the existing compact it will go to the Lower Basin unless we have some method of readjusting it and letting the Upper Basin come into the picture. The method I think, however, ought to be that suggested by Mr. Carson, which is, leave the matter open for renegotiation when that fact becomes known.

COM. STONE: Mr. Chairman, all of the other states have commented; Mr. Breitenstein merely presented the problem. Colorado's position on (b) and (c) is this: First I shall take up (c). We believe that the compact should contain a clause which would permit under the conditions set forth, whatever they may be, a periodic review of nonsubstantive terms, that is, matters which do not affect the substance of the compact, matters which do not change or affect the apportionment to the states, but nonsubstantive terms which are designed and will be helpful in making the compact more effective and operative. We believe in that connection the clause specifying a review should define what constitutes substantive provisions.

As to (b), "Shall the allocation of beneficial consumptive use be subject to future adjustment in the event that any state does not make full beneficial consumptive use of its allotted share within a stated period," Colorado is not in favor of such a provision. Our reason is this: We should make the apportionment in an equitable fashion under the conditions as we know them today. If in the future it appears that some state cannot use its portion of the water, there is nothing to prevent the making of a supplemental compact under the conditions as we shall know them in that day. I am inclined to believe that Grover Giles and Mr. Rollins are right in saying that we cannot now appraise that condition and no state in the interest of future generations would want to appraise it, and there really is no need of doing it because if the thing should happen for Colorado which Mr. Watson mentions, the door is open for the making of a supplemental compact.

So to sum up, Colorado favors a provision suggested by Subsection (c) with the suggestion that that provision must be carefully drawn and should

clearly define what constitutes nonsubstantive matters. Colorado is opposed to anything being included in the compact as suggested under Subsection (b).

MR. CLYDE: Mr. Chairman, may I ask Judge Stone a question?

THE CHAIRMAN: Yes, sir.

MR. CLYDE: Do you, Judge Stone, fear legally that California might be able to argue that we have relinquished our rights to readjust our apportionment if we at this time in perpetuity and with no reservation whatsoever in the compact, allocate more water to an Upper Basin State than it can use and then California come forward and say, "Well, by that now you under Article III, Subsection (e), of the Colorado River Compact have relinquished that water to the Lower Basin"?

COM. STONE: You have raised I think an important question and one I haven't thought of; but offhand I believe we should incorporate in the compact an appropriate reservation to make it clear that the Upper Basin proposes to use its water even though it may require some future re-apportionment among the states of the Upper Basin.

MR. CLYDE: That was the point of my comments before, that we ought to reserve that some way so that by an allocation today on the basis of existing data we don't allocate to one state more than it can use.

COM. STONE: I think you have a very important point there and I agree with your thinking; however, that is a different point from that raised by these two suggestions.

MR. CLYDE: It is different but it is related.

COM. STONE: It is related. I do think we must be very careful that we do not leave the door open for a lower basin state to make a claim such as you mention. I believe that can be done and still carry out sound principles as to (b) and (c). That is a different but a related subject to the one raised by (b) and (c).

THE CHAIRMAN: Well, the Chairman hopes that in the drafting of this compact there will be no provision written into it which will invite competition between the Upper Basin States in the furtherance of their development. You might in the future have a division of opinion between the Upper Basin States and two or three states gang up on another one and get right in the way of their appropriations and delay their work.

Of course we are all talking about this compact in good faith but we will all pass out of the picture one of these days, new faces will appear. How they will look at it remains to be seen. But I would advise extreme caution in leaving the matter open so there would be competition invited between the Upper Basin States themselves in the development.

COM. STONE: I believe, Mr. Chairman, we recognize that and that is one of the reasons why we believe there should be no provision as to (b) but I think that in the interest of the most effective compact there should be some carefully phrased provision under (c), and we will tentatively go along with the suggestion made by Utah that we must have that reservation.

MR. WEHRLI: Mr. Chairman, may I make a comment?

THE CHAIRMAN: Mr. Wehrli.

MR. WEHRLI: It seems to me unimportant whether provisions of this character are included in the compact because the compact can be changed only by the making of a new compact, which would require the concurrence of all of the states, and with or without provisions of this kind the states certainly would have the right at any time in the future to make a new compact. So as far as we are concerned, we think that these matters are unimportant and I am inclined to agree with Mr. Carson in the matter. I am also a little bit apprehensive about the extending of an invitation, which provisions of this kind impliedly do.

COM. STONE: May I reply to that, Mr. Chairman?

THE CHAIRMAN: Certainly.

COM. STONE: I agree with Mr. Wehrli as to (b), but as to (c), he says we can change the compact. Yes, we can change the compact as to nonsubstantive matters, but we all know the turmoils that the machinery of negotiating a new compact mean. We know it means delay even though we are all in agreement. As to nonsubstantive matters which do not affect a state's apportionment of water or which do not affect a state's obligation to deliver water at Lee Ferry but which go to mere details of administration, we shouldn't lose the opportunity of leaving some flexibility on administration if it is properly surrounded with conditions which will protect a state's substantive rights. I believe that that provision in the Rio Grande Compact was carefully considered and experience has demonstrated that it was wise.

COM. WATSON: Can you, Judge Stone, as a lawyer define what is substantive and what is not substantive?

COM. STONE: I believe it can be defined. I wouldn't want to attempt it right at the moment. The question was raised in this state and with other states in connection with compacts which we have had under consideration as to what constitutes substantive matters and what are nonsubstantive matters, and the principles I think are pretty well understood. You cannot change substantive matters without the consent of all of the states and without a compact being made in the same manner as the original compact was made, that is, by ratification of the legislatures and approved by Congress. But I don't believe we should put ourselves in a straightjacket with respect to nonsubstantive matters and that we ought to explore the possibilities of writing a clause under (c) which would be satisfactory to all of the states. I believe that is what Mr. Carson suggested.

THE CHAIRMAN: Judge, just to bring the point out, what is meant by "periodic review of compact terms"? Does that mean every five years, every ten years, every fifty years or every one hundred years, or what does it mean?

COM. STONE: We don't say there. That is a matter for the Commission to agree upon if we have a clause of that kind. You may wish to approach it in a different manner. You may not want to have periodic reviews. You may want to leave it up to a review at the instance or suggestion of, let us say, two states, and such nonsubstantive changes would have to be agreed upon by all of the states.

THE CHAIRMAN: Well, would it be your idea that the year after this compact is written somebody could have a review of it?

COM. STONE: The Rio Grande Compact fixed it at every five years.

THE CHAIRMAN: Was that done on a percentage basis of allocation or actual acre feet?

COM. STONE: It didn't have anything to do with allocation because allocation is a substantive matter; it had to do with nonsubstantive matters. I will ask Mr. Breitenstein, who has had this matter before him, to give some suggestion as to what has been considered substantive and matters which are of nonsubstantive nature.

THE CHAIRMAN: Mr. Breitenstein.

MR. BREITENSTEIN: I can give a curbstone opinion in answer to Mr. Watson's inquiry and probably none of the other lawyers present would agree with me.

THE CHAIRMAN: We appreciate that.

MR. BREITENSTEIN: A substantive matter goes to a right or the definition of a right. A nonsubstantive matter is one which goes entirely to procedure. That is over-simplified but I think it gets the overall idea.

On the periodic review my thought was that it should be permissible to review nonsubstantive matters at fixed intervals and I am inclined to think the five-year period set up in the Rio Grande Compact is as fair as you can get. That is five years after the compact is effective and every five years thereafter. I believe the experience of New Mexico has shown the wisdom of such a provision.

THE CHAIRMAN: Mr. Breitenstein, it is your idea then that this provision (c) would not relate to re-allocation of water?

MR. BREITENSTEIN: Absolutely not.

COM. STONE: It is our position that that could not be done without ratification by the legislatures and approval by Congress.

MR. HOWELL: May I ask you this question? Assuming now you do attempt to define what shall be nonsubstantive matters, who will have the determination as to whether it is of nonsubstantive matter or whether it is not.

COM. STONE: It is my suggestion, Judge, that we should define what constitutes nonsubstantive matters so it would be clear in the compact and it wouldn't be necessary for anybody to determine it except this Commission in making the compact.

MR. HOWELL: The only difficulty about that that I have in mind is that my experience teaches me that two lawyers having desires in opposite ways can very plausibly argue no matter how you define it, the matter is a substantive matter or is a nonsubstantive matter according to what you want.

MR. BREITENSTEIN: May I make a suggestion?

MR. HOWELL: Yes.

MR. BREITENSTEIN: Your definition as to what is nonsubstantive might be by specific reference to paragraphs in the compact.

MR. WEHRLI: May I ask a couple of questions?

THE CHAIRMAN: Surely.

MR. WEHRLI: Did I understand you to say, Judge Stone, that you

were opposed to (b) and favored (c)?

COM. STONE: That is correct. Colorado opposes (b) for the very reason which you gave, that if we want to make any changes of a substantive nature the door is open to renegotiate a compact, or, to put it the other way, to negotiate a supplemental compact. We believe that we are not in a position today to commit any state to a different apportionment from that which is made by this compact and that each state must reserve that for the future.

But as to (c), we sincerely believe we should attempt to draft a clause which will permit some flexibility in the administration of the compact and in the handling of nonsubstantive matters without having to go through the process of negotiating a supplemental compact.

So we oppose (b). We do not submit at this time the exact provision as to (c) but we believe that the Commission should consider (c) and some of the terms that might be set up under (c) and submit it to the Legal Advisory Committee to draft.

MR. WEHRLI: My second question is this: Under (c) if you have such provision in the compact, wouldn't it nevertheless require the action of all the states to make any change?

COM. STONE: The answer to that is this: that if you have periodic review you could not change nonsubstantive matters without the consent and agreement of all the states.

MR. WEHRLI: Well, could you make any change except as to matters of administration, which after all are not defined particularly in the compact, without the concurrence of all of the states?

COM. STONE: If I understand your question right, our position is that you could not change any substantive matter without a supplemental compact. You could change a nonsubstantive matter under an appropriate clause in the compact with the consent of all of the states.

MR. CLYDE: Expressed how, Judge Stone? By the legislature ratifying it or just by the Commission?

COM. STONE: Under the Rio Grande Compact the administrative commission is authorized to make periodic reviews and there are representatives on that commission of all the states. They cannot review and suggest changes of a substantive nature because that requires the action of the states.

MR. HOWELL: Under your view would it require unanimous action on the part of the commission?

COM. STONE: Why certainly. We don't think you can change anything without unanimous action. You can't change nonsubstantive matters without an agreement of all the members, let us say, of the administrative commission. You certainly can't change substantive matters without a new or supplemental compact ratified by the legislatures of the states and approved by Congress.

THE CHAIRMAN: Gentlemen, we have had considerable discussion on subitem (b) of Article 5, Group I. Will somebody submit a motion in regard to it?

COM. BISHOP: I will make a motion that we go on record as against (b).

THE CHAIRMAN: Do I hear a second to Mr. Bishop's motion?

COM. WILSON: Mr. Chairman, I would like to speak on that motion but it has no second.

COM. WATSON: I will second the motion.

THE CHAIRMAN: Mr. Watson has seconded Mr. Bishop's motion. It is now open for discussion.

COM. WILSON: In the first place I would like to say, Mr. Chairman, I don't see what we are accomplishing by voting yes or no on some of these sentences. Reference has been made in discussing points (b) and (c) to the provisions of the Rio Grande Compact, to which Colorado, Texas, and New Mexico are parties, and it does have a provision in Article 13 which provides for a review. What do you mean by providing in a compact for a review? A review by whom? By the commission or the administrative body to be created by the compact?

In the Rio Grande Compact there is authorization for a review by the Commissioners themselves of any matter that is not substantive. I take it that the compact commission that is set up in the compact cannot review a substantive matter. In other words, they can't talk about it. It would do no good. So that would leave only nonsubstantive matters for the commission to review. If there are any nonsubstantive matters in the compact and you have a clause like this in it, the commission presumably can review those nonsubstantive matters. They are precluded, however, from reviewing substantive matters.

Now what is the purpose of permitting the commission to review nonsubstantive matters unless it is to make recommendations that they be changed or unless they have the power to change them themselves? Are you going to give the body that you create here the power to change nonsubstantive matters without going back to the state legislatures?

I think some provision for review ought to be put in the compact but it should be made to mean something. If you are going to give a body the right to review, give them a right to act on the thing or make recommendations. I see no objection to giving them the right to review substantive or nonsubstantive matters even if they can't do anything about either one, except to make recommendations to the legislatures. It seems to me that we can't decide anything by voting yes or no on either one of these, (b) or (c).

As far as (b) is concerned I will say this, that I think we all recognize the principle that if any state does have allotted to it water that it cannot use consumptively and beneficially, that state ought to give some of the other states the opportunity of using it.

THE CHAIRMAN: When?

COM. WILSON: We can't say now.

THE CHAIRMAN: When?

COM. WILSON: That is it. I would be opposed to saying now any stated period of time even though we put it one hundred years. So I think everybody is opposed to (b). But as to (c), it depends a great deal upon the administrative body that you create and the power you confer upon it whether the review amounts to anything or not.

COM. STONE: I understand, Mr. Chairman, that the motion goes only to (b).

THE CHAIRMAN: That is correct, Judge Stone. Are there any further comments on the motion as made and seconded?

COM. STONE: May I ask Mr. Bishop and Mr. Watson if we are correct in our interpretation of the motion that the motion goes only to (b)?

COM. BISHOP: That is right.

COM. WATSON: That is right.

THE CHAIRMAN: That is correct.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Now we have before us the disposition of subitem (c) under Article 5, Group I. Is there further discussion of subitem (c)? The two subitems (b) and (c) have been considered together and some of the comments refer to (c); (b) has been disposed of.

COM. CARSON: Mr. Chairman, I think it would be well if we passed (c) without any action until we see what terms are in this compact. To my mind it is not very likely there will be any nonsubstantive terms in this compact and the action of whatever commission is here set up will be in the matter of interpretation, which can not vary the language of the compact itself.

THE CHAIRMAN: The Chair is not sure he understands your thought there, Com. Carson. We must assume that somebody is going to attempt to put into this draft of the compact, the wishes of the Commission; and whether something is in or out on Item (c), the boys that draft it, and I presume that will be the lawyers, will have to have some indication as to what the Commission wants.

COM. CARSON: I move we defer consideration of Subsection (c) of this agenda to a later time.

COM. BISHOP: I will second that motion.

THE CHAIRMAN: The motion is seconded. Is there a discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Arizona?

COM. CARSON: Aye.

THE CHAIRMAN: New Mexico?

COM. WILSON: Aye.

THE CHAIRMAN: Colorado?

COM. STONE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Utah?

COM. WATSON: Aye.

THE CHAIRMAN: The motion is carried. The next item on the agenda is a consideration of the subitems under Group II on page 2. Now it occurs to your Chairman that in connection with the discussion of the subitems under Group II you should have before you the views of the Federal Power Commission and the International Boundary and Water Commission, but as those copies are not available before you perhaps we may go ahead in a consideration of that item and await final disposition of it to the time when you can consider the views which have been expressed by the Federal agencies. Mr. Watson?

COM. WATSON: What shall we do with the reservation suggested by Mr. Clyde? Shall we refer that to the Legal Advisory Committee so that they may draw the appropriate language as to that reservation made protecting the rights of the Upper Basin against the Lower Basin on water that might go down?

MR. BREITENSTEIN: Group IV, which is set up here on page 2 of the suggested agenda, contains matters referring to the Colorado River Compact. As I understand the suggestion it is to have in the Upper Basin Compact some provision which would take care of the Colorado River Compact as Mr. Clyde has suggested. If that is correct it seems to me the discussion properly comes up under Group IV.

COM. WATSON: That is right.

COM. STONE: Mr. Chairman, I move that we defer consideration of Group II on page 2 until the statements from the Federal agencies to which you have referred are before the Commission.

THE CHAIRMAN: Is there a second to that motion?

COM. CARSON: I will second the motion.

THE CHAIRMAN: Any discussion of the motion? (No response. Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. STONE: Now, Mr. Chairman, we get to Group III, which will precipitate considerable discussion. It is about twelve o'clock. It seems to me we ought to start in there tomorrow with either Group II if those Federal matters are before us, or Group III if they are not.

THE CHAIRMAN: Off the record. (Discussion off the record.)

COM. WATSON: Mr. Chairman, I move we adjourn until tomorrow afternoon at a time to be determined by the adjournment of the Colorado River Basin States Committee.

COM. STONE: The meeting this afternoon is at the Cosmopolitan Hotel at two o'clock.

THE CHAIRMAN: Is there a second to the motion to adjourn?

COM. WILSON: Second the motion.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

(12:00 noon, Recess.)

Denver, Colorado
February 18, 1948
4:00 o'clock p.m.

(All Commissioners present.)

THE CHAIRMAN: Gentlemen, we had gotten down to Group II of the agenda and then decided to pass it up in view of the non-availability of the letters from the Federal agencies. Now those letters have been mimeographed and are available here and we will pass them out to the members of the Commission and others. Mr. Giles, will you take care of that? Then if there is no objection the communications from the Federal agencies will be incorporated in the minutes.

(Mr. Giles distributes copies of communications from Federal agencies.)

THE CHAIRMAN: Gentlemen, is it your desire now to have these made a part of the record or incorporated in the minutes? Apparently the first communications that were received by your Chairman were made a part of your record but were not incorporated in the minutes. You may express your ideas on how you want these handled.

COM. STONE: Mr. Chairman, I move that in accordance with the procedure followed with respect to the other communications from the Federal agencies, these letters be made a part of the record.

COM. WATSON: Second the motion.

THE CHAIRMAN: Any discussion? (No response. Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(The communications above referred to are as follows:)

"INTERNATIONAL BOUNDARY AND WATER COMMISSION
 UNITED STATES AND MEXICO
 FIRST NATIONAL BANK BUILDING
 EL PASO, TEXAS

Office of the Commissioner
 United States Section

December 18, 1947

My dear Mr. Bashore:

This will acknowledge receipt of your letter of December 15, 1947, in which you request a statement in response to the questions propounded by the Upper Colorado River Basin Compact Commission at its meeting in Denver, Colorado, on December 2, 1947. These questions are: 'What right, if any, to the use of Upper Colorado River water does the agency have or claim on behalf of the United States? What particular provision and what particular language should be incorporated in any Upper Colorado River Basin Compact to protect the right, if any, to the use of Upper Colorado River water held or claimed by an agency on behalf of the United States?'

This agency, representing the United States in boundary and water treaty matters with Mexico, claims only such right in waters of the Colorado River system as may be necessary to satisfy the provisions of the Mexican Water Treaty of February 3, 1944, with which you are familiar.

In response to the second question I believe that the rights of the United States, in so far as the particular interests of this agency are concerned, will be adequately protected by a provision in any Upper Colorado River Basin Compact substantially as follows:

'Nothing in this Compact shall be construed as affecting the obligations of the United States of America to the United Mexican States under existing treaties.'

This provision is substantially taken from Article XVI of the Rio Grande Basin Compact.

Sincerely yours,

(Signed)

L. M. Lawson
 Commissioner

Honorable Harry W. Bashore
 Federal Representative and Chairman
 Upper Colorado River Basin Compact Commission
 Mitchell, Nebraska."

"THE SECRETARY OF THE INTERIOR
 WASHINGTON 25, D. C.

January 9, 1948

My dear Mr. Bashore:

I have received your letter of December 15.

The questions raised in your letter will be duly considered and responses thereto will be forthcoming as soon as possible. Your invitation to the Office of Indian Affairs will be transmitted to that agency.

No doubt the Office of Indian Affairs will contact you directly.

Sincerely yours,

(Signed)

William E. Warne
Assistant Secretary of the
Interior

Hon. Harry W. Bashore
Federal Representative and Chairman
Upper Colorado River Basin Compact Commission
Mitchell, Nebraska."

"FEDERAL POWER COMMISSION
Washington 25

Upper Colorado River
Basin Compact Commission

January 30, 1948

Mr. Harry W. Bashore
Federal Representative and Chairman
Upper Colorado River Basin Compact Commission
Mitchell, Nebraska

Dear Mr. Bashore:

In your letter of December 15 you ask two questions on behalf of the Upper Colorado River Basin Compact Commission with regard to the proposed compact for distribution of the waters of the Upper Colorado River Basin.

The first question is: What right, if any, to the use of the Upper Colorado River water does the Federal Power Commission have or claim on behalf of the United States?

If this question has reference to appropriation rights to the use of the Upper Colorado River Basin water, the answer is that the Federal Power Commission does not have or claim any such rights on behalf of the United States to the use of the Upper Colorado River Basin water. Under the Federal Power Act this Commission is not an operating agency, exercising, on behalf of the United States, any proprietary rights. It is authorized to issue and supervise licenses under that Act for non-Federal water power projects. Licenses have been issued for water power developments having an installed capacity of more than 100 horsepower on the following streams within the Upper Colorado River Basin:

Project No. 190, Uinta River and Pole Creek, Utah;
Project No. 400, Animas and Lake Fork on San Miguel
River, Colorado;
Project No. 662, Pine Creek, Wyoming;
Project No. 1773, East Fork of Lake Fork of Duchesne
River (Yellowstone Creek), Utah;
Project No. 1901, Cunningham Creek, Colorado.

There are also a number of water power plants having less than 100 horsepower capacity in this river basin which are operating under Federal Power Commission licenses. Presumably, all of the projects operated under such licenses have acquired water power rights under State law and would not be affected by the proposed compact. However, it is felt that the proposed compact should not contain any provisions which would inequitably

deprive any of these licenses of their water power rights or prevent the acquisition of such projects by the United States in accordance with the terms of the Federal Power Act. If the compact follows the usual form of other interstate river compacts, it is believed that such rights will not be prejudiced.

However, the United States has other rights and responsibilities with respect to water use than those of a proprietary nature, and Congress has entrusted some of those other rights and responsibilities to the Federal Power Commission. In the Federal Power Act Congress requires that licenses for projects of over 100 horsepower capacity shall be issued only for projects which are best adapted to comprehensive plans for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes. This requirement of conformance by non-Federal Water power projects with comprehensive plans represents a policy of long standing and of fundamental importance and has been made equally applicable to Federal developments authorized under other statutes.

Therefore, the compact should recognize the desirability of comprehensive development of water resources in the Upper Colorado River Basin, including power development, to the end that the economic conditions of the area may be improved and the wealth of the nation increased. The rights and responsibilities of the United States should be recognized and the compact should not prevent full development of water power in accordance with State and Federal laws relative to beneficial consumptive use of the waters.

The second question which you ask reads: What particular provision and what particular language should be incorporated in any Upper Colorado River Basin compact in order to protect the rights, if any, to the use of Upper Colorado River water held or claimed by an agency on behalf of the United States?

The following language is suggested for the Upper Colorado River Basin compact:

Article _____

Nothing in this compact shall be deemed:

- (a) To impair or affect any rights, powers, or jurisdiction of the United States, or those acting by or under its authority, in, over and to the waters of the Upper Colorado and its tributaries, as now provided by law; nor to impair or affect the right of the United States or those acting by or under its authority, to acquire rights in and to the use of waters of said river and its tributaries, as now provided by law;
- (b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any State, or subdivision thereof, nor to create an obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;
- (c) To subject any property of the United States, its agencies or

instrumentalities, to the laws of any State to any extent other than the extent these laws would apply without regard to this compact.

When other specific provisions of the compact have been formulated, it will be appreciated if the Federal Power Commission may have an opportunity of studying and commenting upon them before they are finally adopted by the Compact Commission.

Sincerely yours,

(Signed) Nelson Lee Smith,
Chairman."

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"EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

January 21, 1948

Mr. Harry W. Bashore
Federal Representative and Chairman
of the Upper Colorado River Basin
Compact Commission
Mitchell, Nebraska

Dear Mr. Bashore:

This will acknowledge receipt of your letter dated December 15, 1947, setting forth two questions which you have submitted to various Federal agencies concerning the rights of the United States to the waters of the Upper Colorado River.

I appreciate your advising me of these requests and am sure that the agencies concerned will consider the matter and make appropriate replies directly to you. I am requesting these agencies to furnish us with copies of their replies for the information of the Executive Offices.

Sincerely yours,

(Signed) James E. Webb
Director."

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THE CHAIRMAN: You will recall at our meeting yesterday morning the Legal Advisory Committee indicated that it wasn't ready to report but today there is available the mimeographed report and perhaps Mr. Carson, the chairman of that committee, wishes to submit the report. There are plenty of copies of the report available and perhaps they should be passed around for the perusal of those who haven't seen it.

COM. CARSON: I think everybody has a copy who is a member of the Commission.

("Report of Legal Advisory Committee on Matters referred by Compact Commission at Meeting No. 5" distributed.)

CQM. CARSON: The mimeographed copy of the report of the Legal Advisory Committee I think is self-explanatory and I don't know whether there is any desire that the provisions of it be read or not. The Committee considered all the questions that have been submitted to it by the Compact Commission and here in the report detailed the questions that were submitted and the Committee's suggestion of the provision referred to for the consideration of the Compact Commission.

We found that there were some matters that we have tentatively reported on that are of substance rather than mere phraseology. There are some other matters which we think should be decided by the Commission rather than recommended by the Legal Advisory Committee. There were two matters in which there was a divergence of views among the Committee itself, so all of the Committee does not wish--I am sure that is true of each member of the Committee--to be considered as committed to this and this only. We are the servant of this Commission and if anything in here is not acceptable or wrong and if you desire to change the base, we will try to put it in appropriate language.

There are two matters of policy which really require consideration by the Commission, one relating to the administrative provision as to whether or not that should be, as we have here reported, the minimum requirement of an administrative agency to construe reports in the light of this compact and make findings of fact. One school of thought was that perhaps it should be in the nature of an authority set up by compact among the states. The Legal Committee was of the opinion that that was neither necessary nor desirable. So this is explanatory in its terms as to our recommendations of the composition and the powers of the commission and the effect of its findings.

One other question related to that matter which is a matter for the Commission itself, as well as the consideration of the whole thing, but one particular matter is how the expenses of the commission here proposed to administer the compact should be paid. One idea was that it should be borne equally by the four states of the Upper Division; the other was that it should be according to the percentage of water allocated to each. And I might add as a Commissioner now, that in my view this commission here set up should not be participated in by Arizona, both from the Arizona viewpoint and from the viewpoint of the States of the Upper Division, but should be composed of one member from each of the States of the Upper Division and one Federal Representative.

On the matter of the facilities in one state for the benefit of another, which is the second question referred on page 5 of the report, we have there gone into the question of eminent domain and payment in lieu of taxes and other things which seemed to us to be proper for the consideration of the Commission.

On the third question which was presented to us on the charging of reservoir losses, appearing on page 8 of the report, we have suggested language which it seems to us properly handles that proposition but that again for the consideration of the Commission.

On the question of preferential uses of water, we have gone into it and recommend that the language of the Colorado River Compact in that respect be incorporated in this compact.

You also referred to this committee the question of what should be done concerning Indian rights and we recommend that a similar clause to that in the Colorado River Compact be incorporated herein. We did not believe

that this Commission or this compact could authoritatively settle or attempt to settle the question of Indian rights as may be raised by the United States Government or the Indian Service. We do believe that the question of Indian rights should be kept in mind by this Commission whenever it goes to apportioning the water under the belief that the water apportioned to each state must be utilized to satisfy the rights of Indians and whites alike, and that should be taken into account in the apportionments made. We did not believe that any specific language other than that suggested relating to Indians should be incorporated in the compact but we did think that some general clause to the effect that all uses of water within the borders of the state should be charged against the apportionment of that state.

We got along very well and the members of the Committee worked diligently to prepare this report. We suggest it for your consideration.

THE CHAIRMAN: Thank you.

REPORT OF LEGAL ADVISORY COMMITTEE ON
MATTERS REFERRED BY COMPACT COMMISSION AT
MEETING NO. 5

The Upper Colorado River Compact Commission at its meeting No. 5 referred five matters to the Legal Advisory Committee. In this report the committee sets forth its recommendations in regard to each of the matters so referred.

In considering this report the Commission must realize that the compact provisions proposed are necessarily in tentative form. Decisions yet to be made by the Commission on both substantive and procedural matters will affect the proposals here made. It must be understood that the committee and the individual members thereof may desire to make further or different recommendations after further progress has been made in forming a compact.

I.
ADMINISTRATIVE PROVISIONS

Motion of Commission

The principle of creating an administrative agency is accepted by the Commission and a clause shall be incorporated in the compact adopting the principle. The matter is referred to the Legal Advisory Committee to work out the details and report back to the Commission.

Recommendation

ARTICLE
ADMINISTRATIVE PROVISIONS

There is hereby created an interstate administrative agency to be known as "Upper Colorado River Commission."

The Commission shall be composed of one representative of each of the states of the Upper Division, namely, Colorado, New Mexico, Utah and Wyoming, and if designated by the President of the United States, one representative of the United States. The Commissioner for Colorado shall be appointed by the Governor of Colorado with the advice and consent of the Colorado Water Conservation Board. The State Engineer of New Mexico shall be ex-officio commissioner for New Mexico. The commissioner for Utah shall be appointed

by the Governor of Utah with the advice and consent of the State Water and Power Board. The State Engineer of Wyoming shall be ex-officio commissioner for Wyoming. If any state desires to provide for the selection of its commissioner in a different manner, the commissioner, selected as so determined by such state, shall be the commissioner for such state. The President of the United States shall be requested to designate a commissioner for the United States. If a commissioner is so designated for the United States he shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the commissioner of any state.

Any four members of the Commission shall constitute a quorum.

Expenses. The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incident to the administration of this compact and which are not paid by the United States shall be borne (equally by the four states) (prorata by the four states according to the percentage of water allocated to each). On or before November 1st of each year the Commission shall adopt and transmit to the governors of the four states and to the President a budget covering an estimate of its expenses for the following year and of the amount thereof payable by each state. Each state shall pay the amount due by it to the Commission on or before April 1st of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedure of any of the four states or of the United States.

Employees. The Commission shall appoint a secretary who shall not be a member of the Commission and who shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other aid as may in its judgment be necessary for the performance of its functions under this compact. In the hiring of employees the Commission shall not be bound by the civil service laws of any state or of the Federal Government.

Powers. The Commission shall have the power to

1. Adopt rules and regulations not inconsistent with this compact.
2. Locate, establish, construct, abandon, operate and maintain water gaging stations;
3. Make estimates to forecast water run-off on the Colorado River or any of its tributaries;
4. Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
5. Collect, analyze, correlate, preserve and report on data as to stream flows, water storage, water diversions and water use of the waters of Colorado River or any of its tributaries;
6. Make findings as to the amount of and report on the beneficial consumptive use of water each year in the Upper Colorado River Basin and in that portion of each state lying within this basin.
7. Make findings as to the amount of and report on the water deliveries at Lee Ferry each year and the amount of such water supplied by

each state of the Upper division;

8. Make findings as to the amount of and report on the share of reservoir losses chargeable against the apportionment made to each of the four states;

9. Make findings as to the amount of and report on the obligation of each state to make water deliveries at Lee Ferry;

10. Perform all functions and do all things required of it by this compact and do all things proper and convenient in the performance of its duties hereunder. Provided, however, that the concurrence of four members of the Commission shall be necessary in any action taken by the Commission;

11. Make and transmit annually to the Governors of each of the four states and the President of the United States with the estimated budget a report covering the activities of the Commission for the preceding year.

Records Open to Inspection. The Commission and its secretary shall make available to the Governor of each of the signatory states any information within its possession at any time and shall always provide free access to its records by the governors of each of the states or their representatives or authorized representatives of the Federal Government.

Findings of fact. Findings of fact made by the Commission shall not be conclusive in any court or before any agency or tribunal but shall be admissible and shall constitute prima facie evidence of the facts found.

Comments.

1. The committee considered that the apportionment of the expenses of administering the compact is a substantive matter for determination by the Commission. Two methods of apportionment were suggested in meetings of the committee, viz., an equal division by the states or a division proportional to the percentage of water allocated to each state. These alternative methods are set out in brackets in provision on expenses.

2. The Commission is not given the express power to own real and personal property. The committee believes that under paragraph 10 of the powers the Commission would have the right to acquire, hold and dispose of any property, real or personal, necessary to the performance of any of the powers granted. This would mean, by way of example, that the Commission could acquire land necessary for gaging stations.

3. The committee directs the attention of the Commission to the fact that consideration might as well be given to the matter of tort liability of the Commission, its members and employees.

4. The proposal permits action upon a vote of four commissioners. Findings of fact by the Commission are not conclusive and may be rebutted by a dissatisfied state.

II.

FACILITIES IN ONE STATE FOR THE USE OR BENEFIT OF ANOTHER STATE

Motion of Commission.

There is referred to the Legal Advisory Committee consideration of compact provisions relative to the use of eminent domain, reimbursement of

taxes, control of diversions, storage and release of water, compliance with state requirements as to the filing of maps and plans, all in connection with the construction of a project in one state for the benefit of another state or states.

Recommendation

ARTICLE _____
 FACILITIES IN ONE STATE FOR THE
 USE OR BENEFIT OF ANOTHER STATE

No state shall deny the right of the United States, another signatory state, any person or entity to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the states of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing, or regulating water in an upper state for beneficial consumptive use in a lower signatory state when such is within the allocation of such lower state herein made. Such rights shall be subject to the rights in a state in which such reservoir or works are located to have and receive the water allocated to it herein for beneficial consumptive use.

Any signatory state, any person or any entity of any signatory state shall have the right to acquire necessary property rights in any other signatory state by donation, purchase or through the exercise of the power of eminent domain.

Any signatory state upon the written request of the Governor of any other signatory state for the benefit of whose water-users property is to be acquired in the state to which such written request is made shall proceed expeditiously to acquire the desired property through the exercise of its power of eminent domain, and shall convey such property to the requesting state or such entity as may be designated by the requesting state. Provided however, that all costs and expenses of every kind and nature whatsoever incurred in the acquisition of the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

Should any facility be constructed in a signatory state for the benefit of another state or states or the water users thereof as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that in the case of a reservoir constructed in one state for the benefit of another state the water administration officials of the state in which the facility is located shall permit the storage and release of any water which, as determined by the finding of the Commission, falls within the share of the state for whose benefit the facility is constructed, and in the case of a regulating reservoir for the joint benefit of all states in making Lee Ferry deliveries the water administration officials of the state in which the facility is located shall, in permitting the storage and release of water, comply with the findings and orders of the Upper Colorado River Commission.

In the event property is acquired in one state for the use and benefit of another the users of water made available by such facilities shall pay to the political subdivisions of the state in which such works

are located each and every year during which such rights are enjoyed for such purposes a sum of money equivalent to the average amount of taxes levied and assessed against the land and improvements during the ten years preceding the acquisition of such land in full reimbursement for the loss of taxes in such political subdivisions of the state, said payments to be in lieu of any and all taxes on said property, improvements and rights.

The signatory states further agree to recommend to the President and to the Congress that in the event the United States shall acquire property in one of the signatory states for the benefit of another signatory state or its water users, provision be made for like payment in reimbursement of loss of taxes.

Comments.

1. The point was raised in the committee that there are constitutional questions as to whether a state or water user of that state could go into another state and exercise the right of eminent domain. Attention is directed to Grover Irrigation Company v. Lovella District, 21 Wyoming 204, 255. To take care of this situation provision has been made for condemnation by the state in which the facility is located.

2. In subjecting a facility in one state to the laws in the state in which the facility is located, it is not the intent to subject the United States to the police regulations of a state to an extent greater than that provided for in Section 8 of the Reclamation Act of 1902.

3. In the provision on reimbursement for loss of taxes the point was raised that the United States could not be compelled to make the required payments. For this reason a provision was added that a recommendation be made to the United States that when it acquired such property provision be made for reimbursement of taxes.

4. No provision is made for the potential loss of taxes.

III. CHARGING OF RESERVOIR LOSSES

Motion of Commission.

The Legal Advisory Committee is requested to draft a provision to effectuate the principle that losses of water incidental to reservoir operations be apportioned between the states upon the basis of the benefits received from such reservoir operations.

Recommendation.

"Water losses resulting from reservoir operations shall be charged to the state or states receiving benefit from such reservoir operations in proportion to the beneficial consumptive use of water made available to each state by the reservoir except that in the case of regulating reservoirs for the joint benefit of all states in making Lee Ferry deliveries the charge shall be proportionate to the beneficial consumptive use of water in each state during the year for which the charge is made."

Comments.

1. The formula for charging reservoir operation losses should be carefully worked out by a joint engineering and legal committee after the Commission has determined the substantive provisions of the compact.

2. The committee felt that no consideration should be given to power benefits for the reasons that (1) power uses are subordinate to domestic and irrigation uses, (2) any formula based on power uses is impossible of ascertainment at this time, (3) power uses would probably be through a transmission grid which will make it difficult to determine the source or place of use of the power, and (4) some of the power may be used outside of the basin.

IV.

PREFERENTIAL USES OF WATER

Motion of Commission.

The Upper Colorado River Basin Compact shall contain provisions relative to the preferential use of water in conformity with such provisions of the Colorado River Compact and the Legal Advisory Committee is requested to draft the necessary language.

Recommendation.

"Inasmuch as the Upper Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Upper Colorado River basin, the use of its waters for the 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.

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

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."

Comments.

The committee thought that the provision on preferential uses of water should be taken word for word from the Colorado River Compact except for the change to "Upper Colorado River."

V.

INDIAN RIGHTS

Motion of Commission.

The legal question of the rights and interests of the Indians in

Colorado River water is referred to the Legal Advisory Committee for study and recommendations.

Recommendation.

ARTICLE _____

INDIANS

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

Comments.

The committee felt that the wise procedure in regard to the Indian subject is to incorporate in the Upper Basin Compact the same language as is contained in the Colorado River Compact. The question of the charging of Indian uses against the basin or against the state in which the uses occur is a substantive matter for the Commission. The Legal Advisory Committee feels that the charge should be against the state in which the uses occur.

Respectfully submitted,

LEGAL ADVISORY COMMITTEE

By: Charles A. Carson, Chairman.

COM. CARSON: If there is any other member of the Committee who has anything to add to that I wish they would be given an opportunity.

THE CHAIRMAN: Thank you.

COM. STONE: May I ask a question, Mr. Carson? You said there were two matters on which the Committee disagreed. Did I understand those two matters were, first, the policy relating to the provision for the administration of the compact; and, second, the question of the apportionment of the expense? Is that correct?

COM. CARSON: Except I didn't want to be understood as saying there was any particular disagreement among the members of the Committee in what we are now submitting. There were two schools of thought: one that it should be authoritative like a river authority; the other that it should be administrative. This Commission had made no indication of its desire although, as you will recall, I asked you to do so. We concluded the best thing to do at this point was to recommend the minimum administrative body and then if you desire to change that in any way, we would try to put whatever the decision was in the appropriate language. But from our viewpoint the administrative provisions of this compact are preferable to any authoritative body.

The other was on the apportionment of the expense and on that there were two schools of thought so we didn't think we should attempt to resolve that but rather, as you will note in the report on page 2 relating to expenses, we put them both in there in parentheses so the Commission could strike out whichever one it wanted.

THE CHAIRMAN: Are there further comments or questions or suggestions in regard to the report of the Legal Advisory Committee?

MR. WALLACE: Mr. Chairman--

COM. CARSON: I believe if you would call on the other members of the

Legal Advisory Committee they might want to add to what I have said before the questions.

THE CHAIRMAN: Very well. Judge Wilson, you were on that Committee.

COM. WILSON: Yes, Mr. Chairman, I was on the Legal Committee and also a member of the Commission, and it was understood that in making this report, no member of the Commission was necessarily bound by these recommendations. In other words, as I understand the report it is merely a suggestion to the Commission so that the Commission may determine those questions upon which there may be a difference of opinion.

As Mr. Carson stated, when we began it wasn't known what the Commission desired as to the administrative body that would administer and carry out the functions of a compact when one is made. We had to consider that the Commission might desire purely an administrative body with no judicial or quasi-judicial functions whatever, simply to carry out the administrative features of the compact that might be agreed to.

On the other hand it was suggested that the administrative body should be given more power, quasi-judicial functions or even judicial functions. There was even a suggestion by some that the Commission might desire to create a corporation and empower it with many powers and duties, not only to administer the compact but to make binding conclusions of fact. The majority of the Committee seemed to believe an administrative body with no judicial function should be created, and I think you will find that is what has been done in this instance. We did not want to foreclose the Commission from going back behind this and setting up a real corporation if that is what the Commission wanted.

Now with that understanding, as a member of the Legal Committee, we make this report as suggested. As a member of the Commission, I reserve the right to vote on any controversial subject that may arise as and when it does arise.

THE CHAIRMAN: Do the legal advisers for Wyoming have anything to say?

MR. WEHRLI: Mr. Chairman, I want first to refer to a couple of formal matters that I have observed in this draft that escaped my attention and perhaps the attention of others in its preparation.

On the first page there is set up:

"ARTICLE _____
ADMINISTRATIVE PROVISIONS"

What is dealt with in that article is the administrative agency. I assume there may and probably will be other administrative provisions in the compact aside from those that appear in this article. I am inclined to think that through inadvertence that heading came in that way and probably should be "ADMINISTRATIVE AGENCY" rather than "ADMINISTRATIVE PROVISIONS." It is just a formal matter but I think the heading is a little bit misleading because there will be no doubt some other administrative provisions in the compact.

Then on page 5 there is an "ARTICLE" and a place for a number, and I am inclined to think that heading ought to be, "FACILITIES IN ONE STATE FOR THE USE OR BENEFIT OF ANOTHER STATE OR STATES." We had some

discussion about that but I believe the matter was lost in the arduous duties that we attempted to perform in a comparatively short time because as I understand it, that article does relate not only to the construction of a reservoir in one state for the benefit of another state but the construction of a reservoir in one state that might benefit two or perhaps more than two states. Those are merely formal matters that I think should be given some consideration.

With reference to the voting power on the commission, Judge Wilson I believe has correctly said that the Commissioners may disagree with the Committee that prepared this. I find myself in that position so far as Wyoming is concerned. Our Wyoming Commissioner is not entirely agreed upon the question of the voting power. That is a matter of course that probably will come up at a later time.

There is one other point that I would like to refer to and that's the recommendation on page 8 under III about the charging of reservoir losses. I am not sure that I understand exactly what was meant in the last part of that and maybe if I understood I would agree with it, but it says--I am referring to the recommendation:

" .in making Lee Ferry deliveries the charge shall be proportionate to the beneficial consumptive use of water in each state during the year for which the charge is made."

I am wondering if the Committee meant that or whether the Committee meant that the charge should be in proportion to the beneficial consumptive use of water allotted to each state under the compact regardless of the amount that might be used in a particular year. I am in doubt about the matter. I think something might be considered there too as to whether that charge should be related to the consumptive use of water allocated to each state under the compact or whether it should be related to the respective obligations of the Upper States to supply the delivery at Lee Ferry. At least I wish to point out that we are not entirely satisfied with the phraseology used which relates it to the consumptive use of water that is made in each year regardless of the apportionment by the compact, and I think that is a matter that we would want to have given some consideration before passing on it.

I believe those are the only things that we have in mind at this time that we wish to call to the attention of the Commissioners.

THE CHAIRMAN: Thank you, Mr. Wehrli. General Gray, do you have any further comments?

MR. GRAY: No, Mr. Chairman, I do not. Thank you.

THE CHAIRMAN: The member of the committee from Utah. Mr. Clyde.

MR. CLYDE: In attempting to write an administrative provision to administer a compact not yet written we are somewhat handicapped because we are working in the abstract; and we are handicapped somewhat in knowing what administrative provisions to put in because we do not and did not know what would be administered. And for that reason I at least feel that after the compact itself is written and many of the substantive decisions are made, there will of necessity be additions and changes in the administrative provision that we have set up. You can't completely cover the administration of something when you don't know what it is that you are administering. And so the report as far as I am concerned ought to be submitted with the idea that as those substantive decisions are made, changes and additions may of necessity have to be made in what has been submitted.

I think Mr. Carson and Judge Wilson correctly reflect the attitude of the various schools of thought that came forward in the meeting and I concur in their statements of it.

In addition I would like to point out that, in addition to the administrative provisions that are contained in the report denominated subdivision I, there are administrative provisions also contained in that part which is denominated subdivision II, "Facilities in one state for the use or benefit of another state." It is that provision that I interpret to provide the watermaster for the stream. On page 6, releases from reservoirs, both main stem and reservoirs in one state for the use and benefit of another--the release and storage of water in those reservoirs are to be governed by the decisions of the commission and the findings it makes. I think those are equally related to the administrative part as those we have classified in paragraph I and that that is an additional administrative provision and ought to be read together with it.

THE CHAIRMAN: Thank you, Mr. Clyde. Judge Howell.

MR. HOWELL: I don't think I have anything to add to what has been said except perhaps I should say that I was the one I think that was willing to go as far as anybody, perhaps even further, in creating an administrative body which would be vested with full power and authority to carry out the provisions of this compact whether it involved the exercise by the commission of what we commonly call quasi-judicial powers. I think Mr. Clyde was inclined to favor such provisions, perhaps not going as far as I did in the draft which I proposed which created the body politic of this commission or corporation, but substantially I think he was in agreement with me that the commission should be vested with complete power to administer the compact in the same way as a watermaster would be under judicial decree. However, the other members of the Committee were inclined to the view that such provisions could not be finally ratified by the various states and for that reason we acquiesced in giving the commission less power so that it only has the right to make findings of fact, which are prima facie but not conclusive evidence before any court and therefore gives to any state that is dissatisfied with the findings of the commission the right to go into court and have them reviewed.

It does not go so far as I should like to have seen it go but at the same time I would like to say as far as I am personally concerned, I am reasonably satisfied with the administrative provisions.

THE CHAIRMAN: Thank you, Judge Howell. Mr. Breitenstein.

MR. BREITENSTEIN: It seems to me, Mr. Chairman, that what has been said already illustrates the danger, and what I have pointed out on numerous occasions, of the Commission referring to the Legal Advisory Committee the drafting of certain language without telling that Committee what principles you have in mind. It seems to me it is unfair to the Legal Advisory Committee and unfair to the Commission itself to expect your Legal Advisory Committee to draw up any provisions unless you tell us first what general principles you have in mind. Now I think what has been said this afternoon illustrates that point.

The next thing I want to say is this: I disagree one hundred percent with both Mr. Clyde and Judge Howell that anything in the administrative provisions sets up a watermaster on a stream.

MR. HOWELL: I didn't say it did.

MR. BREITENSTEIN: Mr. Clyde did.

MR. HOWELL: I know but I didn't say that. In your present provisions I don't think it does.

MR. BREITENSTEIN: I said during meetings of the Legal Advisory Committee Colorado would not agree to any provisions which had the effect of setting up a watermaster on the stream; and I requested, I thought, so it was understood that that matter would not be brought up at the Commission meeting. As I construe the administrative provisions they do not in any way set up a watermaster on the stream. The commission is given powers solely with regard to facilities in one state for use of water in another state, or for facilities in one state for the common benefit of another state.

The next thing I want to say is in regard to what Mr. Wehrli said on page 8, Article III, "Charging of Reservoir Losses." Now I prepared that recommendation myself. Before it went around to the Legal Advisory Committee I submitted it to lawyers and engineers in Colorado and I got no suggestions of a change. I submitted it to the Legal Advisory Committee and brought it up several times and no one suggested a change.

Now perhaps my language isn't clear--I thought it was--but speaking only personally, my intent in the language which Mr. Wehrli read--and I believe it is as clearly stated as it can be--is that the charge is proportionate to the beneficial consumptive use of water during the year in which the charge is made and that is not proportionate to the allocation of each state, and if it can be said any more clearly I would like to know how it should be said.

THE CHAIRMAN: Thank you, Mr. Breitenstein.

MR. WEHRLI: Mr. Chairman, I will enter my apologies to Mr. Breitenstein. I misread Mr. Breitenstein's language on page 8 or read it with the assumption in my mind that it related to the allocation of beneficial consumptive use in the compact. I still have the question whether that is a proper provision because it would make a determination each year necessary and in addition to that it occurs to me that perhaps the correct thing or the right thing would be to relate it to the right of the state even though the state had not fully exercised its right.

MR. CLYDE: Mr. Chairman, may I clear the record on my remark?

THE CHAIRMAN: Yes.

MR. CLYDE: I didn't mean to imply--and if I said it it was a mischoice of words--that this set up a watermaster. What I did mean was that the subject matter in this dealing with that problem is contained in the joint facilities and I agree with Mr. Breitenstein's interpretation. The facility for one state located in another is under the control of the administrative officer of that state to release or store water according to the findings of the commission. I didn't mean to imply that it was a watermaster we had attempted to create here but the subject matter of how these reservoirs would function was not covered in the administrative part, part I, but in the facilities part in part II.

MR. HOWELL: I would like to say this too because there was sort of an implication in what Mr. Breitenstein said of some sort of bad faith on my part. What I said or what I thought I was saying was that I was in favor of creating a watermaster.

MR. BREITENSTEIN: Yes, I concede that, Judge.

MR. HOWELL: And the majority of you didn't agree with me.

MR. BREITENSTEIN: Yes, sir.

MR. HOWELL: And I gave way on it. So I don't say this creates any watermaster. I don't think it does.

MR. WALLACE: Doesn't it create a watermaster and some sort of commission?

MR. HOWELL: A fact finding board.

MR. WALLACE: A fact finding board. And he reports to the officer in the various states what is going on on the river?

MR. BREITENSTEIN: In two cases: in case of a facility in one state for use in another state; or a facility in one state for the common benefit of all states--in only those two instances.

MR. WALLACE: So if there is a shortage of water at Lee Ferry, what is the action?

MR. BREITENSTEIN: Neither the Commission nor the Legal Advisory Committee has reached that point yet.

THE CHAIRMAN: Apparently we have heard from the lawyers. Are there any further questions or comments on the report of the Legal Advisory Committee?

COM. STONE: Mr. Chairman, I should like to make a suggestion. I anticipate that the action of the Commission on this report will require considerable discussion and I am of the opinion that each Commissioner ought to very carefully study this report before speaking or taking a position. I should like to suggest since it is nearly five o'clock, that we have the evening or some time between now and the convening of the Commission tomorrow to study this report a little more carefully.

THE CHAIRMAN: Judge Stone, would you also suggest that the report of the Committee be studied in connection with the communications received from the Federal agencies which are available?

COM. STONE: Yes.

THE CHAIRMAN: I think that is a pretty good idea.

COM. CARSON: Mr. Chairman, speaking for myself now, I don't believe that this Commission should undertake to adopt these specific provisions here stated until we have gone further in the drafting of the compact as a whole. I think we should just keep these and study them for reference and keep them in mind. But I don't think any formal action should be taken approving them at this time.

COM. STONE: Mr. Carson, perhaps you misunderstood my statement. I don't think so either. Someone suggested--I believe it was Mr. Clyde--the fact that the administrative provision or the provision for the creation of an administrative commission should be left open for review when other provisions of the compact are agreed upon, and yet I do believe we ought to make some progress in discussing this report, and I believe that it's been the policy of this Commission to adopt other measures for incorporation in the compact on a tentative basis.

COM. CARSON: I didn't read this first part of this report but that is what I am speaking of now:

"In considering this report the Commission must realize that the compact provisions proposed are necessarily in tentative form. Decisions yet to be made by the Commission on both substantive and procedural matters will affect the proposals here made. It must be understood that the committee and the individual members thereof may desire to make further or different recommendations after further progress has been made in forming a compact."

COM. STONE: That is correct, I understand that, and yet we ought to attempt to make some decisions as far as we can make them on a tentative basis.

MR. HOWELL: I would like to ask you a question, Mr. Carson, and the other members of the Committee, if they would be willing to have the report amended in the particulars suggested by Mr. Wehrli with reference to the designation of the articles.

COM. CARSON: I would.

MR. HOWELL: So far as I am concerned I think they should be.

COM. STONE: I would too except instead of "agency", "commission". Administrative Commission.

COM. CARSON: Administrative Commission would be better.

MR. WEERLI: That would be agreeable.

COM. CARSON: I would agree. The other members of the Committee are here and if any of the other members of the Committee disagree they had better speak up.

MR. WEERLI: Judge Stone, the reason I used that word was because it was used down here.

MR. BREITENSTEIN: I would just call it "Administration" if I was doing it.

THE CHAIRMAN: Gentlemen, it seems to the Chairman that it is evident that changes will have to be made as you proceed along. What you are trying to do at this time is fit a suit of clothes on a ghost. You don't know anything about the body of the matter, and then as you determine that, this will have to be fit to it. I think the lawyers did an excellent job in the work that was assigned to them but I believe they would have had more heart in the thing if they knew the shape of the body they were going to put these clothes on. That is my view of the situation. Of course you will have to make changes as you go along.

COM. WATSON: Mr. Chairman, inasmuch as there will be a lot of changes made I move that we accept this report of the Legal Advisory Committee and file it for further study and consideration.

COM. STONE: Mr. Chairman, I would oppose that motion for the reason that that means no progress, that simply accepts it and files it. There are decisions which we can possibly make at this time and we should make them, but we should leave it open for review as to all provisions which should be changed when other measures in the compact are agreed upon.

THE CHAIRMAN: Gentlemen, your Chairman likes to proceed somewhat in order. The motion has received no second. Is there a second to the motion? If there is it is open for discussion. Is there a second to Mr. Watson's motion?

COM. WATSON: Mr. Chairman, since I am in the unfortunate position of not getting a second to my motion, I will comment on my own motion if I may.

THE CHAIRMAN: You may do that.

COM. WATSON: We have so many details here, we can't see the forest for the trees. All of us are confused in a mass of detail.

COM. WILSON: May I interrupt?

COM. WATSON: Yes, sir.

COM. WILSON: I would like to second the motion for this reason: I don't believe there is any conflict in his motion and what Judge Stone has in mind. If this board will accept it and file it for study, if Judge Stone wants to call it up in the morning for discussion, there is nothing inappropriate about that.

COM. STONE: That is all right, Judge, if that is understood. I got the impression from Mr. Watson's motion that we would not consider it any further at this time.

COM. WILSON: I don't think he intended that. Let it be filed for study and we will call it up in the morning and discuss it.

COM. STONE: That is all right. I would agree if that is understood.

THE CHAIRMAN: You heard the motion that the report of the Legal Advisory Committee be accepted and that it can be taken up at any time for further consideration. Any further discussion? (No response. Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

THE CHAIRMAN: Mr. Wehrli.

MR. WEHRLI: Mr. Chairman, we are of the opinion that some tentative decisions at least will have to be made as we go along and in that regard I agree with Judge Stone. I believe that it is understood that any decision that is made now is tentative and that before any compact is finally arrived at would be subject to change.

In order to make easier progress than we otherwise might, and having in mind the agenda that Colorado has presented and the matters that are included in the report of the Legal Advisory Committee, Wyoming has prepared a motion which is written and which we will present at some appropriate time tomorrow, and I would like to give copies of it to the Commissioners for their consideration along with this report.

The main purpose of it is to obviate, as far as we can, the difficulty that Mr. Breitenstein mentions of not having very specific instructions for this Legal Advisory Committee. We think this will be a start along that line. In this motion we have attempted to deal with matters that we think are not of the extremely controversial type, matters upon which we may be able to reach tentative agreements at this session.

I would like at this time to give each of the Commissioners a copy of the motion and also the Chairman for such consideration as they may want to give it and we will bring it up at some time tomorrow if it is believed that it will serve any purpose in expediting the proceedings of this Commission.

THE CHAIRMAN: Very well, Mr. Wehrli.

("Motion by L. C. Bishop, Commissioner for Wyoming," distributed.)

THE CHAIRMAN: Gentlemen, is there a motion for adjournment? It is now ten minutes to five. Or do you wish to continue?

COM. STONE: I move we adjourn to reconvene at 9:30 tomorrow morning.

MR. GILES: Before that motion is put, Judge Stone, I find it necessary to ask for leave of absence from the rest of this meeting.

MR. WALLACE: Mr. Chairman, let Mr. Clyde act in his place.

THE CHAIRMAN: Very well. That is Utah's prerogative. Gentlemen, you have heard Mr. Giles' statement that he must leave tomorrow morning and will not be present at the Commission meeting. I am sure we all regret his departure but we will submit to his wishes.

MR. GILES: Thank you, Mr. Chairman.

THE CHAIRMAN: Is there a second to Judge Stone's motion for adjournment?

COM. WATSON: Second the motion.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: We are now adjourned.

(4:55 p.m., Wednesday, February 18, 1948, recess until 9:30 a.m., Thursday, February 19, 1948.)

Denver, Colorado
February 19, 1948
9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission will please come to order. The Chairman observes that the Chairman of the Engineering Advisory Committee is present and on page 1 of the suggested agenda is a place for consideration of the report of the Engineering Advisory Committee. Mr. Riter, are you ready to render your report?

MR. RITER: Mr. Chairman, the Engineering Committee has no formal report to present at this time. I would like to report however, verbally, that the Engineering Committee are still active. We have held two meetings since the December 1st, 1947 meeting of the Compact Commission, and at these meetings we have discussed remaining engineering problems to be studied by the Engineering Committee.

We find that before we can make further progress on determination of streamflows originating from various states, it is necessary for us to determine the present depletions of streamflows at state lines and at Lee Ferry. You will

recall that this is one of the items we were unable to report on on December 1st, 1947 because there isn't unanimous agreement among the members of this Committee on what the present uses are in the Colorado River Basin. Progress is being made. Studies are being conducted to determine the present depletions.

We have taken advantage of the action by the Commission at the last meeting volunteering to pay the expenses of Harry Blaney, who is with the Department of Agriculture and who has performed considerable work determining irrigation uses. He attended our meeting in Cheyenne during the month of January and then late in January and early in February we had a special meeting of a subcommittee in Mr. Blaney's office to further study the subject of present uses.

I don't know exactly when we will be prepared to report our conclusions or recommendations on this subject to the Commission. I feel in my own mind, however, in view of the important nature and the controversial nature of present stream uses, the Engineering Advisory Committee is not going to be satisfied until we ourselves make an inspection tour of the whole Colorado River Basin in company with Mr. Blaney. So I can't look for any conclusive determination of this problem before the end of June.

There are a few members of the Engineering Advisory Committee here, Mr. Merriell--I don't see John Bliss.

COM. WILSON: He left this morning.

MR. RITER: Mr. Baker. They may wish to supplement what I have to say.

THE CHAIRMAN: Before calling on these other men, Mr. Riter, is your Committee able at this time to furnish the Commission an estimate which might be considered 85 or 95 percent correct, of the yield of the tributary streams entering the Colorado from the various states either at the state line or at Lee Ferry?

MR. RITER: If the Commission desires me to, I think I could sit down and from the information we have in the progress report give you an estimate within the indicated percentage that you wish for. I do not know, however, that that estimate would be accepted by all members of the Engineering Advisory Committee.

THE CHAIRMAN: Thank you for the answer, Mr. Riter. I think you have answered my question. Now, Mr. Baker, do you have anything to add?

MR. BAKER: No, I have nothing of value to add.

THE CHAIRMAN: Mr. Merriell?

MR. MERRIELL: Mr. Chairman, I hesitate somewhat to say what I am about to say but I believe it is needed. The Engineering Committee embarked on the job of finding out what is the water resource of the Upper Colorado River. What I now say is not said in derogation of the Bureau of Reclamation but I will say that everything that the Engineering Committee has so far derived is not in the report of the Bureau of Reclamation. That report was properly, as itself says, not intended to operate as a solution of the problems of the division of water in the Upper Basin. There are still to be derived very large amounts of information which I feel are essential to the solution of this problem.

I should like to point out that we people in Western Colorado--and

I am speaking now primarily as a Western Colorado man--have never been under any illusions as to what is involved in a compact between the States of the Upper Basin or Division. It is water that arises in Colorado that is going to pay the bill. The people in New Mexico will agree with me I think that their desires for water exceed the yield of water from New Mexico. The plans for the State of Utah included in the Colorado River Basin report indicate that we can't look for a proportional delivery of water by the State of Utah at Lee Ferry. Our friends in Wyoming are in the same case we are in in Colorado. No matter what is done in Wyoming there will be water continue to flow out of that state for the purpose of making deliveries at Lee Ferry. But what the gentlemen of this Commission are doing is dividing up the water that comes from about twenty thousand square miles in Western Colorado.

Now speaking again as a person from Western Colorado, when we undertake in the final language of this compact to pay that bill for delivery of water at Lee Ferry, we want to be very sure what the bill is going to be. I think it is desirable to say this, although as I say, I say it with some hesitation. I think it is desirable to say this because Colorado has been accused of a desire to prolong this thing, to evade it and to avoid it. It isn't that at all, gentlemen. You are about to get up from the table and leave a check for us to pick up and we would like to know just as nearly as we can know about any future thing, just what the size of that check is going to be.

That is all I have to say, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Merriell.

MR. WALLACE: Mr. Merriell, what additional information are you now seeking and in your opinion how much time will it require?

MR. MERRIELL: I hesitate to take over the functions of the Engineering Advisory Committee but my understanding, Mr. Wallace, is this: We have still to get through the services of Mr. Blaney a final figure upon which we can agree as to the present depletions.

MR. WALLACE: Does that mean an analysis of the consumptive use in the various sections of the entire Upper Basin?

MR. MERRIELL: That is well along, Mr. Wallace. That will not take too much longer. Then we have one other matter which enters into this thing and that is the determination of the channel losses which have occurred in the past and will occur in the future in the conveyance of the water from the various states, principally through Eastern Utah, to Lee Ferry. When we have determined those two things we shall be in a position I take it to say definitely what each state contributes not only at its state border but at Lee Ferry.

Then we have been under the necessity of considering the desires of states for future ultimate development, and that of course will involve the extension of the process we have already worked out for past uses to those future uses. And I can say--speaking again for Western Colorado--that our principal desire all through these years has been that the original Colorado River Compact be strictly carried out and that the deliveries at Lee Ferry should never become a matter of controversy with the Lower Basin.

Now then, if the Upper Basin is going to make a compact for the division of water among its states, the primary consideration in my mind is that that thing that we believed in all these years in Western Colorado should be as definitely determined and as definitely assured as it is possible for humans to do it.

MR. WALLACE: What is your opinion of the duty of the entire Upper Basin to deliver water at Lee Ferry?

44

MR. MERRIELL: With the information we have at present it appears, Mr. Wallace, that we should not be able to deliver that water consistently according to the terms of the original Colorado River Compact without the middle river reservoirs in Eastern Utah to produce regulation and long carryover.

MR. WALLACE: The point I am trying to get is this: Are you permitted under the compact to store water for purposes of equalization and limit your delivery to 75,000,000 acre feet over a period of ten years, or must you deliver there all of the water that is not under the 7,500,000 acre feet consumptive use limitation?

MR. MERRIELL: The only consideration that moves me in that matter at all is the requirement of the original Colorado River Compact that we shall deliver in consecutive ten-year periods 75,000,000 acre feet of water at Lee Ferry.

MR. WALLACE: Then you have a right to use everything in excess of that in the Upper Basin?

MR. MERRIELL: That is a question that I have never given any consideration to at all, what we had a right to use. Whatever is left we do have a right to use if we can substantiate the use above 7,500,000 acre feet.

MR. WALLACE: In other words you are claiming that you have a right to use a part of the surplus?

MR. MERRIELL: Certainly if we can substantiate that use and if there is any surplus.

THE CHAIRMAN: Are there any further remarks or questions in regard to the report of the Engineering Advisory Committee?

COM. WATSON: Mr. Riter, what were the results of your recent visit with Mr. Blaney in Los Angeles in regard to the question of determining the consumptive use of water?

MR. RITER: I think Mr. Roskelley from your state, Mr. Erickson from New Mexico, Mr. Patterson from Colorado, Mr. Dugan from the Bureau of Reclamation, were selected as a special subcommittee to meet with Harry Blaney at Los Angeles and to work out unit rates of depletion using a method devised by Mr. Blaney, based on tank experiments and information on various types of vegetation, unit rates of depletion. The committee met with Mr. Blaney, furnished him with all of the available information that we had compiled regarding types of crops grown in various portions of the Upper Basin, and climatic conditions. By climatic conditions I mean average monthly temperatures and information on percentage of possible sunlight, and information on length of growing season. The committee worked with Mr. Blaney and derived some tentative figures for unit rates of consumptive use for various portions of the Basin.

Now, after the committee returned we examined the data and we have some supplemental information. We have found some unpublished Weather Bureau data that were not available to us previously. We had a brief meeting of the available members of the Engineering Committee here in Denver yesterday morning and we decided we would resubmit the new climatic data to Harry Blaney and then ask him if there are any changes he wishes to recommend to us in the consumptive rates that he had tentatively derived.

Bearing in mind that the information Harry Blaney will furnish us

is consumptive use at various points within the Basin for various types of vegetation, then the Engineering Committee will have to apply that to the information we have on crops to arrive at the final answer on consumptive uses. Does that fully answer your question, Mr. Watson?

MR. WALLACE: Wherein does your study with Mr. Blaney differ from the study on the Lowry-Johnson method?

MR. RITER: The Lowry-Johnson formula is a different approach. We used some of the results that Mr. Blaney gave us on four of the field test areas used in deriving the Lowry-Johnson approach and we found a very close check. Three of the areas I think checked within one or two percent; one of them there was a difference of ten percent. I think that difference of ten percent can be rationalized in that we had an unusually high water table. The tank experiments by Blaney were average water table conditions. When we get the information from Blaney and coordinate it with the Lowry-Johnson approach, we will apply it and we will determine the consumptive use at the point of use.

Now I don't think there will be too much controversy on that item. The principal criticism of the studies made by the Bureau of Reclamation is that the Bureau failed to allow for salvage of water. The Bureau failed to deduct natural consumptive uses on certain areas of land before they were irrigated. I can cite you some examples.

Mr. Merriell in Colorado pointed to some areas along the Gurnison River which were naturally irrigated by Nature before man came; and after man came in and constructed a ditch on that land, the lands received a small amount of additional irrigation. In the studies made by the Bureau of Reclamation we took the total area under the ditch and applied a unit rate of use to it; we called that consumptive use.

The Bureau was criticized by the members of the Engineering Committee because in determining the depletion, caused by irrigation, the Bureau should have deducted the natural consumptive use that took place before the activities of man. Some of us call it salvage and some of us call it natural depletion which should have been subtracted from the total present use.

The net result is that it indicates we may be--I think I gave you a figure at the last meeting--as much as 30 percent too high on our estimate of present depletions.

Of course there are other factors, factors on the high side and factors on the low side. One example: When you irrigate a piece of land you also irrigate additional land besides the particular tract to which you apply water. You irrigate the barrow pits, you irrigate adjacent lands, drainage channels, etc. To allow for such uses the Bureau of Reclamation adopted rates of use high enough to make allowances for these so-called incidental uses.

Is that correct, Mr. Merriell? Do you care to supplement what I said on that particular point?

MR. MERRIELL: I think, Mr. Riter, you covered it except possibly to mention this: People who customarily work with the questions of the consumptive use of water or depletion are accustomed to thinking of a long growing season and a median altitude and conditions which are more or less uniform in the various areas considered. I should like to point out that one thing that has cost us time is the fact that in Colorado irrigation is practiced over a vertical interval of 4,000 feet and with growing seasons which extend from only a few weeks to 200 days; and that in Wyoming and in Utah, to a certain extent, the same condition exists. So that it is a case of tearing the area apart and

getting it into its component parts where conditions can be set up as they actually are.

MR. WALLACE: Mr. Merriell, is it your opinion that you have got to have a definition of consumptive use as the term occurs in the Compact in its relationship to the virgin conditions of the Basin, both land and water? In other words, there was a lot of irrigation going on in the Basin before the white-man came here.

MR. MERRIELL: Oh, yes.

MR. WALLACE: Have you got to establish that relationship before you are satisfied?

MR. MERRIELL: That is one of the things we are attempting to establish along with the general question of consumptive use.

COM. WATSON: Mr. Merriell, did some of that land referred to by Mr. Riter that was partially irrigated by Nature, when it had water applied to it, go out of production because of becoming sour and having too much water applied to it?

MR. MERRIELL: The pre-irrigated land in the Colorado River Basin--and I think this statement can safely be made not only for such land in Colorado but in Wyoming and Utah as well--the pre-irrigated land seldom scours. It is land which almost universally is at high altitudes and is now devoted to the raising of grass hay. And I am hopeful--and I would recommend to any of you so you may understand what is involved--but I am hopeful that when Mr. Blaney makes a trip here this spring I can take him into some of those areas when the melt of the snow is occurring. I think he will see quite clearly and quite quickly that the pre-irrigation is an actual fact.

MR. RITER: May I supplement the question, Mr. Chairman? If I understood Mr. Wallace's question correctly it may have some legal implications. We in the Engineering Advisory Committee are trying to stay with engineering matters and not trying to determine legal matters. I think it may be necessary to have a legal definition of beneficial consumptive use. The Engineering Committee is trying to determine the engineering facts with regard to streamflow depletion.

I observe that Mr. Roskelley has come in since I made my verbal report. I don't know whether he cares to make any comments.

MR. ROSKELLEY: From what I have heard I would say no, Mr. Riter.

THE CHAIRMAN: Mr. Riter, it seems evident to the Chairman that the work of your Committee is now handicapped by the resignation on account of ill health by Mr. Patterson, a very able, intelligent and painstaking engineer. It is the hope of the Chairman that Mr. Patterson will be able to resume his work with your Committee and with the Colorado River Board at an early date. But in the interim, what arrangements are being made to fill the gap caused by Mr. Patterson's resignation?

COM. STONE: Mr. Chairman, is that a question Mr. Riter should answer? Isn't that Colorado's problem?

THE CHAIRMAN: I don't know that it is entirely but it is certainly a question interesting to the Commission--it certainly is interesting to the Chairman.

COM. STONE: Colorado will say we are not going to delay any of the work of the Engineering Committee because of the resignation of Mr. Patterson. Mr. Patterson has resigned as Chief Engineer of the Colorado Water Conservation Board and has resigned as a member of this Committee, is leaving Colorado on the 28th of this month as I am informed, but Colorado is not helpless because of this situation. Mr. Patterson was a very able engineer and did a splendid job, not only on this Committee but on other matters. We regret his resignation. It is a situation which we must face but we don't propose to delay this work because of that unfortunate occurrence.

THE CHAIRMAN: In other words then, Judge, steps will be taken by Colorado to see that the absence of Mr. Patterson will not handicap the work of the Committee?

COM. STONE: I wish to remind you too, Mr. Chairman, that Colorado had three engineers on that Engineering Committee, Mr. Patterson, Mr. Tipton, and Mr. Merriell. Both Mr. Merriell and Mr. Tipton are still with us and expect to function. It is going to be difficult for our state to replace Charlie Patterson. A man like that is not easily replaced. But we are taking every step to secure a man to take his place.

In the meantime, Mr. Tipton and Mr. Merriell will carry on and I don't believe there will be any delay whatsoever because of that occurrence. We just lose the services of a very capable and well-informed engineer, that is true; but that can't be helped.

COM. WATSON: Mr. Chairman, may I ask if these studies that are being made by the Engineering Committee are necessary as prerequisites to writing a compact or could they go on contemporaneously with negotiating the compact.

COM. STONE: I will answer that "no" so far as Colorado is concerned.

COM. WATSON: What do you think, Mr. Riter?

MR. RITER: Well, I prefer not to answer the question. I feel this: The studies are absolutely necessary. Now after all I am only an engineer. I am not a lawyer. I do know that compacts have been negotiated with less engineering information than we now have before you. Whether those compacts are desirable compacts will have to be the responsibility of the Commission to decide. We are just an engineering advisory committee. We can advise you what studies you have to have. Certainly before a compact can be operated you will certainly want information on the water. The water is the thing you are dividing.

Now it may be that some smart lawyer can write some language without knowing what the facts are. I don't know. They did a pretty good job here yesterday writing some language without knowing anything about the nature of the compact. Maybe they can do the same thing without any engineering information. I really don't know.

MR. BREITENSTEIN: Mr. Riter, do you think the Engineering Committee or any member of it can furnish to the Legal Committee now a formula for measuring beneficial consumptive use of water?

MR. RITER: I don't think it is up to the engineers to do that.

MR. WALLACE: Mr. Chairman, off the record.

(Discussion off the record.)

COM. WATSON: Mr. Chairman, do these facts go merely to the administration of the water after a compact shall have been written or are they necessary to a division of the water and consequently a part of the compact?

MR. RITER: Now, Mr. Watson, let's get back and find out what these facts are that we are supposed to report on. What the Engineering Committee is attempting to ascertain is how much of the undepleted flow of the Colorado River originates in each of the five Upper Basin States. That is one of the facts we are attempting to ascertain. When we presented our report to you a year ago it was the opinion of the Commission that those facts were necessary for negotiation of a compact. I presume the Commission is still of that opinion.

One other important study we are making is to analyze the extent of channel losses. We are trying also to analyze the amount of reservoir capacity needed to equate the streamflow.

Now let's keep this fact in mind--I am sure that you have it well in mind--historically in a period from 1931 to 1940, the flow at Lee Ferry averaged about 10,000,000 acre feet per year. Over a longer period of time from 1914 to 1945, the average flow at Lee Ferry was in the neighborhood of 14,000,000 acre feet per year. Of course that is only part of the story.

The present uses are an unknown quantity precisely. For the purpose of illustration let us say they amount to 2,000,000 acre feet per year. That means then that over a long period of time the undepleted flow at Lee Ferry is approximately 16,000,000 acre feet annually. On a short period of time the undepleted flow is approximately 12,000,000 acre feet annually.

The Lower Basin has a bottom right--we might as well say a bottom right because that is exactly what it is--to 7,500,000 acre feet. The Mexican Treaty is an obligation that must be met. The Upper Basin has to meet part of that obligation. There isn't uniform opinion among engineers and lawyers as to how much the Upper Basin will have to release at Lee Ferry for the benefit of the Mexican Treaty. Opinions differ on that. It is my personal opinion that in a critical year of low runoff the Upper Basin is going to have to release at least half of a million and a half acre feet. Other engineers don't agree with me. There are other engineers who say that the Upper Basin will not have to release anything. But in any event if we are going to restrict the Upper Basin development by the flow that is available in a low ten-year period, there will be something less than 5,000,000 acre feet for use in the Upper Basin--probably 4,000,000 acre feet. That is only half of the water that is allocated to the Upper Basin on a long-term basis. On a long-term basis there is approximately 7,500,000 acre feet available. So it seems to me that we have got to make studies of reservoir operation to know and decide how much water can be actually applied to the land.

We do know this, that reservoir losses are going to be charged against the Basin. We do know it is physically possible to put in so many reservoirs that they might use up 1,000,000 acre feet of water just in reservoir losses. It may not be economical to do that. If we can put in another capacity of reservoirs that only evaporate 500,000 acre feet and still meet our obligation at Lee Ferry, then we can get that much more additional water to apply to the land.

Then of course, Mr. Watson, there is also the question of power development and the question of financing these projects. Power development is absolutely essential in my opinion to secure revenues to finance the irrigation developments.

Now these are problems that must be considered. Whether they are problems which should be deferred to the future or whether they are problems that should be looked into at this time, I say the Commission has to determine what should be done. We are engineers. Our primary job is to serve you, to bring to your attention all the facts we can assemble.

MR. ROLLINS: You say that up to date it has been impossible for the engineers to agree on these various items?

MR. RITTER: No, we have partial agreement. We have a progress report. The information contained in the progress report was agreed upon.

MR. ROLLINS: I understood you to say you had recently been disillusioned because you couldn't get together on these things. The question I want to ask you is this: After you are through with your studies in your opinion how nearly 100 percent accurate will you be?

MR. RITTER: We will be just as accurate as it is humanly possible to do it. There is one matter of principle involved, not only facts, but the principle of salvage of water, that we must resolve. Various states have criticized the Bureau for not allowing for salvage of water. At our last meeting in Cheyenne, Mr. Tipton, a very competent engineer who represents Colorado, who has done a lot of thinking on this matter and has made more studies on this matter than I have, presented some illustrations based on other streams which he studied. Those streams were the Rio Grande, the South Platte, and the Arkansas Rivers. Mr. Tipton demonstrated from those streams that the formula used by the Bureau of Reclamation of consumptive use times area irrigated is not the proper rate of depletion. He demonstrated from those streams that some of the depletion was met from salvage of natural losses.

The members of the Engineering Committee do not know to date how much water can be salvaged from the Colorado River. It is our intention, however, to give the matter further study and to try to arrive at a satisfactory answer.

As to the magnitude of the error, it now appears from the tentative studies we have that the Bureau of Reclamation estimates may be off as much as a half million acre feet. Now that is not a final figure but I will say that is just an indication of what we are running into. If the Commission feels we are wasting our time by trying to eliminate an error of half a million acre feet, all you have to do is tell us so and we will cease work.

COM. WATSON: Mr. Chairman, I think these studies are all very important. Many of them will pertain to the administration of the River after a compact has been written, but whether or not we are precluded from dividing the water until these studies shall have been made is another question. The writing of a compact will include the administration of the River, the dividing of the water, and other factors.

MR. RITTER: Well, Mr. Watson, I would hesitate to pass judgment on your opinion. You are a Commissioner and if you are very strong in your opinion I would suggest you get the Commission together and present that matter to the Commission for discussion.

As I said before, compacts have been made with less information than we now have. That is a matter that I know can be proven because we have records of other compacts. Take for example the 1922 compact on the Colorado River. We did not even have a gaging station at Lee Ferry when that compact was negotiated. Now then, whether or not you want to repeat a compact on that basis is for you to say, not for me to tell you.

COM. WATSON: Mr. Riter, I am not intending to put you on the spot. I think the Commission is on the spot.

COM. BISHOP: Mr. Chairman, I am glad to see Mr. Watson finally come over to the stand that has been maintained by Wyoming all along. And I am going to repeat for the benefit of some of those that haven't been here before that it seems to me it doesn't make very much difference whether it is a half million more or less. We will divide the water on a percentage basis--we have agreed to that already--and if there is less and we have to take less, we will take our percentage.

I have great appreciation for the work the Engineering Committee has done and I think we ought to have them do that work and get all the information they can. I don't think it is anything we should hold the compact up for.

MR. BREITENSTEIN: Mr. Chairman, the Colorado Commissioner has gone out of the room but I think the statements of Mr. Watson and Mr. Bishop should be answered by Colorado. I should just like to say two things:

First, Colorado deems it necessary both to allocate the water, the beneficial consumptive use of water; and, second, to determine the obligation to maintain the flows at Lee Ferry. I feel confident in asserting that Colorado would not do one without the other. I would like to know if anybody has any suggestions to make now or tomorrow or the next day on two things: First, what sort of a formula or a method or whatever you want to call it, can be devised so that each state knows its obligations to maintain the Lee Ferry flows; and, second, how you are going to measure beneficial consumptive use.

It doesn't do any good to divide between these states the beneficial consumptive use of any amount of water unless and until you know how you are going to measure that beneficial consumptive use.

COM. WATSON: Mr. Chairman, certainly the obligations at Lee Ferry will not be determined by the amount of water that any state produces. In other words, the amount of water that that state should have in the division is certainly not based on the amount of water that it contributes to the river. There are other factors to be considered and the obligation at Lee Ferry will be determined by them.

MR. WALLACE: Of course I am not a lawyer--I am following the suggestion by Mr. Riter--I am not a lawyer but I can't see a bit of difficulty in the matter of delivery of water at Lee Ferry.

In the first place, Mr. Breitenstein, we need a watermaster. The 7,500,000 acre feet allocated to the Upper Basin States are in common ownership. The priority of use of that water attaches to every acre foot of water. As a result they are all on the same priority excepting those projects that were built prior to the ratification of the compact. All of the other projects will be built having an equal priority. And it is up to the states if they want to change that priority within the state, they may do so; but so far as the watermaster is concerned, the delivery at Lee Ferry will be in proportion to the water they use in those projects that are built after the ratification of the compact--repeating again that those built prior to the ratification of the compact have a priority that cannot be disturbed.

Now if there is any difficulty about that, all you have got to do--

well, there is no difficulty so far as I can see. I thought I was intelligent enough to understand it and the only problem about that is, Mr. Breitenstein, you have got to have a watermaster who will tell you in Colorado what your share is.

MR. BREITENSTEIN: Well, Mr. Wallace, if that is the only solution I am afraid that we are just wasting our time here talking about this because we in Colorado are not going to have a watermaster that is going to come up to our state and tell us what diversions to shut down. That is a state obligation.

MR. WALLACE: Your state will be told what your share of the water delivery at Lee Ferry is by the watermaster.

MR. BREITENSTEIN: We will not be told by the watermaster; we will be told by the compact that is entered into here.

MR. WALLACE: I will go a step further. If you are going to have the privilege of storing the water in the Upper Basin States, you have got to so insist upon the priority of irrigation and municipal use above power that you control by a watermaster the operation of every reservoir on the whole river from source to mouth.

COM. WATSON: Mr. Breitenstein, inasmuch as you asked for a formula to determine these things, wouldn't it be well for us to talk about the formula? Wouldn't it be well for us to have an agenda that would contain matters that are germane to the issue and are substantive and not be shadow-boxing on a lot of issues that are not germane?

MR. BREITENSTEIN: We are willing to consider any formula, any scheme, any device, which any state, the Federal Government, any engineer or any lawyer of any of the states or the Federal Government, has to suggest. We do not have sufficient facts in Colorado to submit such a formula ourselves. We will consider any one that anybody else suggests.

We are not willing to proceed on the basis of allocating so much beneficial consumptive use of water for two reasons: First, that does not define our obligations at Lee Ferry; and, second, that furnishes no method whatsoever of measuring beneficial consumptive use, and if you cannot measure something, what good does it do you to divide it?

COM. WATSON: I take it then that Colorado is not able or willing at the present time to say how much water she thinks she is entitled to in the Upper Basin?

MR. BREITENSTEIN: Oh, I am not going to go that far, Mr. Watson. But I am going to say that any figure which we might give would be utterly valueless unless you have some method of measuring it.

MR. RITTER: Mr. Chairman, may I be permitted to indulge a legal question?

THE CHAIRMAN: At your own risk.

MR. RITTER: Mr. Breitenstein, I fully understand the implication you made to Mr. Watson when you say if you can't measure beneficial consumptive use, you can't divide it. Of course I am ignorant on legal matters but it seemed kind of funny to me that we already have a compact for beneficial consumptive use, the measure of use between the Upper Basin and Lower Basin despite the fact that you and I personally do not know the formula for measuring it.

MR. BREITENSTEIN: One of the weaknesses of your Colorado River Compact is that there is no method of measurement. There is no standard set up. That is one of the weaknesses. Why should we make another compact with the same weakness. You say you give us the beneficial consumptive use of any amount of water, say 1,000,000 acre feet; what good does that do us unless we know how you are going to measure that million acre feet?

MR. RITER: May I call your attention to this fact: That was apparently good enough in 1922 to permit some of our competitors to go ahead and use that water.

MR. BREITENSTEIN: They are down at the bottom of the stream where they get everything the law of gravitation takes down to them.

MR. RITER: Of course maybe I don't fully appreciate the implication there. I will admit that I can't measure it; I don't know what it means. I have my own personal opinion of it. There are lawyers who tell me I am wrong. Now is it necessary to know that precisely before you try to make another compact? That is the only question I am asking you.

MR. WALLACE: These gentlemen have just advised you they have the Lowry-Johnson report. They have worked over that formula and in many instances it doesn't differ more than one percent and the maximum it differs is 10 percent. When they coordinate the studies of the Lowry-Johnson report together with the studies they are now making and give you a report that the consumptive use is so and so, are you prepared to accept it?

MR. BREITENSTEIN: I can't answer that question, Mr. Wallace.

MR. WALLACE: You are making a very strong plea you don't know what consumptive use is and here you have a proposition where these gentlemen are going to present it to you in a little while.

MR. BREITENSTEIN: I didn't say I didn't know what consumptive use was; I said I didn't know how to measure beneficial consumptive use.

MR. WALLACE: I assume that you include in that difficulty the question of salvage?

MR. BREITENSTEIN: Well, I include a number of things.

MR. WALLACE: Repeat them for us so we may understand them.

MR. BREITENSTEIN: Studies of beneficial consumptive use have been made many times. Maybe you know of a definition of beneficial consumptive use. I don't right now. And if I knew of a definition of beneficial consumptive use I wouldn't as a lawyer know how to prepare a definition which I would expect an engineer to go out in the field and put to practical application. Maybe somebody else does. And I say we are willing to consider any suggestions any of you have to make along that line. The mere inability of Colorado to do that should not prevent the rest of you from coming up with whatever ideas you have.

We are not measuring consumptive use; we are measuring beneficial consumptive use. That brings in another term. And how are we going to measure it?

MR. WALLACE: What I am trying to learn are the factors that are necessary on which to base that conclusion. Now we have the Lowry-Johnson report. We have the study of the engineers. You have a study going on as

to salvage. Now what else do you want?

MR. BREITENSTEIN: Well, I want some concrete recommendation. We are talking about generalities here. We are engaging in the most glittering generalities there ever were. Let's get done with sparring. If somebody has something to suggest in black and white let's bring it out and see it.

MR. WALLACE: What I am trying to find out is what you want to know before we can base this conclusion.

MR. BREITENSTEIN: I would like to know two things: First, a definition of beneficial consumptive use; and, second, a method of measuring it.

COM. WATSON: Mr. Breitenstein, if you divide the water on a percentage basis, which has been passed upon by this Commission, would not the variable be not in the percentage but in the amount; and therefore if the amount were small or large it wouldn't make any difference if the percentage were the same.

MR. BREITENSTEIN: It doesn't mean anything because you don't know against what your percentage applies.

MR. WEHRLI: Mr. Chairman, may I ask a question? You have a definition of beneficial consumptive use in the Republican River Compact.

MR. BREITENSTEIN: That is consumptive use as I recall. I am not sure.

MR. WEHRLI: I believe it says beneficial consumptive use. I want to be clear in making reference to that I do not believe that definition would be adequate for the purposes of this compact----- because of a different factor in our determination here relating to transmountain diversions, which was not involved in the Republican River Compact.

COM. STONE: I think Mr. Wehrli's remarks are apropos. It demonstrates the difficulties. Mr. Chairman, I was out when this discussion was going on.

Somebody yesterday joked about my using the word "realistic"; I am going to use it again. I think we have got to get out of the realm of speculation and look at the situation realistically.

I want to announce here and now that it is Colorado's fervent hope and expectation that we shall arrive at a compact for submission at the next session of the legislatures in January. We have a very deep appreciation in this State because of the topographical condition of the State, because of the large amount of water supplies which arise in this State, because of obligations which may be placed on this State for deliveries at Lee Ferry, that we must negotiate a compact which we can recommend to our legislature and have a reasonable chance of having it ratified. When we make a compact we expect to do everything possible to get it ratified by the legislature. A compact which we make cutting the pattern for future generations must be one which we can support, not on the basis of a lot of wild guesses or speculation over formulas, but one which we can support on the basis of the facts.

Let us assume you could drive Colorado into a position of taking hasty action. That doesn't mean you have got a compact. We have sincerely approached this matter on the basis, not of obtaining all of the engineering refinements that engineers might quarrel about for the next fifty years, but on the basis of getting certain salient facts which we believe are necessary for making a compact which we have a reasonable chance of getting ratified.

We have always proceeded on the basis that there were two elements involved here: one, the determination of the respective obligations of the states to make deliveries at Lee Ferry; and, second, the apportionment of water. And unless I change my ideas through the engineering studies or the expression of wisdom on the part of you gentlemen, I think that it is reasonable that a state in the position of Colorado should not agree upon apportionment without a concurrent agreement upon a determination of respective obligations. Those things run concurrently.

This Commission has appointed by unanimous consent an Engineering Advisory Committee. I sincerely believe that that Engineering Committee is doing a good job. I anticipate that there will be a report here in ample time for us to approach with intelligence and with the facts in mind, a consideration of the apportionment of the water and the determination of the deliveries at Lee Ferry, and do that well in advance of the next sessions of the legislatures.

In the meantime, it has been our hope that we would consider other matters which must be considered and agreed upon and made a part of any compact, and we have been proceeding as diligently as we could to present to you gentlemen some of those factors which we believe should be considered. I thought we were making progress last time and if we would get at it, I think we could make progress this time. We can be doing that and get that behind us so there will be no delay on the meat and cocconut of the compact when this Engineering Committee reports, we hope, sometime this spring or early summer.

COM. WATSON: Judge Stone, wouldn't it be well to have a group, appointed by this Commission, studying some of these fundamental factors that will be the basis of making a compact?

In other words, we are studying certain factors here but we have persistently evaded the main things that will determine the apportionment of the water. Wouldn't it be well for us to have a committee from the Commission that should make these studies concurrently and be able to come to a conclusion at an early date rather than wait for the Engineering Committee to make its report?

MR. WALLACE: I will say this much, Judge, we are now wandering all over the place. We have one subject we are discussing now; that is beneficial consumptive use. If we will stick to one thing at a time we will make progress. We compliment all the things you have done. You have done the greatest job in the world; we appreciate that. But the subject before us at this moment is beneficial consumptive use and what I would like to ask Colorado for is--you are the experienced people in this business, you have made many compacts. We have made none except we agreed to the Colorado River Compact. We have Judge Howell with us and I don't believe he has ever worked on a compact in his life, but he is certainly a very capable man. But we can't understand why with all of your experience you are not willing to say just exactly what you want, what the facts are you want to know before you will agree on the definition of beneficial consumptive use. I confess I am puzzled.

Let me get out of Mr. Breitenstein why he can't tell us what he wants to know before we can agree on a definition of beneficial consumptive use and apply that definition.

COM. STONE: Thank you, Mr. Wallace, and I will answer Mr. Watson's question and I want to reciprocate your statement about Judge Howell. We certainly think you have got a very able man advising you on the legal side

together with Mr. Clyde.

Mr. Watson, we assumed that we were doing just what you suggest in this agenda which we have submitted to you here. We believed we were submitting some of those fundamental questions. I think as we go through them you will finally agree that we have submitted some of those fundamental questions which we can be working on while the engineers are completing their studies.

Now Mr. Wallace brings up the question of a suggestion about this factor of beneficial consumptive use or what is the definition of it. I should like to reiterate what Mr. Breitenstein has said that it is not limited to a mere definition of beneficial consumptive use. A very important factor is the measure of that beneficial consumptive use and that is in my judgment--for what it is worth--a factor which must be determined before we make a compact.

Now Mr. Blaney has been brought in and a very able subcommittee has been established to study and make recommendations from an engineering viewpoint on what should be the basis of this Commission's consideration in determining and agreeing upon the measure of beneficial consumptive use. My point was--and this is partly in answer to Mr. Wallace--that if we do have a committee made up of as competent men as there is in the western half of the United States or anywhere, attempting to arrive at engineering factors upon which we can determine that, is it not wise before anyone attempts to deal with generalities on the subject for us to have the benefit of that? And in the meantime there are other important factors which as you suggest we should be working on and that was our program--I mean--that was our suggested program. That is mere suggestion from one state.

Mr. Wallace, that may not be a full answer but Mr. Wehrli brought out something here which I think demonstrates the situation. He points out a thing which I have always thought, that the definition in the Republican River Compact would not be applicable to the Colorado River because of its situation and because of the potential developments on that River, uses within the Basin and uses without the Basin. Now the difference between two rivers is a factual matter, and it is the factual matter which this committee is studying. It seems to me that we can--and I want to say for Colorado we will meet just as often and as long every time as you want to--and I think we can put in our time in studying this basic material which has been submitted to the Commission. By that time the Engineering Committee can come out.

MR. BREITENSTEIN: Judge, Mr. Wallace made reference to some of the things I have said and I hate to use up any time of the Commission in making a speech but if you would like to have a lawyer talk for a few minutes on engineering matters I will be glad to tell Mr. Wallace what bothers me.

MR. WALLACE: All I am trying to find out is what are the factors to be considered in the definition of the words, beneficial consumptive use; and when that definition is agreed upon, some explanation of the application thereof. Now if that has been referred to this Committee and we are going to wait for this Committee and you are going to wait for the report of this Committee, I personally don't see anything else to do.

MR. BREITENSTEIN: It seems to me there is a lack of understanding of a problem around here. There is either a lack of understanding or we are completely off base in Colorado, one or the other. You have said, Mr. Wallace, that we in Colorado have had perhaps more experience in making compacts--and also in interstate litigation--than the other states. Unfortunately that is true. I am not so concerned with a definition of beneficial consumptive use as I am concerned with the method of measuring beneficial consumptive use. The Colorado River Compact does not divide water; it divides the beneficial

consumptive use of water.

Now when you get into a dispute like this, what are the methods which have been used for measuring it? At times the method employed has been headgate measurements. The Laramie River decision of the United States Supreme Court is an example of that and I think we all know enough of that decision and of the facts there to agree--and I think even Wyoming will agree--that measuring on the basis of headgate diversions is utterly unfair.

Another method which has been employed is to determine beneficial consumptive use by the extent of irrigated acreage. That just does not work and the thing that Mr. Riter referred to when he told of Mr. Tipton's explanation, is the best example of that.

Along the Arkansas River we have had a lot of litigation with Kansas. Kansas claimed in a suit brought in 1928 that Colorado was injuring her because the irrigated acreage had increased almost double since the decree of the Supreme Court in 1907, and we were able to establish by engineering testimony, which was accepted without qualifications by the United States Supreme Court, that that increase in irrigated acreage had not resulted in any increase in consumptive use of water. We showed that the usable state-line flows had increased in the thirty years that had elapsed. So acreage is not a measure.

If there is any doubt on that Mr. Wehrli's experience on the North Platte should be indicative. There the engineers testified without contradiction that when an area is opened up to irrigation, considerable amounts of water are used to fill up the ground water table, and when your water table comes in balance, then the return flows from the project increase and more water is available downstream. We here in Colorado have had the same experience on the South Platte.

Now, with those factors, things that we know about that cannot be denied, what method--and I say it is an engineering rather than a legal question, Randy, with all due regard--what engineering formula are we going to devise to measure this beneficial consumptive use?

And I say you cannot charge Colorado with any neglect or any dilatoriness in that matter. I venture to say that long before any of the other states thought of this we in Colorado requested our engineering advisers to try to work out some formula for doing this. I know myself I talked to engineers about it in the summer of 1945 when this thing first came up, and I have had numerous schemes advanced to me as to the system which might be followed. I didn't see why we couldn't write them out in language and use them. But unfortunately in each instance when the engineers made further investigations they found that each scheme, each plan, whatever you want to call it, was unworkable and thus far no engineer has come to either Judge Stone or me with a workable method of measuring beneficial consumptive use of water.

Now we are not all-wise; we are just working boys like the rest of you. And if anybody, anybody at all, has a plan for doing this, we are most ready, willing and able to consider it.

THE CHAIRMAN: The Chair recognizes Mr. Wehrli.

MR. WEHRLI: Wyoming will offer to give you a definition of beneficial consumptive use and we will do that this afternoon in writing.

Now that will not be a formula for dividing the water between

these states but it will represent at least our conception of how beneficial consumptive use ought to be defined as it relates to the use to be allocated to each of the states, not as it relates to the amount of beneficial consumptive use that may be available to the Upper Basin States under the terms of the Colorado River Compact. The two are not the same. But if it will make anyone happy or accomplish any good purpose, I have worked on that problem a little bit and I will be glad to present it in writing this afternoon.

I recognize what Mr. Breitenstein so clearly brings out about the difficulty of making an allocation of water. You at first think that perhaps an amount of diversions in acre feet would be the better plan. I am inclined to agree with Mr. Breitenstein that that has its very serious objections.

In the North Platte case to which Mr. Breitenstein has referred some allocation was made upon the basis of acreage irrigated. I doubt if that could be applied in making a compact here as it was in the North Platte case because here we have some rather complicating factors which we didn't have in the particular areas there where that sort of formula was used.

I observe that in the Republican River Compact, with which I am not familiar except having read it, and of course it is Colorado's compact, a division was made on the basis of beneficial consumptive use.

We do have confronting us in this case the fact that in the Colorado River Compact the term, beneficial consumptive use, is employed. It seems to me that the greatest difficulty that will arise if you base a division of water upon percentage and beneficial consumptive use--and if I read the record of the proceedings of the last meeting of this Commission correctly, which I did not attend of course, there was a motion to that effect--the greatest difficulty you are going to be confronted with is finding out every year how much each state used under a definition of that kind. Obviously it is easier each year to measure the amount of headgate diversions in a particular state. It is likewise easier to measure the amount of acreage irrigated, and of course some other diversions, let us say, for power and the amount of reservoir losses, and so forth.

But when you come to a determination under whatever definition you employ--let's assume we get the best definition we can--when you come to a determination each year, as you may have to ultimately under the administration of a compact, of the amount of water that the state has beneficially consumptively used, I think it is a very difficult problem. That in my mind does not preclude the making of such an allocation because that may be--and I am inclined to think it is--the best method that can be employed.

So much for that. As I say, we will be glad to present something for the consideration of the other states on a definition of beneficial consumptive use as it relates only to the use that may be made in the respective states and with the assumption that the compact ultimately will apportion the water in terms of beneficial consumptive use. Of course if it doesn't then the definition is unimportant.

COM. STONE: Mr. Wehrli, may I ask you a question at that point?

MR. WEHRLI: Yes, sir.

COM. STONE: As I understand that merely goes to the definition of beneficial consumptive use and you don't propose at this time--of course you have a right to do it and if you have a formula we certainly would like to have it--but I assume that doesn't go to the measurement of the beneficial consumptive use, merely the definition of it.

MR. WEHRLI: Well, when we get through defining it we might find a way to measure it. As long as we don't know what it is I don't know that we can.

By "formula" do you mean some percentage allocation between the states?

COM. STONE: No, where and how the beneficial consumptive use is to be measured, whether by depletions or by beneficial consumptive use at the point of use.

MR. WEHRLI: My definition will have some bearing upon that question, Judge Stone, and might answer your question. I am not sure as to that.

We came here this morning rather with the assumption that we were going to pick up where we left off yesterday in consideration of the Legal Advisory Committee report, and of course we had the engineering report, which I think was entirely appropriate. We did not expect to have before us at this time this question of beneficial consumptive use although it is on the agenda. We would suggest that orderly procedure at this time would be to return to the consideration of the Legal Advisory Committee's report and take up this other subject of beneficial consumptive use at whatever time someone desires to take it up.

THE CHAIRMAN: We will convene at two o'clock.

(2:00 p.m. Meeting resumed.)

THE CHAIRMAN: The Commission will please come to order.

MR. WALLACE: Mr. Breitenstein, what is the difference between facts and factors?

MR. BREITENSTEIN: Well, you want me to get into a discussion now of the differences between findings of facts and conclusions of law? You have got the same thing there. I take it a fact is a fact. A factor is something in which an element of judgment is involved. It isn't the ultimate fact.

MR. WALLACE: I have been trying to get you to name the factor concerning which we seem to be puzzled.

MR. BREITENSTEIN: I don't know what you are all trying to get out of me because I do not have the ability to devise this formula. I will say that flatly. I haven't the training or the experience to do it.

But now just start up at the headwaters of the stream, if we are going to continue the discussion, you have got the Green River in Wyoming into which flow some tributaries from Utah. On those tributaries is Utah going to be required to deliver any water to the Wyoming line and if so, how much and how is that amount of water to be measured? The Green River then flows down into Utah, back into Colorado, and then out into Utah. Now simplifying it to some extent, when it gets down to the Colorado-Utah line, are Wyoming and Colorado because the Yampa River comes in ahead of that going to be required to maintain any flows at that point and if so how much and how are they to be determined?

Next downstream is the White River rising in Colorado. Is Colorado going to be required to deliver any specific amount of water at the

Utah Line, and if so, how much and how is it to be determined? And the same, going on downstream, is true for the main stem of the Colorado River, the Dolores, the San Juan and all of its tributaries.

I do not see how we can enter into a fair compact unless all those situations are considered.

Judge Stone suggests that I have left out one thing in my attempt to simplify it, and that is that we must consider the losses in Utah in transporting the water from the Colorado Boundary down to Lee Ferry. I believe that you in Utah will agree that it would not be fair to charge Utah with all those losses. If you are willing to assume them, why, just tell us so and we will deal on that basis, but it does not seem to me that Utah in fairness should be charged with those.

When the water gets to the Utah Line it flows for a considerable distance before it passes into Arizona. Going down those hundreds of miles, water is lost through evaporation, bank storage, and all those things. How are those losses to be charged? Does Colorado's obligation end when it delivers the water at the Utah Line? Are we to have no concern over those transportation losses or over the evaporation losses in the main stem reservoirs? Is Utah going to bear the entire burden of those? From the standpoint of fairness it seems to me that Colorado and Wyoming should bear part of that because the mere fact that we deliver the water to the Utah Line doesn't mean it gets down to Lee Ferry.

Frankly, rather than overstating the problem I have understated it. I have been guilty of oversimplification. It seems to me that the physical facts should be so apparent to all of you that you should recognize that we are not here concerned merely with cutting the pie.

COM. WATSON: Mr. Breitenstein, am I correct in saying that the Engineering Advisory Committee have been properly authorized by this Commission to make these studies in our assignment to them?

MR. BREITENSTEIN: I am not going to answer that one, no, sir. I am not on the Commission and I am not on the Engineering Advisory Committee and I am not going to construe your authorization to them.

COM. STONE: I didn't get that question.

COM. WATSON: Am I correct in assuming that the Engineering Advisory Committee has been properly authorized by this Commission to make these studies and report back?

COM. STONE: I think all we have to do is look back at the minutes of this Commission to ascertain what they have been authorized to do.

COM. WATSON: As I remember it, Judge Stone, the Engineering Advisory Committee was given a very limited assignment that would not involve many of the problems that will come up in this matter that are fundamental in negotiating a compact. And one of the objections that some of us have had is that the assignment for study of these various fundamental problems was not extensive enough.

COM. STONE: Mr. Watson, the only comment I would have to make on that--and I think it is in line with the constructive procedure you have in mind--is that if the assignment to the Engineering Advisory Committee is not broad enough and any state feels it should be broadened it would be perfectly proper for that state to suggest such broadening of the assignment. It has

been our thought in Colorado that the broadening of such an assignment may become necessary as we proceed but that the Engineering Committee had a sufficient assignment at the moment. But we would not resist the wishes of any state that desired to suggest a broadening of the assignment at this or any other time.

MR. CLYDE: Mr. Chairman, it seems to me in listening to the discussion that there is a certain amount of buck-passing going around between the Commission, the Legal Advisory Committee and the Engineering Advisory Committee. Utah has indicated that it feels that the data now available is sufficient to permit a division of water on a percentage basis. If I correctly interpret Colorado, they indicate that they don't think so, that they have to have some more engineering facts.

I haven't clear in my mind what additional engineering facts they have got to have and whether or not the Engineering Committee understands what additional engineering facts they have got to get. If somebody could specifically state what is lacking and what is yet needed so that we can get to that subject, then the Engineering Committee could be told to get them, those specific things, and could concentrate on getting them. Then as soon as they are here we would be in a position to turn to the discussion of the particular thing that Utah has been urging that we turn the discussion to, that is, to-wit, the division of the water.

I don't think it has been stated what additional engineering facts are necessary so the Engineering Committee can get them for us, and in talking to individual Committee members I am convinced that they don't know exactly what it is the Commission wants them to get.

COM. STONE: Mr. Clyde, were you through?

MR. CLYDE: Yes.

COM. STONE: There is one thing that worries me a lot and your statement just made indicates or points up that matter. You refer in your statement to necessary information regarding the division of the water---as Mr. Breitenstein put it a few moments ago, the division of the pie. None of you seem to be concerned and apparently never mention that engineering facts are probably needed more to determine the respective obligations to deliver water under the Colorado River Compact than for the apportionment of the water granted to the Upper Basin under the Colorado River Compact.

It was, I think, quite pointedly stated here by Mr. Merriell this morning that because of Colorado's position, our topographic position as a state, we will be compelled to assume, probably justly so, a large measure of obligation. Colorado does not propose to end up these compact negotiations and have the obligations of the Colorado River Compact to deliver water placed solely on her shoulders and have only such water for use in our state as remains after that obligation is met by Colorado for all the other states. That is a joint obligation. That is not an obligation of one state.

We can never forget that we have two jobs to do here: one, to determine the respective obligations to deliver water at Lee Ferry; and, secondly, to apportion the water allotted to the Upper Basin for Upper beneficial consumptive use. And we cannot confine this discussion with respect to engineering facts to the mere matter of securing the necessary data to apportion the water.

MR. CLYDE: I appreciate, Judge Stone, the position of Colorado and speaking personally I think the position is reasonable that Colorado should desire to tie in the division of the water with the division of the obligation at Lee Ferry. If I were representing the State of Colorado I would insist that those two things be decided and discussed together.

I wasn't attempting to give a solution to the problem, I was attempting to state it as it appears to me. We had it in the Legal Committee when we were attempting to function. In talking to some individual members of the Engineering Committee I think I see the same problem. I am willing to take it for granted that Colorado on the present basis of existing facts is not willing to discuss either of those two questions. We are confronted then with a theory. We are confronted with a situation where you feel that the protection of your state requires more inquiry and more facts than you have at your disposal this morning.

COM. STONE: That is a very fair statement, Mr. Clyde.

MR. CLYDE: Now, that being so, it would seem to me taking that as the position with which we are confronted, can we not clarify for the Legal Committee and the Engineering Committee and others who might be working on this, the line or the lines along which you feel further inquiry is necessary so that the further study by the peoples working on it can be concentrated to the end of getting for you the data which you feel is yet necessary for you to have.

Maybe the Engineering Committee sees clearly where it is supposed to go and what the Commission wants, but I have gathered from the comments of those who have spoken that they don't clearly understand what the Commission yet wants so we can get to a discussion of that. And I think our work would be greatly facilitated if that could be spelled out better for those who are working on it.

MR. RITER: Mr. Chairman, the Engineering Committee has a specific task to do. Briefly the assignment given us consists of the following elements:

1. Preparation of base maps for use by the Commission in its deliberations. We have completed that assignment. We have made available to each state, maps prepared by the Bureau of Reclamation--

THE CHAIRMAN: Mr. Riter, pardon me. I would suggest that you are repeating what you have told this Commission three or four times before. Let's get more to the point on this thing.

MR. RITER: I am trying to be helpful by trying to reiterate briefly the assignment the Engineering Committee has and with that assignment in front of it, the Commission can decide if they want to give us more assignment.

THE CHAIRMAN: Very well.

MR. RITER: Item No. 2 is determine the water supply available from each state. That assignment has not been completed. It is partially complete but it is not completed.

Item No. 3 concerns studies of river and reservoir operations to determine the extent to which the Upper Basin can make use of its allocated water supply during drought cycles and still meet its compact obligations at Lee Ferry. That assignment has not been completed.

Those three items constitute our present assignment.

COM. WATSON: Mr. Chairman.

THE CHAIRMAN: The Chair recognizes Mr. Watson.

COM. WATSON: In defense of Mr. Riter I wish to say that his statement was very definite. I was present at that Engineering Advisory Committee meeting in Cheyenne, September 1946, and that Committee was definitely assigned the work Mr. Riter and his Committee performed.

Now, as far as I can remember there has been no other definite assignment by this Commission to that Engineering Advisory Committee. Therefore, I think it is the duty of this Commission to state definitely and emphatically what other factors the Commission should take up for study.

The objection that some of us have had to the procedure is that many of these problems that should be considered contemporaneously with the study that the Engineering Committee has made.

I therefore think that this Commission should make assignments to Mr. Riter's Committee. I think he has done a fine job. I don't think he is in any way subject to criticism from this Commission.

COM. STONE: I don't imply criticism. I am speaking plainly. But, Mr. Watson, you have those ideas and they are no doubt appropriate, and there are certain matters which you say are worrying you; can you put down and submit under the a, b, c, the further assignments which should be given to this Committee? If you can, Colorado is not going to stand in the way of any reasonable assignment.

COM. WATSON: Judge Stone, I would be glad to do that and will give it to this Commission tomorrow morning.

MR. CLYDE: The discussion that has just ensued since my last remarks demonstrates to me that perhaps each is waiting for someone else to go forward. The Engineering Committee is waiting for a further assignment from the Commission. It is proceeding with all its energies to study the things assigned to it but it hasn't gone into some of the things that Colorado has indicated she feels are indispensable to reaching a discussion of this. The Legal Committee had the same problem.

I haven't sufficient information and knowledge and experience in these things so that I can say what we now need and haven't got so I can tell anybody how to do it. But I certainly feel that it might be very helpful if the group could get together informally, the engineers, the lawyers, and the Commission, and discuss what they haven't got yet that they need so that each can then start upon an enterprise of getting it. Maybe we can't set it down definitely but it would seem to me we could do it more definitely than we have given anybody the word yet on it.

MR. RITER: Mr. Chairman, Mr. Watson is correct. He and Mr. Bishop were both present when the engineers discussed our assignment. There was a great deal of controversy over one item, namely, potential uses. Some of us on the Engineering Committee felt that that was the most important single factor to be used as the basis for negotiating a compact. After discussing the matter pro and con we felt it was entirely beyond the capacity of the Engineering Committee to determine potential uses.

The Bureau of Reclamation spent close to a million and a half dollars preparing the report that discusses project potentialities. The Engineering Committee recognizes the potentialities are a very important

factor. It is so stated in our report. But we did not recommend that we be given the job of studying the project potentialities. We felt that was a job that should be reserved for the Commissioner of each state. The Engineering Committee stands ready to serve in any way the Commission sees fit that we can help serve to advance this cause.

COM. WATSON: Mr. Chairman, at that meeting these various factors explained by Mr. Riter were approved by the Engineering Advisory Committee. The representative from Colorado, for whom I have a very great deal of respect, stated that he would not be able under his commission as agent to go any further than the assignment described by Mr. Riter. For that reason nothing else was done.

COM. STONE: Who was that made that statement?

COM. WATSON: Mr. Patterson.

MR. RITER: This report was signed by the representative of each state: Riter, Baker, Patterson, Bliss, Cottrell, and Person.

COM. STONE: I would suggest that as a help on this situation, in addition to Mr. Watson attempting to set down some matters which he thinks should be further studied by the Engineering Committee, it might be helpful if Mr. Riter would aid in that and make a suggestion as to further assignments that should be given to them.

COM. WATSON: I suggest also, Mr. Chairman, that Colorado do the same thing, along with each of the other states.

THE CHAIRMAN: Well, gentlemen, it seems to your Chairman that we have had rather an exhaustive discussion of the report of the Engineering Advisory Committee, and the Chair is a little bit hopeful that we may proceed. However, if the discussion has not been completed, I don't want to appear arbitrary about the matter, but these matters are all inter-related and unless you have an objection and further discussion, we might take up again, if any of the Commission members so desire, a further consideration of the report of the Legal Advisory Committee, particularly since mimeographed copies of the report of the Legal Advisory Committee were furnished all members last evening, together with the letters which your Chairman received from the Federal agencies.

Does anyone have anything further to suggest in regard to a more detailed consideration of the report of the Legal Advisory Committee?

MR. HOWELL: At the expense of being criticized for prolonging this matter it appears to me that this is the situation now that confronts us. The Governor of Colorado last night in a very good speech as I thought, said that he hoped certainly that we would be able to present this compact to the next meeting of the legislature. I don't know when your legislature meets but I know ours meets in January.

Now it is indicated so far that until June, at least, we can't expect a final report from the engineers' assignment as they construe it at the present moment. It is indicated that there are other matters which will also be necessary to refer to them. Judge Stone says that probably that can't be done until the next meeting, which it certainly wouldn't be any use to have before June as I figure it when the final report upon what has been assigned to the Engineering Committee is ready. If at that time and waiting until that time you make these other suggestions, being now only seven months away at least from our legislature, you will then be still nearer to it and you diminish the

possibility of presenting this matter to the next legislature, at least as far as our state is concerned.

So it seems to me--and of course I am not a member of this Commission, I am merely making the suggestion--that it would be a good idea if a motion were made that each state designate a representative to meet with Mr. Riter and determine as far as they are able at this time at least, the matters which should be referred to this Engineering Committee and have a report.

COM. WATSON: Mr. Chairman, I so move.

COM. STONE: Wait a minute. You so move what?

COM. WATSON: I move that this Commission appoint one member from each state to meet with Mr. Riter to discuss any additional factors that should be considered now in order to acquire data that will lead to the making of a compact.

THE CHAIRMAN: The Chairman is not clear as to when these appointees are to meet with Mr. Riter.

MR. HOWELL: Right now.

THE CHAIRMAN: Very well.

COM. BISHOP: Second the motion.

THE CHAIRMAN: You have heard the motion and the second. Now, Judge Stone, it is up for discussion. The Chair recognizes Judge Stone.

COM. STONE: I am not prepared to discuss that motion now. I wish to clarify a statement made by Mr. Howell.

THE CHAIRMAN: Let's dispose of the motion and then you can clarify the statement.

COM. STONE: We will be compelled to vote "no" on the motion--

THE CHAIRMAN: That is certain.

COM. WATSON: Question.

COM. STONE: --if we are not permitted to clarify that statement, and we dislike doing that because we do have some belief that the motion is well taken. But if this is arbitrary and we are not permitted to keep this record straight on the part of a state that is compacting here, we must take a position of that kind.

MR. HOWELL: I ask as a matter of personal privilege, Mr. Chairman, that Judge Stone, if I have made any statement that he thinks misrepresents him, be permitted to state what it is.

THE CHAIRMAN: Very well. We will now hear from Judge Stone on the matter of clarifying the motion.

COM. STONE: Not to clarify the motion, no.

THE CHAIRMAN: Very well, anything you want to say. Let's have a little harmony.

COM. STONE: The statement was made that Colorado suggested that this whole matter be deferred to June, Mr. Howell.

MR. HOWELL: No, no.

COM. STONE: I wanted you to know that I said perhaps we could do this better at the next meeting. I hope we are not going to wait until June to have another meeting. I also wish to say that what the Governor stated yesterday is my position. I do want to get this compact done for the next legislature.

MR. HOWELL: Well, but the only reason I said there probably wouldn't be any use for you to have a meeting until June was because as I understood-- I might be wrong--the Chairman of the Engineering Advisory Committee stated that they wouldn't be ready to make their final report on what has already been assigned to them until June. Now, if you can't go ahead without that report and then you indicate that there are certain other things you want to know, what would be the use of having a meeting before they are able to make that report?

COM. STONE: I have never gone that far in any statement I have made. Furthermore, I think there is some substance in the agenda which Colorado suggested and it does include matters which Colorado will insist upon being settled before a compact is written, and I think we can be making more time than has been made here today if we go to those matters. That is all.

MR. HOWELL: Mr. Chairman, it won't interfere with the agenda as far as that is concerned if we do have this meeting.

COM. STONE: I am not opposing that meeting.

THE CHAIRMAN: The Chairman has proceeded in a very unparliamentary manner and we are now ready for discussion of the motion. (Question is called for.) (Thereupon a vote was taken and Com. Watson's motion carries unanimously.)

THE CHAIRMAN: Now do you at this time wish to appoint in accordance with the motion?

COM. WATSON: Mr. Chairman, may I suggest one other matter and that is that when this committee has been appointed, they proceed immediately to go to work.

THE CHAIRMAN: That was incorporated in your motion, I think. I understood it that way.

COM. STONE: May I make this inquiry: The motion is limited to one person from each state?

COM. WATSON: I would yield to that, Judge.

COM. STONE: It involves legal and engineering matters and it seems to me that perhaps no state is prepared to fully set forth its suggestions by the attendance of only one person.

COM. WATSON: I think your objection is well taken.

THE CHAIRMAN: As the Chair understands it then, each state can designate any number to confer with the Chairman of the Engineering Advisory Committee.

COM. WATSON: At least one engineer and one lawyer.

THE CHAIRMAN: Oh, that is the understanding. Very well, the Chair stands corrected. The Chair will now ask the State of Arizona to designate its representatives if you will.

COM. CARSON: R. Gail Baker.

COM. WATSON: What lawyer?

COM. CARSON: We don't need a lawyer on that. He is both.

THE CHAIRMAN: Colorado?

COM. STONE: Designate Jean Breitenstein and Frank Merriell.

THE CHAIRMAN: New Mexico?

COM. WILSON: Designate Rufus Carter and I. J. Coury.

THE CHAIRMAN: Utah?

COM. WATSON: C. R. Roskelley and J. A. Howell.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Mr. Wehrli and Mr. Rollins for Wyoming.

COM. STONE: Mr. Chairman, I move the Commission adjourn to reconvene this evening in order that this special committee that has been appointed may proceed with its work.

THE CHAIRMAN: Is there a second to Judge Stone's motion?

COM. BISHOP: Second.

THE CHAIRMAN: Is there a discussion of the motion?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(3:05 p.m. Recess.)

(7:30 p.m. Meeting resumed.)

THE CHAIRMAN: Will the Commission please come to order. In line with the wishes of the Commission prior to recess, the states appointed their advisers to confer and consult with the Chairman of the Engineering Advisory Committee for the purpose of determining what if any additional studies should be undertaken in order to assist the Commission in writing a compact.

Mr. Ritar, as Chairman of the Committee are you ready to submit a report?

MR. RITER: Yes, sir.

THE CHAIRMAN: Mr. Riter, you may proceed to make your report.

MR. RITER: The special committee assumed that its function was to determine whether it was necessary to vest in the Engineering Advisory Committee any additional authority to that already given it to furnish any additional factual data to enable the Commission to make a division of the water of the Upper Basin and to fix the obligation of the respective states at Lee Ferry.

Opportunity was therefore given by the committee to the representatives of each state to suggest what additional factual data those representatives deemed necessary. No state suggested any additional factual data that was deemed necessary, although the committee has not yet completed its present assignment.

Accordingly, the committee decided unanimously that it was not necessary to vest the Engineering Advisory Committee with any additional authority and that it was for the Commission to determine whether it could make a hypothetical division of the water to which it is entitled under the Colorado River Compact among the respective states and to determine whether it should make any hypothetical determination of the obligation of the respective states at Lee Ferry prior to the final report of the Engineering Advisory Committee; that if and when such hypothetical decisions are made, either prior to or after such final report, it may be necessary to have the Engineering Advisory Committee make additional studies to determine how such tentative decisions of the Commission will operate.

COM. BISHOP: I move the adoption of the report.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion is now open for discussion.

COM. STONE: May I inquire, does an adoption of that report mean that a vote in favor of it is in agreement to a hypothetical division or a hypothetical determination of obligations at Lee Ferry agreed upon--does that carry that implication?

MR. WEHRLI: Mr. Chairman, I would think not. I would think that the report of the committee simply means that if a hypothetical situation is presented to the Engineering Committee and there is further action desired, then a further report would be made without obligation to present such hypothetical situation.

COM. STONE: Thank you, Mr. Wehrli. I assumed that was it but I wanted to be clear on it.

MR. WEHRLI: I think we ought to be clear on it and I think that is the purpose of it and the intent of it.

THE CHAIRMAN: As the Chairman understands it, it is not incumbent upon the Commission or any member of the Commission to make a hypothetical or tentative allocation until the original assignment of this Committee has been completed. Then at that time I believe the report of the Committee implies that before it can continue and make further studies, a hypothetical allocation should be made and then they will proceed to see how that allocation works out and will present that then to the Commission for further consideration of any member. If he feels that it is not acceptable to his state he can raise his objection. Is that correct, Mr. Riter?

MR. RITER: That is my understanding.

COM. WILSON: Mr. Chairman, would it be understood also that any hypothetical allocation or determination would not be binding on anybody and be merely for the purposes of demonstration?

THE CHAIRMAN: Yes, Judge Wilson. That is my understanding of it because the Engineering Committee will have to study any assumed allocation to determine if the Commission has gotten its foot in it here and there and done an injustice to any particular state. That is the purpose of this study after the assumption is made.

COM. CARSON: Mr. Chairman, what was that motion, to adopt or to accept?

(Motion read as follows: COM. BISHOP: I move the adoption of the report.)

COM. CARSON: Mr. Chairman, I would like to make an amendment to that motion, that the report be accepted for the consideration of the Commission, or a substitute motion.

THE CHAIRMAN: Is the amendment accepted?

MR. WEHRLI: We have no objection to the change in terminology.

THE CHAIRMAN: Is that satisfactory to the second to the motion?

COM. WATSON: Yes.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: The question has been called for. (Thereupon a vote was taken and Com. Bishop's motion as amended carried unanimously.)

MR. CLYDE: Mr. Chairman, I would like to ask Mr. Riter a question. If I correctly heard the report it contemplated that this Commission might either before the engineers complete the report or after it, depending on what they decide--

MR. RITER: That is right.

MR. CLYDE: --make this hypothetical allocation.

MR. RITER: That is right.

MR. CLYDE: And that the question would be for the Commission perhaps now to decide whether they want to try it now or after.

MR. RITER: It is entirely up to the Commission, yes.

THE CHAIRMAN: Are there further remarks on the subject mentioned by Mr. Clyde?

COM. STONE: I might say, Mr. Chairman, Colorado voted favorably on the motion on the explanation that was made before the vote was taken. The explanation now made is not the explanation that was made by Mr. Riter or the Chairman when the motion was put.

MR. HOWELL: The report itself definitely stated either before or after the final report of the Engineering Advisory Committee.

COM. WILSON: It can't be made after unless the Commission so votes.

COM. STONE: I might say, gentlemen, that Mr. Breitenstein tells me that the explanation now made by Riter is the correct intention of the committee. If it is, although I misunderstood the interpretation of that report or the intent of it as put by the Chairman and concurred in by Mr. Riter, we shall not quarrel about that. If that is the intent of the committee we are willing to abide by the intent even though I as Colorado's Commissioner voted upon a different interpretation of the report.

MR. WEHRLI: Mr. Chairman, I don't believe there can be any misunderstanding that would have any serious consequences, because if any one state represented on this Commission is opposed to presenting a hypothetical situation prior to obtaining the report of the Engineering Committee, I can't very well see how such a hypothetical situation could be presented. Consequently I think there is no substantial disagreement about it. And if Colorado objects, as I understand it does, to the presentation of any hypothetical or tentative formula until after receiving the report, it seems to me that such a situation cannot be presented until after the report is received.

I think that is the situation we are in and that there isn't any real disagreement about it or can be any real disagreement about it because as I understand it Colorado says they are not prepared to enter into the presentation of a hypothetical or tentative figure until after the report is received.

COM. STONE: Mr. Wehrli's statement I think is entirely correct. There is no reason to delay this matter because the outcome would be the same apparently.

COM. WILSON: Mr. Chairman, I would like to say this, that I attended the meeting of the engineering committee and I thought this would be a very splendid idea. In fact, I think the committee agreed that there is a great deal of information that they have been asked to furnish that they can't furnish unless they do assume an allocation of water and I believe that is the situation. However, in view of Colorado's position I don't want to be put in the position of trying to force this on Colorado, since they have expressed themselves as they have, and I am not going to press the point. I still think it would be a good idea and wouldn't hurt anybody and would facilitate the work of the Engineering Committee. But I am not going to insist and I don't think the Commission should force Colorado into accepting this plan. Let's wait until the report is in and then determine it.

COM. WATSON: The solution is hypothetical.

COM. WILSON: That was my idea. You could take two or three hypothetical figures assuming each state got this much and assuming each state got that much. If we don't authorize the Committee to do that I don't see why they cannot on their own motion juggle some figures around so they can tell us what this obligation at Lee Ferry spells.

THE CHAIRMAN: Mr. Riter, since we have come to an agreement in regard to the work that your Committee is to do, the Chairman would like to ask you how long in your opinion will it take to complete your work? By that I don't mean to include a study of a hypothetical allocation of benefits and responsibilities.

MR. RITER: Mr. Chairman, I think the record will show this morning I

stated we could have a final report before June. My reason for saying that is that the subject we are having the most difficulty reconciling is the matter of present uses. I feel from the studies that we have made and the discussions we have had that the Engineering Committee will not agree upon final figures on present use until we have had an opportunity to go in the field with Mr. Blaney and inspect typical areas in various states in order to verify the judgment of the representatives of the various states regarding type and character of agricultural practice and to visualize areas of pre-irrigated land.

COM. CARSON: Mr. Chairman, I would like to move that we proceed with this agenda.

COM. STONE: I second the motion. (No vote taken.)

COM. BISHOP: Mr. Chairman, if we are ready to consider this report I would like to move that this under "Expenses" on the second page where it says in parenthesis, "(equally by the four states)" and then in parenthesis, "(prorata by the four states according to the percentage of water allocated to each)", that the last one be approved by this group, "prorata by the four states according to the percentage of water allocated to each."

COM. WATSON: Second the motion.

THE CHAIRMAN: Any discussion of the motion as made and seconded?

COM. STONE: Mr. Chairman, just a moment and I will have a comment to make. (Confers.) Mr. Chairman, I understand that any vote at this time on this or other matters is in accordance with the agreement at the last meeting that all favorable or unfavorable votes are tentative until the final vote is taken on all of the terms of the compact.

THE CHAIRMAN: The Chair would feel that that is a reasonable interpretation because some of these matters I think need a little consideration more than we can afford to give at these meetings by the individual states.

COM. STONE: That is our understanding. I just wanted to be sure that that was the understanding of the Commission. It was at the last meeting.

MR. WEHRLI: Mr. Chairman, as far as Wyoming is concerned that is our understanding that these matters are approved tentatively.

COM. STONE: Colorado has no comments to make on the motion at this time.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Those in favor of the motion will please say "Aye."

COM. WILSON: I suggest you call it by states.

THE CHAIRMAN: That is the procedure we followed the other day. Perhaps we should do that. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: I will pass on that. We are not concerned with that.

THE CHAIRMAN: New Mexico?

COM. WILSON: New Mexico declines to vote on that until there has been an allocation.

COM. BISHOP: Mr. Chairman, on page 3, Item 10, I would like to amend the third line where it says "that the concurrence of four members of the Commission shall be necessary"--I would like to amend that to read "that the concurrence of a majority of the members of the Commission shall be necessary in any action taken by the Commission."

COM. WATSON: You make that as a motion, Mr. Bishop?

COM. BISHOP: Yes.

COM. WATSON: I second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made by Com. Bishop? It would occur to the Chairman at this point that one of the members of the Legal Advisory Committee should give his reason for stating four members.

COM. CARSON: Mr. Chairman, in the beginning in the Legal Advisory Committee there was an opinion expressed that all actions taken by the Commission should be by unanimous vote, but it was also the suggestion that it be made by majority vote. The Legal Advisory Committee discussed the matter pro and con and then set up this provision for the five members, one from each of the four states of the Upper Division and a Federal Representative, and in order to not completely stymie the action of the commission by the veto power of any one state, we finally worked out a compromise of ideas sufficiently to report to this Commission on the basis here set up. That is a four-fifths vote.

Then we made these other provisions limited to the findings of fact and provided that those findings should "not be conclusive in any court or before any agency or tribunal but shall be admissible and shall constitute prima facie evidence of the facts found."

It seemed to us that that was about as good as you could go here and it would make it then so that if four members of the commission agreed on a finding of fact it would be prima facie evidence of the facts found but still if one state disagreed it could contest it and go into the matter before any court or tribunal it desired. That was our best judgment as to the possibility of working out a compromise in view of the contrasting points of view.

But here again I want to point out that Arizona is not directly concerned in this because we don't participate on this commission.

THE CHAIRMAN: Is it understood that the Federal member of this board

would have voting power?

COM. CARSON: Yes, sir. That is, it is set up in this report that he would have voting power.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Those in favor of the motion will say "Aye."

COM. STONE: May I suggest you call the roll of states.

THE CHAIRMAN: Oh, yes, thank you. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: No.

THE CHAIRMAN: Arizona?

COM. CARSON: I think I should vote "No" on that because I want to assist in arriving at a compact and if it is made that way you won't get a compact, so I vote "No."

THE CHAIRMAN: New Mexico?

COM. WILSON: No.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: The motion fails to carry by three to two. Gentlemen, let's stick to the agenda. Have you finished with page 3 under the item of "Powers"? If so, we will proceed to page 4. Are there any comments or objections to the paragraph entitled, "Records Open to Inspection"?

COM. STONE: Mr. Chairman, if there are no further motions with respect to particular sections of the article, "Administrative Commission", I move, subject to the rule that a vote at this time is tentative, that the article as amended and changed be approved.

COM. BISHOP: Second the motion.

THE CHAIRMAN: That would include, then, Judge, bottom of page 1, all of page 2, page 3, and part of page 4 as amended and corrected. All of page 4?

COM. STONE: Down to the word, "Comments".

THE CHAIRMAN: Yes. Ready for the question? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

(The article, "Administrative Commission", as amended and corrected, above referred to, is as follows:)

"ADMINISTRATIVE COMMISSION

"There is hereby created an interstate administrative agency to be known as 'Upper Colorado River Commission.'

"The Commission shall be composed of one representative of each of the states of the Upper Division, namely, Colorado, New Mexico, Utah and Wyoming, and if designated by the President of the United States, one representative of the United States. The Commissioner for Colorado shall be appointed by the Governor of Colorado with the advice and consent of the Colorado Water Conservation Board. The State Engineer of New Mexico shall be ex-officio commissioner for New Mexico. The State Engineer of Utah shall be ex-officio commissioner for Utah. The State Engineer of Wyoming shall be ex-officio commissioner for Wyoming. If any state desires to provide for the selection of its commissioner in a different manner, the commissioner, selected as so determined by such state, shall be the commissioner for such state. The President of the United States shall be requested to designate a commissioner for the United States. If a commissioner is so designated for the United States he shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the commissioner of any state.

"Any four members of the Commission shall constitute a quorum.

"Expenses. The salaries and personal expenses of each commissioner shall be paid by the government which he represents. All other expenses which are incident to the administration of this compact and which are not paid by the United States shall be borne prorata by the four states according to the percentage of water allocated to each. On or before November 1st of each year the Commission shall adopt and transmit to the governors of the four states and to the President a budget covering an estimate of its expenses for the following year and of the amount thereof payable by each state. Each state shall pay the amount due by it to the Commission on or before April 1st of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedure of any of the four states or of the United States.

"Employees. The Commission shall appoint a secretary who shall not be a member of the Commission and who shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other aid as may in its judgment be necessary for the performance of its functions under this

compact. In the hiring of employees the Commission shall not be bound by the civil service laws of any state or of the Federal Government.

"Powers. The Commission shall have the power to:

"1. Adopt rules and regulations not inconsistent with this compact;

"2. Locate, establish, construct, abandon, operate and maintain water gaging stations;

"3. Make estimates to forecast water run-off on the Colorado River or any of its tributaries;

"4. Engage in cooperative studies of water supplies of the Colorado River and its tributaries;

"5. Collect, analyze, correlate, preserve and report on data as to stream flows, water storage, water diversions and water use of the waters of Colorado River or any of its tributaries;

"6. Make findings as to the amount of and report on the beneficial consumptive use of water each year in the Upper Colorado River Basin and in that portion of each state lying within this basin;

"7. Make findings as to the amount of and report on the water deliveries at Lee Ferry each year and the amount of such water supplied by each state of the Upper Division;

"8. Make findings as to the amount of and report on the share of reservoir losses chargeable against the apportionment made to each of the four states;

"9. Make findings as to the amount of and report on the obligation of each state to make water deliveries at Lee Ferry;

"10. Perform all functions and do all things required of it by this compact and do all things proper and convenient in the performance of its duties hereunder. Provided, however, that the concurrence of four members of the Commission shall be necessary in any action taken by the Commission;

"11. Make and transmit annually to the Governors of each of the four states and the President of the United States with the estimated budget a report covering the activities of the Commission for the preceding year.

"Records Open to Inspection. The Commission and its secretary shall make available to the Governor of each of the signatory states any information within its possession at any time and shall always provide free access to its records by the governors of each of the states or their representatives or authorized representatives of the Federal Government.

"Findings of Fact. Findings of fact made by the Commission shall not be conclusive in any court or before any agency or tribunal but shall be admissible and shall constitute prima facie evidence of the facts found."

THE CHAIRMAN: It appears now we are ready to consider Article II.

COM. WILSON: Mr. Chairman, before you go to Article II I would just like to suggest that the matter under "Comments" through this report should probably be taken by the members of the Commission and their legal advisers and considered. I don't think it is necessary to discuss them now but there are some things there that ought to be given some thought. That is why the comments were put in there, to call it to the attention of the Commission.

THE CHAIRMAN: The Chair is assuming that the comments are there for the benefit of the present consideration. They certainly should be used for what they are worth and presumably have been read and considered prior to the adoption of the motion.

Are you ready now for the consideration of Article II? And in line with Judge Wilson's suggestion, it is assumed that on page 7 the comments have been studied by the members of the Commission.

MR. BREITENSTEIN: I think it should show in the record that the interpretation placed on the article which you have just adopted is that the commission, the agency you set up, may acquire, hold and dispose of any property, either real or personal, necessary for the performance of any of its powers. I think the record should show that is the intent of the Commission in adopting it.

THE CHAIRMAN: Without objection, the record will so show.

COM. STONE: Mr. Chairman, may I make a further suggestion? It appears to me that it would be good practice if the article be read here rather than rely on our previous reading of it or hasty reading here.

THE CHAIRMAN: That might be a very good suggestion, Judge Stone, and assuming that there is no objection, we will impose on Mr. Breitenstein to read the article.

MR. BREITENSTEIN:

"No state shall deny the right of the United States, another signatory state, any person or entity to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the states of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing, or regulating water in an upper state for beneficial consumptive use in a lower signatory state when such use is within the allocation of such lower state herein made. Such rights shall be subject to the rights in a state in which such reservoir or works are located to have and receive the water allocated to it herein for beneficial consumptive use.

"Any signatory state, any person or any entity of any signatory state shall have the right to acquire necessary property rights in any other signatory state by donation, purchase or through the exercise of the power of eminent domain.

"Any signatory state upon the written request of the Governor of any other signatory state for the benefit of whose water users property is to be acquired in the state to which such written request is made shall proceed expeditiously to acquire the desired property through the exercise of its power of eminent domain, and shall convey such property to the requesting state or such entity as may be designated by the requesting state. Provided

however, that all costs and expenses of every kind and nature whatsoever incurred in the acquisition of the requested property shall be paid by the requesting state at the time and in the manner prescribed by the state requested to acquire the property.

"Should any facility be constructed in a signatory state for the benefit of another state or states or the water users thereof as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the state in which the facility is located, except that in the case of a reservoir constructed in one state for the benefit of another state the water administration officials of the state in which the facility is located shall permit the storage and release of any water which, as determined by the finding of the Commission, falls within the share of the state for whose benefit the facility is constructed, and in the case of a regulating reservoir for the joint benefit of all states in making Lee Ferry deliveries the water administration officials of the state in which the facility is located shall, in permitting the storage and release of water, comply with the findings and orders of the Upper Colorado River Commission.

"In the event property is acquired in one state for the use and benefit of another the users of water made available by such facilities shall pay to the political subdivisions of the state in which such works are located each and every year during which such rights are enjoyed for such purposes a sum of money equivalent to the average amount of taxes levied and assessed against the land and improvements during the ten years preceding the acquisition of such land in full reimbursement for the loss of taxes in such political subdivisions of the state, said payments to be in lieu of any and all taxes on said property, improvements and rights.

"The signatory states further agree to recommend to the President and to the Congress that in the event the United States shall acquire property in one of the signatory states for the benefit of another signatory state or its water users, provision be made for like payment in reimbursement of loss of taxes."

THE CHAIRMAN: Now, gentlemen, the Chair would like to call your attention to the letter from the Federal Power Commission which has been handed to you and I believe that perhaps you should consider that in connection with Article II. Mr. Breitenstein, will you read the letter?

MR. BREITENSTEIN: "Dear Mr. Bashore"--it is dated January 30, 1948.

THE CHAIRMAN: Pardon me, just a moment. I am just wondering if you need to read the entire letter.

MR. RITER: It is Item (b) on page 2.

MR. BREITENSTEIN: Here is what you want:

"The following language is suggested for the Upper Colorado River Basin Compact:

"Article _____

"Nothing in this compact shall be deemed:

- "(a) To impair or affect any rights, powers, or jurisdiction of the United States, or those acting by or under its authority, in, over, and to the waters of the Upper Colorado River and its tributaries, as now provided by law; nor to impair or affect the right of the United States or those acting by or under its authority, to acquire rights in and to the use of waters of said river and its tributaries, as now provided by law;"

The next one I think is the one the Chairman thought was important:

- "(b) To subject any property of the United States, its agencies or instrumentalities, to taxation by any State, or subdivision thereof, nor to create any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction, or operation of any property or works of whatsoever kind, to make any payments to any State or political subdivision thereof, state agency, municipality, or entity whatsoever in reimbursement for the loss of taxes;
- "(c) To subject any property of the United States, its agencies or instrumentalities, to the laws of any State to any extent other than the extent these laws would apply without regard to this compact."

COM. STONE: As I understand this provision, the last paragraph of the proposed article is not in conflict with that statement made by the Federal Power Commission. It simply says the signatory states agree to recommend to the President and to the Congress in the event the United States shall acquire property in one state and so forth. The Congress may not be willing to carry out that provision. All we say here is that the states agree to attempt to induce the Congress to recognize that provision in the event of the building of any of these works.

MR. WEHRLI: Mr. Chairman, I would like to point out that in the mimeographed copy of the 9th line of the first paragraph after the word "such", which is the second word appearing in that line, the word "use" doesn't appear. I think it is intended to be in there and it was read that way by Mr. Breitenstein, and I believe it should be in.

MR. BREITENSTEIN: I wasn't reading from the mimeographed copy; I was reading from my copy of the copy I gave to the girls to copy.

COM. STONE: The word "use" is eliminated and should be inserted.

COM. CARSON: That is on page 5 of the Legal Advisory Committee report.

COM. STONE: Mr. Chairman, at the risk of being accused of being too technical I should like to raise a point, I don't insist on it, and yet it seems to me that the first paragraph of this article is somewhat in conflict with the following paragraphs. The first paragraph says that, "No state shall deny the right of the United States, another signatory state, any person or entity to construct or participate in the construction and use of diversion works"--and so forth; and the remaining part of the article sets forth the conditions under which another state may acquire and use property in one state for use in another.

Now it seems to me that there is a semblance of a denial by the subsequent provisions. There is a denial unless those provisions are complied with. It seems to me that "no state shall deny" is the intent but it is not

entirely clear--that there shall be no denial--but if a state fails to comply with subsequent provisions, then it seems to me that a denial would follow.

MR. BREITENSTEIN: Judge, you thought of a new one that wasn't suggested in the Legal Advisory Committee meetings.

COM. STONE: Isn't that good?

MR. BREITENSTEIN: I think that is highly technical because I think the rights are fully protected. If you want to grant any validity to that technicality, you can of course put a qualifying phrase in your first couple lines of your opening paragraph.

COM. STONE: That is my suggestion, that for fear some lawyer in the future may also be highly technical or some state I think it would be well to insert that.

MR. BREITENSTEIN: "Upon the compliance with this article no state shall deny the right"--something like that. That wouldn't quite do it. Something like that would take care of what you have in mind. "Subject to the conditions hereinafter stated"--begin that way.

COM. STONE: To get this matter before the Commission, I move at the beginning of the first paragraph of the article on page 5 there be inserted the words, "Subject to the conditions hereinafter stated".

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there discussion of the motion: Are you ready for the question?

COM. WATSON: Question.

MR. SAUNDERS: One thing I would like to ask, in the second sentence of the same paragraph, "Such rights shall be subject to the rights in a state in which such reservoir or works are located to have and receive the water allocated to it herein for beneficial consumptive use"--don't you mean, "shall be limited by" rather than "subject to"?

MR. BREITENSTEIN: No, I didn't mean that, Mr. Saunders. The idea is that the exercise of these rights, whatever they are, shall be subject--just the plain meaning of the word "subject"--to the rights of the state in which the reservoir is located--inferior and superior, paramount and subordinate, primary and secondary, "a" and "b", one and two.

MR. SAUNDERS: You have just nullified all the rest of your section.

MR. BREITENSTEIN: No. It was not the intent to nullify it, but it was an attempt to make it subordinate.

MR. SAUNDERS: I will have to sleep over it to see that you haven't just practically abolished the rest of the language of that section.

MR. BREITENSTEIN: All right, how would you suggest we change it?

MR. SAUNDERS: As I say, I will sleep over it. I want to see what I think about it tomorrow morning. I stumbled over that language when I read it first and I stumbled again.

MR. BREITENSTEIN: That language there is not new to the Legal

Advisory Committee. That is from the Republican River Compact. Maybe for that reason it should be changed.

MR. SAUNDERS: That hasn't gone very far yet either.

MR. BREITENSTEIN: I just wanted to show you the source of the language.

THE CHAIRMAN: We will call the roll. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

MR. WEHRLI: Mr. Chairman, the matter I have in mind, which may be hypertechical, relates to the last sentence in that first paragraph where it says that, "Such rights shall be subject to the rights in a state in which such reservoir or works are located to have and receive the water allocated to it herein for beneficial consumptive use." I believe a better use of language would be to say that "are located to receive and use the water." Of course, the language used may mean that but it may not.

MR. BREITENSTEIN: I would agree with you on that.

MR. WEHRLI: I think it would be a better use of language--"are located to receive and use the water."

COM. STONE: That is unquestionably better. I think we ought to have a motion and make the correction.

COM. BISHOP: I move the correction be made as has just been stated by Mr. Wehrl.

COM. WATSON: Second the motion.

COM. CARSON: Let's get it exact. Which one do you mean?

MR. WEHRLI: I would strike out "have and" just before "receive" and say, "receive and use."

MR. HOWELL: Would you mind repeating that once more? I didn't get it yet.

MR. WEHRLI: In the next to the last line of that first paragraph of that article, strike out the words, "have and", and after the word "receive" insert the words "and use".

MR. HOWELL: So it now reads, ". .or works are located to receive and use the water allocated to it. ."

MR. WEHRLI: That is right.

THE CHAIRMAN: Is there further discussion of the motion?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Motion carries unanimously.

COM. BISHOP: Mr. Chairman, I move that the article as amended be approved.

COM. WATSON: Second the motion.

MR. CLYDE: Mr. Chairman, before you vote on that motion I have one other comment to make that was raised by the Federal Representative to the Legal Advisory Committee. On page 6 of the mimeographed report, second paragraph, beginning, "Should any facility be constructed in a signatory state for the benefit of another state. .", as you go on with that language it subjects such construction in another state to the laws of the state in which the project is constructed.

I think that, unless the United States is excepted from it by a later provision, is inconsistent with the letter of the Federal Power Commission; and we discussed that pro and con in the Legal Committee. Some were of the opinion that if it is inconsistent with their position it could be taken care of by a later general provision excluding the United States. I think if that were not done it would be inconsistent with the letter written by the Federal Power Commission and that the Commission in voting on it should have that fact in mind and be aware of the necessity for some general language in addition to this to cover the thing covered by the Federal Power Commission letter.

MR. BREITENSTEIN: The matter which Mr. Clyde has just mentioned is the reason for the inclusion of Comment No. 2. If Comment No. 2 is put in as the interpretation of the clause of the Commission in adopting it, it seems to me you have the matter taken care of.

MR. HOWELL: Does the motion now made include the adoption of the comments under this article?

COM. STONE: I do not believe it does and for the sake of making the legislative history clear, it might be well in moving the tentative adoption of this article that particular attention be called to Comment No. 2 and that it be written into the record here as a part of the motion.

COM. WATSON: Do you make that in the form of a motion?

MR. WEHRLI: I think that Wyoming made the motion. We will accept that, Judge Stone.

COM. STONE: Very well. May we ask then that Mr. Wehrli restate the motion carrying out that idea so the record will be clear.

MR. WEHRLI: Well, the motion made then is that the article proposed by the Legal Advisory Committee entitled, "Facilities in one State for the Use or Benefit of Another State or States," be approved as amended and carrying with it the comments of Paragraph 2 on page 7 of the report wherein it is stated: "In subjecting a facility in one state to the laws in the state in which the facility is located, it is not the intent to subject the United States to the police regulations of a state to an extent greater than that provided for in Section 8 of the Reclamation Act of 1902."

THE CHAIRMAN: Is that agreeable to the second?

COM. WATSON: I will accept that and second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for and we will vote on the motion. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

(The article above referred to reads as follows as amended:)

"FACILITIES IN ONE STATE FOR THE USE OR
BENEFIT OF ANOTHER STATE OR STATES

"Subject to the conditions hereinafter stated no state shall deny the

right of the United States, another signatory state, any person or entity to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one state for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the states of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing, or regulating water in an upper state for beneficial consumptive use in a lower signatory state when such use is within the allocation of such lower state herein made. Such rights shall be subject to the rights in a state in which such reservoir or works are located to receive and use the water allocated to it herein for beneficial consumptive use."

(The remaining five paragraphs of the above articles were not amended.)

THE CHAIRMAN: Apparently the Commission is now ready for the consideration of Article III entitled, "Charging of Reservoir Losses."

The Chairman requests that Mr. Breitenstein read Article III.

MR. BREITENSTEIN:

"Water losses resulting from reservoir operations shall be charged to the state or states receiving benefit from such reservoir operations in proportion to the beneficial consumptive use of water made available to each state by the reservoir except that in the case of regulating reservoirs for the joint benefit of all states in making Lee Ferry deliveries the charge shall be proportionate to the beneficial consumptive use of water in each state during the year for which the charge is made."

COM. BISHOP: I make a motion that Article III on page 8 be adopted.

THE CHAIRMAN: Does the Chair hear a second to the motion?

COM. WATSON: Second the motion.

THE CHAIRMAN: Are there comments or discussion of the motion as made and seconded?

MR. BREITENSTEIN: I want to warn you against that. I think that is one that may cause you difficulty when you come finally to apportion the consumptive use of water and obligations at Lee Ferry among the states, but nobody yet has come up with a better idea than this. This is certainly a case where your adoption should be tentative and the formula should be given careful consideration both by the engineers and lawyers.

MR. HOWELL: In any event, the adoption is only tentative here at this time, or hypothetical.

THE CHAIRMAN: The Chairman would like to ask Mr. Carson if he sees any embarrassment arising in the interpretation of the original Compact if this motion is adopted?

COM. CARSON: No. No, I don't see any embarrassment but I agree that this should be tentative. My own engineer just suggested to me he didn't know whether this would work. So we have to consider this tentative and have engineers and lawyers go over it again before it is finally written

into the final compact. But I think it does embody in that the principle that reservoir losses should be charged in proportion to the benefits received from storage in the reservoir, which I think is not in any way inconsistent with or in dereliction of the original Compact.

MR. WALLACE: Would you begin the paragraph with the words, "Within the Upper Basin"?

MR. BREITENSTEIN: My thought in connection with that is that if you are going to preface this paragraph with any such language you are going to have to preface pretty nearly every paragraph in your compact with the same language and it is unnecessary to do that. There should be a clear, general statement near the front of the compact which should take care of not only this provision but every provision of the compact and it shouldn't be necessary to repeat or reassert that language when you write the compact.

COM. STONE: Mr. Chairman, I think Mr. Breitenstein's suggestion there would take care of this and other matters more appropriately. It carries out the same idea. It would be better to make that clear right at the beginning of the compact.

COM. CARSON: That is what I thought.

Well, Mr. Chairman, I think both of those points of view can be reconciled by inserting this language, after the words "reservoir operations" in the first line, the words, "in the Upper Basin".

MR. WEHRLI: I think that is a good suggestion.

MR. BREITENSTEIN: I won't object to that, Charlie.

COM. CARSON: But then wait a minute, I have got another one. I don't want to be charged with them either as a Lower Basin State. (Laughter.)

MR. BREITENSTEIN: I thought you wouldn't bring that up.

COM. CARSON: Then also after the word "states" in the second line, you would say "of the Upper Basin".

THE CHAIRMAN: Gentlemen, we will recess for five minutes in order to give our reporter a chance to stretch her arm.

(9:45 p.m. Recess.)

(9:55 p.m. Meeting resumed.)

THE CHAIRMAN: Will you come to order.

COM. STONE: Mr. Chairman, I offer a substitute motion. It appearing that the clause dealing with charging of reservoir losses involves engineering as well as legal considerations, I move that action on that clause be deferred at this time and that the clause be referred to the Engineering Advisory Committee, who shall consult with the Legal Advisory Committee, and advise the Commission which will consider the clause at a later time.

COM. CARSON: I second the motion.

THE CHAIRMAN: Are there any comments on the substitute motion?

COM. WATSON: Question.

THE CHAIRMAN: We will now vote on the substitute motion. Those in favor will say "Aye" and I will call on Wyoming first.

COM. BISHOP: Aye.

THE CHAIRMAN: Colorado?

COM. STONE: Aye.

THE CHAIRMAN: Utah?

COM. WATSON: Aye.

THE CHAIRMAN: New Mexico?

COM. WILSON: Aye.

THE CHAIRMAN: Arizona?

COM. CARSON: Aye.

COM. STONE: Mr. Chairman, I move we adjourn to reconvene at ten o'clock in the morning.

COM. WATSON: Second the motion.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(10:00 p.m., Thursday, February 19, 1948, recess until 10:00 a.m., Friday, February 20, 1948.)

Denver, Colorado
February 20, 1948
10:00 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission will come to order. Apparently the Commission is now ready to consider Article IV of the report of the Legal Advisory Committee, and following the procedure of yesterday, we will request Mr. Breitenstein to read the Article.

MR. BREITENSTEIN:

"Inasmuch as the Upper Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Upper Colorado River basin, the use of its waters for the 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.

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

"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."

THE CHAIRMAN: Thank you, sir.

COM. STONE: Mr. Chairman, in order that we carefully consider this article and not for the purpose of necessarily expressing an opinion at this time, I should like to raise a question with respect to Paragraph 1 of this article.

There has been a lot of history on this question of navigation as it relates to utilization of waters since the Colorado River Compact was adopted. The matter has received considerable attention in Congress. It has also been the subject of much controversy in making other compacts between the states and such agencies as the Federal Power Commission. The Federal Power Commission Act of 1936 delegated certain powers to the Federal Power Commission by the Congress.

Fortunately, the Congress in 1938 when it approved the Colorado River Compact was not subject to pressures on that question which exist today. The Upper Basin even after the negotiation of this compact will still be subject to all of the provisions of the Colorado River Compact. On this particular subject the Colorado River Compact is the law of the river and will continue to be the law of the river. Then, too, the physical conditions, the construction of many dams, the existence of such dams as Hoover Dam, eliminate any fear on this subject. Some of the great projects have been authorized and others will be authorized and built among other things for the production of power, which stems back to the commerce clause. Since the question is covered by the Colorado River Compact I suggest we eliminate the first paragraph of this Article.

Colorado moves that the question which has been raised regarding Article IV be re-referred to the Legal Committee for further consideration.

COM. WATSON: Second the motion.

THE CHAIRMAN: Any discussion of the motion? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Motion carries.

COM. STONE: Mr. Chairman, Mr. Merriell has a point on that article which I should like to have him state for the benefit of the Legal Committee when it reconsiders this motion.

MR. MERRIELL: In the second paragraph of Article IV that appears

here, there is no reference to the use to which certain large reservoirs in the middle river are going to be put. It strikes me that the Legal Committee ought to give consideration to the regulatory effect of the reservoirs, so that the latter part of that paragraph should read, "subservient to the use and consumption of such water for agricultural and domestic purposes"--and then a statement--"as to the regulating reservoirs." Otherwise there is no recognition of the regulatory effect of those reservoirs.

THE CHAIRMAN: Well, does Colorado have some language which it is proposed to insert or substitute?

COM. STONE: We have Mr. Breitenstein, and we would possibly have language to suggest when the matter comes up before the Legal Advisory Committee.

THE CHAIRMAN: Gentlemen, are you ready for the consideration of Article V? Mr. Breitenstein, will you please read Article V so we may have it before us for consideration?

MR. BREITENSTEIN:

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

That is all there is.

COM. BISHOP: Mr. Chairman, I move the adoption of that article.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there any discussion of that motion? Ready for the question? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: It occurs to me that before we get through we will have to include pretty near the entire transcript because as we go along with this discussion there are going to be more things referred. Isn't it going to be the entire transcript? Am I wrong?

COM. STONE: No.

Colorado moves that the reporter be asked to prepare: 1. Copies

of all articles contained in the report of the Legal Advisory Committee which have been tentatively approved by the Commission; 2. Copies of Article III relating to reservoir evaporation losses which has been referred for consideration by the Engineering Advisory Committee; 3. Copies of Article IV which has been re-referred to the Legal Advisory Committee; and that such copies be made available to the members of the Commission, the members of the Legal Advisory Committee, and the members of the Engineering Advisory Committee.

Does that now cover all the suggestions?

COM. WATSON: Second the motion.

MR. WEHRLI: I presume that the reporter in preparing that would reflect whatever changes have been made, I don't recall very many, or what would be the thought on that?

COM. STONE: I thought that would carry the changes and that was the principal reason for doing it. You might put that in there. Instead of saying the articles that have been tentatively approved, the articles as revised and tentatively approved. That was the purpose, some here wanted to get these articles as revised.

MR. WEHRLI: Very well.

COM. STONE: Otherwise there would be no need. We would just make extra copies of this.

THE CHAIRMAN: Do you have any further comments? (No response. Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

(Discussion off the record.)

THE CHAIRMAN: Judge Stone, yesterday you indicated that you had a matter which you wished to lay before the Commission in regard to the services of Mr. Blansy, I believe.

COM. STONE: I can bring that up now.

THE CHAIRMAN: It occurs to the Chairman that now is a good time for that because it will fit in anywhere and we have completed consideration of the Legal Advisory Committee report.

COM. STONE: I am sorry Mr. Giles is not here. I made that suggestion because of the fact that Mr. Giles, Secretary of the Commission, reminded me that we had voted to make a fund available in his hands to pay the expense vouchers of Mr. Blaney. He now has a bill for \$135.00. He suggested that appropriate action be taken to make funds available in his hands to comply with previous action of the Commission in that matter.

MR. WALLACE: Off the record. (Discussion off the record.)

COM. STONE: Mr. Chairman, I move that pursuant to resolution adopted at the last meeting of the Commission, the Secretary of the Commission bill each of the four states, Colorado, New Mexico, Utah, and Wyoming for \$250.00 each.

COM. WATSON: Second the motion.

THE CHAIRMAN: Are there any comments on the motion as made and seconded?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

COM. CARSON: Arizona can't vote.

THE CHAIRMAN: Arizona declines to vote. The motion carries.

We may now proceed with the consideration of the remaining articles on the agenda, which are somewhat numerous.

COM. CARSON: I move that it be deferred for later consideration.

COM. WILSON: And the Legal Advisory Committee can give such further consideration to it as is desired.

COM. STONE: I second the motion.

THE CHAIRMAN: Any discussion of the motion as made by Mr. Carson and seconded by Judge Stone? Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: It appears the Commission is ready to consider the items in Group II on page 2 of the mimeographed copy of the agenda, subitem (a): "What provisions shall be incorporated in the compact to define the rights and obligations of the United States."

COM. STONE: Mr. Chairman, may I inquire, don't you have a letter from the Federal Power Commission that makes suggestions on the provisions?

THE CHAIRMAN: Yes, indeed, and the letter was passed out to the members of the Commission and are available for consideration.

THE CHAIRMAN: We don't like to impose on Mr. Breitenstein but we would be very glad to have him read it.

MR. BREITENSTEIN: This is a letter from the Federal Power Commission dated January 30, 1948, to Mr. Bashore.

(Letter referred to and read.)

COM. STONE: Mr. Chairman, this clause has been considered by Colorado as one state, no doubt by other states. I happen to know that it has been considered by Wyoming in some other compacts, and this has come to be rather common language on this particular subject. We do not see any objection to it. It leaves the rights and the jurisdictions of the Federal and State Governments just where they are, and those rights are not changed by the compact.

In considering this subject I believe we should keep in mind that the Federal Government is not a party to the compact in the absence of ancillary administration. I don't believe we are trying to define the rights between the Federal and State Governments in this compact. We leave them just where they are and that is all this clause does. We don't attempt or could we legally impose any taxation or claims against the Federal Government to pay money in lieu of taxes. Colorado would approve tentatively acceptance of this suggested language.

THE CHAIRMAN: The Chair wonders if the Commission wants to take any action whatsoever on these suggestions by the Federal agencies until you get them all before us. We haven't heard from the Interior Department or the Department of Agriculture. That is merely a suggestion for consideration.

COM. STONE: I have not moved for its tentative acceptance.

THE CHAIRMAN: I understand that.

COM. STONE: I say we would have no objection to it and experience has demonstrated that probably all the Federal agencies will ask for such language.

COM. BISHOP: Judge Stone, if we don't have it in there we will have an argument with the Federal Power Commission and will have to put it in before we can get it through Congress.

COM. STONE: Mr. Chairman, to dispose of this matter without delay, and in view of the fact that suggested language by other Federal agencies has not yet been received, Colorado moves that this matter be deferred for future consideration.

COM. WATSON: Second the motion.

THE CHAIRMAN: Are there any remarks or discussion of the motion made and seconded?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Perhaps we are now ready for the consideration of subitem (b) of Group II which reads: "How shall water uses made by the United States or any of its agencies be charged."

MR. BREITENSTEIN: Mr. Chairman, since Colorado prepared this agenda, may I say what we had in mind there?

THE CHAIRMAN: Yes.

MR. BREITENSTEIN: That is tied in, of course, with subdivisions (c), (d), (e) and (f) under Group II. Those relate to the Indians, navigation, flood control and silt control, and the question is whether or not it is desirable to have in the compact any provision relative to the charging of water uses by the United States. It would seem to me that unless there are specific provisions relating to that matter, the water uses would then be charged against the state in which the use is made of the water.

Consider first the question of the Indians; I apprehend that unless

there is some particular provision taking care of the Indians, the uses by the Indians would be a charge against the allocation made to the state in which the uses occur. Now, is there any reason for incorporating in the compact any provision which would make charges for any of these Federal uses, requiring charges to be made in any different way than are other uses of water?

I might say that the question of the charging of Indian uses was considered to some extent by the Legal Advisory Committee and as I understand it, the consensus of opinion in that Committee was that the uses should be charged against the share of the state in which the uses occur. So far as the Indians are concerned, the point was raised that it would be very difficult from an administrative standpoint to differentiate between Indian uses and white uses, and that any provision which attempted to charge Indian uses against the Basin as a whole would not be possible of practical operation.

THE CHAIRMAN: Gentlemen, you have heard Mr. Breitenstein's explanation. Are there further comments?

MR. WEHRLI: Mr. Chairman, it appears to us at this time that no provision should be incorporated in the compact upon the subject designated under subparagraph (b) of Group II. I don't know hardly how you could frame a provision properly in any event without the states recognizing at least impliedly, some rights that I presume most of the states, if not all of them, deny that the United States has. In other words, I think the position of the states probably is that whatever use is made by any agency of the United States is only as an appropriator of the particular state in which the use is made.

COM. STONE: This question of Indian rights came up before and there was submitted in accordance with the request of the Commission, a brief prepared by Mr. Breitenstein on that subject. I assume that the Legal Committee studied that brief.

MR. WEHRLI: We have partially disposed of the item under (c), not completely, however. It seems to me that (b) and (c) ought to be disposed of together by a general provision in the compact to the effect, generally, that all beneficial use of waters in any state shall be supplied from the water apportioned to that state. That is roughly the language in Article VIII of the Colorado River Compact. I refer more particularly to the second paragraph of Article VIII.

MR. RITER: Mr. Chairman, I note all the Federal agencies have not submitted reports on what rights they might claim. May I suggest that maybe the Commission will probably have to defer action on (b) till they find out what claims, if any, are going to be submitted under (a).

I know we have given quite a little thought to that in the Bureau. We haven't made up our mind fully what rights if any we should claim. We recognize that under Section 8 of the Reclamation Act, the United States gets its water rights through the states; however, it is possible that there may be other rights that might be claimed.

For example, I refer you to Commissioner Lawson's letter of the International Boundary and Water Commission of December 18th, and he suggests brief language to allow for the Mexican Treaty obligation. Then I would like to raise at this time also a possible question about power reservoirs the Federal Government may build, recognizing of course that the Commission has already indicated that power should be subservient to other uses; but none the less, there is also a question about evaporation losses from power reservoirs.

In view of all these complications and in view of the fact that we

don't know what other rights might be claimed--it might be conceivable, for example, that there might be some right claimed for Fish and Wildlife purposes --I am merely throwing that out as a possibility--in view of the uncertainty it just seems to me that as a suggestion to the Commission, you might want to defer action on (b) until you have in front of you the rest of the claims the Federal agencies may wish to make.

MR. CLYDE: Mr. Chairman, it seems to me that in view of the discussion that the Legal Committee had, for example, about Indian rights and the difficulties that will be encountered if they are attempted to be fixed on a basin rather than a state basis, and that if they are fixed on a state basis, that that factor will be one of the factors that will have to be considered in allocating the water, those states having large Indian rights, if they also have the obligation of taking care of the Indians from their allocated share, must have that factor considered in allocating the water; and therefore it seems to me undesirable to attempt to dispose of the basis upon which you are going to divide Indian rights until you allocate the water, find out what weight you give to that factor in the allocation. If you disregard that factor in allocation, it would seem to me you would have to put it on a basin basis. If you give states credit because they have got Indian rights, then that determination it would seem to me would dictate that you go on a state basis. It seems premature to try to dispose of it now.

COM. WATSON: Mr. Chairman, I think that subdivision (c) should be treated similarly to subdivision (b), that we are not ready to make a decision and we should defer action on it. Speaking for Utah, there are about 70,000 acres in the Uinta Basin that are watered from the Uinta Mountains. Three acre-feet per acre are diverted to those 70,000 acres.

I don't think we are ready to make any decision on that one way or the other, so I suggest that Item (c) be deferred for further consideration.

COM. STONE: Why pick out one item? If you are going to defer it, defer them all because they are all related.

THE CHAIRMAN: It occurs to your Chairman that the War Department hasn't notified the Commission in regard to navigation except in its first letter and we have asked the War Department for a reply to those two questions propounded by the Commission. In the absence of that information today it appears doubtful whether you can take intelligent action on subitem (d).

COM. WILSON: I move that action on Group II, page 2, of the agenda, designated as Paragraphs (a), (b), (c), (d), (e), (f), and (g), be deferred with this provision, that as to subdivisions (d), (e), (f), and (g), it does not foreclose discussion at this time.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are there comments on the motion as made by Judge Wilson and seconded by Mr. Bishop?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: We have now reached Group III on the agenda and are ready for the consideration of the subitems under Group III. Subitem (a) reads: "Shall compact contain any provision relating to the delivery of water at Lee Ferry for the use of Mexico in the event there is not sufficient surplus water to supply the Mexican share."

MR. WEHRLI: Mr. Chairman, I think that it is obvious that some provision will have to be made to recognize the potential obligation in the Colorado River Compact, and I hope it is only potential, and to apportion that obligation among the States of the Upper Basin, that is to say, to apportion such obligation as may arise against the States of the Upper Basin between or among those States. We would be of the opinion that that obligation, whatever it may be, ought to be apportioned upon the same basis as the obligation to make the required deliveries at Lee Ferry. It hardly seems possible that you can deal in terms of quantities of water in connection with this potential obligation and that we will likely have to deal with the distribution of it among the states upon a percentage basis. And as I say, we would be of the opinion that that obligation should be borne percentage-wise in the same way as the obligation to make deliveries at Lee Ferry.

THE CHAIRMAN: Well, let's have a free discussion of that item and then dispose of the matter with a motion.

COM. WILSON: Mr. Chairman, I am inclined to agree with what Wyoming said but we have already deferred action on determining the exact obligation at Lee Ferry among the states. It seems to me that the two go together and we couldn't make any actual determination of any provision in the compact relative to the Mexican Treaty or otherwise until that question has also been considered.

MR. RITER: Mr. Chairman, with regard to Mr. Wehrli's comments may I suggest this, that the Mexican Treaty obligation is a real obligation. Under the original 1922 compact, we did not know what the obligation would be to Mexico. In the meantime, however, a Treaty has been consummated and the Mexican obligation is now known and is real.

THE CHAIRMAN: Mr. Riter, I think maybe you misunderstood Mr. Wehrli. I think he recognizes that part of it but his remarks were directed to the occasion of an extraordinary drought.

MR. BREITENSTEIN: No.

THE CHAIRMAN: Isn't that true?

COM. STONE: No, his remarks went to (a).

MR. WEHRLI: My thought about it was that it is a real obligation,

Mr. Riter; but I merely was trying to express the hope that while it was a real obligation, the water supplies would be such that the Upper Basin would not be called upon to have to supply any water. That is the thought I had in mind.

MR. RITER: Well, of course, we can all live in hopes.

MR. WEHRLI: I don't disagree with you. It is an obligation that is placed on the Upper States.

MR. RITER: I may have misunderstood your remarks. I rather gathered from your remarks that it wasn't a definite obligation, potential obligation.

MR. WEHRLI: It provides that we must respond to the supplying of a deficiency. I was merely trying to express the hope that there wouldn't be a deficiency.

THE CHAIRMAN: Mr. Riter, you were interrupted. Have you completed your statement?

MR. RITER: Yes. Apparently I misunderstood the intent of Mr. Wehrli's remarks.

COM. STONE: This liability might be better described as a contingent liability and it certainly is one which the states cannot overlook, particularly because of the provision of the Colorado River Compact and because of the fact that the total obligation of the United States has been determined.

COM. WATSON: Mr. Chairman, I move that we defer this Group III, Items (a) and (b), until the obligation is determined and further action concerning our obligation at Lee Ferry is decided.

COM. STONE: Mr. Chairman, has that motion been seconded?

THE CHAIRMAN: No, it has not. You have heard Com. Watson's motion. Is there a second?

COM. WILSON: To get it before the house I will second it.

THE CHAIRMAN: The motion has been made and seconded by Judge Wilson. Is there discussion on the motion?

COM. WATSON: Mr. Chairman, I would like to modify my motion. I intended to include (b) also.

THE CHAIRMAN: You did.

COM. STONE: Mr. Chairman, I would like to make a substitute motion. I don't know why we should just defer everything. Some things we must defer but why can't we make some progress here.

My remarks go solely to Subsection (a) and for that reason I move that the Commission recognizes the contingent liability for deliveries of water at Lee Ferry in the event there is not sufficient water supply to comply with the obligations of the United States under the Mexican Treaty, and that the matter be referred to the Legal Advisory Committee.

COM. BISHOP: I second the motion.

THE CHAIRMAN: Substitute motion has been made by Judge Stone and seconded. Com. Watson, do you care to withdraw your motion?

COM. WATSON: If it is necessary. I would like to comment.

I think that what Judge Stone stated is already the law of the river and we all understand it so we are just simply stating something that is self-evident. Therefore we refer something that is self-evident to the Legal Committee.

COM. STONE: My purpose, Mr. Watson, is this: The Legal Committee is a drafting committee and we could make some progress by an instruction to the Legal Committee to prepare language. Now the apportionment is another matter which need not necessarily be included in such language, but we ought to make some progress, not just put everything off, when there are some things that the Legal Committee can be working on.

COM. WATSON: I yield, Judge Stone. If you say refer it to the Legal Committee, that is the thing to do.

MR. CLYDE: Mr. Chairman, it seems to me that about the only thing the Legal Committee could do at this point would be to recognize that this is the law of the river. As far as making the apportionment of that obligation, the Legal Committee can do nothing to draft language there until you decide how you are going to apportion the obligation at Lee Ferry, (a) to the Lower Basin and, (b) to Mexico.

COM. STONE: Mr. Clyde, that is exactly what I said. The Legal Committee is not authorized to incorporate it but certainly they could leave that part blank and we could get some language without taking some time in the future to do it and to have it before the Commission. That is my only purpose in it.

MR. WEHRLI: Judge Stone, I agree with what you say. It occurs to me that the language in relation to this obligation may necessarily have to be coupled with the language in relation to the apportionment of the obligation for delivery at Lee Ferry, or at least that it might be desirable.

COM. STONE: I recognize that, Mr. Wehrli. I think that is true and that is a matter which the Legal Committee could report back on.

MR. WEHRLI: I would merely want to make this further suggestion that while the Legal Committee would have no authority and no business trying to allocate either obligation, I would favor at this time referring to the Legal Committee the task of preparing such language as the Legal Committee would deem appropriate for apportioning these obligations. Perhaps you wouldn't want to go that far but I think the Legal Committee could be doing something in attempting to draft some language on both subjects.

COM. STONE: That is the apportioning of the obligation at Lee Ferry. I wouldn't oppose that; I think that is all right. I would go as far as Mr. Wehrli suggests.

COM. CARSON: Mr. Chairman, it seems to me that whatever language is prepared along that line that would in any way differ from that suggested by the International Boundary and Water Commission would require substantive decision by this Commission.

Speaking now as Arizona, a Lower Basin State, we are not directly concerned in the division of the obligation of the Upper Division to make deliveries at Lee Ferry. But the obligation of the Upper Division to make deliveries at Lee Ferry for use in Mexico is not limited to a deficiency of the

surplus, but includes the delivery at Lee Ferry of the surplus to help supply the burden to Mexico in a very large quantity.

The Colorado River Compact apportioned water to Mexico in an indeterminate amount until fixed by the United States but provided that it should first be supplied out of the surplus. So then it seems to me that the obligation of the States of the Upper Division to deliver water at Lee Ferry is not limited to the 75,000,000 acre feet every ten-year period as set out in the Colorado River Compact, but in addition to that 75,000,000 acre feet every ten-year period, some surplus would have to be delivered there for Mexico.

Now, according to our engineer's figures, and I believe they are the Bureau figures, the virgin flow of the River at the Mexican Boundary, with the allocation to Mexico and the apportionment to the Upper and Lower Basins, reduces the surplus in the whole river to some 220,000 acre feet on the average above all of our rights. That necessarily then includes the obligation of the States of the Upper Division to make delivery at Lee Ferry in addition to the 75,000,000 acre feet every ten years for use in the Lower Basin, approximately a million acre feet a year on the average to discharge the obligation to Mexico in the absence or the disappearance of surplus, at which time if there was any deficiency in the surplus to Mexico, then the Lower Basin would supply half the deficiency and the Upper Division half.

So it is a very complicated affair right in there that I think would require the additional engineering information that I understand you feel you have to have before you could make or begin to get down to the question of the apportionment of the beneficial consumptive use of the 7,500,000 acre feet apportioned to the Upper Basin, or an apportionment of the obligations to deliver at Lee Ferry. So that the Legal Committee now would not be able to do much in addition to what the Boundary Commission suggests, which is that: "Nothing in this Compact shall be construed as affecting the obligations of the United States of America to the United Mexican States under existing treaties." That is about as far as the Legal Committee could now go until further substantive decisions are made.

COM. STONE: Mr. Carson, I don't quite follow you. I have always contended for engineering data when it is necessary; but I don't quite see why you need any engineering data on this subject. We must recognize, of course, the obligation on that surplus to make deliveries at Lee Ferry. That is a legal matter.

COM. CARSON: Yes.

COM. STONE: We don't know what that is and I doubt whether the Engineering Committee can lend any light on it; and if they did, the obligation would remain the same no matter what it is. I think your statement demonstrates the advisability of the Legal Committee considering the language submitted by the International Boundary Commission and the suggestions which have been made here and make some progress by working on it.

COM. CARSON: Well, if you refer it we will do the best we can with it, but I wanted to call your attention to those other things.

COM. STONE: Whether the Engineering Committee said it was 1,500,000 acre feet or 500,000 acre feet, it is still an obligation. And then added to that is the additional obligation imposed by the Colorado River Compact for each state to share equally if the surplus defined in the Colorado River Compact is deficient to meet Mexican obligations.

71
THE CHAIRMAN: For each basin to share, you mean.

COM. STONE: Each basin, I mean. So that the discussion here does indicate that inherent to this question are legal matters. I still insist that this is a matter which should in the interest of progress and can well be referred to the Legal Committee for consideration.

COM. WILSON: Mr. Chairman, as I understand, the only thing before the Commission is Judge Stone's substitute motion, which requires that this be referred to the Legal Committee for further consideration?

COM. STONE: That is right.

COM. WILSON: Mr. Watson's motion was that action on it be deferred. Now, I don't think it makes a bit of difference. If you read the question here, the question that is asked is: "Shall compact contain any provision relating to the delivery of water at Lee Ferry for the use of Mexico in the event there is not sufficient surplus water to supply the Mexican share." If you answer that "yes", it means simply that the compact will have some language in it to cover that. Whether you defer action or whether you refer it to the Legal Committee, it may be determined not to say anything about it, while we all recognize the obligation. The only point I can see there is to determine whether you are going to say anything or nothing. In either event we recognize the obligation of the Mexican Treaty. Now I will vote on either motion, "yes."

COM. STONE: Mr. Wilson, I think you have got a point there and I believe my motion should be to the effect that tentatively the compact should contain language and that the matter be referred to the Legal Committee.

COM. WILSON: I am not sure yet that we can all agree that it should contain any reference at all. I think perhaps it should. But why make up our minds now that you are going to say something about it when we can change our minds later and decide not to?

COM. STONE: We have a lot of confidence in the Legal Committee and if we refer it to the Legal Committee we will be making progress.

MR. HOWELL: For the purpose of determining how extensive this motion should be, I would like to ask Mr. Riter a question. If I understood him rightly yesterday in making his report, with that modesty so characteristic of engineers, he stated the Engineering Committee was unable to determine the exact obligations of the Upper Basin under the Mexican Treaty. Did I misunderstand you?

MR. RITER: Well, I don't remember exactly what I said yesterday. I did quite a bit of talking, more talking than I should. But I have heard conflicting legal philosophies regarding the obligation of the Upper Basin to deliver water to Mexico. In my own mind there is no question about it. In my own mind the Upper Basin unquestionably has an obligation to supply the Mexican Treaty. There are people present in this room who do not agree with me.

COM. STONE: You don't mean to supply the Mexican Treaty. We don't have it all.

COM. BISHOP: Supply the shortage would be enough, wouldn't it, Mr. Riter?

MR. RITER: There are some people in this room who believe we don't

30
have to deliver anything at Lee Ferry to help meet the obligation imposed by the Mexican Treaty. I don't share that view.

MR. HOWELL: Well, the only reason I made this inquiry, Mr. Chairman, is to determine whether or not it wouldn't be a good thing in view of the statement of the Chairman of the Engineering Advisory Committee that this matter or the obligation under the Treaty of the Upper Basin States be referred to both the Engineering and the Legal Committee.

MR. ROLLINS: I was wondering about the wording of Paragraph (a); I am wondering if our obligation ends as Upper Basin States in connection with the Mexican Treaty, if a shortage should develop which would require our furnishing water to Mexico--if our obligation ends if we deliver it at Lee Ferry. Wouldn't we have to be responsible for our portion of the delivery at the International Boundary?

CCM. STONE: No, the Compact makes that clear.

THE CHAIRMAN: Well, the Chairman is a little bit confused about the intent of the Commission on this. It seems that the Commission should decide, first, whether or not it wants to have language referring to this matter, and if so the lawyers presumably are to work it out. And apparently that is the intent of the motion, to indicate, maybe very cautiously, that the Commission has a notion there should be a provision and hopes that the lawyers will work something out.

CCM. STONE: Mr. Chairman, Mr. Wehrli says that he has some suggestion to make to clarify the motion. Maybe he has got something that will solve it. What is it?

MR. WEERLI: I didn't have any suggestion, Judge Stone, but Mr. Watson's motion having been withdrawn and you having made a substitute motion and then having sort of rephrased your substitute motion, I was wondering if you wouldn't start over on your motion and make such motion as you feel ought to be made. I thought that might clarify the record on it.

CCM. STONE: Very well. I withdraw my former motion and now make this motion: that with reference to the question appearing as Sub-section (a) under Group III appearing on the agenda, the Commission, subject to review and reconsideration, believes that the compact should contain language relating to the deliveries of water at Lee Ferry for the use of Mexico in the event there is not sufficient surplus water as defined by the Colorado River Compact to supply the Mexican share; and also language which will consider the obligations under the Mexican Treaty for delivery of water from the surplus; and that the matter be referred to the Legal Advisory Committee.

Now, my thought in submitting this motion is that the discussion here indicates that there are legal questions. The record shows that the International Boundary and Water Commission has made a proposal. That proposal should be considered along with any language which the Legal Committee might have in mind. I also call attention to the fact that my motion specifies that it is a subject for further review and consideration. We will be better able to consider this if some specific recommendation comes from the Legal Committee.

CCM. BISHOP: Second the motion.

MR. WALLACE: Mr. Chairman, a question.

99
THE CHAIRMAN: Mr. Wallace.

MR. WALLACE: What about drought?

COM. STONE: My motion doesn't cover Subsection (b) on drought, just (a). That is reserved for further action.

THE CHAIRMAN: Is there further discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Do you now wish to consider Item (b) of Group III on page 2 of the agenda which reads: "Should the compact contain any provision relative to extraordinary drought in order to take advantage of the applicable provisions of the Mexican Water Treaty."

COM. WATSON: Mr. Chairman, it is very apparent that we should, if we do have the obligation. Therefore, we should answer this item in the affirmative and refer it to the Legal Advisory Committee. I so move.

THE CHAIRMAN: Is there a second to Mr. Watson's motion?

COM. BISHOP: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. WILSON: On that same thing, I am not sure the affirmative answer is yes. It may be but it appears to me that we answer (a) up there and say we recognize the obligation in some appropriate language. Then under (b), in case of extraordinary drought, that obligation may be limited. If we answer (a) yes and use appropriate language, it may be entirely unnecessary to say anything about extraordinary drought, which is a matter the International Boundary and Water Commission will enforce against Mexico if appropriate.

MR. BREITENSTEIN: Mr. Wilson, my thought in submitting that was that there is no provision in the Mexican Treaty which really places into effect the provision on extraordinary drought. As I understand it, the matter is left for determination by the United States but no agency is really designated to make the determination. It seems to me that we ought to have something in here which would recognize the right of the administrative agency which we set up to say to the United States Section that we have got an extraordinary drought and so the share of water delivery to Mexico should be scaled down. In my own mind, there should be some specific direction to the agency which we set up which would cover this subject.

COM. WILSON: It might be desirable to have something in there that would assert that we want the benefit of that if that condition exists.

MR. BREITENSTEIN: And direct our agency to determine it and make a representation to the International Boundary and Water Commission, the United States Section of it. That was what I had in mind.

COM. WILSON: That may be included. They may want to say something about it. It may still be an open question, whether we need to try to spell it out in the compact or not.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: It has been called to the attention of the Chairman it is twelve o'clock. Do you wish to adjourn until a certain time?

COM. BISHOP: I move we adjourn at four o'clock tomorrow afternoon, or sooner if we can get our agenda cleared.

THE CHAIRMAN: Of course, that is understood. Now does any other Commissioner wish to say anything on that subject?

COM. CARSON: I second Wyoming's motion.

THE CHAIRMAN: You have heard the motion. Is there further discussion of the motion? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Then the understanding is that we will try to get through by four o'clock tomorrow afternoon but whether we do or not, we will call it a day.

COM. STONE: What time do we meet this afternoon?

THE CHAIRMAN: That hasn't been disposed of. We shall recess now. What time shall we come together?

MR. ROLLINS: One-thirty.

THE CHAIRMAN: Is one-thirty satisfactory? (No response.) Let it be understood then we will convene at one-thirty today.

(12:00 Noon, Recess.)

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(1:30 p.m. Meeting reconvened.)

THE CHAIRMAN: Gentlemen, will you come to order, please. It appears now that the Commission is ready to consider Item (a) of Group IV, which reads: "What general provision should be incorporated in the Upper Basin Compact to recognize the validity and applicability of the Colorado River Compact."

COM. BISHOP: Mr. Chairman, I move that a provision be incorporated in the compact recognizing the validity and applicability of the Colorado River Compact, and that the drafting of such a provision be referred to the Legal Advisory Committee.

COM. STONE: Second the motion.

THE CHAIRMAN: Any discussion of the motion? Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: We will now consider Item (b) of Group IV, which reads: "Should the definitions contained in Article II of the Colorado River Compact be incorporated without change in the Upper Basin Compact." Gentlemen, the Chair would suggest now that you discuss this matter freely and then finally let's get a motion to dispose of it which you can all agree to.

MR. BREITENSTEIN: I suggest that before any action is taken on that those definitions should be read to the Commission here.

THE CHAIRMAN: That is a very good suggestion. Mr. Wehrli, will you read the provisions referred to?

MR. WEHRLI:

"ARTICLE II. As used in this compact--

"(a) The term 'Colorado River system' means that portion of the Colorado River and its tributaries within the United States of America.

"(b) The term 'Colorado River Basin' means all of the drainage area of the Colorado River system and all other territory within the United States of America to which the waters of the Colorado River system shall be beneficially applied.

"(c) The term 'States of the upper division' means the States of Colorado, New Mexico, Utah, and Wyoming.

"(d) The term 'States of the lower division' means the States of Arizona, California, and Nevada.

"(e) The term 'Lee Ferry' means a point in the main stream of the Colorado River 1 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 term 'domestic use' shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power."

THE CHAIRMAN: You have heard the definitions as read by Mr. Wehrli. What are the wishes of the members of the Commission?

MR. WEHRLI: Mr. Chairman, I think we are of the opinion that these definitions should be included in the compact but that this is not necessarily

an exhaustive list of definitions that you will need in the compact on the Upper Basin. We would favor inclusion of these definitions but with the understanding that it may be necessary to add some others.

COM. STONE: Mr. Chairman, Colorado concurs in the statement made by Mr. Wehrli for Wyoming. And we would suggest that the Legal Committee be instructed to give consideration to such other definitions as may be needed and desirable in the compact now under negotiation.

THE CHAIRMAN: Do you suggest that as a motion, Judge Stone?

COM. STONE: I am just discussing it is all.

THE CHAIRMAN: All right. Are there any other suggestions?

COM. WILSON: Mr. Chairman, I agree in substance with what has been said but I understand the Legal Committee wants some authority from this Commission before they bring something back. Now it seems to me that there ought to be a little discussion somewhere as to whether each one of these definitions shall be copied verbatim into our compact. Obviously there are a few of them that don't fit our compact. Some of them are of such a substantial nature that we want to put them in our compact word for word whether all of them go in or not, and I think that the Committee ought to have further suggestions from the Commission.

The general provision that you adopted there under (a), the language of that, would in effect cover the definitions. Then it is a question of which ones you want to specify, or does the Commission want to say, "Now, without regard to applicability or whether they fit, copy each definition word for word", and then add some more. There should be some discretion it seems to me in the Legal Committee to come back and suggest that maybe some of the definitions shouldn't be set out verbatim in our compact.

COM. STONE: Mr. Wilson, do you think we might make progress now--it isn't a difficult matter--if we would go over each definition and determine here whether in the judgment of the Commission such a definition may not be applicable and unnecessary or whether any change in definition should be made?

COM. WILSON: I think that might be all right, Judge Stone.

COM. STONE: I think we might be making some progress that way, and yet I am wondering whether we could legally change a definition, if we use it at all, that is contained in the Colorado River Compact.

COM. WILSON: I am assuming that the Committee will write out a general provision recognizing the validity and applicability of the whole compact. Now, when that language has been decided upon, is it then necessary to follow that up and put every definition in the new compact word for word?

COM. CARSON: Mr. Chairman, in accordance with the suggestion of Mr. Wehrli that it may be advisable to define terms in this compact in addition to the terms that were defined in the Colorado River Compact, it would seem to me that article relating to definitions probably should be the last one considered by this Commission after the other articles are in and we determine whether any of the terms there used appear to require specific definition. The Legal Committee could be instructed here to consider and recommend to the Commission any specific definitions of terms, either included in the Colorado River Compact or in the Upper Basin Compact, as it would deem advisable to have specifically defined when the whole compact is completed.

MR. WEHRLI: If that is a motion, we would join in it, Mr. Carson.

COM. CARSON: I would like to make that as a motion.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Motion has been made and seconded. Is there a discussion of the motion as presented by Com. Carson? (Question is called for.) The question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

MR. BREITENSTEIN: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: We now come to Item (c) of Group IV of the agenda which reads: "Should paragraphs (f) and (g) of Article III of the Colorado River Compact relating to the apportionment of unapportioned water be carried over into the Upper Basin Compact."

Mr. Wehrli, can we borrow your voice to read the paragraphs (f) and (g) of Article III of the Colorado River Compact so the Commissioners may know what they are directing their attention to?

MR. WEHRLI: (f) of Article III provides:

"Further equitable apportionment of the beneficial uses of the waters of the Colorado River system unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October 1, 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 mentioned in paragraph (f) subject to the legislative ratification of the signatory States and the Congress of the United States of America."

MR. BREITENSTEIN: Since Colorado suggested that I might say one of the things we had in mind was: If there is any surplus water in the

109

Colorado River which is subject to allocation, of course the Upper Basin doesn't want to give away the right to participate in some of that surplus water. It seems to me there should be in an Upper Basin Compact some provision for allocation among the States of the Upper Basin of that portion of surplus water which may be allocated to the Upper Basin in accordance with these provisions of the Colorado River Compact which have just been read.

THE CHAIRMAN: Mr. Breitenstein, is it your idea that the final allocation which may be made on a percentage basis would be limited to the unapportioned water or would it include the surplus?

MR. BREITENSTEIN: Well, my idea, speaking only personally, is that whatever allocation we make among the States of the Upper Basin at this time is an allocation of III (a) water and not of surplus.

THE CHAIRMAN: Then when the matter of surplus water is determined you would proceed under the provisions of the Colorado River Compact in order to make a further apportionment?

MR. BREITENSTEIN: It would seem to me that further apportionment would be desirable. It may be that apportionment shouldn't be on the same basis as the apportionment of the III (a) water. Now I don't know; it is just a possibility.

THE CHAIRMAN: Of course, that would afford an opportunity at that time, then, to rectify any inequities which might pop up in the compact we are talking about.

MR. BREITENSTEIN: That is a possibility. I would be surprised if any of the states here were willing to make an allocation among the States of the Upper Basin of surplus water. Maybe they are; I don't know.

THE CHAIRMAN: Mr. Breitenstein, let me ask you this: Could they really do that without violation of the existing compact?

MR. BREITENSTEIN: Oh, I think it is possible. You could say when, as and if the Upper Basin is determined to be entitled to any surplus water, then that water shall be allocated in a certain way.

THE CHAIRMAN: Thanks, Mr. Breitenstein.

Com. Carson, do you have any remarks on this item?

COM. CARSON: Well, Mr. Chairman, I agree with Mr. Breitenstein that you probably ought to have some reference in there so as to preserve the right of the Upper Basin to participate in that further apportionment between the Upper and the Lower Basin, preserve that so there will be no question about it. But I don't believe it would be proper now to undertake to apportion it until that apportionment is made between basins.

THE CHAIRMAN: Com. Wilson?

COM. WILSON: Well, my present thought on it is in line with what Mr. Breitenstein says. However, I don't know whether the Commission, when it comes to making the allocation, is going to specify III (a) water. I don't know. That is a matter I think that would have to be given some very serious consideration. But I am perfectly willing to use language that will preserve our right to participate in the apportionment of surplus water when it is available under the terms of the Colorado River Compact.

100
THE CHAIRMAN: It would seem to the Chairman--I don't know how you would term it--but that notice should be taken of the possibility of the availability of unapportioned water in this compact and it should be definitely understood what this compact allocates.

Com. Stone, do you have any further comments?

COM. STONE: I do not believe it is good policy, and irrespective of what Mr. Breitenstein said, I still question the possibility of making any apportionment of surplus water. At least it isn't good policy in this compact to attempt any apportionment of the surplus water. I believe that the paragraph should be referred to in appropriate language.

The states of the Upper Colorado River Basin may not apportion surplus water defined in the Colorado River Compact in the absence of the other two states of the Colorado River Basin. As Mr. Breitenstein suggests, we might agree among ourselves that if an apportionment is made, the apportionment shall be in accordance with the agreement contained in this compact, but after all that is an agreement reached in a meeting or in a negotiation at which the other states are not parties. I think it would be very bad policy.

COM. WILSON: I would like to call your attention to the provisions of that Paragraph (f), that it isn't necessarily true that this apportionment will be made in 1963.

COM. STONE: It isn't, certainly; you are right about that.

COM. WILSON: In 1963, if either basin shall have reached its total beneficial consumptive use, and that might be fifty years after 1963.

COM. STONE: That is what I said. They could apportion it under certain conditions and that is a definite condition.

MR. BREITENSTEIN: I didn't say as a matter of policy I favored making apportionment of any surplus water. In answer to the Commissioner's question I said it was a possibility. I think that is right. But the Boulder Canyon Project Act states, so much III (a) water plus not more than half the surplus to California; and the Arizona contract states so much water plus not more than one-half of the surplus.

COM. CARSON: Of course, that means surplus available in the Lower Basin.

MR. BREITENSTEIN: That is right. You could do the same thing up here but I think it is bad policy to do it.

COM. STONE: In my opinion, whether it is possible or not possible, it is clearly a bad policy.

THE CHAIRMAN: Off the record. (Discussion off the record.) Does the Commissioner for Wyoming or Mr. Wehrli have anything to offer on this item?

MR. WEHRLI: We are willing to leave it to the future, but if that is done I believe the Legal Advisory Committee ought to be given the task of drafting the necessary language that would have to go into the compact. I don't believe it is a subject that you can ignore. I think you have got to make some reference to it in the compact and that the Legal Committee

ought to draft such a provision if it is agreed by the Commissioners that no apportionment should be made in the compact at this time.

COM. WILSON: Mr. Chairman, I move that the question set out in the agenda under IV (c) be referred to the Legal Advisory Committee with instructions to that Committee to put in appropriate language such provision dealing with paragraphs (f) and (g) of Article III of the Colorado River Compact which they deem necessary to protect the rights of the Upper Basin in any water that may be unapportioned. Of course they report back to the Commission.

COM. STONE: Second the motion.

THE CHAIRMAN: Are there any further comments on the motion by Judge Wilson? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: The next item on the agenda is Item (d), Group IV, which reads: "What, if anything, should be done with relation to Article VI of the Colorado River Compact pertaining to controversies between two or more states."

Will you please read Article VI of the Colorado River Compact, Mr. Wehrli?

MR. WEHRLI:

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

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

100
THE CHAIRMAN: The Chairman would like to ask a question as to what effect any action taken on this item would have on the administrative setup which you tentatively discussed and approved a day or so ago.

COM. STONE: Mr. Chairman, Mr. Breitenstein has a statement to make on this Item (d), page 3 of the agenda. Perhaps he will clarify your question.

THE CHAIRMAN: Would be very glad to hear from Mr. Breitenstein.

MR. BREITENSTEIN: My thought was that the Commission should give consideration to this article of the Colorado River Compact but I do not mean to imply that I think there is any reason for incorporating a similar provision in the Upper Basin Compact. Frankly, I don't like the way that Article VI of the Colorado River Compact reads at all. I see no reason whatsoever for incorporating it in an Upper Basin Compact. You noticed in the reading, of course, that one of the articles mentioned was facilities in one state for use in another state. We are doing here what that provision contemplates. We have made arrangements, in what has been tentatively adopted, for the operation of facilities in one state for the benefit of another state. In my opinion that is perfectly proper under Article VI and is in accord with it.

My recommendation is that we do not carry over into the Upper Basin Compact Article VI of the Colorado River Compact.

THE CHAIRMAN: Com. Carson, do you have anything to offer on this item?

COM. CARSON: Mr. Chairman, I agree with Mr. Breitenstein that it is not necessary that this article come over as it is written here. I don't think it would be completely applicable. I thought it might be covered in that other clause that we have referred to that we haven't yet been instructed to write, that is, at the request of one or more states, the other states would appoint commissioners to consider any matter.

MR. BREITENSTEIN: Mr. Carson, I didn't mean to imply that I wasn't in favor of what you just mentioned. My point was that there was no necessity to carry Article VI over into the Upper Basin Compact. Something such as you suggest I think might be well done.

COM. CARSON: That is the same thought that we both had. As it is written here it would not be proper to be brought over as is.

MR. WEHRLI: Mr. Breitenstein, are you talking now about the same thing or something different than what we discussed in the Legal Advisory Committee about review by the commissioners, or would the two go together in some way?

MR. BREITENSTEIN: They are probably two things. I had in mind the possibility of having a provision for review and also that the Commission might desire to set up some machinery for ironing out disputes. I don't know whether they would or not. But regardless of what action is taken on those two my recommendation is that Article VI should not be carried over.

MR. WEHRLI: My thought about the matter is that if you don't carry over Article VI--I think we can agree with you on that--nevertheless this might be the appropriate time to make some request of the Legal Advisory Committee to prepare something on the subject.

MR. BREITENSTEIN: I agree. It might be a good idea.

COM. STONE: Mr. Wehrli, are we not here though considering provisions of the Colorado River Compact, what provisions should be carried over, under this group? Can't we dispose of this matter as a matter of policy and then revert to those questions which you raise?

MR. WEHRLI: That will be agreeable.

COM. BISHOP: Mr. Chairman, I move that Article VI of the Colorado River Compact not be included in the Upper Basin Compact.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion has been made and seconded. Do you wish to discuss the motion? (Question is called for.) Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

(Discussion off the record.)

COM. STONE: Mr. Chairman, Colorado makes this motion: That the following suggested language be referred to the Legal Committee for its consideration, such language being suggested for incorporation in an Upper Colorado River Basin Compact, namely: "The failure of any state to use the water allocated to it for beneficial consumptive use shall not constitute any relinquishment of such water to the Lower Basin or any state thereof." Further that the Legal Committee be asked to study this language and feel free to substitute therefor any other language which in its judgment would be more appropriate for such purpose or enlarge on it if it sees fit.

COM. WILSON: Second the motion.

THE CHAIRMAN: Are there any further comments on the motion as offered by Judge Stone?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Off the record. (Discussion off the record.)

(3:05 p.m. Recess.)

(3:15 p.m. Meeting resumed.)

THE CHAIRMAN: Now, gentlemen, I believe we are ready to consider the items under Group V as shown on the agenda. Item (a) of Group V reads: "Should the compact endeavor to encompass rights and obligations arising out of or affecting interstate tributaries."

MR. BREITENSTEIN: May I state the thought I had in mind in putting that down?

THE CHAIRMAN: We shall be very glad to have you state it.

MR. BREITENSTEIN: Everything under Group V is related and to me the basic question for decision by the Commission is whether or not these matters pertaining to the tributaries should all be settled and concluded by one general overall basin compact or whether the idea is to have separate compacts between the states affected on particular tributaries. That general proposition is involved in everything which is under Group V. There is only one small item which is different; that is in connection with the existing La Plata River Compact.

MR. WALLACE: What is your suggestion?

MR. WEERLI: I would suggest, Mr. Chairman, that subparagraph (b), having some different aspects than the others in that group, be considered first, or else consider (a), (c), (d), (e) and (f) together. It seems to me that (a), (c), (d), (e) and (f) are entirely germane, (b) is a little bit different, and (g) and (h) are somewhat different.

COM. STONE: I have somewhat the same opinion, that we can't settle anything under (a) because it requires separate treatment as evidenced by (c), (d) and so forth.

MR. WEERLI: I think we should take up either (b) or else--

MR. BREITENSTEIN: I agree with you, Mr. Wehrli. I think the most appropriate thing is to take up (b) first. I think that can be disposed of very simply.

THE CHAIRMAN: We will consider Item (b), which reads: "What provision shall be made with relation to the existing La Plata River Compact."

MR. WALLACE: What is the---off the record. (Discussion off the record.)

COM. STONE: It seems to me we should have a provision recognizing that compact and the validity of its terms and that nothing in this compact which is under negotiation shall be construed as having the effect of invalidating any of the terms of that existing compact.

COM. WILSON: Judge Stone, I will say so far as I know the water users in both Colorado and New Mexico have indicated that they desire that the La Plata Compact be continued in force and effect so far as their individual rights are concerned.

COM. STONE: That is my understanding.

COM. WILSON: If that is true, it seems to me it might be desirable to put something in the compact to show that it is to continue in force and effect.

COM. STONE: Mr. Chairman, as representing one of the states party signatory to the existing La Plata Compact, I move that the continuance and the validity of such La Plata Compact be adequately protected by appropriate language in an Upper Colorado River Basin Compact; and that the matter be referred to the Legal Committee to draft appropriate language.

COM. WILSON: Second the motion.

MR. WEHRLI: Mr. Chairman, we agree that the validity of that compact must be recognized but it seems that whenever an apportionment of water is made to the respective states under the compact, of course as to each state it would have to be subject to the provisions of the compact we are now endeavoring to negotiate, that is to say, subject to the percentage allocation of beneficial consumptive use and subject to the provisions relating to the obligations of delivery at Lee Ferry. I think that probably would be implicit but I think it is a matter which should be mentioned and understood.

COM. STONE: Colorado doesn't question that.

COM. WILSON: Neither does New Mexico.

COM. STONE: That matter will be considered in making the apportionment.

MR. WEHRLI: I would merely suggest then that in referring the matter to the Legal Advisory Committee that Committee ought to consider perhaps a little bit more than your motion might indicate and that a provision merely recognizing the validity of the compact is not quite enough. I think we may have to have some other provisos in connection with it.

COM. STONE: I might say, Mr. Wehrli, that my motion set forth the idea and included the statement that the Legal Committee use appropriate language to carry that out. So to the extent that the question you mentioned should be incorporated, I assume it would be incorporated in appropriate language. I have in mind the matter you mention.

COM. CARSON: Mr. Wehrli, it would seem to me that would be covered by a general clause that would go in there that all rights to beneficial consumptive use of water in any state be satisfied from the water apportioned to that state, including the La Plata water or whatever it is.

MR. WEHRLI: I am not quite prepared to agree with you on that but I think the record is clear enough as to this reference to the Legal Advisory Committee and it would be up to that Committee to attempt to use such language as it feels necessary. So I have no disagreement with the motion that has been made.

COM. WILSON: I assume the water that is used in New Mexico and also in Colorado by individual water users is capable of measurement. It is a peculiar compact. It provides for alternate use, so many dates in one state, so many days in another. But I assume we can find some way to measure it so as to make it come within the allotment of each state.

MR. WEHRLI: To make my position entirely clear, I am assuming that a condition might arise when Colorado would have to respond to the supplying of some water to meet the obligation at Lee Ferry. Obviously, of course, Colorado might use its own discretion presumably as to where that water comes from, but this particular water in the La Plata River as we view it wouldn't be free from the general obligation of the State of Colorado any more than any other portion of its supply.

COM. STONE: I might say this off the record--(Discussion off the record.)

THE CHAIRMAN: Are there any further comments on the motion as made and seconded? Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Now, gentlemen, as pointed out by Mr. Breitenstein, these items are related. What are the suggestions for a combination of items for consideration?

COM. STONE: I suggest we go to Item (c) of Group V.

THE CHAIRMAN: Off the record. (Discussion off the record.)
Gentlemen, you have before you the consideration of Item (c), which reads: "What adjustment must be made between Colorado and New Mexico in connection with the use of San Juan River water."

COM. WILSON: I yield to Judge Stone on that point.

COM. STONE: I might yield to Mr. Wilson. However, I think we must approach these subjects frankly and realistically. It is very obvious because of the topography of the country that any water apportioned to New Mexico has to come out of the San Juan Basin. It therefore creates a problem requiring special treatment and adjustment in the compact now under negotiation.

COM. WILSON: I agree that is an adjustment that must be made and perhaps it can be made in this compact. I realize that out of any allotment that is made to New Mexico, the only source where we can obtain the water is the San Juan and its tributaries. And if by chance we got enough water to affect Colorado's potential future uses on the San Juan, that is a matter that Colorado and New Mexico will have to come to agreement on, if ever it should become necessary for Colorado to forego some future uses on the San Juan in order for New Mexico to have its allotment. That is a matter that will have to be agreed upon and determined. As I visualize it from whatever allotments are made to Colorado, Colorado will have to choose from which tributaries she is going to take that water.

MR. WALLACE: You have one choice.

COM. WILSON: And I am assuming you wouldn't want to take it all from the San Juan. I am assuming that Colorado--I will use the word arbitrarily--would not arbitrarily choose to take a large portion of her percentage of allotted water out of the San Juan if the result would be to prevent New Mexico having any source to go to at all to get the water allotted to her. I assume you won't agree to an allotment to New Mexico that you felt would deprive you of San Juan water that you just had to have. I don't know where that line is. I do know your present uses on the San Juan are comparatively small and I do know that your potential possibilities are comparatively small so far as the Colorado River report goes, but that is a matter we will have to adjust. I don't know that there can be an adjustment today. I am willing to listen to a discussion on it.

COM. STONE: There are two questions which Colorado must keep in mind: One is that the development of the land and water resources in the San Juan Basin in Colorado are dependent solely upon waters of that tributary. I know of no possibilities for Colorado to take any surplus waters out of another tributary for use within that basin.

The other question involved here relates to deliveries at Lee Ferry. It can be assumed for the present at least, that when New Mexico's desires and apportionments are taken care of out of this basin, that it will greatly reduce water remaining with which to aid in making deliveries at Lee Ferry. That may place a heavier draft so far as Colorado is concerned on other tributaries within the state. So that it does become a rather involved problem.

In a real sense, this San Juan River constitutes a separate river in which two states are primarily interested and which could, and in the absence of an Upper Basin Compact probably would, ultimately mean a separate compact. It is Colorado's present view that we should attempt to adjust these problems within the framework of the compact now under negotiation. We hope that that can be accomplished. I can't see now what we can do about it unless it is the subject for separate discussions between the two states.

MR. WALLACE: Does the Dolores have any relationship there? Can you take any water out of the Dolores down in the San Juan Basin?

COM. STONE: It is physically possible but I don't think there is

enough surplus water in the Dolores that would make that likely. I imagine that there might be--from a physical point of view--more likelihood of taking some water out of the San Juan into the Dolores. But it is one of these problems which points up the proposition that the blanket apportionment of "X" amount of water to Colorado--no doubt the same thing is true as to other states--does not answer the question.

MR. WEHRLI: Maybe you can't answer this or don't feel like answering it, but is your present view of the matter that the making of an agreement with New Mexico on the San Juan River would be the necessary prerequisite to the conclusion of the compact we are negotiating on, or what is your view of that?

COM. STONE: My view about it is that I think it would be well for the two states to have some discussions on that matter in order to complement the making of this compact. Does that answer your question?

MR. WEHRLI: Well, not entirely. Suppose that you and New Mexico are unable to agree; can we still go ahead and make this compact we are engaged in attempting to negotiate here?

COM. STONE: Well, I think probably that your question would go to New Mexico more appropriately than Colorado. New Mexico is wholly dependent upon the San Juan River.

MR. WEHRLI: May I ask the question then of Judge Wilson to see what his view is, if he cares to express himself.

COM. WILSON: Naturally I would say, Mr. Wehrli, if we can't arrive at an agreement in this compact that whatever water is allotted to us can be obtained by us, we won't agree to the compact. In other words, I don't see how you could draw a compact that would allot the right to use so much water to New Mexico unless there were provisions in the compact that made that possible of accomplishment, and to that extent I would say that the main compact is in a measure dependent upon our being able to make some agreement.

COM. STONE: For Colorado I want to say I appreciate fully Mr. Wilson's statement. I hardly see how he could take any different position.

It seems to me, gentlemen, frankly, that this San Juan matter is an important one as disclosed by the discussion that must be taken care of in this compact now under negotiation.

THE CHAIRMAN: Gentlemen, is it not possible that this matter will have to be taken care of in the allotment, the allotment itself would indicate that?

COM. STONE: That isn't enough. That is what we are just trying to point out.

THE CHAIRMAN: Let me ask a little further then if that isn't enough. I haven't been able to determine yet whether the Commission intends to specify percentages on tributaries or a lump sum percentage which will cover all the tributaries.

MR. BREITENSTEIN: Those questions are posed later on.

COM. STONE: Those questions come later. But certainly, Mr.

Chairman, as to the San Juan River, I will say this, frankly it would be very unfair to New Mexico and I don't see how New Mexico could ever accept a blanket allotment to Colorado without some adjustment with Colorado on the San Juan.

THE CHAIRMAN: In other words you feel, Judge Stone, that the percentage would have to be specified in the compact on that stream.

COM. STONE: Certainly some appropriate arrangement.

COM. WATSON: The question I would like to ask is: Will it be necessary for us to make a compact in the future dividing certain waters between Wyoming and Utah, and will this compact that we are now making just simply say that that compact will be made and we will acquiesce in the terms?

COM. STONE: Mr. Watson, in answer to that--I thought I covered it in my other statement--you can't do it that way. No lower state such as New Mexico could accept such a provision--that is for Mr. Wilson to say, this is just my view.

I think we should all try to be equitable in these matters. We could leave New Mexico high and dry almost so far as their possibilities for the utilization of Colorado River water is concerned. They must get their water from the San Juan. If we simply say we are including within the blanket apportionment to New Mexico and to Colorado the waters of this stream or a proportion or amount of water of this stream and that will be determined by future compact, then if Colorado said, "Well, that is fine. We just won't make a compact"--and we are the upper state, it isn't right and it won't settle the Upper Colorado River Basin problems if we leave those things in that condition. We can't do it.

COM. WATSON: Judge, may I add this in explanation of the condition: There is ample water rising in the Uinta Mountains to cover the land that exists in Wyoming and there is a willingness on the part of the State of Utah to make a compact with Wyoming to apportion the water, we will say, of Henry's Fork. Now, my question relates to this: Shall we go ahead this summer and make the compact as soon as we can and then let it be a part of this compact that we are writing at the present time, that is, in the nature of the La Plata Compact that already exists?

COM. STONE: Sure that can be done if it is done before this compact is closed.

COM. WATSON: But we don't divide water between Wyoming and Utah in this compact; we make a separate compact and accept this compact, is that it?

COM. STONE: That is a matter for those states to determine.

There are two possibilities: You can do it within the framework of this compact; or you as a matter of policy may desire to do it by a separate compact which would be consummated prior to the making of this compact. However, I can see possibilities where that procedure might hold up this compact because both of them may come before the Congress at the same time, one ahead of the other.

THE CHAIRMAN: Well, it seems to me that in simple language, the compact which is made first governs.

COM. STONE: That is correct.

MR. BARLOW: Mr. Chairman, I would like to ask this question with

that thought in mind, would it be well that Wyoming and Utah have an agreement on the Henry's Fork, included in this compact the same as New Mexico and Colorado on the San Juan and not figure on negotiating anything after this compact?

THE CHAIRMAN: Well, Mr. Barlow, if you negotiated after this compact it would have to be with due recognition of the provisions in this compact. Whichever compact is negotiated first governs.

COM. STONE: Whichever one is approved first.

THE CHAIRMAN: Approved first, yes, correct.

COM. BISHOP: Mr. Chairman, we wouldn't like to go to the trouble and expense of negotiating a compact on the Henry's Fork or on the Little Snake River when it can be taken care of by a paragraph in this compact. We had a meeting in Craig, Colorado, to get together on this and each state has appointed an attorney and they are supposed to draft the language. I believe we tentatively agreed that it could be done and our attorney it seems hasn't been able to get together with Mr. Breitenstein, who represents Colorado. If it is all right with Mr. Breitenstein, I would like to have Mr. Wehrli serve on that so we can get it done. Let's get it done and over with. If that is the right way to do it, let's do it.

MR. BREITENSTEIN: You are getting down now to Item (d). I think we should make every effort possible to adjust our differences on the Little Snake and incorporate appropriate provisions in this Upper Basin Compact. I assure you Colorado is willing to do everything possible.

THE CHAIRMAN: Whatever work you did do it seems to the Chairman would be helpful. You would have to use your own judgment whether you would get your compact ahead of this one or not, but certainly you will not be wasting your efforts, if you work out the situation on that stream.

MR. WALLACE: Why not confine the discussion to the San Juan until we get that behind us.

COM. WILSON: I move that the Commission refer Paragraph (c) of Group V on the agenda to the representatives of the States of Colorado and New Mexico and that they report back to this Commission at a subsequent meeting what adjustments they have arrived at and which they think can be incorporated in this compact.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion? Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: The question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Now, Mr. Breitenstein, as you prepared this agenda, what item do you suggest be taken up at this juncture?

MR. BREITENSTEIN: (d), the one with relation to the Little Snake River.

THE CHAIRMAN: Very well, we will consider Item (d), which reads: "What adjustment must be made between Colorado and Wyoming with relation to the uses of the water of Little Snake River."

COM. BISHOP: I move that the States of Colorado and Wyoming be requested to confer on an apportionment on the Little Snake River and report such agreement as they may be able to arrive at back to this Commission as soon as may conveniently be done.

COM. STONE: Colorado will second that motion.

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

COM. BISHOP: For the record, Wyoming appoints Mr. Wehrli as the attorney to represent Wyoming in the drafting of that compact.

THE CHAIRMAN: Gentlemen, are you now ready to consider Item (e): "What adjustment must be made between Wyoming and Utah with respect to the uses of the water of Green River tributaries arising in Utah."

COM. WATSON: Mr. Chairman, I move that the States of Utah and Wyoming appoint their representatives to confer on the apportionment and report back to this Commission.

COM. BISHOP: I will second the motion.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

COM. BISHOP: Mr. Chairman, I appoint on that committee Mr. Wehrli, the legal adviser, and Mr. Person, the engineering adviser.

COM. WATSON: As for Utah, I will appoint the adviser to the State Engineer, Mr. Clyde, and Mr. C. O. Roskelley.

THE CHAIRMAN: Gentlemen, Item (f) is the next on the agenda under Group V; do you wish to consider that item at this time? The item reads: "What adjustment must be made between Colorado and Utah with respect to uses of water on the main stream of the Colorado River, the Yampa River, the White River and the Dolores River, and other interstate streams tributary to either the Green River or the Colorado River."

MR. WALLACE: How shall we handle that, Judge Stone?

COM. STONE: We felt that that was a matter which concerns principally the rights of Utah and we would like in the first instance to have your suggestions.

COM. WATSON: Mr. Chairman, in reading this item, as far as I can recall the diversions from the Yampa are largely in Colorado. I don't know of any lands in Utah. Are there any, Mr. Breitenstein?

MR. BREITENSTEIN: It joins the Green in Colorado.

MR. MERRIELL: The Echo Park reservoir will be very largely supplied by the Yampa.

MR. WALLACE: The Deadman's Bench is how large?

MR. BREITENSTEIN: I don't recall the exact area but it lies between the White and Yampa in both Utah and Colorado.

MR. WALLACE: It is a large area and there is a report on it.

MR. BREITENSTEIN: It is described in the Colorado River Basin report.

MR. WALLACE: It is described in the Green or somebody else's.

MR. BREITENSTEIN: Yes, there is an old report on it.

MR. WALLACE: Are you familiar with that situation, Mr. Merriell?

COM. STONE: Mr. Merriell is familiar with it. I will ask him--
Deadman's Bench.

MR. MERRIELL: Quite a little of that land is in Utah.

MR. WALLACE: The major part is in Colorado, though.

MR. MERRIELL: It will be supplied with water from White River.

COM. WATSON: The land in Utah lies west of Artesia, Colorado, which
is near the State Line.

MR. MERRIELL: A good deal of that Deadman's Bench project is in Utah.

MR. WALLACE: Hadn't that better go to a committee to see whether
you should make separate allocations there on those streams or whether the al-
locations should remain in the mass?

COM. STONE: Such action is agreeable to Colorado, Mr. Wallace.

COM. WATSON: I move that the States of Colorado and Utah each ap-
point representatives to meet and confer on these rivers, the Yampa, the White
and the Dolores, consider all the facts and report back to this Commission.

COM. STONE: Colorado seconds the motion.

COM. CARSON: Mr. Chairman, may I ask a question there?

THE CHAIRMAN: Yes.

COM. CARSON: In this you left out the main stream of the Colorado
River and also the main stream of the Green River.

COM. WATSON: Include everything in Subsection (f).

COM. CARSON: Doesn't the Green River flow out of Utah into Colorado
and back?

MR. MERRIELL: Practically no development, though.

COM. WATSON: Include all matters under (f).

COM. CARSON: The Green isn't mentioned on that.

MR. BREITENSTEIN: I didn't think there would be any problem over the
main stem of the Green.

COM. CARSON: As a member of the Commission I would like to know there
wasn't.

MR. BREITENSTEIN: Maybe I am not right, I don't know. That was my
guess when I drew this up.

COM. STONE: What do you say about that?

MR. MERRIELL: I don't anticipate any development on the Green River in Colorado except possibly reservoirs, no.

CCM. CARSON: When we meet again I would like to know that Colorado and Utah are agreed on all those matters if possible.

CCM. WATSON: Question, Mr. Chairman.

THE CHAIRMAN: Question has been called for. Wyoming?

CCM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

CCM. STONE: Yes.

THE CHAIRMAN: Utah?

CCM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

CCM. WILSON: Yes.

THE CHAIRMAN: Arizona?

CCM. CARSON: Yes.

THE CHAIRMAN: Does Colorado wish to announce the appointment of any conferees?

CCM. STONE: May Colorado reserve the appointment of these conferees on Item (f) of Group V of the agenda?

MR. WALLACE: For how long?

CCM. STONE: We will try to do it expeditiously, within a matter of two or three weeks.

CCM. WATSON: Utah will agree to that and will appoint its commissioners.

THE CHAIRMAN: Presumably you will communicate with each other as to time of the meeting.

CCM. STONE: That is right.

THE CHAIRMAN: Now we come to a very interesting item, Item (g), which reads: "In the allocation of beneficial consumptive use of water shall there be specific allocations to tributary drainage basins in each state."

CCM. WILSON: Mr. Chairman, just to get this started I would like to make a motion.

THE CHAIRMAN: Very well, Judge Wilson.

CCM. WILSON: In reference to Paragraph (g) of Group V, I move that any allocation made under the terms of this compact be made to the states as such and not to any basin so that each state may determine for

121
itself the source from which it will take its allotted portion of the water, subject of course to the understanding that as to New Mexico and Colorado on the San Juan, it will be necessary to specify in the compact what portion of Colorado's allotment shall come from the San Juan Basin.

COM. BISHOP: Second the motion.

MR. MERRIELL: Mr. Chairman, I concur in Mr. Wilson's suggestion. The way it will have to be worked out will be by tributary basin but I think the compact should make the allocation only by states.

COM. STONE: I dislike to disagree with my colleague, Mr. Merriell, but I do to a certain extent, and with Fred Wilson. I am at a loss to know how we can answer that one until we have some report and some action on what has been done with respect to (c), (d), (e) and (f).

MR. MERRIELL: That is the way it will have to be worked out, no question about that.

COM. WILSON: The Engineering Committee as I understand is working on that very problem.

MR. MERRIELL: But in the final language in the compact, I agree with Mr. Wilson that it should be an allocation purely by state.

COM. STONE: Such allocation to a state would have to be subject to the special provisions of the compact with respect to certain tributaries.

COM. WILSON: I understand the Engineering Committee will furnish facts and data as to the tributaries so as to enable each state to determine how it can get its water out of any particular tributary.

THE CHAIRMAN: The Chairman would like to ask Judge Stone a question: Do you make allocation to tributary basins in the Republican River Compact?

COM. STONE: That is correct, sir.

THE CHAIRMAN: The Chair recognizes Mr. Riter.

MR. RITER: The Engineering Advisory Committee will determine the facts with regard to streamflow and present uses by tributaries. The report of the Bureau of Reclamation is the only document that I know of which compiles all the project potentialities by tributaries.

It seems to me from an engineering viewpoint, bearing in mind the discussion we had with Mr. Clyde before our recess, that the final allocation should be by states. I have this in mind that there are project potentialities within each state that are presumably larger than the water which will be allocated to each state, and I feel that each state should not tie its hands by coming out in a formal document and subdividing its own allocation among its tributaries. It seems to me that each state should preserve a certain amount of flexibility where its water will be used within the state.

THE CHAIRMAN: Mr. Riter, the Chairman would like to ask you a question: If you were in the position of some of these commissioners or the state engineers, in supporting this compact before the various legislatures, how would you answer the question propounded by a legislator in a certain tributary basin as to what he would get out of this compact and his people in the way of irrigation development unless you specify how much of the allotment to the state comes out of a certain tributary?

MR. RITTER: Well, I couldn't answer the question.

MR. HOWELL: It would surely have the fellow that wasn't going to get any against you.

THE CHAIRMAN: I realize that.

MR. WEHRLI: I don't know whether you heard it or the reporter got it but Mr. Bishop seconded the motion made by Mr. Wilson.

THE CHAIRMAN: I certainly didn't hear it. Pardon me for my neglect.

MR. WEHRLI: He didn't speak very loud.

MR. WALLACE: From your experience, what is the wise thing to do, Judge Stone?

COM. STONE: I might remark that (g) and (h) are interrelated. Before we reach any conclusion we might consider (h).

THE CHAIRMAN: That is entirely satisfactory to the Chairman. (h) reads: "Shall an upper state be required to deliver to a lower state any specific amount of water from any tributary."

MR. WEHRLI: I can see that those two are interrelated but I don't apprehend that even though you might decide under (h) that a certain amount of water would have to be delivered to a lower state upon a particular tributary, that would necessarily mean that the allocation of beneficial consumptive use in each state would not be made to the state itself rather than to drainage basins within the state.

THE CHAIRMAN: I think this discussion of (h) is pertinent to the discussion of (g) and it is permissible in spite of the fact that a motion is before us in regard to (g).

COM. CARSON: Mr. Chairman, it seems to me that if you limited the discussion to (g), to be specific, allocations to tributary drainage basins in each state, that would only be in case of interstate tributaries I take it. It wouldn't tie in with (h). In other words, I think that when any of these interstate tributaries are involved, the allocation will be made to the state in a percentage of use. Still, there would have to be a provision to protect the lower state as well as the upper state. What percentage would come out of the interstate tributary and how much of that interstate tributary flow would be deliverable at the state line for use in the other state?

As I understood Judge Wilson's motion, I don't think it quite encompassed everything it should insofar as these interstate tributaries are concerned. We are not directly concerned for Arizona, but I don't see how you can make an apportionment blanket to a state without specifying what quantity of that apportionment shall come out of one of these interstate tributaries or what part of the flow of the interstate tributary would be delivered at the line.

COM. WILSON: Mr. Chairman, I agree that these questions are interrelated but I call your attention to the fact that (g) goes to the point of whether allocation shall be made in the compact to a basin or to a state. That is the point that my motion went to.

Now then, if you assume that the allocations are to be made to a state and not to a basin, then take up Paragraph (h): "Shall an upper state be required to deliver to a lower state any specific amount of water from any tributary." The obvious answer would be, yes, if necessary to effectuate the allotments that are made in the compact. I don't know whether the two can be decided together or not.

COM. STONE: Mr. Chairman, with respect to both (g) and (h) and in answer further to Mr. Wallace's question, it occurs to me that there are many factors and decisions that should be made before any decision should be attempted on these two paragraphs. I understand that the engineers are making depletion studies, making certain studies as to all of these tributaries. We have already agreed that some of these states shall meet and discuss the matter of apportionment of water and use of water on certain tributaries. It seems to me that those two matters are clearly subjects which should be deferred for future action.

MR. WALLACE: Until the report of the Engineering Committee?

COM. STONE: Or until the Engineering Committee can give us the data we need for the consideration of it, and also until these special committees dealing with different tributaries have been able to make some report.

COM. WILSON: I didn't expect either one of these to be settled definitely here today. I made the motion, and I don't know whether I want to withdraw it, but it is obvious that these things can't be worked out until the Engineering Committee report and until we determine just how the allocation should be made and the amount of it.

THE CHAIRMAN: Well, the Chairman is certainly confused on it. I don't see why you need to wait for any engineering data to determine whether you want to make the allocation in a lump sum or to tributaries. I can't see how further information would help. Mr. Riter, I would like to have your comment on that.

MR. RITER: I don't know whether I can add much more, Mr. Bashore. I do not know what is going to be used as a basis of the compact. I presume that the Commissioners will certainly consider project potentialities. The information the Bureau of Reclamation has is already available to the Commission on that basis.

Now, the engineers have furnished you factual information on stream-flow at key gaging stations. We have not yet furnished you information on present uses or flows at state lines.

I still feel in my own mind that the compact itself should be somewhat along the line that Mr. Wilson has in mind, the allocation should be to the state. I feel that it is entirely within the state's own business after the water is allocated to it how it is going to use such allocated water.

COM. CARSON: Except on interstate tributaries.

MR. RITER: Yes, there will have to be some agreement on that. I recognize that.

COM. STONE: I for the life of me can't get Mr. Riter's reasoning on that. How in the world can Colorado and New Mexico on the San Juan make an equitable adjustment and still say that you make a blanket apportionment to each state? Certainly if it is a blanket apportionment there have got to be some special provisions to take care of such situations.

MR. RITER: Well, Judge, I excepted that tributary.

MR. WEHRLI: Isn't the situation this: that if you made a blanket apportionment to each state percentage-wise and then required, let us say, certain state line flows, that blanket apportionment would be indirectly affected by those required flows. But I am wondering if you have in mind that instead of making a blanket apportionment to each state in percentages, you contemplate making an apportionment to a tributary basin in percentages. It seems to me that the apportionment should be to the states in percentage, if we are assuming that we are to make a percentage apportionment. Of course the use of that water will be affected indirectly by the required state line flows, but I don't think that that necessarily means or requires any attempt to divide up within the State of Colorado, or any other state, the total amount of use of that state as to all of the tributary basins.

COM. STONE: Perhaps I can clarify what I have said somewhat. I agree with Mr. Riter's general principle that it should be the business of a state to use the water wherever it sees fit and can obtain projects for such utilization, but we can't disregard the situation with respect to interstate tributaries. If those tributaries were in one state, the question would be simple and could be answered by that general principle. But where you do have an interstate tributary such as the San Juan and one state dependent wholly upon that tributary, then you cannot cover the situation by a blanket apportionment to each state unless such apportionment is subject to special provisions of the compact with respect to such interstate tributaries.

MR. RITER: I don't disagree with you.

MR. WEHRLI: I don't believe, Judge Stone, the views you have just expressed conflict with Judge Wilson's motion--at least they don't in my mind.

COM. WILSON: I don't think what Judge Stone says conflicts with what I have in mind but I can give you an illustration if the figures I use are not taken as having any implication. Let's assume there is an allocation to Colorado to use 40 percent of the total of 7,500,000. Now then, as Mr. Riter said, it is up to Colorado to determine where she is going to get that water. If you say you are going to take 25 percent of that out of the San Juan you are going to forego the right to take it out of some other stream, either the main stem or some other tributary, and I think that is a question for Colorado to determine, what the interests of her state require her to do, where you are going to get the water. And obviously if you decide to take 25 or 30 percent of your allotment out of the San Juan, assuming it is there, you might make it impossible for New Mexico to get a smaller allotment from that same source.

I take it that Colorado would have to say, "Now how much of this are we going to take out of the San Juan?" It might have to be spelled out in the compact. And I don't believe that contradicts what Judge Stone said nor what Mr. Riter said. Somebody in Colorado under this particular circumstance would have to determine that and it might be difficult to determine. It might be the people on the tributary that you want to give the least water to might be there clamoring for more, I don't know.

THE CHAIRMAN: Gentlemen, this has been a rather interesting discussion. It is now about 4:40 and you have all worked pretty well on this today and this is a very, very important question. Perhaps you would like to adjourn and think about it a little bit and come at it with

a fresh view tomorrow morning at say about 9:30. Do I hear a motion to that effect?

COM. WATSON: I move we recess until 9:30 tomorrow morning to continue this agenda and that this evening this Commission meet to correct the minutes of the last meeting.

THE CHAIRMAN: Is there a second?

COM. STONE: Second the motion.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

(4:40 p.m., Friday, February 20, 1948, recess until 9:30 a.m., Saturday, February 21, 1948.)

Denver, Colorado
February 21, 1948
9:30 a.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission will please come to order. Last evening we were considering the items under Group V, Items (g) and (h). There was quite a bit of discussion on those items and apparently some uncertainty as to the disposition of them, and apparently we adjourned with the idea of having more time to think about them and perhaps this morning the ideas may be more clarified.

COM. WILSON: As I recall, sometime yesterday afternoon we got down to that portion of the agenda under Group V designated as (g) and (h) and I made a motion. I am not sure right now what the motion was and I would like to withdraw that motion and have it deleted from the record.

I want to say this: When I read (g) I thought the answer to it was so obvious that everybody could agree that the allocation should be made to the states as sovereign states. That is what I saw in that (g). Apparently there is more in it than that. When you tie (h) into it, obviously my motion was not sufficient to cover all the elements that enter into both of those questions.

What I have in mind now is that, without being technical at all, sometime, somewhere in the compact there is going to be language that will allocate to each state the right to use a definite portion of the water allocated to the Upper Basin States by the Colorado River Compact. To my mind, and I don't believe anybody will disagree, that language should allocate that water or grant it or whatever term you want to use, to each sovereign state. I think I am clear up to that point and that is what I had in mind in moving yesterday that the answer to (g) should be to the states and not to the tributary drainage basin because I couldn't conceive of an allotment being made to a drainage basin. The allotment should be made to the state and adjustment in each drainage basin might be necessary.

I am not going to make another motion but I do want to say this, that this language would carry out the idea I had combining (g) and (h).

COM. STONE: Will you put that in the form of a motion? Colorado will agree to that.

COM. WILSON: I so move.

COM. WATSON: I will second that motion.

MR. WEHRLI: Mr. Wilson, I don't know that we necessarily disagree with that proposal but I don't believe we are able to say at this time or to agree at this time that there must necessarily be on each interstate tributary a minimum flow fixed or a flow of some kind fixed. There may be cases in which that may be necessary. If the motion means that we are agreeing, even tentatively, to the proposition that this must necessarily be true on all interstate tributaries, I don't think we would feel like going along on it.

COM. WILSON: I am not familiar enough with the upper tributaries to say whether it is or is not. As to the San Juan I think it is necessary obviously.

COM. STONE: I don't understand that implies all tributaries; that is, where necessary, was your idea, wasn't it, Mr. Wilson?

COM. WILSON: Well, interstate tributary, if it is necessary. I think it wouldn't be necessary to making the allotment but I apprehend after it is made, each state will want to know where its water comes from and how much water is taken from each tributary and these interstate flows, that is, the gaging stations at the state line, would have to be kept either for the benefit of the Commission or of the state itself. I am not sure that it would be absolutely necessary on every tributary.

COM. WATSON: The facts can be easily ironed out with any state concerned on any tributary that Utah might be interested in. That would be particularly true with the Henry's Fork area that rises on the north side of the Uintas and flows into Wyoming and back into the Green.

In the case of the tributaries in Colorado except the Yampa the acreage lying in Utah is small and therefore we think that arrangement could be made with Colorado for an agreement between Utah and Colorado.

THE CHAIRMAN: Well, gentlemen, you mustn't forget it seems to the Chairman in the consideration of Items (g) and (h) that it is just as important to consider the obligation the tributary drainage basin has in meeting the collective obligation at Lee Ferry as to think about what benefit that basin is going to get.

COM. STONE: Mr. Chairman, it is our interpretation of Mr. Wilson's motion that that very item is covered. I think he made it quite specific. And assuming he did that, could not the question raised by Mr. Wehrli be covered by letting the record show that the motion made by Mr. Wilson does not necessarily imply application to all tributaries, but to such tributaries where the general principle contained in his motion is necessary. If that is put in the record to cover Mr. Wehrli's position, I am certain the question raised by the Chairman is covered by Mr. Wilson's motion.

MR. WEHRLI: May I ask a question? Maybe this is premature, but in considering this matter as to tributary basins are you thinking about fixing a certain amount of beneficial consumptive use for a particular tributary basin, or are you thinking only of fixing the use in that basin by requiring an outflow from the basin of a certain amount?

COM. STONE: As we conceive that motion it is difficult to state whether one or the other would apply--perhaps both. In other cases it may

be accomplished by a requirement of a minimum delivery on a tributary at a state line. I think that gets into details which would have to be spelled out and worked out in these arrangements which were suggested yesterday, arrangements between states on particular tributaries such as the San Juan. I don't see that Mr. Wilson's motion applies any hard and fast rule as to that, but it is obviously necessary on some of the tributaries.

COM. BISHOP: Mr. Chairman, at this point I would like to explain what my conception of the situation on the Green River might be. Wyoming might be compelled to deliver a certain percentage or a certain number of acre feet of water at the Utah Line. But I can't see how that is going to affect or prevent Utah and Wyoming, for instance, up here on a tributary that happens to head in Utah--several tributaries head in Utah and flow into Wyoming--having an agreement that we will administer the water on a priority basis in that basin in accordance with the laws of the two states, recognizing the priorities and amount in the two states. I can't see we should go on each one of those several tributaries and see that Utah delivers a certain amount of water at the state line. Utah will automatically deliver that water at the state line if they go according to priority on those tributaries.

I just want to make that explanation so you see what we have in mind. Just how they are going to work, if they say we have got to deliver a certain percentage of water in the Green River at the state line, maybe that is the way to do it. But I don't see where this agreement on the tributaries needs to take into consideration the amount of water that Utah has to deliver at the Wyoming State Line. That is automatically taken care of by an agreement that we will have a commissioner administer the water on that stream just like it was all in one state, the recognition of the rights in those two states.

COM. STONE: Mr. Bishop, that may be an appropriate arrangement there, but we shouldn't defeat a general principle which may have to be applied on others.

COM. BISHOP: Judge Stone, I don't think there is any argument between us there. I agree with the motion of Mr. Wilson that it covers that situation and if it doesn't I would like to have Mr. Wilson tell me why.

COM. WILSON: There may be tributaries up in Utah and Wyoming that I am not sufficiently familiar with that you probably might adjust by interstate agreement and not have to account for each tributary outflow. But as a general rule--I know it is applicable to the San Juan--there must be specified in the compact these things that are mentioned in the motion,

COM. BISHOP: I think that is all right.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Now, gentlemen, do you wish to proceed with the consideration of Group VI or go back to the consideration of Item (a) under Group V?

COM. STONE: Mr. Breitenstein suggests that there should be an indication as to whether the states attempt to take care of these matters in one compact, namely, the compact under negotiation. It could be argued that such indication is evidenced by the action on the other subdivisions; however, he suggests that such an indication might be more specifically covered and in order to make progress I would suggest to him that he make on behalf of Colorado the motion that he has in mind in order to get the matter before the Commission.

MR. BREITENSTEIN: I thought the Commission should take action to the effect that the states will attempt in this Upper Basin Compact to determine the rights and obligations of the various states arising out of or affecting interstate tributaries of the Upper Colorado River.

COM. BISHOP: I will second the motion.

THE CHAIRMAN: Motion is made and seconded. Do you wish to discuss the motion?

COM. WATSON: Question.

THE CHAIRMAN: The question has been called for. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Apparently we have covered Group V and we now proceed to the consideration of Group VI. Is it your wish to consider Item (a) first as shown on the agenda or to proceed in some other manner? Which item do you wish to take up first regardless of its position on the agenda?

COM. STONE: Mr. Chairman, it seems to me that Item (a) under Group VI, "Definition of the term 'beneficial consumptive use'." could be disposed of rather expeditiously. Mr. Wehrli suggested that he had a

definition that he may wish to submit later. It appears to Colorado that that is a matter which ought to be worked out between the Engineering and Legal Committees. It is understood by all to be a definition which should be carefully considered. It is very obvious it has both legal and engineering implications.

For those reasons, Colorado moves that the drafting of such a definition be worked out by the Legal and Engineering Committees and be referred to those Committees for that purpose.

COM. WATSON: Second the motion.

MR. WEHRLI: Mr. Chairman, I don't wish to be in default on any promise that I made. I have worked out what I think would be an appropriate definition of beneficial consumptive use as related only to the apportionment that we hope to make between the states. I will distribute that definition if it is desired as I said I would do, but if it isn't, it doesn't make any difference.

COM. STONE: You would be willing to distribute that to the Engineering and Legal Committees, would you not, Mr. Wehrli, for their consideration?

MR. WEHRLI: I would distribute it now or at any time you wish.

COM. WATSON: I suggest you distribute it now.

MR. WEHRLI: It is something that can be considered and if you don't wish the thing to go into the record, that doesn't make any difference either. I think it is a very difficult problem in this compact.

THE CHAIRMAN: Off the record. (Discussion off the record.)

COM. STONE: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: We now come to Item (b) of Group VI which reads, "Method of measuring beneficial consumptive use."

COM. STONE: To expedite the matter I might state that it is Colorado's position that (b), (c), (d), and (e) cannot now be determined until more information is made available by the Engineering Committee and discussion at this time would merely result in waste of time.

COM. WATSON: I so move.

THE CHAIRMAN: Who seconds the motion? Is there a second to the motion?

COM. STONE: Second.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

MR. WEERLI: I didn't hear that motion. Was it a reference to both the Engineering and Legal Committees?

COM. STONE: That referred those items (b), (c), (d), and (e).

MR. WEERLI: Was it a reference to both of the committees or one or the other?

COM. STONE: It was a reference to the Engineering Committee, that we could not make any progress on those items until further data and information was made available by the Engineering Committee.

THE CHAIRMAN: We now come to Article 6 which is entitled, "Discussion of means of correlating the work of the Engineering and Legal Committees."

COM. STONE: Mr. Chairman, that whole matter could be handled quickly by direction from you as chairman that the chairmen of the two committees make appropriate arrangements to work together where it is required.

THE CHAIRMAN: Yes, I think that is a good suggestion. Let the record show that the chairmen of the two committees are to correlate their work and meet according to their best judgment. Does that dispose of Article 6 to the complete satisfaction of all the members of the Commission? If so, we will now consider Article 7 which reads: "Discussion of a time schedule for the preparation and completion of a draft of the compact."

MR. WEERLI: Perhaps you would have to discuss 7 and 8 together.

THE CHAIRMAN: It appears to the Chairman that the two articles are very closely related and if you wish to discuss them both together, certainly there is no objection. Article 8 reads: "Determination of time and place of next meeting."

COM. WATSON: You wish to discuss the matter of the next meeting place first?

COM. STONE: I move that the next meeting of this Commission be held at Vernal, Utah, on July 7th at ten o'clock a.m. and continuing for such time as may be required.

COM. WATSON: I second your motion.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for to vote on the motion fixing the time and place of the next meeting. Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

MR. WALLACE: I have enjoyed this meeting and I appreciate the spirit that has been displayed and I am very happy to recognize the experience and wisdom displayed by the delegation from Colorado and thank them for preparing the agenda, which has been very useful in the deliberations of this conference. Further, I would like to say for my old friend--not my old friend, my young friend Mr. Carson from Arizona, that in spite of the comparatively small interest that Arizona has in the result of this conference--what can I say nice about you, Charlie?

COM. CARSON: I can't imagine.

MR. WALLACE: Whatever it is I would like to say it as I regard you an extremely useful member of this organization. I would like to go right down the line but I think maybe that is enough to say because for these two groups I have a very, very high regard.

COM. CARSON: Thank you.

COM. STONE: Thank you, Mr. Wallace; we appreciate that. Mr. Chairman, on the record the Chairman has been referring to and for about three days we have been referring to specific items on the agenda. In order that the agenda may be intelligible, may I suggest that at the beginning of this meeting the entire agenda be placed in the record.

THE CHAIRMAN: Yes, that is a good idea.

MR. BREITENSTEIN: Off the record. (Discussion off the record.)

THE CHAIRMAN: That is with the exception of Item (e), Group III on page 3 of the agenda.

COM. STONE: That is correct. Item (e) of Group III appearing on page 3 would not appear on the agenda as appearing in the record.

(Pursuant to the foregoing, agenda was copied into the record.)

MR. WEHRLI: Mr. Chairman, I don't know that my ideas exactly coincide with those of the Chairman of the Legal Advisory Committee or with those expressed by others present, but it doesn't seem to me quite essential for the Legal Advisory Committee to be entirely bound and limited by the instructions given to it by the Commissioners in session here. I would like to move that the Legal Advisory Committee, in addition to the matters specifically referred to it, prepare such additional introductory and formal provisions as the Committee believes should properly become a part of the compact; and that the Committee also give attention to a skeleton outline placing the different provisions in what the Committee deems to be a proper sequence.

Let me explain that I don't have in mind that the Committee will deal with any substantive matters except as same have been referred to the Committee. But I believe it would be helpful if the Legal Committee would correlate to some extent the different matters that have been assigned to it and come back with a report putting those in some proper relation to each other, leaving appropriate places for other things to be inserted, and also giving some attention to preparation of introductory statements that usually appear in these compacts and other formal matters that have not been specifically assigned to the Committee.

COM. STONE: Did you make that in the form of a motion, Mr. Wehrl?

MR. WEHRLI: Yes, I did.

COM. STONE: If that is a motion, I second it.

MR. WEHRLI: Of course, Mr. Bishop makes the motion.

THE CHAIRMAN: Yes, that is understood, seconded by Colorado. Is there a discussion of the motion as made by Mr. Bishop?

COM. WATSON: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Now, the Chair will not insist on his suggestion if you all understand what is to be done in the meantime, but the Chairman probably is a little more dense than some of you and I don't understand it and I still think a clear statement and concise statement should be made by someone on the work to be done in the interim and the correlation of that work so there will be no misunderstanding about it. We have about 45 minutes until twelve o'clock.

MR. WEHRLI: Mr. Chairman, as we understand it, there will be a preliminary meeting--

COM. STONE: Pardon me. I was going to suggest, Mr. Wehrli, that since the specific procedure which has been discussed and apparently approved was submitted by Mr. Breitenstein as a member of the Legal Committee from Colorado, I should be glad to ask Mr. Breitenstein on behalf of Colorado to place that procedure in the form of a motion in compliance with the suggestion of the Chair.

MR. WEHRLI: That is very agreeable.

THE CHAIRMAN: Mr. Breitenstein.

MR. BREITENSTEIN: The motion is that in the period between now and the next meeting of the Commission on July 7, the committees which have been authorized between the states affecting tributary basins, and the Legal Advisory Committee and the Engineering Advisory Committee, should be so correlated that prior to the meeting on July 7, there is presented to the Commission in the event of agreement between the states, recommendations as to the method of treatment of the tributaries and as to all other matters which have been discussed and referred to the Legal Advisory Committee and the Engineering Advisory Committee; and that it shall be the obligation of the representatives of the various states on those committees under the overall control and direction of the Chairmen of the Engineering Committee and the Legal Committee to so coordinate their efforts that this may be accomplished.

THE CHAIRMAN: Thank you, Mr. Breitenstein. That is a very clear statement I think.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there discussion of the motion as submitted by Mr. Breitenstein? Are there any questions concerning the motion? Mr. Riter?

MR. RITER: I can't remember all that he said. I would appreciate it, if the motion passes, if I might have a copy of it for my guidance in advance of the complete transcript of the whole meeting.

THE CHAIRMAN: And also for Mr. Carson, I believe, too.

MR. WALLACE: Question.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Yes.

THE CHAIRMAN: Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: New Mexico?

COM. WILSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: The Chairman at this time would like to express his appreciation of the intelligent manner in which the press has reported the progress of the Commission meetings. I find no fault whatever with the articles which I have read and I think the press is to be commended for its intelligent handling of this complex matter.

COM. CARSON: I move that the Commission meet at two o'clock to edit these minutes.

THE CHAIRMAN: Is there a second to the motion?

COM. STONE: I second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. STONE: Move we adjourn.

(Motion is seconded, a vote is taken and the motion carries unanimously.)

(11:30 a.m., Saturday, February 21, 1948; Commission adjourned until 10:00 a.m., Wednesday, July 7, 1948, at Vernal, Utah.)

UPPER COLORADO RIVER BASIN COMPACT COMMISSION

OFFICIAL RECORD OF MEETING NO. 7

July 7 - 21, inc., 1948

Field House of Natural History
Vernal, Utah

MEETING NO. 7
 Vernal, Utah
 July 7 - 21, 1948

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Appearances.	2	7	1
Call to Order.	2	7	5
Comments by Chairman Bashore.	2	7	5
Statement by Geraint Humpherys, Indian Affairs	2	7	5
Listing of Federal Agencies' Correspondence.	2	7	6
Motion by Com. Stone to Make Federal Letters Part of the Record; Seconded by Com. Watson.	2	7	8
Vote taken; carried.	2	7	8
Text, Department of Army Letter	2	7	8
Text, Department of Interior Letter	2	7	9
Text, Office of Indian Affairs Letter	2	7	10
Text, Bashore Letter to Secretary Krug.	2	7	11
Text, Department of Agriculture Letter.	2	7	13
Motion by Com. Stone that Commission Chairman Solicit State- ment from Atomic Energy Commission; Seconded by Com. Watson.	2	7	15
Vote taken; carried	2	7	15
Decision That All in Attendance May Contribute Comments.	2	7	15
Report of Engineering Advisory Committee	2	7	15
Explanation by Mr. Riter.	2	7	15
Text of Report.	2	7	16
Table on StreamFlows at Gaging Stations	2	7	24
Table on Depletions at State Lines.	2	7	25
Comments by Com. Stone re Copies of Report.	2	7	26
Comments by Chairman Bashore.	2	7	26
Comments by Mr. Tipton.	2	7	27
Comments by Mr. Wallace	2	7	27
Comments by Mr. Riter.	2	7	27
Noon Recess.	2	7	29
July 7 (Afternoon) 2 p. m.			
Outline of Meeting Schedule for Commission	2	7	29
Report of Legal Advisory Committee.	2	7	30
Text of Report.	2	7	30
Text of Attachments Submitted with Report.	2	7	34
Motion by Com. Stone That Engineering Committee's Report and Legal Committee's Report be Received and Made Part of the Record, for Further Consideration by the Commission;			
Seconded by Com. Watson.	2	7	40
Vote taken; carried.	2	7	41
Comments by Chairman Bashore.	2	7	41
Comments by Com. Stone	2	7	41
Motion by Com. Carson to Adjourn to July 8; Seconded by Com. Watson.	2	7	41
Vote taken; carried	2	7	42
July 8 (Forenoon) 9:30 a. m.			
Call to Order.	2	7	42
Remarks by Chairman Bashore.	2	7	42
Discussion of Apportionment and Measurement of Apportion- ment.	2	7	42

	Vol.	Mtg.	Page
Analysis by Mr. Tipton (With Charts, Maps and Graphs) . . .	2	7	42
Comments by Mr. Wallace	2	7	48
Comments by Chairman Bashore.	2	7	51
Comments by Mr. Goodrich.	2	7	54
Comments by Mr. Meeker.	2	7	55
Motion by Com. Watson Suggested by Mr. Wallace that Colorado Offer of Tipton Charts for Record Be Accepted; Seconded by Com. Wilson.	2	7	56
Vote taken; carried	2	7	56
Further Discussion of Tipton Analysis.	2	7	57
Comments by Mr. Clyde	2	7	57
Comments by Mr. Wehrli.	2	7	57
Comments by Mr. Breitenstein.	2	7	60
Comments by Com. Watson	2	7	61
Comments by Com. Carson	2	7	61
Comments by Com. Stone.	2	7	62
Comments by Chairman Bashore.	2	7	62
Comments by Com. Wilson	2	7	62
Adjournment to July 9.	2	7	63

July 9 (Forenoon) 9:30 a. m.

Call to Order.	2	7	63
Colorado Proposal by Com. Stone for Percentage Apportionment of Water, with Colorado to Claim 56 Per cent	2	7	63
Conditions of Acceptance.	2	7	64
Wehrli Correction of Figures Submitted by Him July 8	2	7	64
Report on Region 4 Studies of Reservoir Operations on Colorado River and Flow at Lee Ferry.	2	7	65
Explanation by Mr. Larson.	2	7	65
Comments by Chairman Bashore.	2	7	66
Larson Charts for Record.	2	7	67
Wyoming Statement on Percentage Apportionment, Claiming 16 Per cent	2	7	67
Explanation by Com. Bishop.	2	7	67
Utah Statement on Percentage Apportionment, Claiming 28 Per cent	2	7	68
Comments by Com. Watson	2	7	68
Arizona Statement on Apportionment	2	7	69
Comments by Com. Carson	2	7	69
Comments by Mr. Ritter	2	7	69
New Mexico Statement on Percentage Apportionment, Claiming 15 Per cent.	2	7	69
Distribution of Colorado Statement in Mimeographed Form.	2	7	70
Comments by Com. Watson	2	7	70
Comments by Com. Stone.	2	7	70
Comments by Mr. Tipton.	2	7	70
Comments by Mr. Breitenstein.	2	7	71
Comments by Mr. Wehrli.	2	7	71
Motion by Com. Watson that Each State Prepare Written Justifications for Water Apportionment, Similar to Colorado Statement, for Study by Commission; Seconded by Com. Stone.	2	7	71
Comment by Com. Carson.	2	7	71
Vote taken; carried	2	7	72

	Vol.	Mtg.	Page
Consideration of Articles Contained in Legal Committee			
Report.	2	7	72
Committee Report.	2	7	72
Comments by Mr. Clyde	2	7	72
Comments by Com. Stone.	2	7	72
Comments by Mr. Wehrli.	2	7	72
Motion by Com. Watson That Commission Proceed Article-by-Article Analysis of Legal Committee Report, to Approve or Reject Principles Involving No Controversy, and Delay Action on Controversial Items; Seconded by Com. Stone			
Vote taken; carried	2	7	74
Motion by Com. Stone that J. G. Will, Federal Legal Adviser, be Chairman of Drafting Committee, and that Each of the Five States Name One Member to Committee; Seconded by Com. Wilson.			
Vote taken; carried	2	7	74
Personnel of Drafting Committee.	2	7	75
Consideration of Items of Legal Committee Report	2	7	75
Attachment "A"			
Comments by Com. Carson	2	7	76
Comments by Mr. Clyde.	2	7	76
Motion by Com. Stone to Accept Attachment "A" in Principle and Refer It to Drafting Committee; Second by Com. Watson			
Comments by Mr. Bliss	2	7	77
Comments by Mr. Breitenstein.	2	7	77
Comments by Mr. Tipton.	2	7	77
Comments by Mr. Rollins	2	7	78
Comments by Mr. Clyde	2	7	78
Comments by Com. Stone.	2	7	78
Stone motion amended and revised			
Comments by Mr. Riter	2	7	78
Comments by Mr. Breitenstein.	2	7	79
Comments by Chairman Bashore.	2	7	80
Comments by Mr. Clyde	2	7	80
Comments by Mr. Tipton.	2	7	80
Comments by Mr. Bliss	2	7	81
Vote on Amendment; carried.	2	7	81
Vote on Amended Motion; carried	2	7	81
Attachment "B".			
Comments by Com. Carson	2	7	81
Motion by Com. Watson to Adopt Attachment "B" in Principle and Refer It to Drafting Committee; Seconded by Com. Bishop.			
Comments by Mr. Will.	2	7	81
Amendment to Include Other Relevant Agencies.	2	7	82
Motion Withdrawn, to Permit Submission of Reframed Motion.	2	7	82
Motion by Com. Wilson That Attachment "B" Be Tentatively Approved and Referred to Drafting Committee, with Authority to Incorporate Language for Suggestions by Mr. Will and Com. Stone; Seconded by Com. Carson.			
Vote taken; carried.	2	7	83
Appointment of Jesse A. Udall of Arizona to Drafting Committee	2	7	83
Attachment "C".			
Comments by Com. Carson	2	7	83
Comments by Mr. Breitenstein.	2	7	83

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Com. Carson to Accept Attachment "C" in Principle and Refer It to Drafting Committee; Seconded by Com. Watson.	2	7	85
Vote taken; Carried	2	7	83
Attachment "D"	2	7	83
Comments by Com. Carson	2	7	83
Motion by Com. Carson That Attachment "D" be Approved in Principle and Referred to Drafting Committee; Seconded by Com. Watson.	2	7	83
Recommendation by Com. Stone.	2	7	83
Vote taken; Carried	2	7	84
Attachment "E".	2	7	84
Comments by Com. Carson	2	7	84
Motion by Com. Stone to Defer Attachment "E" for Consideration at a Later Time; Seconded by Com. Carson.	2	7	84
Vote taken; Carried.	2	7	84
Attachment "F"	2	7	84
Comments by Mr. Clyde	2	7	84
Comments by Com. Wilson	2	7	84
Comments by Mr. Breitenstein.	2	7	84
Motion by Com. Carson to Adopt Attachment "F" in Principle and Refer to Drafting Committee; Seconded by Com. Wilson.	2	7	84
Vote taken; Carried	2	7	85
Attachment "J".	2	7	85
Comments by Com. Carson.	2	7	85
Motion by Com. Stone That Subparagraph (a) of Attachment "J" Be Stricken; Seconded by Com. Bishop.	2	7	85
Comments by Mr. Breitenstein.	2	7	85
Vote taken; Carried	2	7	86
Motion by Com. Carson that Balance of Attachment "J" be Approved in Principle as Revised, and Referred to Drafting Committee; Seconded by Com. Watson.	2	7	86
Comments by Mr. Breitenstein.	2	7	86
Comments by Com. Carson	2	7	86
Comments by Com. Stone.	2	7	86
Comments by Mr. Howell.	2	7	86
Amended Motion Submitted by Com. Stone; Seconded by Com. Watson.	2	7	87
Vote Taken; Amended motion carried.	2	7	87
Attachment "K"	2	7	87
Comments by Com. Carson	2	7	87
Motion by Com. Bishop That Attachment "K" be Approved in Principle and Referred to Drafting Committee; Seconded by Com. Watson.	2	7	88
Comments by Mr. Humpherys	2	7	88
Comments by Com. Carson	2	7	89
Comments by Com. Stone.	2	7	89
Comments by Mr. Threet.	2	7	90
Comments by Mr. Howell.	2	7	90
Vote taken; Carried	2	7	90
Adjournment to July 10	2	7	91

July 10 (Forenoon) 9:30 a. m.

	Vol.	Mtg.	Page
Call to Order	2	7	91
Attachment "L"	2	7	91
Comments by Com. Carson	2	7	91
Comments by Com. Watson	2	7	91
Motion by Com. Carson that Attachment "L" be Approved in Principle and Referred to Drafting Committee; Seconded by Com. Bishop	2	7	91
Comments by Com. Stone	2	7	91
Vote taken; Carried	2	7	92
Attachment "M"	2	7	92
Comments by Com. Carson	2	7	92
Motion by Com. Stone That Attachment "M" be Approved in Principle and Referred to Drafting Committee; Seconded by Com. Watson	2	7	92
Vote taken; Carried	2	7	92
Attachment "N" (Included in action on Attachment "J")	2	7	92
Attachment "O"	2	7	92
Comments by Com. Carson	2	7	92
Motion by Com. Stone That Attachment "O" Be Rejected; Seconded by Com. Watson	2	7	92
Comments by Mr. Wehrli	2	7	93
Comments by Com. Stone	2	7	93
Comments by Mr. Tipton	2	7	93
Comments by Com. Wilson	2	7	94
Vote taken; Carried	2	7	94
Attachment "P"	2	7	94
Comments by Com. Carson	2	7	94
Motion by Com. Carson That Attachment "P" Be Approved in Principle and Referred to Drafting Committee; Seconded by Com. Wilson	2	7	94
Vote taken; Carried	2	7	94
Attachment "Q" (Action deferred)	2	7	94
Comments by Com. Stone	2	7	94
Comments by Mr. Tipton	2	7	95
Comments by Com. Carson	2	7	95
Motion by Com. Stone That Other Articles Previously Tentatively Approved Also Be Referred to Drafting Committee; Seconded by Com. Carson	2	7	95
Vote taken; Carried	2	7	95
Colorado Statement of Justification of Claim of 56 Per cent of Water	2	7	95
Analysis by Mr. Tipton	2	7	95
Text of Colorado Statement	2	7	96
Utah Statement for Justification of 28 Per cent of Water	2	7	97
Analysis by Com. Watson	2	7	97
Text of Utah Statement	2	7	97
Comments by Mr. Riter	2	7	98
Arizona Statement on Water Apportionment	2	7	98
Analysis by Com. Carson	2	7	98
Text of Arizona Statement	2	7	98

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
New Mexico Statement of Justification of Claim of 15			
Per cent of Water.	2	7	99
Comments by Com. Wilson.	2	7	99
Analysis by Mr. Bliss.	2	7	99
Text of New Mexico Statement	2	7	99
Wyoming State of Justification of Claim of 16 Per cent of			
Water.	2	7	100
Analysis by Com. Bishop.	2	7	100
Text of Wyoming Statement.	2	7	100
Motion by Com. Stone to Recess to Monday for States to Study			
Water Apportionment Statements; Seconded by Com. Carson.	2	7	101
Vote taken; Carried with one Dissenting Vote	2	7	101
Roll Call asked; Wyoming "No" Vote Explained.	2	7	101
Comments by Mr. Wehrli.	2	7	101
Comments by Com. Stone	2	7	102
Comments by Chairman Bashore	2	7	102
Comments by Com. Wilson.	2	7	102
Comments by Com. Bishop.	2	7	103
Comments by Mr. Bliss.	2	7	103
Arrangements for Two-State Conferences.	2	7	104
Vote taken on adjournment to July 12; Carried.	2	7	104

July 12 (Forenoon) 9:30 a.m.

Call to Order.	2	7	105
Comments by Com. Stone.	2	7	105
Comments by Com. Watson	2	7	105
Comments by Mr. Wehrli.	2	7	105
Comments by Com. Carson	2	7	105
Motion by Com. Carson to Compare States' Justification Figures			
With Bureau Report on Potentialities; Seconded by Com.			
Watson	2	7	106
Comments by Com. Wilson	2	7	106
Comments by Mr. Tipton.	2	7	107
Comments by Mr. Wehrli.	2	7	108
Comments by Com. Carson	2	7	109
Vote taken; Carried 4 to 1, Wyoming Voting "No"	2	7	109
Comment by Chairman Bashore	2	7	109
Motion by Com. Stone That Engineering Advisers of Each State			
be Authorized to Meet and Approach Formula for Compact on			
Basis of Potentialities for each State; Seconded by Com. .			
Wilson.	2	7	110
Roll Call; Carried (Wyoming not voting.	2	7	110
Personnel of Engineering Advisers' Committee	2	7	110
Motion by Com. Watson for Commission to Recess, Subject to			
Call when the Engineering Advisers Are Ready to Report;			
Seconded by Com. Stone	2	7	111
Vote taken; Carried.	2	7	112

July 13 (Forenoon) 9:30 a.m.

Call to Order.	2	7	112
Comments by Chairman Bashore.	2	7	112
Report of States' Engineering Advisers	2	7	112
Analysis by Mr. Tipton.	2	7	112
Comments by Com. Wilson	2	7	112

Motion by Com. Stone That Report of Engineering Advisers be Received, Referred to Commission for Consideration and Made a Part of Official Minutes of the Commission;

Seconded by Com. Watson. 2 7 114

Vote taken; Carried. 2 7 115

Text of Engineering Advisers' Report 2 7 115

Comments by Hr. Wehrli 2 7 117

Comments by Com. Stone 2 7 118

Comments by Chairman Bashore 2 7 118

Comments by Com. Watson. 2 7 118

Motion by Com. Watson for Commission to Resolve Itself Into a Series of States' Meetings; Seconded by Com. Bishop . . . 2 7 119

Vote taken; Carried. 2 7 119

Schedule for States' Meetings 2 7 119

Motion to Approve Schedule; Carried. 2 7 120

Recess to July 14. 2 7 120

July 14 (Forenoon) 9:30 a.m.

Call to Order. 2 7 120

Comments by Chairman Bashore 2 7 120

Arrangements for Continuation of States' Meetings 2 7 120

Adjournment to July 15. 2 7 121

July 15 (Forenoon) 9:30 a.m.

Call to Order. 2 7 122

Recess Continued to July 16, to Permit More States' Meetings. 2 7 122

July 16 (Forenoon) 9:30 a.m.

Call to Order. 2 7 122

Motion by Com. Carson to Continue Recess for States' Meetings, Subject to call of the Chair; Seconded by Com. Bishop. . . 2 7 123

Vote taken; Carried. 2 7 123

July 19 (Forenoon) 9:30 a.m.

Call to Order. 2 7 123

Comments by Chairman Bashore 2 7 123

Percentage Formula for Apportionment of Upper Basin Water Submitted by Chairman Bashore 2 7 124

Adjournment to Permit States to Study Percentage Formula. . . 2 7 124

July 19 (Evening) 8 p.m.

Call to Order. 2 7 124

Comments by Chairman Bashore 2 7 124

Utah Request for Delay in Vote on Bashore Percentage Formula. 2 7 124

Vote Delayed to July 20. 2 7 124

Motion by Com. Carson to Adjourn to July 20; Seconded by Com. Wilson 2 7 125

Vote taken; Carried. 2 7 126

July 20 (Forenoon) 10 a.m.

Call to Order 2 7 126

Comments by Chairman Bashore 2 7 126

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Utah Request for Further Delay in Vote on Percentage Formula	2	7	126
Arrangement for Meeting of Drafting Committee	2	7	127
Recess, Subject to Call of the Chair.	2	7	128

July 20 (Evening) 8 p.m.

Call to Order	2	7	123
Comments by Chairman Bashore	2	7	128
Introduction of Members of Utah Water and Power Board.	2	7	128
States Ready to Vote on Percentage Formula.	2	7	128
Tabulation of Written Ballots	2	7	129
Voting "Aye"--New Mexico, Colorado, Utah, Wyoming and Arizona (Unanimous).	2	7	129
Comments by Chairman Bashore	2	7	129
Comments by Mr. Wehrli	2	7	130
Comments by Com. Carson.	2	7	130
Report of Drafting Committee.	2	7	130
Comments by Mr. Skeen.	2	7	130
Text of Drafting Committee Report	2	7	130
Recess to July 21.	2	7	137

July 21 (Forenoon) 9 a.m.

Call to Order	2	7	138
Motion by Com. Watson That Articles As Submitted by Drafting Committee be Accepted and Written into the Compact, Subject to Language Revisions	2	7	138
Language Revision by Mr. Wehrli.	2	7	138
Language Revisions by Com. Stone	2	7	138
Motion Seconded by Com. Stone	2	7	139
Vote taken; Carried.	2	7	139
Motion by Com. Stone to Refer Article on Apportionment of Water to Upper Basin States to Drafting Committee; Seconded by Com. Carson.	2	7	139
Vote taken; Carried	2	7	139
Introduction of Special Arizona Article for Compact	2	7	139
Comments by Com. Carson.	2	7	140
Motion by Com. Carson to Accept Arizona Article in Principle and Refer to Drafting Committee.	2	7	140
Utah (Howell) Amendment to Name Also New Mexico and Utah in Special Article (Accepted as Amendment).	2	7	140
Vote taken; Amended Motion Carried	2	7	140
Motion by Com. Watson That Proposed Article on Charge for Diverted Water Be Accepted in Principle and Referred to Drafting Committee; Seconded by Com. Stone	2	7	140
Vote taken; Carried.	2	7	141
Bashore Commendation to Mr. Wallace	2	7	141
Motion by Com. Stone That Two Articles (re Colorado-New Mexico Water and re Colorado-Utah water) be Referred to Drafting Committee for Statement in Principle, but to Require Engineering Study; Seconded by Com. Wilson	2	7	141
Text of San Juan Article	2	7	141
Text of Yampa Article.	2	7	141
Vote taken; Carried.	2	7	142

	Vol.	Pt.	Page
Arrangements for Little Snake Article (Colorado-Wyoming)	2	7	142
Consideration of Time and Place for Next Meeting.	2	7	142
Comments by Com. Stone re Engineering Committee Assign- ment.	2	7	142
Comments by Mr. Tipton	2	7	142
Motion by Com. Stone to Refer Pertinent Engineering Matters to Engineering Committee for Study and Report at Next Meeting of the Commission; Seconded by Com. Bishop	2	7	143
Vote taken; Carried.	2	7	143
Motion by Com. Stone Authorizing Drafting Committee to Determine Order of Articles in Compact; Seconded by Com. Bishop.	2	7	143
Vote taken; Carried	2	7	143
Invitation to Meet in Santa Fe, New Mexico.	2	7	143
Invitation to Meet in Jackson, Wyoming.	2	7	144
Motion by Com. Wilson to Meet October 4, 1949 in Santa Fe; Seconded by Com. Bishop (Carried).	2	7	144
Suggestion by Com. Carson to Recess to Permit Work by Drafting Committee.	2	7	144
Recess, Subject to Call of the Chair.	2	7	145
July 21 (Afternoon) 12:30 p.m.			
Call to Order.	2	7	145
Comments on Utah Hospitality.	2	7	145
Report of Drafting Committee.	2	7	145
Comments by Mr. Skeen.	2	7	145
Motion by Com. Stone That Report of Drafting Committee be Approved, Inserted into Record, and Accepted as Draft of Upper Colorado River Basin Compact, Subject to Technical Revisions and Final Agreements by States on Interstate Waters; Seconded by Com. Carson.	2	7	146
Vote taken; Carried.	2	7	146
Text of Compact as Prepared by Drafting Committee	2	7	146
Motion by Com. Bishop That Final Drafting Committee be Composed to One Federal Representative and One Representative from Each State, to Meet prior to Santa Fe Meeting; Seconded by Com. Watson.	2	7	154
Vote taken; Carried.	2	7	155
Personnel of Final Drafting Committee	2	7	155
Motion by Com. Carson to Express Appreciation to People of Vernal and Uinta Basin; Seconded by Com. Bishop	2	7	155
Vote taken; Carried.	2	7	155
Motion by Com. Bishop to Recess to October 4, 1948, at Santa Fe, New Mexico; Seconded by Com. Wilson.	2	7	155
Vote taken; Carried.	2	7	155

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OFFICE OF INDIAN AFFAIRS:

Geraint Rumpherys	Chief Irrigation Counsel, Indian Service, Los Angeles, California.
R. H. Rupkey	Hydraulic Engineer, Indian Service, Phoenix, Arizona.
J. E. Stenberg	Indian Service, Fort Duchesne, Utah.

PROCEEDINGS

The meeting was called to order by Chairman Bashore at ten o'clock a.m., Wednesday, July 7, 1948, in the Field House of Natural History at Vernal, Utah.

THE CHAIRMAN: Will the meeting please come to order. It will be recalled that in the meeting of the Commission held in Denver in December several questions were directed by the Commission to various Federal agencies. Since that time replies have been received by the Chairman of the Commission and copies of those replies have been furnished to each member of the Commission. Only today a copy of a letter from the Acting Secretary of the Army, dated February 17, 1946, is being furnished to the members of the Commission.

It will be recalled that maybe a year or a year and a half ago the Commission appointed an Engineering Advisory Committee and assigned to that committee the task of working out solutions of various problems. It will also be recalled that at the February meeting of the Commission held in Denver there was assigned by the Commission to the Legal Advisory Committee, which had been previously appointed, a number of questions, and the idea of preparing a skeleton draft of the compact after consultation with the Engineering Advisory Committee for the consideration of the Commission at this meeting. Last week from Tuesday to Saturday, inclusive, the Engineering Advisory Committee and the Legal Advisory Committee met in Denver for the purpose of carrying out the wishes of the Commission. A joint meeting of the two committees was held and your chairman was asked to act as chairman of those meetings. In the opinion of your chairman a lot of excellent work was accomplished at these meetings in Denver.

Now while five days were used in Denver by the two committees I doubt if over a day and a half was used in a formal meeting, but what happened was that problems would come up in the meeting, then the meeting would adjourn and different groups would go to their respective rooms or offices and try to do some work. That seems to be an excellent way of doing work.

The report of the Engineering Advisory Committee will be rendered later and also the report of the Legal Advisory Committee. I don't know when we will get to those reports. It will depend on how much discussion is brought forth by the rendition of each of them--I think the Engineering report undoubtedly should be given first--but, before we get to the submission of those reports and in view of the possibility of some modification being necessary on those reports we are going to hear from the representatives of the Office of Indian Affairs who are here at the suggestion of the Secretary of the Interior and at the invitation of your chairman. I don't know what more these men can add to the information which has been given in regard to the rights of the Indians but we certainly want to hear from them and we want to hear from any Federal agency, so far as that is concerned, in case it is felt that the interest of that particular agency hasn't been adequately presented or additional information is available.

So at this time we have with us Mr. Humpherys of the Office of Indian Affairs. Mr. Humpherys is a very well informed lawyer, recognized as an authority on Indian rights; and also Mr. Rupkey, an engineer of the Office of Indian Affairs, men of unquestioned attainments in their field.

At this time the Chairman will ask Mr. Humpherys to take the floor and make any remarks that he may feel appropriate.

MR. HUMPHERYS: Mr. Chairman and ladies and gentlemen: I think your chairman has very fittingly introduced what I might say by stating that he didn't know that there was much that could be said, and I don't either.

As I understand it, at some time the Commission through the Chairman requested the Department to express its views regarding the Indian rights. I do not have a copy of that letter but I do have a copy of the letter from the Assistant Secretary dated June 11th and which transmitted a memorandum from the Acting Commissioner of Indian Affairs to your Chairman and through him to the Commission, setting forth briefly the position of the Indian Bureau with reference to the water rights of the American Indians, who have been using water for some two thousand years at various places in the United States.

I understand that your chairman has distributed to each of you copies of Mr. Warne's letter of June 11th, 1948, together with a memorandum to the Secretary from the Acting Commissioner of Indian Affairs, covering the proposed recognition of Indian water rights in the Upper Colorado River Basin, and the other documents which accompanied that letter.

It would serve no useful purpose for me to try to summarize what was stated either in that memorandum or the accompanying documents. I think it would be appropriate to call attention in an oral statement to some suggested language that was contained in the memorandum of the Acting Commissioner of Indian Affairs to the Secretary of the Interior, and as heretofore indicated, transmitted by Assistant Secretary Warne to you through your chairman on June 11th of this year. That language reads as follows:

"In compliance with Mr. Bashore's request, I have hereinafter set forth a paragraph or provision which I believe, if included in the proposed Upper Colorado River Basin Compact, would protect the water rights of the Indians as defined in the enclosed memorandum and as briefly summarized herein."

The proposed language reads as follows:

"Apportionment of water for which provision is made in this compact is subject to the first and prior water rights reserved for Indians, for Indian tribes, and for Indian reservations whether such first and prior water rights of the Indians are inchoate or covered by Federal court decrees."

I might add that many of the rights are already covered or at least some of them are already covered by Federal Court decrees in the several states.

Some of the data sheets which were submitted along with the memorandum submitted by the Secretary contain the Indian Service's best estimate of the reasonable requirements for irrigation and domestic uses for the Indians in the several states using water from the Colorado River or its tributaries in the Upper Basin.

Unless there are some other questions I doubt if it would serve any useful purpose for me to prolong my remarks or add anything further to what the Commissioner has already said and which as I understand it is already in your hands together with the Secretary's letter.

THE CHAIRMAN: Thank you very much, Mr. Humpherys.

COM. STONE: Mr. Chairman, in order that the Commission may know what is before it with respect to the presentations of the Federal agencies, it would seem to me appropriate that the Federal representative, the Chairman of our Commission, would indicate to the Commission those letters and statements presented by Federal agencies and which have not yet been considered by the Commission and made a part of the record.

I recall that you sent out a number of statements since our last meeting and today we understand there is a further statement and it would seem to me that those statements ought to be indicated and that after being indicated they be made a part of the record of the Commission and that we go over them. I have in mind particularly the statement made by Mr. Humpherys. He refers to a statement by the Secretary of the Interior dated June 11th which contains a number of matters and which has attached to it the statement of the Commissioner of Indian Affairs.

THE CHAIRMAN: Judge Stone, I think that is an excellent suggestion and the Chair hereby appoints you as a committee of one to enumerate to the Commission and for the record a list of the letters which have been received and distributed, and in that connection I herewith hand you for distribution to the members of the Commission, copies of a letter dated February 17, 1948, from the Acting Secretary of the Army.

COM. STONE: Mr. Chairman, I hesitate to list those statements because I am not certain that my files are complete, I was just looking over them, and I assumed you had the originals and they would be the best evidence of those letters. I have mimeographed copies of only two of them here but I am quite sure that is not a complete list. I thought the originals you had in your possession would be the most complete list.

THE CHAIRMAN: Judge Stone, I do not have the originals with me but I think I have a complete set of the copies and if you will be kind enough to read those that you have I will endeavor to check it and I will ask that other members of the Commission do likewise.

COM. STONE: It appears that the following letters are now presented to the Commission and have not heretofore been made a part of the record:

One from the Department of the Army dated February 17, 1948. This is the letter which has just been distributed.

Second, there is a letter or memorandum dated June 11th, 1948, from the Secretary of the Interior to which is attached a memorandum to the Secretary of the Interior from the Acting Commissioner of Indian Affairs.

THE CHAIRMAN: That letter is undated, I believe.

COM. STONE: That memorandum appears to be undated. As a part of that letter from the Commissioner of Indian Affairs is a memorandum heretofore presented to the Commission and I believe made a part of the record dated November 25, 1946.

MR. HUMPHERYS: Judge Stone, may I ask, as to that one I assume you are referring to the one from the Commissioner of Indian Affairs to Mr. Hoyt, Executive Officer, Water Resources Committee, Department of the Interior?

COM. STONE: That is correct. That was attached and is dated November 25, 1946.

THE CHAIRMAN: And to that letter, Judge Stone, was attached a tabulation?

COM. STONE: Yes, attached to that letter is a "Summary Indian Irrigation Projects, Upper Colorado River Basin, Based upon Surveys to Nov. 1, 1946, Estimated Diversions and Stream Depletions in Acre Feet."

Then, Mr. Chairman, there were other letters as I recall it which were supplied to the members of this Commission since our last meeting and I believe

the Chairman should state what those are. My record in this file seems to be incomplete because I recall some others that don't appear to be here.

THE CHAIRMAN: There is one letter, Judge Stone, dated June 16, 1948, from the Chairman of the Upper Colorado River Basin Compact Commission to the Secretary of the Interior inviting attendance at the meeting of the Compact Commission by the Office of Indian Affairs and by representatives of Regions 4 and 7. So far as I can recall that constitutes the essential list of letters.

COM. STONE: Mr. Chairman, I move that these letters which have been mentioned be made a part of the record of this Commission.

COM. WATSON: Second the motion.

THE CHAIRMAN: Any discussion of the motion? (No response.)
(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(Letters referred to are as follows:)

"DEPARTMENT OF THE ARMY
WASHINGTON, D. C.

17 FEB 1948

Mr. Harry W. Bashore
Federal Representative and Chairman
Upper Colorado River Basin Compact Commission
Mitchell, Nebraska

Dear Mr. Bashore:

Reference is made to your letter of 15 December 1947 in which you stated that you had been requested at a meeting of the Upper Colorado River Basin Compact Commission held in Denver, Colorado, on 2 December 1947, by a motion duly made and seconded and unanimously carried to 'direct a letter to all of the Federal agencies that have heretofore been contacted by the Chairman, asking them to answer two specific questions, namely: What right, if any, to the use of Upper Colorado River water does the agency have or claim on behalf of the United States? What particular provision and what particular language should be incorporated in any Upper Colorado River Basin Compact to protect the right, if any, to the use of Upper Colorado River water held or claimed by an agency on behalf of the United States?' You requested in your letter a statement in response to the questions set forth by the Commission.

The Corps of Engineers of the Department of the Army is at present engaged in the preparation of a preliminary examination and survey report on the Colorado River above Lees Ferry, Arizona, under authority of the Flood Control Act approved 28 June 1938. This report is now under preparation by the District Engineer, Corps of Engineers, Los Angeles, California, under the general supervision of the Division Engineer, South Pacific Division, Oakland, California. Although the results of this investigation will not be available for sometime, it can be stated that they will not affect the question of right to the use of water of the Upper Colorado River Basin by the Department of the Army. The Department does not now have or claim on behalf of the United States any right to the use of Upper Colorado River water and does not, therefore, require any particular provision or language to be incorporated in any Upper Colorado River Basin Compact.

Sincerely yours,

(Signed)

William H. Draper, Jr.

Acting Secretary of the Army."

"UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

June 11, 1948

My dear Mr. Bashore:

In your letter of December 15, 1947, you requested a statement of what right, if any, to the use of Upper Colorado River Water the Department of the Interior has or claims on behalf of the United States. You also asked, 'What particular provisions and what particular language should be incorporated in any Upper Colorado River Basin Compact to protect rights, if any, to the use of Upper Colorado River water held or claimed by an agency on behalf of the United States?' The matter of Indian rights is treated in a separate letter.

Your questions were answered in part by our letter of November 12, 1946. In that letter it was pointed out that 'Water rights involving the use of 62.50 second-feet of water in the 17 National Park Service areas have been perfected to the stage of permit, license, or decree, in conformity with the water laws of the several States.' Some general suggestions were also made in that letter which are reiterated here:

(1) The National Park Service favors a flexible compact which will not prematurely determine the allocation of land and water to the multiple purposes for which developments are being made.

(2) The natural water courses are the most important single factor in the wildlife habitat of the Upper Colorado River Basin. Hence, any plan for allocation and development of water, to be truly comprehensive, must give full consideration to conservation and enhancement of fish and wildlife values.

(3) The Geological Survey suggested that inclusion in the proposed compact of a paragraph similar to Article V of the Colorado River Compact, which provides for the collection of water data by the heads of the Bureau of Reclamation and the Geological Survey and appropriate officials of the States concerned, would be helpful in dealing with problems of the Upper Basin.

You are, I am sure, aware of the importance of taking account of extensive filings made in the name of the United States pursuant to Section 8 of the Act of June 17, 1902 (32 Stat. 388) and other laws. We hope, of course, that the framers of the compact will not attempt to affect adversely existing uses of the waters of the Colorado River System. There must also be borne in mind rights and claims made by water users and others to water for projects to be constructed by the Bureau of Reclamation. Protection of the interests of the United States should not, however, be limited to cases where filings have been or may be under State law.

The compact should not attempt, in our judgment, to define, limit, or

in any manner to determine the powers of the United States in, over, or to the waters of the Colorado River System. The extent to which those powers should be exercised is a matter for determination by the Congress.

Sincerely yours,

(Signed) William E. Warne

Assistant Secretary of the Interior

Mr. Harry W. Bashore
Federal Representative and Chairman
of the Upper Colorado River Basin
Compact Commission
Mitchell, Nebraska."

(Attachment to preceding letter.)

"UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON 25, D. C.

(Not dated.)

Memorandum

To: Secretary of the Interior

From: Acting Commissioner - Indian Affairs.

Subject: Proposed letter to Harry Bashore re recognition of Indian water rights in the Upper Colorado.

In a letter of December 15, 1947, Mr. Bashore requested that our views be set forth concerning whatever rights to waters of the Upper Colorado River the agencies of the Department may have and that suggested language be submitted for inclusion in the proposed Upper Colorado River Basin Compact, a provision which would protect such rights.

As you know, the Indians have a paramount right to use enough water from the Colorado River and its tributaries to irrigate their lands. Their usufructuary rights have been recognized in practice, defined and recognized in numerous judicial decisions irrespective of whether the creation of their reservations resulted from treaties, Acts of Congress, or Executive Orders made pursuant to the provisions of law. The leading case defining the basis and extent of their water rights is Winters v. United States, 207 U. S. 564. Many cases have been decided since that one, both in the lower Courts and the United States Supreme Court wherein the principles of the Winters case have been followed and reaffirmed. Briefly, their rights as defined by the courts and this Department are: that the Indians, or their sovereign guardian for them, are entitled to divert and use waters from streams bordering on or running through or arising on their reservations, with a priority not later than the date their respective reservations were created and that such right of usufruct carries a water duty sufficient to irrigate their lands adequately. A more detailed statement of these rights was set forth in my memorandum of November 25, 1946, to Mr. W. G. Hoyt, Executive Officer of the Water Resources Committee, to which was attached a tabular summary of information concerning

Indian irrigation projects and water requirements therefor in said basin.
(A copy of that memorandum is enclosed).

In compliance with Mr. Bashore's request, I have hereinafter set forth a paragraph or provision which I believe, if included in the proposed Upper Colorado River Basin Compact, would protect the water rights of the Indians as defined in the enclosed memorandum and as briefly summarized herein.

'Apportionment of water for which provision is made in this compact is subject to the first and prior water rights reserved for Indians, for Indian tribes, and for Indian reservations whether such first and prior water rights of the Indians are inchoate or covered by Federal court decrees.'

The Indian Service will be glad to meet with Mr. Bashore and the Upper Basin Compact Commission at the convenience of Mr. Bashore and the Commission to discuss further the problems involved.

Acting Commissioner.

Enclosure 95
6 meg 11

Copy to:

Mr. Harry W. Bashore,
Federal Representative & Chairman,
Upper Colo. River Basin Compact Commission,
Mitchell, Nebraska.

Law Division."

(The memorandum dated November 25, 1946 and tabulation referred to in the above undated memorandum and attached thereto is set forth in the Official Record of Meeting No. 5.)

"Mitchell, Nebraska
June 16, 1948

Honorable J. A. Krug
Secretary, Department of the Interior
Interior Building
Washington, D. C.

My dear Mr. Secretary:

Receipt is acknowledged of the letter, with the accompanying materials, of Assistant Secretary W. E. Warne relating to the Upper Colorado River Basin Compact negotiations.

I suggest, and strongly urge, that a representative or representatives of the Office of Indian Affairs attend the meeting of the Commission which convenes at Vernal, Utah, on July 7, 1948.

It is assumed that representatives of the Bureau of Reclamation, including representatives of Region 4 and 7, will be in attendance at this Compact Session. As you no doubt know, John R. Riter, Chief, Hydrology Division, Branch of Project Planning, and J. G. Will, of the legal staff of

the Bureau, are respectively chairman of the Engineering Committee of the Commission and legal adviser to me. It is expected that both of them will attend this compact meeting.

Respectfully yours,

Harry W. Bashore
Federal Representative and Chair-
man, Upper Colorado River Basin
Compact Commission."

COM. STONE: Mr. Chairman, would it be appropriate because of the importance of the participation of the Department of the Interior and the Bureau of Reclamation in the development of the Colorado River Basin to in more detail review that letter from the Secretary of the Interior dated June 11, 1948?

THE CHAIRMAN: That will be entirely satisfactory, Judge, in just a moment. The Chair wanted to call on Mr. Rupkey in case he wishes to say anything in addition to what Mr. Humpherys has said.

MR. RUPKEY: Mr. Chairman, I believe I have nothing in addition to what Mr. Humpherys has said.

THE CHAIRMAN: Very well. Thank you. Now reverting to Judge Stone's suggestion for a more detailed consideration of the letter of June 11, 1948, from the Department of the Interior, signed by William E. Warne, Assistant Secretary of the Interior--that is the one to which you have reference, is it not, Judge?

COM. STONE: Yes.

THE CHAIRMAN: I suggest that our secretary read the letter.
Mr. Giles.

(Mr. Giles reads letter.)

THE CHAIRMAN: Now, gentlemen, you have had this letter in your possession for sometime, you have heard it read by Mr. Giles; are there any comments on the letter at this time that anyone wishes to make?

MR. HUMPERYS: Mr. Chairman, I hate to bother but am I mistaken in my assumption that the Assistant Secretary also wrote a letter dated the 11th with which he transmitted the memorandum of the Acting Commissioner of Indian Affairs to the Secretary of the Interior to which I referred in my remarks?

THE CHAIRMAN: You were correct. That is another letter of June 11th. Perhaps that letter should also be read. Unless there is objection the secretary will read that letter.

COM. STONE: That letter, Mr. Chairman, is attached and it is in the form of a memorandum addressed to the Secretary of the Interior.

MR. GILES: Addressed to the Secretary, Judge Stone? Does it commence by saying, "In a letter of December 15th..?"

COM. STONE: Yes.

(Mr. Giles reads undated memorandum.)

COM. STONE: Mr. Chairman, I recall that since the last meeting you sent out a letter from the Department of Agriculture which lists in acre feet water which is to be required by the Forest Service. You have that letter I am sure and I am also certain that it has not been made a part of the record. It seems to me it ought to be presented at this time.

THE CHAIRMAN: I think you are entirely correct, Judge Stone. I have the original of that letter here and each Commissioner has a copy and we will again ask our secretary to read that letter.

MR. GILES: This is a letter dated March 25, 1946, from the Department of Agriculture, Washington, signed by Charles F. Brannan, Assistant Secretary, and addressed to our chairman, Harry W. Bashore:

"This letter replies to your communication of December 15, 1947 asking for our answers to two specific questions regarding possible claims to the use of Upper Colorado River water.

With respect to the acquisition of water rights in the Western States in which the doctrine of prior appropriation prevails, the long continued policy of the Department of Agriculture, based in part upon court decisions and supported to some extent by the provisions of Federal laws, has been to recognize the authority of the States to control the use and disposition of the waters within their boundaries. In conformity with this policy the agencies of the Department have always proceeded in strict accordance with State laws and procedures in appropriating waters for use by them in administering Federal projects. In view of this well-established policy, and in the absence of Congressional action to the contrary, it is the Department's position that its claim on behalf of the United States to rights for the use of water of the Upper Colorado River are confined to those it has acquired or may acquire under State appropriation laws.

The Department's interests in water resources of the Upper Colorado River are substantial, as represented by the following tabulation:

Water Rights in Upper Colorado River (in acre feet per annum)

Claimed by Forest Service, U. S. Department of Agriculture (including adjudicated rights and rights being perfected)	Additional water needed for future development of the Forests (including domestic, stock watering, irrigation, recreation, camps and other N.F. uses)
--	---

Colorado	56,608.3	90,000
Wyoming	1,408.9	6,000
Utah	4,572.8	14,000
	62,590.0	110,000

Of these water requirements a considerable proportion is for stock watering and irrigation on National Forest range land; some 20 percent is estimated to be needed for water supplies for ranger stations, guard stations, organization camps and recreational uses. A small amount of water is also required for preserving fish life by maintaining a minimum summer flow in certain streams and for other miscellaneous needs that are essential to the beneficial utilization of the National Forests. The estimated future needs

are subject to revision, probably upward, as use of the Forests increases.

It will not be necessary, in our opinion, to incorporate in any Upper Colorado River Basin Compact any particular provision or language for the protection of rights to the use of Upper Colorado River water acquired by the Department of Agriculture under State appropriation procedures. We regard such rights as standing upon the same footing as those obtained by any other appropriator under State laws. We do recommend including in any such compact such provisions as will tend to assure the allocation between the several interested States of an adequate supply of Upper Colorado River water to meet the present and future needs of the Department within each of such States.

We trust that this reply will adequately answer your inquiry. If you desire additional information, we shall be glad to hear from you at any time.

Sincerely,

(Signed) Charles F. Braman

Assistant Secretary."

THE CHAIRMAN: In accordance with the action of the Commission this letter as well as other letters will be a part of the minutes and the official record of the Commission. Probably we should have read the letter from the Acting Secretary of the Army. Mr. Giles, will you please read the letter dated February 17, 1948, addressed to the Chairman of the Upper Colorado River Basin Compact Commission and signed by William H. Draper, Jr., Acting Secretary of the Army.

(Mr. Giles reads letter referred to.)

COM. STONE: Mr. Chairman, those other letters from the Bureau of Mines and Federal Power Commission were previously considered by the Commission. However, we have heard much discussion recently concerning the activities of the Atomic Energy Commission and we know that certain preliminary investigations under the direction of that Commission have been made in the Colorado River Basin. I fear that we may have overlooked a possible comment which that Commission may desire to submit to this Compact Commission. I merely mention it for whatever action the Commission or the Federal representatives wishee to take.

THE CHAIRMAN: Well, Judge Stone, it undoubtedly would be a good idea for the Chairman to direct a letter to the proper official if he can find out where that official is located and who he is, soliciting their views as to what they think should be incorporated in the compact to further their activities or to protect any interests the United States might have in the results of their activities, and if that is the wish of the Commission it will be done. (Confers.)

Mr. Will calls to my attention the fact that I have overlooked, and apparently the members of the Commission have overlooked that a letter was directed to the Bureau of the Budget with the request that they circularize all Federal agencies that might be interested in the outcome of this compact, and I am certain that we had no reply from the Atomic Energy Commission.

15

Now that isn't altogether an oversight of this Commission or of the Chairman but it is the duty of the Bureau of the Budget to notify the Commission; but perhaps it is an oversight on the part of the Bureau of the Budget and we might as well chase the thing down to a finality and solicit a statement from the Atomic Energy Commission.

COM. STONE: Mr. Chairman, in line with your remarks and recognizing the fact that the Nation as a whole is conscious of that activity, I move that it be suggested to the Chairman that he solicit any comments which the Atomic Energy Commission desires to make with respect to the proposed Upper Colorado River Basin Compact.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion has been made and seconded. Are there any comments on the motion? Any discussion? (No response. Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

Now are there any further questions or suggestions concerning the letters which have been read? I don't want to stop any discussion but we must move along.

COM. STONE: I assume that these comments of the Federal agencies will be considered in due course when the Compact is under preparation. For instance, the suggestion of the Indian Service as to language and any further comments of Federal agencies will be considered. It would serve no purpose at this moment to discuss those letters.

THE CHAIRMAN: They undoubtedly should be considered when the final draft of the compact is being worked out, but if anyone has any suggestion for the benefit of the Commission members at this time I think those suggestions are in order. Of course I think what you mean, Judge Stone, is that we are not simply passing these comments of the Federal agencies at this time as a final disposition of them. They will be taken up again in executive session of the Commission.

Are we now ready to have the rendition of the report of the Chairman of the Engineering Advisory Committee, Mr. J. R. Riter? (Cheers.)

The Secretary has raised the question about the right of any individual in this gathering to ask a question or to make any comment. Now as long as this Commission is not in executive session anybody here is perfectly welcome to say anything that they have to say for the guidance and benefit of the Commissioners. You are not barred from saying what you have to say now because the Commission is not in executive session at this time. I hope you will all understand that; otherwise I don't know why you came here.

Before Mr. Riter makes his report to the Commission you will all please understand that this is a report for the Commission and not for circularization in the press. It is not a report that has been accepted by the Commission. It is a report of the Engineering Advisory Committee for what it is worth and I think we should all be very careful that we don't get matters in the newspapers in a way that they appear to be final because until this compact is ready for signature there is nothing final. I hope you will all bear that in mind.

Unless there is an objection we will now hear the presentation of the Engineering Advisory Committee report by the chairman of the Committee, Mr. Riter. Mr. Riter is also engineer advisor to the Federal Representative.

MR. RITER: Mr. Chairman, I present the Chairman a signed copy of the document.

(Distributes document to Commissioners.)

THE CHAIRMAN: Before you give your report, Mr. Riter, it is assumed by the Chairman that at the conclusion of your report, or rather at the conclusion of the discussion of your report, a motion will be made by some member of the Commission as to the disposition of this report, whether or not it be included in the minutes and in the final official record of the Commission. Please bear that in mind.

MR. RITER: This is a report dated at Vernal, Utah, July 7, 1948:

"To Upper Colorado River Basin Compact Commission

Gentlemen:

On December 1, 1947, there was submitted to you a progress report of the Engineering Advisory Committee. Since that time the Committee has completed the work assigned to it on September 17, 1946, at the Santa Fe meeting of the Commission. The purpose of this letter is to present a brief summary of the results and conclusions of the work of the Engineering Advisory Committee.

Assignment

The work assigned to the Engineering Committee was:

(a) Preparation of base maps to show the locations of present and potential irrigation developments within the limit of the Colorado River system upstream from Lee Ferry and stream gaging stations and drainage areas.

(b) Determination of water contributions by States, involving the tabulation of stream flow records at key gaging stations, the extension of records by estimates, and estimation of runoff from unmeasured areas.

(c) Estimation of present depletions above key gaging stations, State Lines and Lee Ferry.

(d) Estimation of channel losses along the main Colorado River and principal tributaries above Lee Ferry.

(e) Determination of the extent to which the Upper Basin can make its apportioned water uses during drought cycles and still meet its compact obligation at Lee Ferry.

Maps

The progress report transmitted to you on December 1, 1947 contains copies of maps of the states of Arizona, Colorado, New Mexico, Utah and Wyoming prepared by the Bureau of Reclamation and published as part of the report on "The Colorado River" (House Document 419, 80th Congress, first session). These maps show the location of present irrigated areas and potential irrigation projects, as envisioned by the Bureau of Reclamation, within the Colorado River Basin. The progress report of the Engineering Advisory Committee also contains a general map, prepared by the Colorado Water Conservation Board, showing drainage areas and the locations of gaging stations.

Drainage Areas

The table of drainage areas previously submitted has been revised to correct a few minor errors. The total drainage area above the Lee Ferry compact point is 109,889 square miles (instead of 108,989 square miles, previously reported). The drainage areas are shown on the attached Table 1.

Historic Stream Flows

The progress report of December 1947 contains tables showing the recorded and estimated stream flows at key gaging stations for the years 1914-1945, inclusive. That report also contains an explanation of the methods used to estimate stream flows at the various gaging stations during the period of non-record. The average annual stream flows at key gaging stations for the period 1914-1945, inclusive, are shown on the attached Table 1.

Historic Runoff at State Lines

The runoff per square mile from ungaged drainage areas within each state was determined by computing the net gain between gaging stations, adding the estimated channel losses and dividing by the drainage areas. The average annual flows (period 1914 to 1945, inclusive) at State Lines are estimated to be as follows:

AVERAGE ANNUAL HISTORIC FLOWS AT STATE LINES (1914-1945, incl.)

Arizona

1000 A.F.

Ungaged area tributary to San Juan River	86.5
Ungaged area tributary to Colorado River	46.8
Arizona share of main stem channel losses within State	-0.1
Net flow at State Line	133.2

Colorado

Little Snake River (at mouth)	226.9
Yampa River (exclusive of Little Snake River)	1,172.5
White River	576.2
Ungaged area tributary to Green River	27.4
Colorado River including Gunnison River	5,469.9
Dolores River	762.3
San Juan River above Rosa	929.9
Pine River	294.7
Animas River	807.2
LaPlata River	30.9
Mancos River	48.2
McElmo Creek	51.1
Ungaged area tributary to San Juan River	13.5
Colorado share of main stem channel losses within State	-2.3
Net flow at State Line	10,408.4

New Mexico

Ungaged area tributary to San Juan River	192.1
New Mexico share of main stem channel losses within State	-6.0
Net flow at State Line	186.1

Utah

1000 A.F.

Tributaries of Green River above Linwood	158.8
Henry's Fork	66.8
Brush Creek near Jensen	36.0
Ashley Creek near Vernal	78.0
Duchesne River near Randlett	653.3
Price River at Mouth	87.6
Ungaged area tributary to Green River	127.4
Dolores River	23.2
Ungaged area tributary to Colorado River above Cisco	17.7
Paria River	18.1
Ungaged area tributary to Colorado River below Green River, Bluff and Cisco	777.3
Ungaged area tributary to San Juan River at Bluff	29.2
Utah share of main stem channel losses within State	-50.6
Net flow at State Line	2,022.8

Wyoming

Green River above Linwood	1,364.4
Little Snake River (at State Line)	249.8
Ungaged area tributary to Green River below Linwood	15.1
Wyoming share of main stem channel losses within State	-18.7
Net flow at State Line	1,610.6
Sum of flows at State Lines	14,361.1

Channel Losses

Average annual channel losses used in the studies reported herein were estimated by the application of appropriate evaporation and consumptive use rates to areas of channel exposed, such areas being estimated from available maps. Channel losses were computed for reaches from Lees Ferry, Arizona, to Granby, Colorado, on the Colorado River; from the mouth to Rosa, New Mexico, on the San Juan River; from the mouth to Green River, Wyoming, on the Green River; and on major tributaries to state lines or to headwater areas. This method of computing channel losses was deviated from only on the Colorado River between the gaging stations at Cisco, Utah, and Camco, Colorado. These gaging stations indicate a depletion of the river greater than the sum of the calculated irrigation depletions and evaporation channel losses reduced by a nominal inflow from the intervening drainage area. Since the records of streamflow, calculated irrigation depletions, and inflow estimates are believed to be reasonable, the additional depletion was charged to channel losses in that reach of river.

The channel losses adopted by the Committee were compared with those calculated by hydrographic analysis and other methods were applicable, and are believed to be reasonable.

A comparison of the annual streamflows, with the annual channel losses, estimated by means of differential hydrographs at Lees Ferry and the combined flows of Colorado River at Cisco, Utah; Green River at Green River, Utah, and San Juan River at Bluff, Utah, shows that the channel losses are not uniform each year, but that they vary with the streamflow, being smaller than average in years of less than average streamflows. Similar variations in annual channel losses were found in the studies of the various reaches of the San Juan River. It is assumed that on the other tributaries annual channel losses similarly will vary with the annual runoff.

Historic Contributions at Lee Ferry

Estimated channel losses and unmeasured inflows between state lines and key gaging stations were used to compute the contributions at state lines. The channel losses on water conveyed out of the state to Lee Ferry were proportioned to the state on the basis of the proportionate part of the total quantities of water carried through the channels. The aggregate amounts of such out-of-state channel losses and the estimated contributions by states of the historic flow (average 1914-45, inclusive) at Lee Ferry are as follows:

State	: Historic Flow : at State Lines : acre-feet	: Out of state : losses : acre-feet	: Historic Contribution : to Flow at Lee Ferry : Acre-feet : % of Total
Arizona	: 133,200	: 1,000	: 132,200 : 0.96
Colorado	: 10,408,400	: 455,600	: 9,952,800 : 72.18
N. Mexico	: 186,100	: 7,700	: 178,400 : 1.29
Utah	: 2,022,800	: 6,000	: 2,016,800 : 14.63
Wyoming	: 1,610,600	: 102,200	: 1,508,400 : 10.94
Total	: 14,361,100	: 572,500	: 13,788,600 : 100.00

Streamflow Depletions

To determine the virgin (or reconstructed) streamflow at state lines and at Lee Ferry, it is necessary to add to the historic flows the effect at these points of the past upstream depletions caused by the activities of man. The principal cause of such past depletions is irrigation development within the Colorado River Basin. Other causes of streamflow depletion are trans-mountain diversions outside of the basin, evaporation losses from reservoirs, and consumptive use of water by cities, towns, etc.

The depletion at Lee Ferry was estimated as follows:

(1) The man-made depletions at the sites of use were estimated. For irrigation this involved the determination of (a) the irrigated area; (b) the crop distribution; (c) the areas and character of lands in addition to crop lands, such as canals, drainage ways and incidental seeped areas adjacent to irrigated crop lands which consume water because of man's activities; (d) the estimation from climatic data, irrigation practices and experimental data of rates of consumptive use of irrigation water.

(2) The man-made depletions at the sites of use by cropped land and by incidental water consuming areas were routed downstream through the appropriate channel sections to determine the reduction in channel losses which have taken place due to the decrease in streamflow caused by such depletions between the sites of use and Lee Ferry.

Irrigated Areas

The following tabulation shows the average irrigated areas for the study period, 1914-1945, inclusive, and the present irrigated areas adopted by the Engineering Committee. The figures presented herein supersede those shown in the progress report of December 1, 1947.

Irrigated Areas - Acres		
State	Average for 1914-1945, incl.	Present
Arizona	3,770	9,840
Colorado	790,606	790,600*
New Mexico	39,000	43,620
Utah	288,520	303,977
Wyoming	228,700	236,675
Total	1,350,596	1,384,712

* Assumed to be same as average for period, 1914-1945.

Incidental Areas

The areas of non-cropped land adjacent to and consuming irrigation water incidental to the irrigation of the crop lands were estimated by inspection of the Bureau of Reclamation land classification sheets, field inspection, available aerial surveys and other detail and general maps of the irrigated areas. The incidental areas adopted by the Committee are as follows:

(Average for Study Period, 1914-1945, inclusive)

Arizona	Negligible
Colorado	106,812 Acres
New Mexico	6,482 "
Utah	48,625 "
Wyoming	<u>28,600</u> "
Total	190,519 "

Rates of Depletion

Field experimental data within the Colorado River Basin to determine unit rates of consumptive uses are available for the New Fork Area, Wyoming, and Uncompahgre Project, Colorado. Similar data are available at other experimental plots outside of the Colorado River Basin. To transfer the consumptive use data to various sites of use within the Colorado River Basin, empirical relationships between the experimental data and climatological data were used. The method developed by H. F. Blaney of the Department of Agriculture, who is an authority on consumptive use, was adopted. Arrangements were made to secure the services of Mr. Blaney and Wayne Criddle of the Department of Agriculture to study the problem. A field inspection trip over the Colorado River Basin was arranged so they could inspect the various areas and interview local water masters, water commissioners, water users, personnel of the Soil Conservation Service and the Bureau of Reclamation, and others regarding data on irrigation practices and adequacy of water supply in the various areas of the basin. With these data appropriate rates of consumptive use of irrigation water at the sites of use were selected.

Past Man-made Depletions at Sites of Use

The rates of consumptive use of irrigation water for various crops and types of native vegetation were applied by the Engineering Advisory Committee to the irrigated and incidental areas to secure the past man-made depletions at sites of use. The past man-made depletions at sites of use are summarized in the following table:

**Man-made Depletions at Sites of Use
Averages for 1914-1945, incl.**

Acre-feet.

Type of Use	Ariz.	Colorado	N. Mex.	Utah	Wyoming
Cropped Lands	3,790	821,378	56,174	384,043	183,620
Incidental Areas	---	178,662	14,993	81,001	40,750
Transmountain	---	---	---	---	---
Diversion	---	43,713	---	79,000	---
Res. Evap. Losses	200	10,000	---	13,500	2,200
Domestic Use	---	9,000	1,000	3,000	1,100
Less Water Supplied from Imports	---	---	---	4,000	---
Totals at Sites of Use	3,990	1,062,753	72,167	556,544	227,670
Total for Basin					1,923,124

"Salvaged" Channel Losses

The depletions at the sites of use were routed downstream to Leo Ferry to determine the change in channel losses resulting from man-made depletions. The differences between average past channel losses and the channel losses as they would have been had the depletions not been made represent "salvaged" channel losses as follows:

Average 1914-1945

Salvaged Channel Losses (acre-feet)

State	Average 1914-1945		
	Within state	Out of state	Total
Arizona	0	0	0
Colorado	20,000	26,700	46,700
New Mexico	900	1,800	2,700
Utah	11,700	500	12,200
Wyoming	1,300	10,400	11,700
Totals	33,900	39,400	73,300

Estimate of Man-made Depletions at States Lines and at Leo Ferry

Deducting the salvaged channel losses from the man-made depletions at the sites of use results in depletions at state lines and at Leo Ferry as shown in the following table. For convenience this table also shows the estimated depletions at the sites of use.

Man-made Depletions

(Units Acre-feet) Rounded to Nearest 100 AF

Averages for 1914-1945, incl.

State	At Sites of Use	At State Lines	At Leo Ferry
Arizona	4,000	4,000	4,000
Colorado	1,062,800	1,042,800	1,016,100
New Mexico	72,200	71,300	69,500
Utah	556,500	544,800	544,300
Wyoming	227,700	226,400	216,000
Total	1,923,200	1,889,300	1,849,900

For convenient reference there is attached hereto a tabulation showing the past depletions at state lines by tributaries.

Virgin Flow at Lee Ferry

Virgin streamflow contributions at state lines and at Lee Ferry were obtained by adding to the historic contributions the man-made stream depletions estimated at these sites. The following table shows the virgin contributions at state lines and Lee Ferry and also the out of state channel losses which were estimated for average undepleted flow conditions.

Virgin Flows at State Lines and Lee Ferry					
State	Virgin flow at state lines acre-feet	Out of state losses acre-feet	Contribution to virgin flow at Lee Ferry acre-feet	% of total	
Arizona	137,200	1,000	136,200	0.87	
Colorado	11,451,200	482,300	10,968,900	70.14	
New Mexico	257,400	9,500	247,900	1.58	
Utah	2,567,600	6,500	2,561,100	16.38	
Wyoming	1,837,000	112,600	1,724,400	11.03	
Total	16,250,400	611,900	15,638,500	100.00	

Main Stem Reservoir Operations

The flow of the Colorado River is not uniform but varies from year to year. At Lee Ferry the historic flow has ranged between a minimum of about 4,400,000 acre-feet in 1934 to a maximum of about 21,900,000 acre-feet in 1917. The average historic flow for 1914-1945, inclusive, was 13,788,600 acre-feet. In the 10-year period of lowest historic flow, 1931-40, inclusive, the average annual flow at Lee Ferry was 10,151,000 acre-feet.

In the absence of replacement reservoirs the Upper Basin, under the terms of the Colorado River Compact, during such a period as 1931 to 1940, inclusive, could deplete the virgin flow of the Colorado River at Lee Ferry by only about 4,300,000 acre-feet. To permit full use of the Upper Basin allocation of 7,500,000 acre-feet annually during drought cycles, holdover reservoirs must be constructed in the Upper Colorado River Basin to impound water in years of high runoff and to release such stored water in critical periods of low runoff, such as 1931-40, to help meet the Upper Basin obligation at Lee Ferry.

Such reservoirs will deplete the flow at Lee Ferry by reason of evaporation losses. The amount of holdover storage capacity required to regulate the streamflow and the depletion of flows at Lee Ferry due to reservoir evaporation losses can only be approximated until alternative storage sites have been studied in detail and the locations and capacities of reservoirs selected. One important factor, which cannot now be precisely evaluated, but which will have a marked influence on the holdover storage capacity needed is the effect of upstream development of future irrigation projects and storage reservoirs. Such projects will furnish some equation of streamflows and will decrease the storage capacity needed in the holdover reservoirs, shown in the studies reported herein.

Operation studies were made, assuming that all holdover storage would be provided at the Glen Canyon site on the Colorado River. For simplification in operation it was assumed that the flow at Lee Ferry would be maintained at an annual rate of 7,500,000 acre-feet during the period of draw-down and refilling of the reservoir and that increased upstream depletions would be at a uniform rate of 5,174,100 (7,500,000 represents allocated water, minus 1,849,900 which represents our estimate of present depletions,

minus 476,000 which represents our estimate of evaporation losses from hold-over reservoirs) acre-feet annually. It was also assumed that 5,000,000 acre-feet of storage capacity would be reserved as dead storage for power head and sediment.

These studies show a required storage capacity of 34,200,000 acre-feet (live capacity 29,200,000 acre-feet) to regulate the flow of the Colorado River in the manner indicated. The average annual stream depletions due to reservoir losses are estimated to be about 476,000 acre-feet.

During a closed cycle (by "closed cycle" I mean the stream flow at the end of 1945 is the same as 1914) operation for the 32-year period such a reservoir would perform in the following manner:

- (a) Be at dead storage level at the end of 1940.
- (b) Refill during the period from 1941 to 1945 and from 1914 to 1920.
- (c) Be generally full and spilling from 1920 to 1929, inclusive.
- (d) Be drawn down during the period, 1930 to 1940, inclusive.

The reservoir operation studies described herein show the average annual use of the virgin flow at Lee Ferry as follows: (Average 1914-1945)

Depletion of flow at Lee Ferry by irrigation, etc. in Upper Colorado River Basin	7,024,000 AF
Depletion of flow at Lee Ferry by evaporation losses from holdover reservoirs	476,000 AF
Sustained flow at Lee Ferry for Lower Basin	7,500,000 AF
Spill from reservoir (would largely occur in 7 years)	<u>638,500 AF</u>
Total average virgin flow	15,638,500 AF

Respectfully submitted,

Engineering Advisory Committee

- (Signed) J. R. Riter Chairman
- H. P. Dugan U.S.B.R.
- R. I. Meeker Arizona
- R. J. Tipton Colorado
- F. C. Merriell Colorado
- R. M. Gildersleeve Colorado
- John H. Bliss New Mexico
- J. R. Erickson New Mexico
- C. O. Roskelley Utah
- H. T. Person Wyoming
- R. D. Goodrich Wyoming.

There are attached to the document two tables.

THE CHAIRMAN: Pardon me, Mr. Riter. I believe you should mention a few other eminent engineers who have participated in the preparation of this report in order that the record may be complete.

MR. RITER: That is all.

THE CHAIRMAN: There are no names to add?

MR. RITTER: We have acknowledged the help of Mr. Blaney and Mr. Criddle, who were a very great help to us in selecting the consumptive use rates. All the Bureau of Reclamation offices concerned with the use of water in the Colorado River Basin have participated and have furnished information useful to the Committee. While Mr. E. O. Larson, Director of Region 4, has not had time personally to attend our meetings he has made available to us the services of C. B. Jacobson, his Regional Hydrologist. He has made available to us the services of his field man, Mr. C. H. Jex at Grand Junction, John J. Hedderman at Durango, and Mr. Palmer DeLong at Kemmerer, Wyoming. These men accompanied the Engineering Committee on the field inspection trip and made available a large share of the field records.

I think at this time the Engineering Committee should express its deep debt of gratitude to F. C. Merriell, who is a constant inspiration to us and who worked very hard and diligently. As a matter of fact he worked so hard on this that I think that was part of the reason for the breakdown of his health. I am sure that without his work the report would not have been completed. I wish to acknowledge that at this time.

Mr. Patterson, who was formerly a member of the Committee, worked with us up to the time of the submission of the Progress Report in December 1947. He has not been with us since then.

Mr. Gail Baker of Arizona was a member of the Committee but he has had other duties. I asked him if he wanted to sign the report but he decided that if Ralph Meeker's name was on it he was satisfied. Mr. Baker did read the report, however.

There are attached to the report two tables, which I will not read but which will be available for study. Table 1 is the table of streamflows at key gaging stations and the drainage areas in square miles. There is a total of 46 stations for which we have tabulated historic flows, the averages, from 1914 to 1945.

(Table 1 above referred to is as follows:)

"UPPER COLORADO RIVER BASIN KEY GAGING STATIONS

Streamflow Station	Mean Historic	Drainage
	Flow Water Years 1914-1945 1000 A.F.	Areas Square Miles
1. Green River at Green River, Wyo.	1260.5	7670
2. Blacks Fork near Millburne, Wyo.	113.2	156
3. East Fork of Smith Fork near Robertson, Wyo.	32.5	53
4. West Fork of Smith Fork near Robertson, Wyo.	16.3	37
5. Green River near Linwood, Utah	1501.6	14300
6. Burnt Fork near Burnt Fork, Wyo.	25.1	53
7. Henrys Fork near Lonetree, Wyo.	32.4	55
8. Henrys Fork at Linwood, Utah.	66.8	530
9. Little Snake River near Dixon, Wyo.	423.5	1028
10. Little Snake River near Lily, Colo.	472.4	3680
11. Yampa River at Steamboat Springs, Colorado	345.1	604
12. Yampa River near Jaybell, Colorado	1189.5	3410
13. Brush Creek near Jensen, Utah	36.0	255
14. Ashley Creek near Vernal, Utah	78.0	101
15. Duchesne River at Myton, Utah	439.5	2705
16. Duchesne River near Randlett, Utah	653.3	3820

17.	White River near Meeker, Colorado	461.7	762
18.	White River near Watson, Utah	582.0	4020
19.	Price River near Hainer, Utah	92.6	430
20.	Green River at Green River, Utah	4658.4	40920
21.	Colorado River at Hot Sulphur Springs, Colo.	*	782
22.	Colorado River at Glenwood Springs, Colorado	2080.4	4560
23.	Roaring Fork at Glenwood Springs, Colorado	1028.0	1460
24.	Colorado River near Cameo, Colo.	3505.0	6055
25.	Plateau Creek near Cameo, Colo.	186.3	604
26.	Gunnison River near Grand Junction, Colorado	2054.9	8020
27.	Dolores River at Gateway, Colo.	788.1	4350
28.	Colorado River near Cisco, Utah	6186.0	24100
29.	Sum of San Juan, Rio Blanco and Rito Blanco Rivers at Pagosa Springs, Colorado	399.5	379
30.	Navajo River at Edith, Colorado	131.8	165
31.	Piedra River at Arboles, Colorado	380.6	650
32.	San Juan River at Rosa, New Mexico	956.6	1990
33.	Pine River at Ignacio, Colorado	256.4	448
34.	San Juan River near Blanco, N. Mex.	1260.2	3558
35.	Animas River at Durango, Colorado	534.7	692
36.	Animas River near Cedar Hill, N. Mex.	806.7	1092
37.	Animas River at Farmington, N. Mex.	753.8	1360
38.	San Juan River at Farmington, N. Mex.	2111.4	7245
39.	La Plata River at Colorado-New Mexico State Line	30.9	331
40.	San Juan River at Shiprock, N. Mex.	*	12276
41.	Manco's River near Towaoc, Colo.	52.0	550
42.	McElmo Creek near Cortez, Colo.	41.0	253
43.	San Juan River near Bluff, Utah	2275.6	22010
44.	Paria River at Lees Ferry, Arizona	25.3	1550
45.	Colorado River at Lees Ferry, Arizona	13763.2	108335
46.	Colorado River at Lee Ferry, Arizona	13788.6	109889

* Mean for Water Years 1914-1945 not computed.

Table 2 was referred to in the text. It is depletions at state lines by principal tributaries. There is one little explanation in Colorado that might be in order. For McElmo Creek a depletion of 65,500 acre feet is shown. Actually that depletion results from water that is transferred from the Dolores River Basin into the San Juan Basin. A large share if not all of that depletion comes from the water from the Dolores River, which averages about 100,000 acre feet annually and is taken from the Dolores River into McElmo Creek for the irrigation of lands.

(Table 2 above referred to is as follows:)

Averages for 1914-1945, Inclusive

Depletions at State Lines by Principal Streams - Acre-feet

(rounded)

State	Stream	Depletion
Arizona	All	4,000
Colorado	Little Snake	11,300
	Yampa River	52,100
	White River	33,700

Colorado	Colorado River	723,000
	Dolores River	39,200
	San Juan above Rosa	13,600
	Pine River	41,500
	Animas River	30,000
	LaPlata River	20,400
	Mancos River	11,400
	McElmo Creek	65,500
	Miscellaneous, small	<u>1,100</u>
	Subtotal Colorado	1,042,800
New Mexico	San Juan Basin	71,300
Utah	Green above Linwood	0
	Henry's Fork	11,300
	Other tributaries above Green River, Utah	415,200
	Colorado River & tributaries above Cisco, Utah	0
	San Juan above Bluff	9,000
	Remainder of State	105,300
	Import	<u>4,000</u>
	Subtotal Utah	544,800
Wyoming	Green River above Linwood	193,500
	Little Snake River	19,300
	Miscellaneous areas	<u>13,600</u>
	Subtotal Wyoming	<u>226,400</u>
	Total for Upper Basin	<u>1,889,700</u>

That completes the submission except for such questions or explanations that might be requested.

COM. STONE: Mr. Chairman, as a matter of procedure--Colorado, and I am sure it is true of other states, has certain water officials here. In the case of Colorado we have three members of the Colorado Water Conservation Board here. And it seems to me that this report ought to be duplicated or reproduced in sufficient number for the use of those representing the various states, particularly in an official capacity. I understand that these typewritten reports are limited in number and have been distributed to the members of the Commission. May I inquire whether it would be agreeable to the Chairman and the Commission for this report, today if possible, to be reproduced in such number as each state may indicate for its use here.

THE CHAIRMAN: It is certainly agreeable to the Chairman provided the facilities are available for complying with your request, Judge Stone.

This is a very important report in the deliberations of this Commission. It is signed by the most eminent engineers that you can find in the West. And they proceeded in the knowledge of the Chairman, not as representatives of any state, but as a group. There was no jockeying and juggling around for advantage in the data presented in this report. It is a factual presentation and in the opinion of the Chairman it is extremely important that this report receive the consideration to which it is entitled. The Chairman made the statement a while

ago that some very excellent work had been done. As far as the Chairman is concerned this is evidence in support of his statement and further evidence will be submitted later.

It is assumed then that the report of the Engineering Advisory Committee will be reproduced in sufficient number to pass around among the advisers to the State Commissioners.

MR. TIPTON: Mr. Chairman and the chairman of the Engineering Committee, I think it should be made clear for the record, and I think it is rather important--it is not completely clear in the report--that the rates of depletion at points of use that results from man's activities were worked out entirely by Mr. Blaney and Mr. Criddle. The aid that was given to those gentlemen was furnishing information as to irrigation practices, adequacy of water supply, and then the mechanical aid of assisting them in working out certain arithmetical computations.

THE CHAIRMAN: Thank you, Mr. Tipton. It is the intention of the Chairman later to call on you for repetition of your most excellent presentation made at the meeting in Denver last week and at an appropriate time we will call on you for that. It may be that now is the appropriate time but that is up to the--

MR. TIPTON: I would suggest, Mr. Chairman, that that come in the regular order of procedure at the time some of the basic matters which will be presented by the Legal Advisory Committee are under consideration by the Commission.

THE CHAIRMAN: You would prefer your presentation be deferred then until the chairman of the Legal Advisory Committee has made his report?

MR. TIPTON: I prefer it come within the context of the Legal Advisory Committee's report.

THE CHAIRMAN: Very well.

MR. WALLACE: Mr. Chairman, may I ask a question of Mr. Riter? Apparently there has been no study made of reservoir locations?

MR. RITER: There have been a number of studies made. Region 4 of the Bureau of Reclamation is continuing those studies but they have not advanced to the point where the committee is in a position to select reservoir sites. We secured and studied information on rates of evaporation losses and assumed that the entire holdover capacity would be provided at the Glen Canyon site. This assumption was made for the purpose of arriving at a figure on the amount of evaporation losses.

Mr. Larson is endeavoring to find combinations of reservoirs which will have a minimum of reservoir loss per acre-foot of storage capacity, which will have opportunities for development of hydroelectric power and which will serve multiple uses.

Those studies have not reached a point of investigation where the information that will be developed by them is available to the Committee.

In the absence of detailed data, we made an estimate which was 476,000 acre feet stream depletion from reservoir losses. That is new losses over and above present losses in the reservoirs sites.

COM. STONE: Mr. Riter, following up Mr. Wallace's question may I ask

20
this: Would the assumed loss at Glen Canyon be the maximum loss of such hold-over storage?

MR. RITER: When you try to project yourself into the future you always get in trouble. I think it represents a reasonable estimate of reservoir losses.

MR. WALLACE: Mr. Riter, what about the estimate of losses of 831,000 acre feet contained in the Bureau report?

MR. RITER: We don't estimate losses quite that high. The Bureau itself in its most recent studies has found losses. When we compiled the Bureau report we listed the reservoir sites for which we had information at that time. Since 1946 Mr. Larson in his studies has reviewed the matter and eliminated some reservoir sites because they were heavy evaporators. You will recall that we listed the Dewey Reservoir Site, for a capacity of some five or six million acre feet. When that Dewey Reservoir is compared with other reservoir sites I think it will not be among the recommended reservoirs because of its high rate of evaporation loss. The Glen Canyon site is an efficient reservoir from the standpoint of evaporation losses.

Going back to Judge Stone's question: We have tried to be as careful as we can in estimating the future reservoir losses. There is always a possibility which cannot be accurately foreseen that the reservoir losses may be worse than we anticipate. There are other reservoirs built in the Southwest-- I particularly refer to the Elephant Butte Reservoir on the Rio Grande and to the McMillan Reservoir on the Pecos. At the time those reservoirs were planned nobody ever anticipated extremely high losses from them. In the meantime, however, very thick growths of salt cedars have occurred at the backwaters of those reservoirs. The reservoir losses have far exceeded the first engineer's estimate.

In travelling through the Colorado River Basin we have noted several instances where salt cedars are growing along the Colorado River and its tributaries. We cannot accurately foresee future conditions. It is entirely possible, however, that if some of these growths should take place in the delta area at the backwater of the reservoirs, the losses will be larger than we anticipate.

MR. WALLACE: What is the additional loss over your original estimate?

MR. RITER: On what?

MR. WALLACE: Because of this salt cedar situation?

MR. RITER: We have made no attempt, Mr. Wallace, to make an estimate of that in this particular case. I do not know. We have no means of making a forecast on that. That is one of the things the future will have to settle for us.

Now there is another factor: In making these studies we took the historic streamflow the way they had occurred; then we assumed that the increased rates of depletion at upstream sites would be uniform. We know that assumption is not entirely correct. We know for example that there will need to be additional reservoirs above the sites of use to regulate the streams to make water available in years of low runoff. The effect of such upstream reservoirs and the effect of return flows from upstream irrigation developments will be to create a partial regulation of the streamflow.

We haven't tried to make a precise evaluation of that factor. The Engineering Committee believes that the effect of such upstream irrigation

developments and storage developments will be quite marked and we believe the effect will be to reduce somewhat the requirements of the downstream regulating reservoirs, and if we reduce the requirements, we therefore reduce the evaporation loss. We have to make so many assumptions that I don't think the results would be materially different from reported study. Such requirements would be pretty much of an academic study.

I would like to propose the use of a round figure of about a half million acre feet. For comparison, our report shows 476,000 acre feet.

Judge Stone, that discussion was directed in response to your question; does it answer you satisfactorily?

MR. TIPTON: I think, Mr. Chairman, the most important item that would tend to reduce that would be the last item that the Chairman of the Engineering Advisory Committee mentioned, the equation of the streamflow by future development in the Basin. It would be a physical impossibility for the Basin to utilize 7,500,000 acre feet during such a period as 1931 to 1940 without substantial regulation to make available water at points of use. Such regulation will have a very marked effect on the equation of the flow of the stream, reducing substantially the indicated amount of replacement capacity as shown in the engineers' report.

So that the rate of reservoir loss on these main stream reservoirs may be greater than assumed by the Engineering Committee due to growth of salt cedars and other water-loving plants; however, there is the other counteracting factor, namely, there will be lower losses at those reservoirs used by projects and project areas if you assume those rates will be somewhat less because those reservoirs will be located at higher elevations at points where temperatures are less than on the main stream.

THE CHAIRMAN: Gentlemen, it is now twelve o'clock. Do you wish to recess until about one-thirty, or shall we continue the discussion of this report?

Are there any objections to recessing until two p.m. today? (No response.) We will now stand recessed until two p.m.

(12:00 Noon, Recess.)

(2:00 p.m., Meeting resumed.)

THE CHAIRMAN: Will the meeting please come to order. In about five minutes we will have the mimeographed copies of the report of the Legal Advisory Committee ready for distribution. Of course it is expected that that will be handled wisely and not taken as something to be scattered to the four corners of the United States as a decision of this Commission. It is merely a report.

Now in the meantime the Chair proposes the following procedure: The Commission will hereafter have regular sessions beginning at nine-thirty in the morning and ending at twelve-fifteen p.m. each day. That is right before lunch. This will afford time during the afternoons for work by committees and technicians. Of course, should it be found desirable at any time to change this schedule and to hold meetings of the Commission in the afternoon, that can be done.

How do you like that proposed procedure? Personally I think it is a

very good idea for this reason: As I mentioned to you this morning, the best work done in Denver at a meeting of the Legal and Engineering Advisory Committees was not in joint meeting but in the law offices around Denver and in the rooms in the hotel. Judge Wilson, you are looking very seriously about the matter; do you have any objection to that procedure?

COM. WILSON: I very seriously believe it is good procedure.

THE CHAIRMAN: The Chairman is waiting to hear objections. (No response.) Without objections that will be our procedure during the remainder of our negotiations here in Vernal.

Now you gentlemen may relax for a few moments until we can have available for us the report of the Legal Advisory Committee unless there is something else that some member of the Commission or some adviser wishes to submit at this time.

Mr. Carson, are you now ready to submit for the consideration of the Commission the report of the Legal Advisory Committee?

COM. CARSON: Yes, sir. The report of the Legal Advisory Committee has been mimeographed and I think copies are available. The report of the Legal Advisory Committee is in two parts: One is the report of the Committee itself; and one is headed "Attachments", which are proposed articles, proposed for the consideration of the Commission. I think it would be helpful probably if I read the report:

"The Upper Colorado River Compact Commission at its Meeting No. 6 referred to the Legal Advisory Committee ten matters, some of which were to be considered jointly by the Legal Advisory Committee and the Engineering Advisory Committee, and to the Engineering Advisory Committee alone one matter.

The Legal Advisory Committee met in Denver June 29th, 30th, and July 1st, 2nd and 3rd. At each of the meetings of the Legal Advisory Committee there were present:

J. G. Will, Legal Adviser to the Federal Representative;
 Judge Fred E. Wilson of New Mexico;
 Jean S. Breitenstein, and at some of the meetings,
 James D. Geissinger, of Colorado;
 W. J. Wehrli of Wyoming;
 Judge J. A. Howell and Edward W. Clyde of Utah; and
 Charles A. Carson of Arizona.

On the days on which the Legal Advisory Committee met with the Engineering Advisory Committee it is our understanding that the report of the Engineering Advisory Committee will show the names of the engineers who participated.

It must be understood that this report as well as the previous report of the Legal Advisory Committee and the compact provisions suggested for consideration by the Compact Commission are necessarily tentative. Decisions yet to be made by the Commission on both substantive and administrative matters will necessarily affect the proposals here made. The Legal Advisory Committee and each of the members thereof may desire to make further or different recommendations after further progress has been made in forming a compact.

The matters referred to the Legal Advisory Committee for consideration and the matters referred to the two committees jointly, as well as the one

matter referred to the Engineering Advisory Committee alone, were as follows:

1. Shall the allocation of beneficial consumptive use be subject to future adjustment in the event that any state does not make full beneficial consumptive use of its allotted share within a stated period. Rejected by Commission. (Tr. 48) Reallocation principle was approved and the item was referred to the Legal Committee for suitable language. (Tr. 280)
2. Provisions for periodic review of compact terms and conditions. Referred to Legal Committee. (Tr. 221)
3. Shall compact contain any provision relating to the delivery of water at Lee Ferry for the use of Mexico in the event there is not sufficient surplus water to supply the Mexican share. Commission recognized Mexican obligation and referred item to Legal Committee for drafting of suitable language. (Tr. 243)
4. Should the compact contain any provision relative to extraordinary drought in order to take advantage of the applicable provisions of the Mexican Water Treaty. Referred to Legal Committee. (Tr. 245)
5. What general provision should be incorporated in the Upper Basin Compact to recognize the validity and the applicability of the Colorado River Compact. Validity and applicability of Compact recognized and item referred to Legal Committee for suitable language. (Tr. 250)
6. Should the definitions contained in Article II of the Colorado River Compact be incorporated without change in the Upper Basin Compact. Referred to Legal Committee and deferred as one of the later items on the agenda to include other possible definitions that might be required. (Tr. 254)
7. Should paragraphs (f) and (g) of Article III of the Colorado River Compact relating to the apportionment of unapportioned water be carried over into the Upper Basin Compact. Referred to Legal Committee to draft appropriate language to protect Upper Basin States' rights in unapportioned water. (Tr. 262)
8. What provision shall be made with relation to the existing LaPlata River Compact. Referred to Legal Committee for appropriate language incorporating the LaPlata Compact provisions in the Upper Basin Compact. (Tr. 283)
9. Definition of term "beneficial consumptive use". Referred to Legal and Engineering Committees. (Tr. 322)
10. Method of measuring beneficial consumptive use, consideration of method of treatment of conveyance losses, consideration of method of treatment of so-called salvage water, and the determination of general type of formula for defining obligations of the states to make deliveries at Lee Ferry. Referred to Engineering Committee. (Tr. 323)
11. Recommendation of Legal Committee, Charging Reservoir Losses, referred to Engineering Advisory Committee to consult with Legal Advisory Committee for consideration of clause at a later date. (Tr. 209)

Your Legal Advisory Committee on the matters referred to it reports as follows:

1. In considering Item No. 1 as hereinabove set forth the Legal

32
Advisory Committee concluded that its consideration of that matter should be deferred for further instruction from the Commission itself because the instruction was not clear to the Committee, and because also the Commission had previously tentatively decided to apportion water to individual states in perpetuity. However, the Committee did prepare one proposed article which would make it clear that the water apportioned to any state should be in perpetuity and that that state's failure to utilize the water should not constitute any abandonment of its right. (See Attachment "M".)

2. The Legal Advisory Committee also concluded to defer consideration of Item No. 2 listed above, which indicated that the Commission referred to the Legal Advisory Committee the question of whether or not there should be a periodic review of compact terms and conditions. Such a provision seemed to the Legal Advisory Committee to be inconsistent with the decision of the Commission to apportion water in perpetuity and it seemed to the Legal Advisory Committee that such a provision would render uncertain the allocations which may be agreed upon.

3. The Legal Advisory Committee without specifically referring to the delivery of water at Lee Ferry for the use of Mexico it is believed has sufficiently covered the matter in the proposed article which for purposes of identification is marked "A" and attached to this report.

4. The Legal Advisory Committee suggests for the consideration of the Commission the addition to the "Powers" of the administrative agency to be known as the Upper Colorado River Commission, contained in the previous report of the Legal Advisory Committee, of subdivision 10, which would necessitate changing the numbers of the present 10 to 11, and of the present 11 to 12. The proposed additional subdivision 10 is attached to this report and marked "B" for identification. Further recognition is given to the obligations of the United States under the treaty with the United Mexican States in the proposed article marked for identification "C", which is attached to this report.

5. The Legal Advisory Committee suggests the language contained in the proposed article which is marked "D" for identification, which is attached to this report, as appropriate for recognition of the validity and applicability of the Colorado River Compact.

6. The Legal Advisory Committee considers that the appropriate definitions contained in Article II of the Colorado River Compact should be incorporated without change in the Upper Basin Compact but concluded that the article containing the definitions should be deferred until it is ascertained whether or not any other terms used in the Upper Basin Compact should be defined in such proposed article.

7. The Legal Advisory Committee suggests the language in the article marked "E", which is attached to this report, as the appropriate language to provide for any further apportionment that may be made under paragraphs (f) and (g) of Article III of the Colorado River Compact.

8. The Legal Advisory Committee considered a provision recognizing the validity of the La Plata River Compact and suggests for the consideration of the Commission, the article marked "F" attached to this report.

9. The Legal Advisory Committee and the Engineering Advisory Committee considered together the question of whether or not the compact should contain a definition of the term, "beneficial consumptive use", and concluded that it would be unwise to incorporate in the Upper Basin Compact a definition of that term. However, the Legal Advisory Committee was unable to reach

agreement as to whether or not the Upper Basin Compact should contain any definition of the term, "use". No formal vote was taken upon the article herewith submitted for the consideration of the Commission which undertakes to define "use". However, it was apparently the opinion of the majority of the members of the Legal Advisory Committee that such definition should not be included in any Upper Basin Compact. It is referred to the Commission for its consideration and instruction. It is believed that the article referred to, which is marked "G" and hereto attached, is clear as to its purpose.

10. Item No. 10 was referred to the Engineering Advisory Committee alone. However, the Legal Advisory Committee and the Engineering Advisory Committee considered this question as being closely related to No. 9 as herein set out. One of the engineers prepared a proposed article designed to comply with the instruction of the Commission, which article is hereto attached and marked "H" for identification. The Legal Advisory Committee considers that the proposed article correctly sets forth the principle which in the mind of the engineer preparing it should be adopted, but the Legal Advisory Committee has not carefully gone over the language of the article because it considered it unnecessary to do so until the Commission had indicated whether or not it desired to adopt the principle.

11. The Legal Advisory Committee and the Engineering Advisory Committee considered language relating to the charging of reservoir losses referred to the two committees by the Commission under No. 11 above recited. The Legal Advisory Committee prepared an article which is hereto attached marked "I". At a joint meeting with the Engineering Advisory Committee there was some discussion and apparent differences of opinion as to whether or not the proposed article should contain any provisions relating to reservoir losses resulting from the storage of water for the generation of electrical energy. It appeared that some thought the Commission should undertake to make provision for the apportionment of benefits of any electrical energy that might be generated in the Basin and others thought that the Commission should confine itself to the apportionment of the water among the states. The question of the consideration of reservoir losses resulting from the storage of water for the purpose of generating electrical energy has therefore not been covered except as such storage of water may be for the purpose of and utilized in making deliveries of water at Lee Ferry. If the Commission desires anything further as to the charging of reservoir losses which may result from the storage of water for the generation of electrical energy, as distinguished from consumptive uses in the Upper Basin and as distinguished from consumptive uses in the Upper Basin and as distinguished from the purpose of making deliveries of water at Lee Ferry, then the further instruction of the Commission is desired.

In addition to the instructions of the Compact Commission at its meeting No. 6 the Legal Advisory Committee has prepared for the consideration of the Commission an article relating to preferential uses of water, which is taken from the Colorado River Compact and is hereto attached marked "J".

Also the Legal Advisory Committee has prepared for the consideration of the Commission articles marked "K", "L", "M", "N", "O", and "P", which it is believed are self-explanatory.

The Legal Advisory Committee has also prepared for the consideration of the Commission a skeleton article relating to gaging stations, which is marked "Q" and attached hereto.

The Legal Advisory Committee also prepared an article relating to the curtailment of use if necessary, which has already been referred to in connection with Item 3 above and is attached hereto marked "A", which is believed to be self-explanatory.

It must be understood that each member of the Legal Advisory Committee as well as the Committee proposes the articles hereto attached for the consideration of the Commission and each member of the Committee and the Committee itself realize that it may be necessary to change completely any one or all of the articles proposed for the consideration of the Commission and reserve the right to make any further or different recommendations after the Commission has made the necessary decisions and issued the necessary instructions.

Respectfully submitted,

LEGAL ADVISORY COMMITTEE

By Charles A. Carson
Chairman."

(The attachments referred to in the foregoing are as follows:)

Attachment "A"

ARTICLE _____

In the event curtailment of uses by the States of the Upper Division shall at any time become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the amount of curtailment of consumptive use of water apportioned to each of the States of the Upper Division by Article _____ hereof, to be made by each of the States of the Upper Division shall be sufficient to deliver at Lee Ferry an amount of water which bears the same relation to the deficiency to be made up as the consumptive use being made by the particular state bears to the aggregate consumptive use of water of the Colorado River System being made at the time by the States of the Upper Division under the apportionment of Article _____ hereof; provided that for the purpose of computing the curtailment that must be made by any state as required by this paragraph, all consumptive uses existing prior to the 24th day of November, 1922, shall be excluded; and provided further that if any state of the Upper Division in the ten years immediately preceding the year in which such curtailment is required to be made shall have consumptively used more water than it was entitled to use under the apportionment made by Article _____ hereof, such state shall be required to supply at Lee Ferry an amount equal to such excess before demand is made on any other state.

Attachment "B"

10. In the event of extraordinary drought or serious accident to the irrigation system in the Upper Basin thereby making it difficult for the Upper Basin to deliver any amount of water which it may be required to deliver in order to satisfy the Water Treaty between the United States of America and the United Mexican States dated February 3rd, 1944, the Commission shall make findings of fact in regard thereto and report such findings to the United States Section of the International Water and Boundary Commission with the request that the water allotted to Mexico under Division III of such treaty may be reduced.

Attachment "C"

ARTICLE _____

Nothing in this compact shall be deemed

.....

(b) To affect the obligations of the United States of America under the Treaty with the United Mexican States.

.....

(For complete suggested article see Attachment "K".)

Attachment "D"

ARTICLE _____

Each of the signatory states recognizes the validity of the Colorado River Compact, that it is in full force and effect, and all of the provisions hereof are subject thereto.

Attachment "E"

ARTICLE _____

The use of water as such use is apportioned in perpetuity to the Upper Basin and available for use by the States of the Upper Basin under the Colorado River Compact is hereby apportioned among the States of the Upper Basin, subject to the provisions and limitations appearing therein and herein, as follows:

Arizona	_____	per cent
Colorado	_____	per cent
New Mexico	_____	per cent
Utah	_____	per cent
Wyoming	_____	per cent

The apportionment made to each state shall include all water necessary for the supply of any rights which may now exist.

No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact, and any apportionment of such uses shall be made in accordance with the terms of such paragraphs.

Attachment "F"

ARTICLE _____

Each of the signatory states recognizes the validity of the La Plata River Compact entered into between the States of Colorado and New Mexico and dated the 27th day of November, 1922, and this compact shall not affect the

apportionment made thereby; provided that water uses made by either Colorado or New Mexico under the La Plata River Compact shall be chargeable to the state in which such water uses occur in determining the use made by such state of water apportioned by Article _____ of this compact.

Attachment "G"

ARTICLE _____

For the purpose of measuring the amount of water used by each of the signatory states and of determining whether any such state may have exceeded the apportionment herein made to it, the use of water is defined to be that by which the water supply of the Upper Colorado River Basin, the use of which is herein apportioned among the signatory states, is consumed through the activities of man and shall include water consumed by evaporation from any canal, ditch, or irrigated area and from any reservoir except as hereinafter provided, and shall include the full amount of water diverted above Lee Ferry and exported from the drainage area of the Colorado River System to the basin of any other stream measured as nearly as may be at the point of departure from the drainage area of the Colorado River System.

The definition in this Article contained is for the sole purpose of measuring the relative use of water by the signatory states under this Compact, and has no relation to or bearing upon the term "exclusive beneficial consumptive use" as employed in paragraph (a) of Article III of the Colorado River Compact.

Attachment "H"

ARTICLE _____

The following table shows the relation between the measured runoff in the 10-year progressive series at the inflow index stations, corrected for man-made depletion above those stations, for the Upper Colorado River Basin and the virgin flow at Lee Ferry.

<u>Index Inflow</u>	<u>Virgin Flow at Lee Ferry</u>
_____	_____
_____	_____
_____	_____

The Commission shall determine for each successive 10-year period the relationship between the measured actual flow at the inflow index stations for the Upper Colorado River Basin corrected for man-made depletions above those stations and the actual measured flow at Lee Ferry corrected for change in storage in the replacement capacity of main stream reservoirs. The extent to which this relationship departs from the relationship indicated in the above table shall be considered as the beneficial consumptive use being made of the water of the Colorado River and its tributaries by the Upper Basin.

The following tables indicate the relationship between the flow at the index inflow stations for each state and the virgin flow at the outflow

stations for that state.

For each successive 10-year period the Commission shall determine the relationship between the actual measured flow at the inflow index stations for each state, after being corrected for man-made depletions being made in that state above those stations, and the measured flow at the outflow stations for that state, and shall determine the magnitude of the departure of that relationship from the relationship shown in the above applicable table. This departure shall be considered to be the beneficial consumptive use within the state.

The relationship between the flow of the main stream and the major tributaries below all present and prospective major irrigation development in the Upper Colorado River as measured at Bluff, Utah, on the San Juan, at Cisco, Utah, on the Colorado River, and the Green River at Green River, Utah, and the actual flow at Lee Ferry is represented by the following table.

The Commission shall determine in each successive 10-year period the relationship between the flow as measured at the above stations and the actual flow at Lee Ferry corrected for change in storage in the replacement capacity of main stream reservoirs located below the inflow stations. The change in this relationship from that shown in the table shall be credited or charged to each state in proportion to the relation between the increase in beneficial consumptive use within the state since 1922 and the aggregate increase in beneficial consumptive use of Colorado River water and its tributaries in the Upper Basin since 1922. The beneficial consumptive use within each state, modified in accordance with the state's proportion of the change in depletion along the main channels, as referred to in the preceding sentence, shall be considered the total beneficial consumptive use being made by the state at the time of the determination.

 Attachment "I"

ARTICLE _____

The storage capacity of reservoirs and the water stored therein for the purpose of and utilized in making deliveries of water at Lee Ferry in compliance with the provisions of Article III of the Colorado River Compact shall be considered to be for the common benefit of the states of the Upper Division, and water so stored for such purpose shall not be earmarked for nor charged to any individual state.

Reservoir losses resulting from the storage of water for the joint benefit of such states in making deliveries of water at Lee Ferry shall be charged to the States of the Upper Division in proportion to the consumptive use of

water in each state of the Upper Division during the year for which the charge is made.

Reservoir losses resulting from the storage of water for consumptive use apportioned by Article _____ hereof by one or more states shall be charged to the state or states for whose benefit the water is so stored in proportion to the consumptive use of water by each of such states from said storage.

Attachment "J"

ARTICLE _____

(a) Inasmuch as the Upper Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Upper Colorado River Basin, the use of its waters for the 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.

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

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

Attachment "K"

ARTICLE _____

Nothing in this compact shall be deemed

(a) To affect the obligations of the United States of America to the Indian Tribes.

(b) To affect the obligations of the United States of America under the Treaty with the United Mexican States.

(c) To affect any rights or powers of the United States, its agencies or instrumentalities in or to the use of waters of the Upper Basin of the Colorado River, nor its capacity to acquire rights in and to the use of said waters.

(d) To subject any property of the United States, its agencies or instrumentalities to taxation by any state or subdivision thereof, nor to create any obligation on the part of the United States, its agencies or instrumentalities by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payments to any state or political subdivision thereof, state agency, municipality or entity whatsoever, in reimbursement for the loss of taxes.

(e) To subject any property of the United States, its agencies or instrumentalities, to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

Attachment "L"

ARTICLE _____

The use of water by the United States or any of its agencies, instrumentalities or wards shall be charged to the state in which the use is made.

Attachment "M"

ARTICLE _____

The failure of any state to use the water or any part thereof allocated to it for use under the terms of this compact shall not constitute any relinquishment of such water or the right to use the same, to the Lower Basin or to any other state, nor shall it constitute any forfeiture or abandonment of the right to such use.

Attachment "N"

ARTICLE _____

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

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

Attachment "O"

ARTICLE _____

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

Attachment "P"

ARTICLE _____

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

ARTICLE _____

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic stage recorder at each of the following points, to wit:

Stations _____ to _____ shall be considered as inflow index stations for the Upper Colorado River Basin. The station at Lee Ferry shall be considered as the outflow station for the Upper Colorado River Basin.

The inflow index stations and the outflow stations for each main tributary in each of the states shall be as shown in the following table:

State	Tributary	Inflow Index Stations	Outflow Stations
Wyoming	Green River	Green River at Warren Bridge near Daniel	Green River near Linwood, Utah
		New Fork River Near Boulder	
		Fontenelle Cr. near Fontenelle	

COM. CARSON: I don't know, Mr. Chairman, how the Commission would like to proceed on the consideration of any of these proposed articles. I would like to call the attention of the Chairman to the fact that Judge Howell of Utah, who participated in the meetings, is not yet here. I understood from him he would be here either tonight or tomorrow morning.

THE CHAIRMAN: Is it your suggestion, Mr. Carson, that the scrutiny of each of these articles be deferred until Judge Howell is present?

COM. CARSON: I believe we would make time by doing that and in the meantime let each Commissioner look them over with his own people or in groups as they may desire.

THE CHAIRMAN: Gentlemen, you have heard the report of the Legal Advisory Committee as submitted by the chairman, Mr. Carson.

COM. STONE: Mr. Chairman, I move that the report of the Engineering Committee made this forenoon by Mr. Riter and the report of the Legal Committee

which has just been made by Mr. Carson as its chairman, be received by the Commission and made a part of the record for further consideration by the Commission.

COM. WATSON: Second the motion.

THE CHAIRMAN: The Chair understands that the motion was not to accept the report but to receive it.

COM. STONE: I am glad you mentioned that. The motion that was made by me purports merely to receive the report, make it a part of the record, and refer it to the Commission for further consideration, which does not mean that the reports are either approved or disapproved but merely received and made a part of the record for the consideration of the Commission.

THE CHAIRMAN: Is there further discussion of the motion? The motion is to receive the reports, which has been seconded.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: Now it would seem to the Chairman that the members of the Commission and their advisers have considerable to digest and that perhaps it might be digested better by groups and it might be well to adjourn at this time. However, perhaps some of you are better prepared than I anticipate and may wish to discuss the engineering report or the legal report at this time.

COM. STONE: Mr. Chairman, it seemed to me that everyone would be better prepared to discuss particularly the report of the Legal Committee and the suggested articles and clauses of the compact after an opportunity had been afforded to give them some study. I think many of us could discuss them perhaps endlessly but perhaps not too wisely until we have studied them.

THE CHAIRMAN: I am wondering if this is an appropriate time to have Mr. Tipton discuss the question of depletion at point of use?

MR. TIPTON: I would suggest again, Mr. Chairman, that that come up at the time the Commission has under consideration Attachments "G" and "H".

THE CHAIRMAN: You would prefer to defer it?

MR. TIPTON: It isn't up to me to say; it is for the Commission to say. But I think that would be at the proper place when we come to that point. It is perfectly all right with me to lift those out and make those come first. I think that might be well. On some of these other matters probably there would be no difference of opinion and they would need little discussion. It would be perfectly all right with me to take it up in any order you want but I think it would be well to have that as a part of the discussion of those items of the report. In addition to that it requires some exhibits and I would like to ask of the Chairman that all the exhibits that I used in presenting the subject to the Legal Committee and the Engineering Committee be presented to the Commission.

THE CHAIRMAN: Well, it is the opinion of the Chairman that you should use all the exhibits that you have available for use because I think that is very instructive.

COM. CARSON: Then, Mr. Chairman, I move we adjourn until nine-thirty tomorrow morning.

COM. WATSON: Second the motion.

THE CHAIRMAN: It has been moved and seconded that we adjourn until nine-thirty tomorrow morning. (Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

(2:45 p.m., Wednesday, July 7, 1948, recess until 9:30 a.m., Thursday, July 8, 1948.)

Vernal, Utah
July 8, 1948
9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order. This morning we will hear a very interesting discussion from a distinguished engineer, a man who is high in the councils of the American Society of Civil Engineers and who has been urged by his friends to be a candidate for the office of vice president of the American Society. This man is tops so far as the ability to analyze and study the water supplies of the United States is concerned. His professional attainments and ability have been recognized by foreign governments and they have retained him in various capacities. He has performed valuable services for the United States. He has been retained by the State of Colorado as consultant but in the opinion of the Chairman he has rendered valuable service to the Upper Basin in the analyses and studies which he has made.

Now, Mr. Tipton, we will be glad to hear from you and your remarks will be incorporated in the record of the Commission and I hope that you will take the time that you need in order to fully explain to the members of the Commission and their advisers the conclusions which you have reached in your studies. Mr. Tipton.

MR. TIPTON: Mr. Chairman, members of the Commission and advisers. Mr. Chairman, you make me blush.

THE CHAIRMAN: I don't think I have exaggerated at all. If I have I will stand corrected.

MR. TIPTON: I am going to talk about two phases of one subject. The subject has to do with the water that was apportioned to the Upper Basin by the Colorado River Compact. The first phase of the subject goes to the question of what is it that this Commission at this session is going to apportion among the States? The only thing that the Commission can apportion is that which was apportioned to the Upper Basin by the original Colorado River Compact Commission in the present Colorado River Compact.

The second phase of the subject which I shall discuss is the means of measuring that which the Commission here will apportion among the States, and the means of measuring that which was apportioned to the Upper Basin by the original Commission.

First let me make this plain: I am not speaking for the State of Colorado alone. I am considering this problem from the standpoint of the Upper Basin as a whole. The subject which I shall discuss is of importance to each State of the Upper Basin and to the Upper Basin as a whole.

In my opinion the record is crystal clear to the effect that the Colorado River Compact Commission in 1922 apportioned a certain part of the virgin flow of the Colorado River between the two basins. The record in my opinion is clear that that which was apportioned to the Upper Basin was 7,500,000 acre feet of the virgin flow of the Colorado River at Lee Ferry.

What we now term "virgin flow", in 1922 was called "reconstructed flow." Both terms mean the flow of the river as it was in the state of nature before man entered the picture. In my opinion under the apportionment that was made by the original Commission the Upper Basin has the right to deplete by man's activities the virgin flow of the Colorado River at Lee Ferry by 7,500,000 acre feet per year.

There is considerable difference between 7,500,000 acre feet of depletion of virgin flow at Lee Ferry and 7,500,000 feet of depletion of the waters of the Colorado River and its tributaries at the places where man is using those waters. There are two main reasons for this difference. The first reason is because of the consumption of water by nature on some of the lands now irrigated, or to be irrigated. The second reason is because of channel losses that are salvaged by man's activities.

On some of the land that is now being irrigated by man, a loss of water was occurring in a state of nature. On an appreciable part of the land that will be irrigated by man in the future, there is now being consumed water by natural processes. That is particularly true on native hay lands that are now irrigated, in the Green River Basin in Wyoming and in some parts of Colorado. A good example of this in Colorado is the Middle Park area near Kremmling. Those lands were irrigated by Nature during the flood season. Man came into the picture and all he did was to start to cut the hay. There isn't a major ditch in that area at the present time. Man cuts the hay and the next season Nature irrigates the lands as she did in the past.

Consumption of water was taking place on those lands before man came into the picture. The water which was being consumed in the state of nature never did reach Lee Ferry. It never was a part of the water which was apportioned by the Colorado River Compact Commission to the Upper Basin.

Man, on that type of land in some instances, has increased somewhat the depletion. In some cases he has constructed ditches and has extended the irrigation season thereby causing a greater depletion of the stream flows than was occurring in the state of nature.

On other types of land there were cottonwood trees and other water-loving plants growing before man cleared the lands. The depletion that is being caused by man at the point of use by the irrigation of such lands is not the full depletion that results from the irrigation of those lands because in the state of nature some of the waters of the streams were being lost. Those waters never did reach Lee Ferry. They never were a part of the water supply that the Commission apportioned to the Upper Basin.

The other factor already mentioned that is important is the salvage of channel losses. Assume that man by his activities on a certain tract of land in the Upper Basin is depleting the flow of a stream at that particular point by 100,000 acre feet. He is not depleting the flow at Lee Ferry by 100,000 acre feet because if the 100,000 acre feet were left in the river and man didn't take it out and burn it up at the point of use, all of it wouldn't get to Lee Ferry; some of it would be lost in transit. That which in the state of nature was lost in transit was not a part of the water that was apportioned by the Commission because it was not a part of the virgin flow at Lee Ferry.

44

This principle possibly can be illustrated best by considering an hypothetical transmountain diversion. Assume 500,000 acre feet being diverted from the Colorado River Basin to some basin outside of the Colorado River Basin. By man's activity the tributary from which that water is being diverted is being depleted at the point of diversion by 500,000 acre feet. The flow at Lee Ferry is not being depleted by 500,000 acre feet because, if that 500,000 acre feet were left in the river, all of it would not reach Lee Ferry. The amount that would not reach Lee Ferry was not a part of the water that was apportioned by the Colorado River Compact Commission.

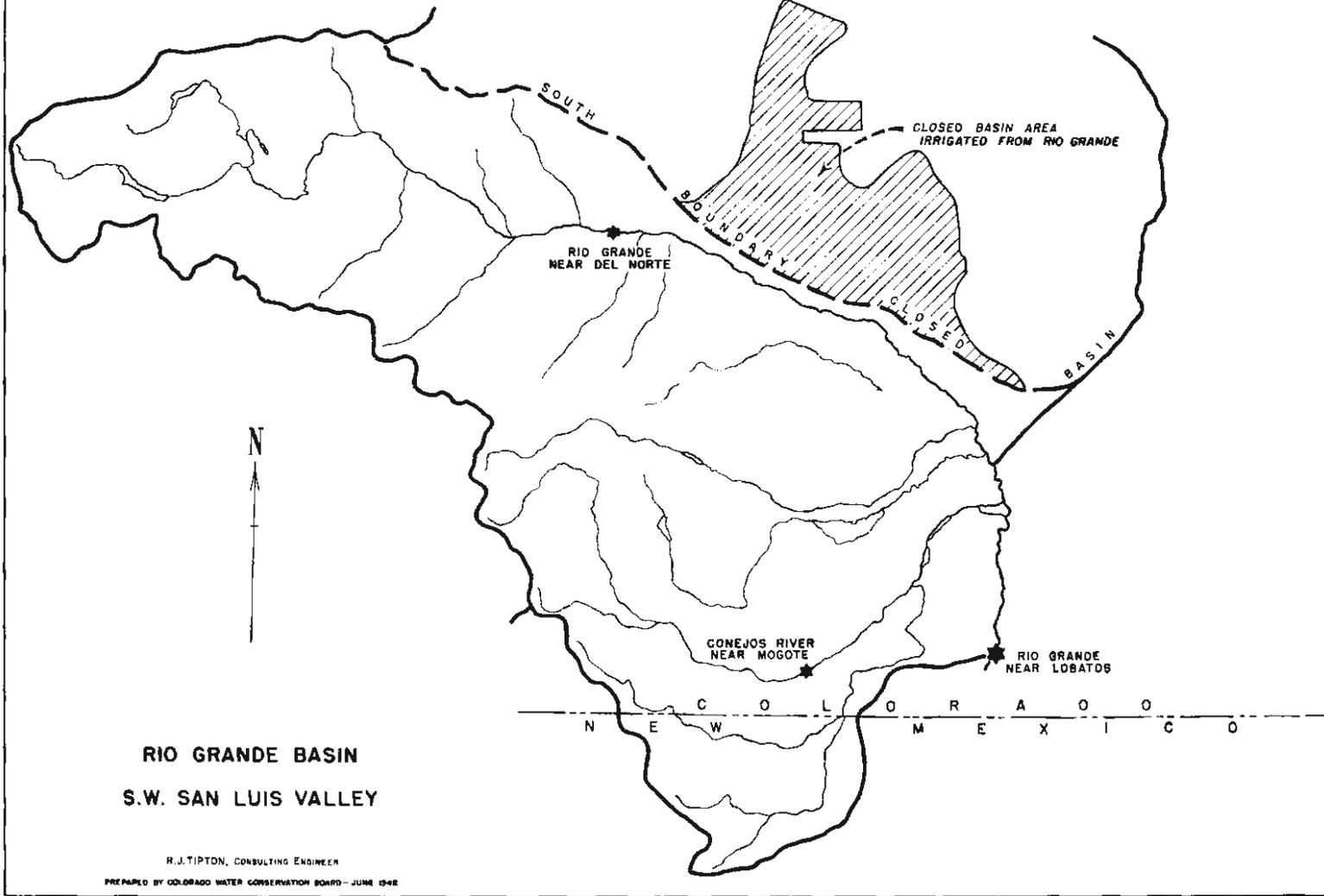
The principles that I am outlining first began to be recognized by some of us in the last Supreme Court case over the Arkansas River, Colorado vs. Kansas, decided December 6, 1943. Kansas alleged that because Colorado had increased its irrigated acreage by some 200,000 acres since the original Kansas vs. Colorado suit was being heard in the early 1900's, the flow across the Stateline had been depleted by an average of 300,000 acre feet per year. The stream flow records of the Arkansas River did not support such claim. Although Colorado had increased its irrigated acreage from about 300,000 acres at the time the testimony in the original suit was closed in 1905 to something over 500,000 acres at the time the last suit was being heard, the increase in acreage did not increase the depletion of flow at the Stateline between Kansas and Colorado. We were able to show this to the satisfaction of the court. To study the principles involved, we considered the performance of a number of river basins. It became apparent that the depletion of the flow of a stream at some point downstream was not in direct relation with the increase in development caused by man at some point upstream. We have prepared a number of exhibits which bring up to date some of the matters which we presented to the Supreme Court in that case.

I shall illustrate the principle I have been discussing by pointing out what has happened on a few of the typical rivers of the inter-mountain region. The principle is the same on all although it varies in degree with a particular river. I shall indicate the rivers and areas we have studied and then I shall describe in detail only one or two.

The rivers and areas studied are: The southwest Rio Grande area in Colorado; The Mesilla Valley in New Mexico; The Rio Grande area between Elephant Butte and El Paso; The Rio Grande between El Paso and Ft. Quitman; The entire South Platte River in Colorado; and The South Platte River above Kersey at a point below its confluence with the Cache la Poudre.

The first area I shall describe is the Southwest Rio Grande area in Colorado. The results of the study are shown on Plate No. I. There appears on this plate two graphs. On the upper graph is indicated by 5 year progressive means the irrigated acreage for the years 1890 to 1945, inclusive. On the lower graph are placed several lines to indicate stream flow. The upper blue line represents a measure of the virgin flow to the area. I say, "a measure of the virgin flow" because obviously all of the inflow cannot be measured. Certain gaging stations have been established in this particular area on the main stream and the main tributaries which measure about 75 percent of all the inflow. The sum of the runoff at these gaging stations is therefore a very accurate index of the virgin inflow to the area. The values represented by the blue line are in five year progressive means. It is interesting to note the rather wide fluctuations of the virgin flow indicating natural fluctuations because of difference in precipitation from period to period.

The black line, on the lower part of the graph, indicates the historic outflow from the basin which has resulted after man has carried on his development. The mean irrigated acreage for the five year period 1890 to 1894 was 145,000 acres. For the period 1941 to 1945 the mean irrigated acreage



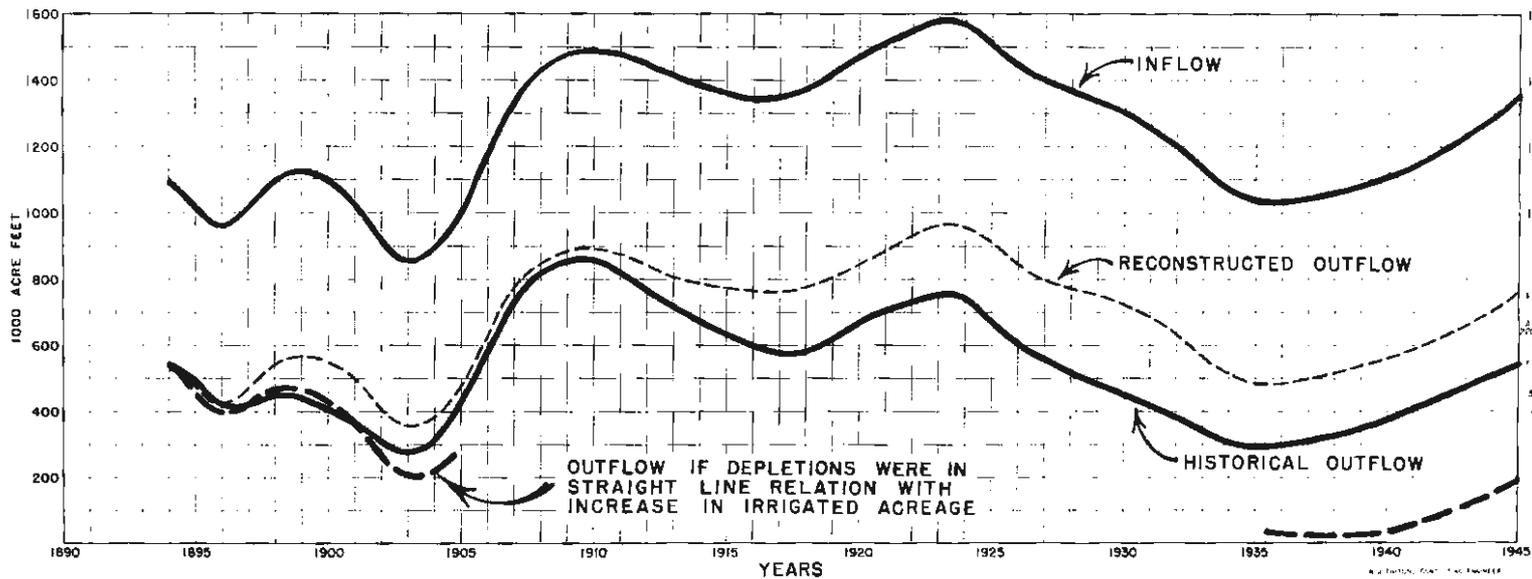
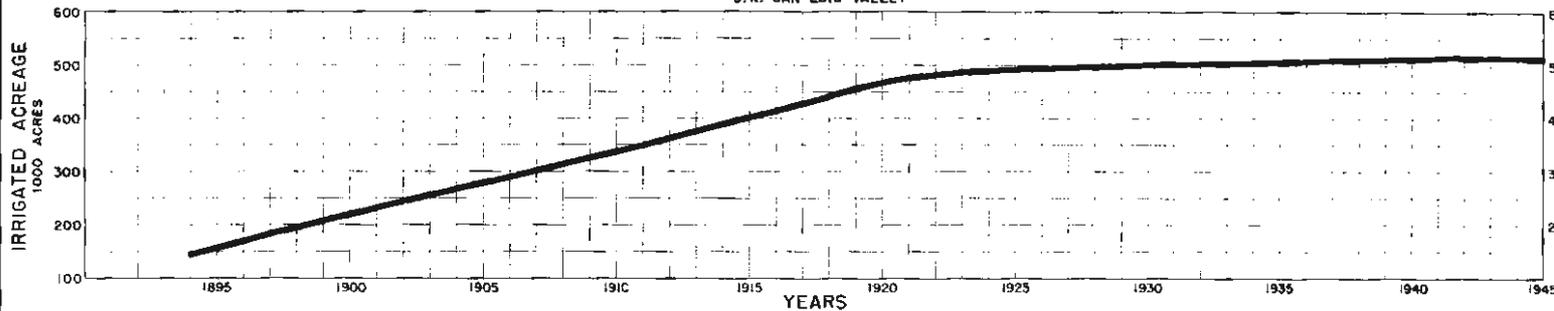
**RIO GRANDE BASIN
S.W. SAN LUIS VALLEY**

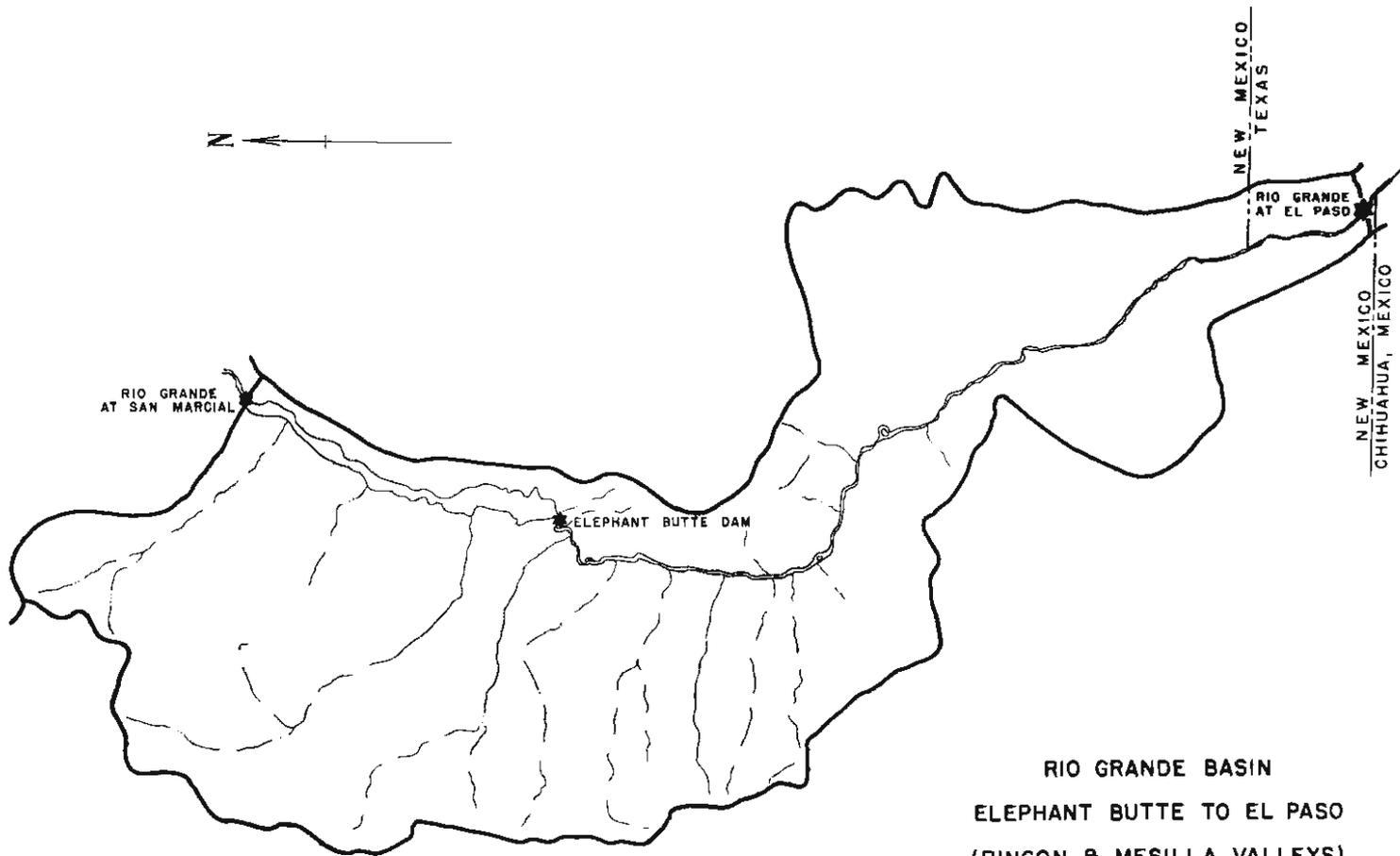
R. J. TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1948

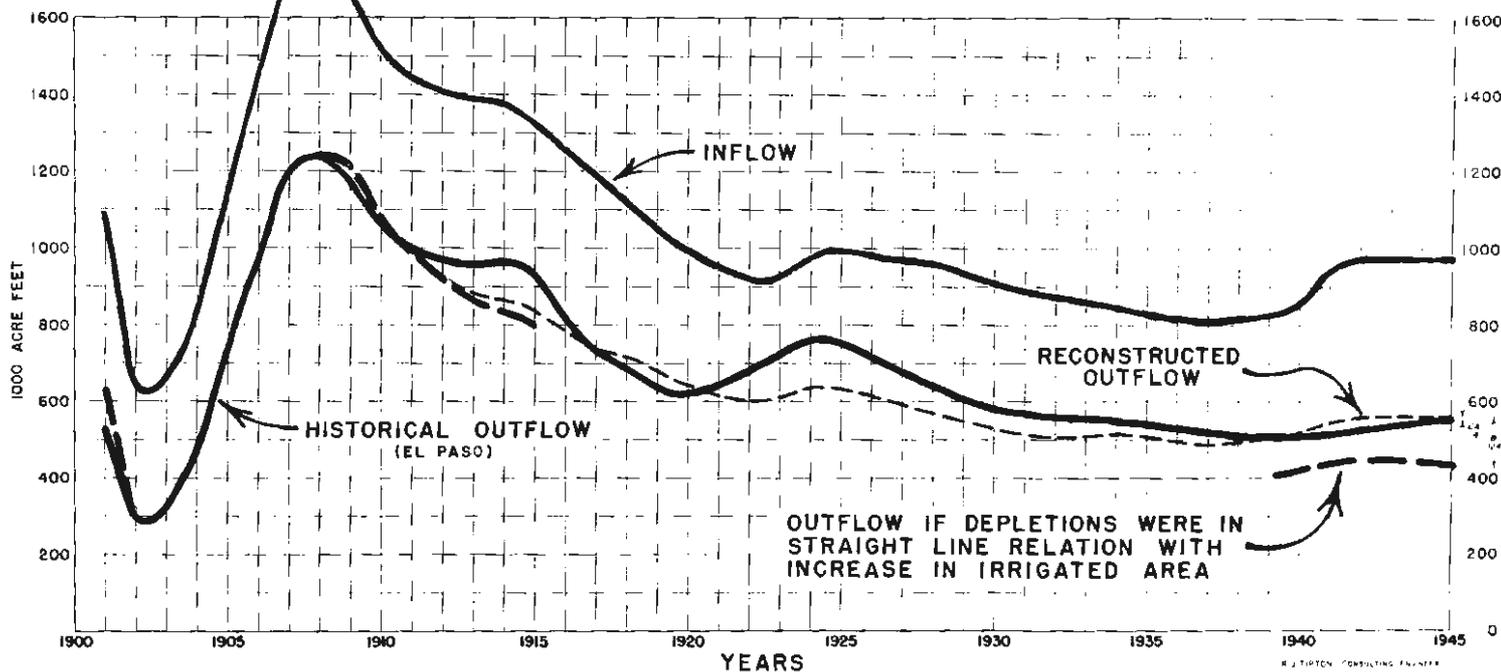
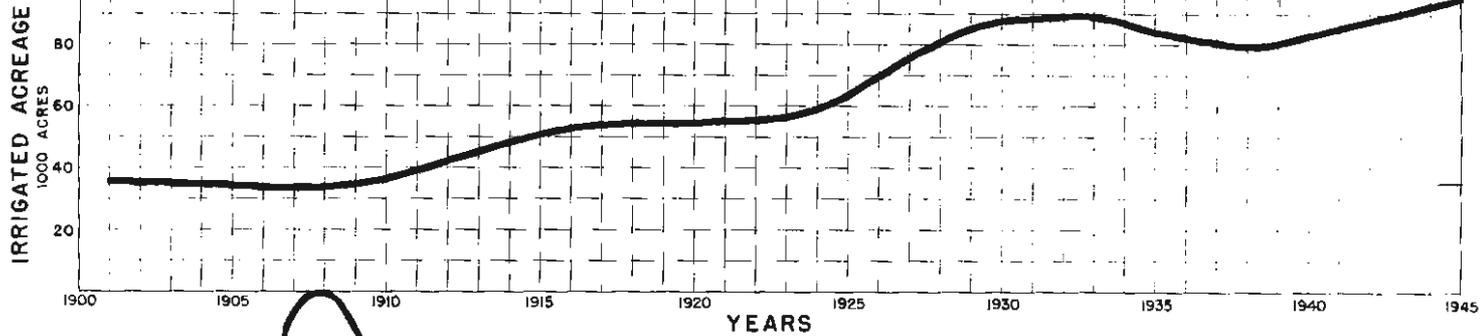
RIO GRANDE
S.W. SAN LUIS VALLEY

Plotted Values are 5 Year Progressive Averages





RIO GRANDE BASIN
ELEPHANT BUTTE TO EL PASO
(RINCON & MESILLA VALLEYS)





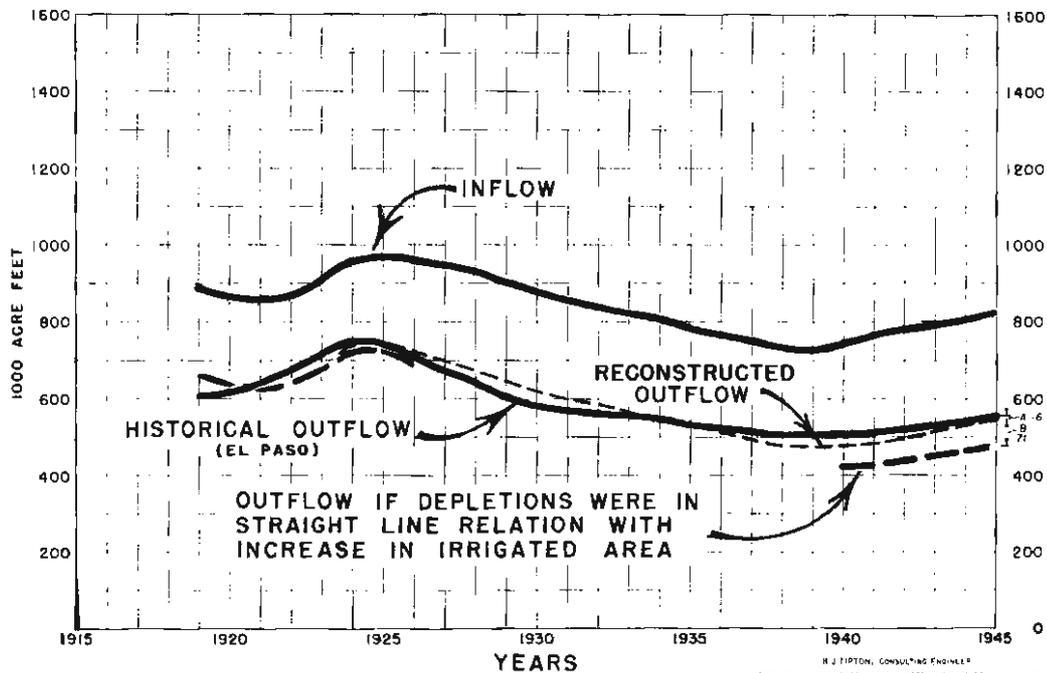
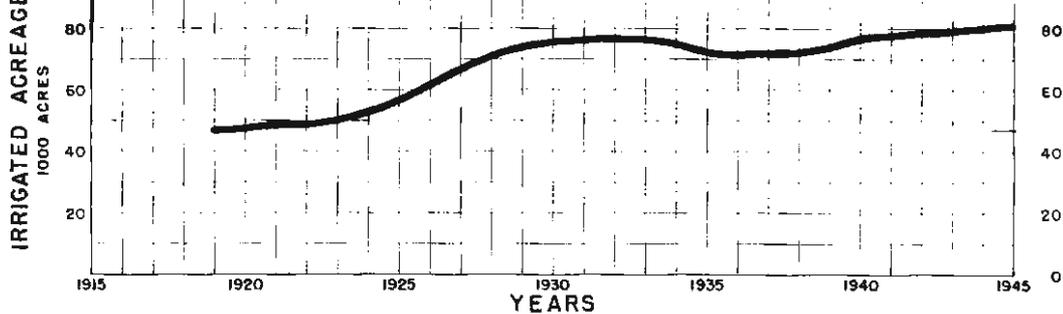
NEW MEXICO
TEXAS

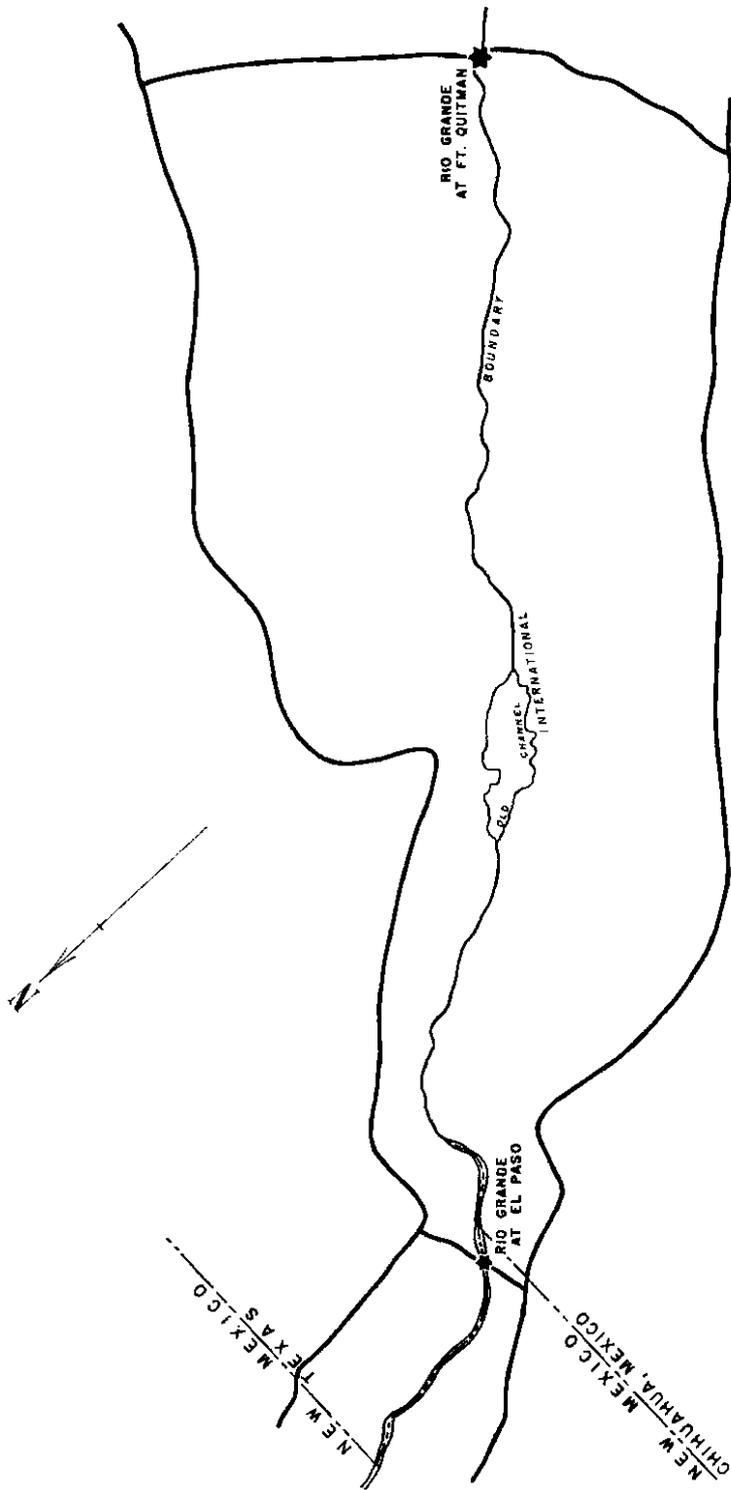
RIO GRANDE
AT EL PASO

NEW MEXICO
CHIHUAHUA, MEXICO

RIO GRANDE AT LEASBURG

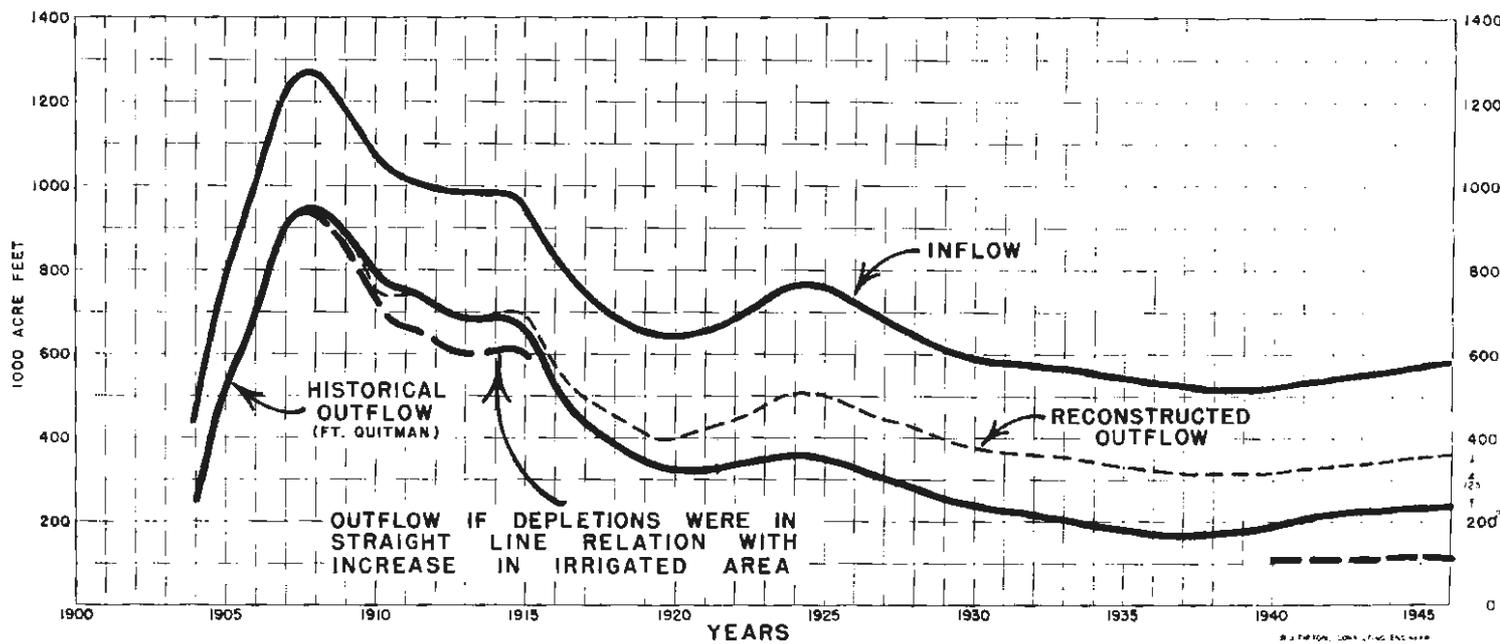
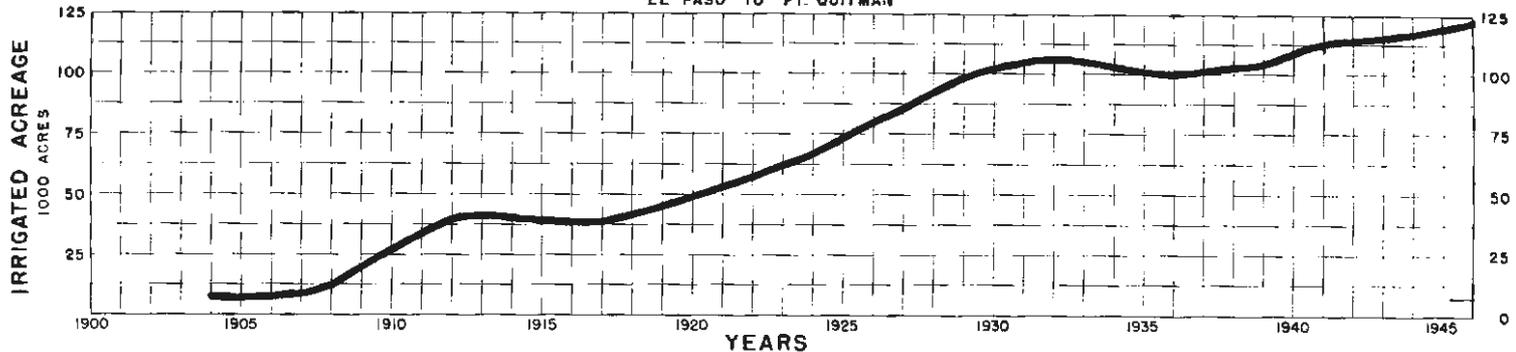
RIO GRANDE BASIN IN NEW MEXICO
LEASBURG TO EL PASO
(MESILLA VALLEY)

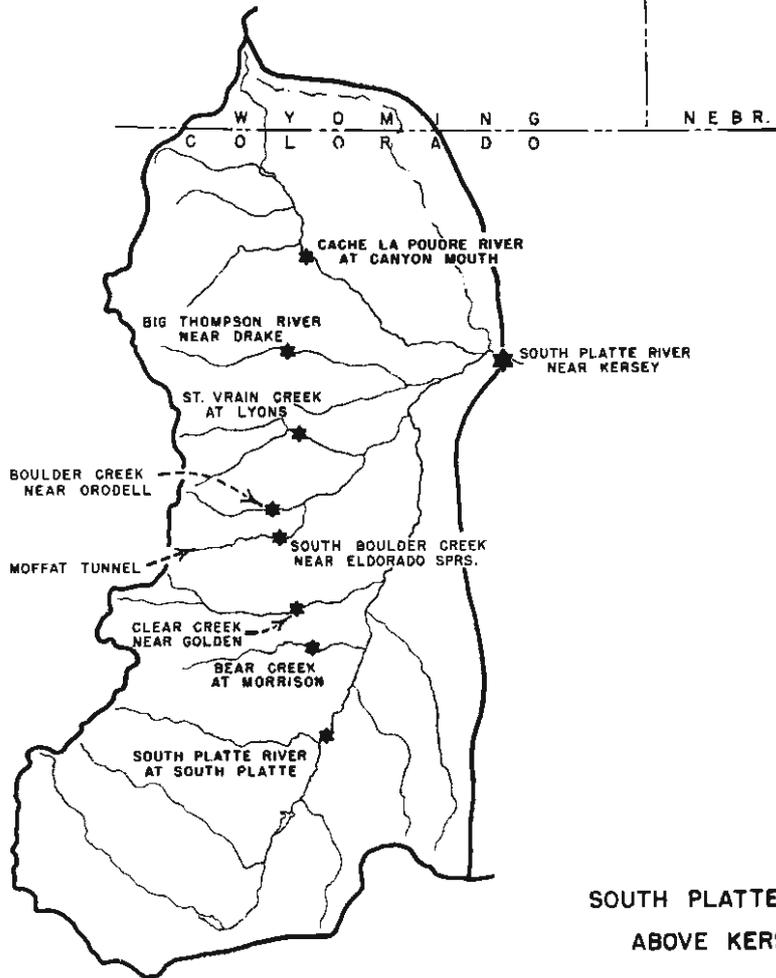




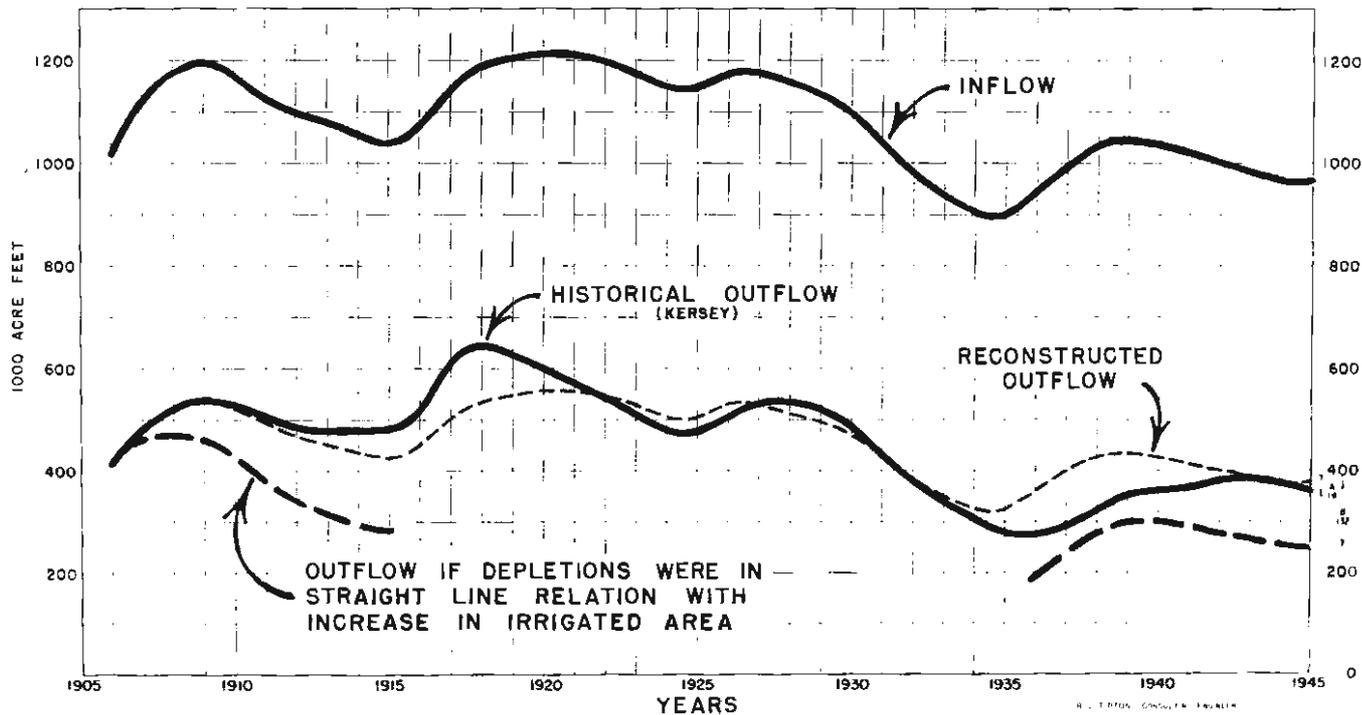
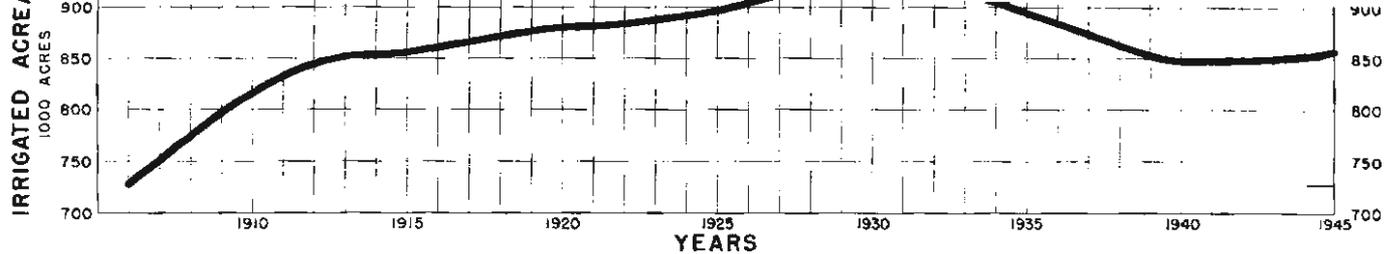
RIO GRANDE BASIN EL PASO TO FT. QUITMAN

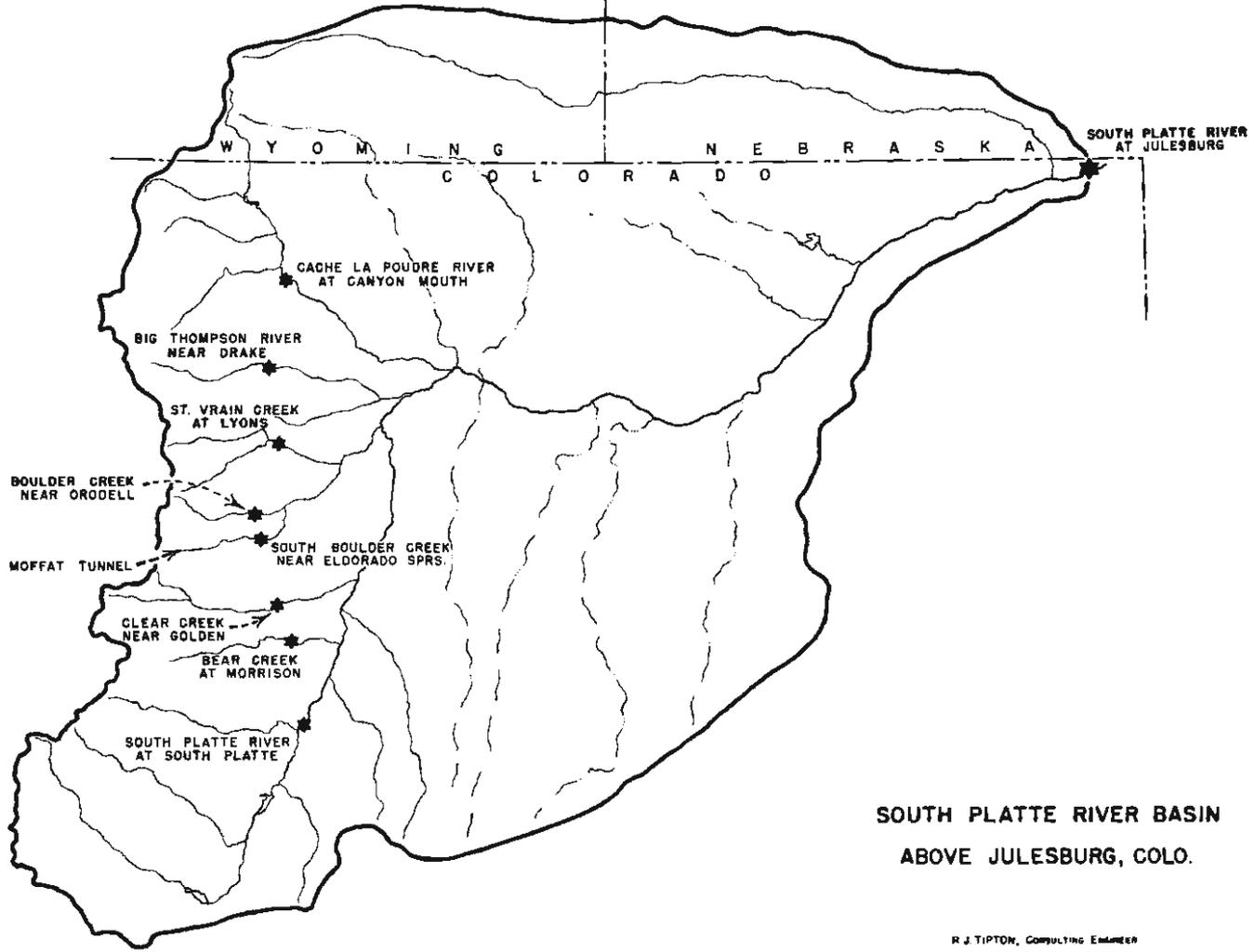
R. J. TIPTON, Consulting Engineer
PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1944





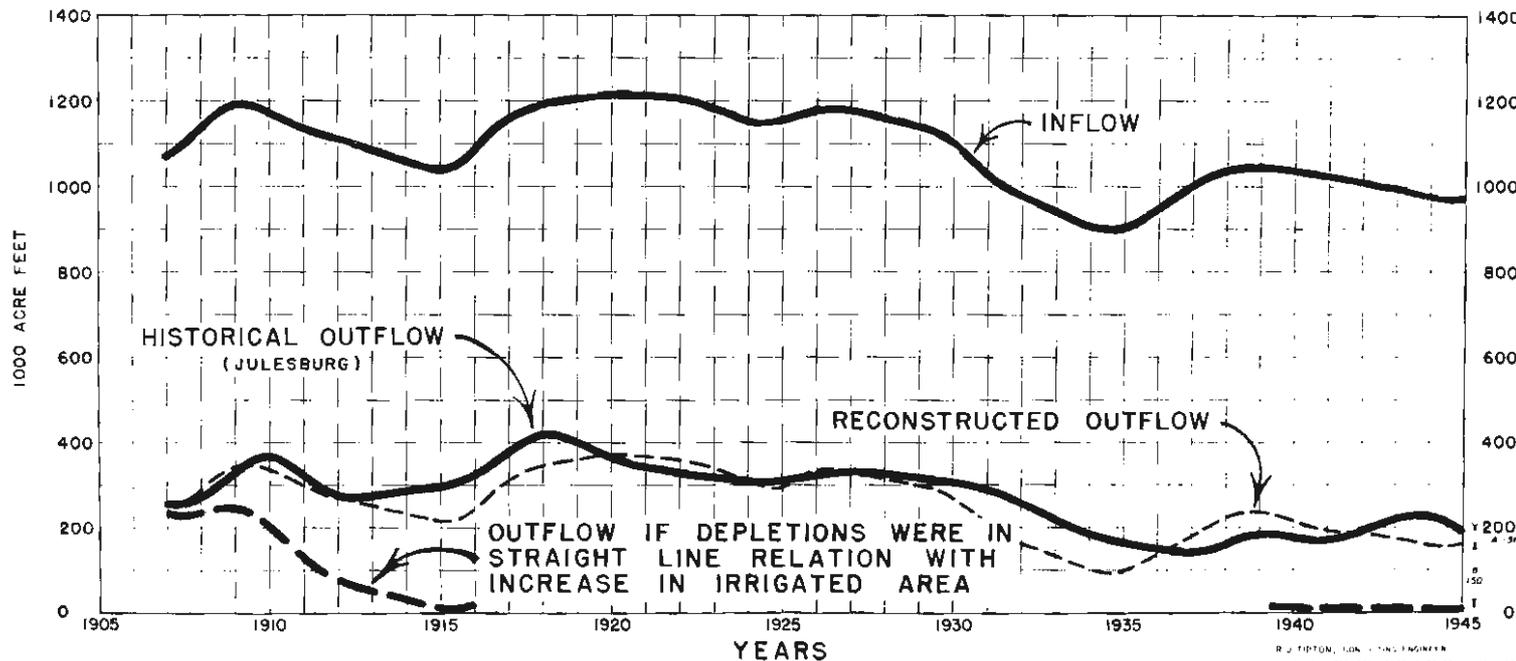
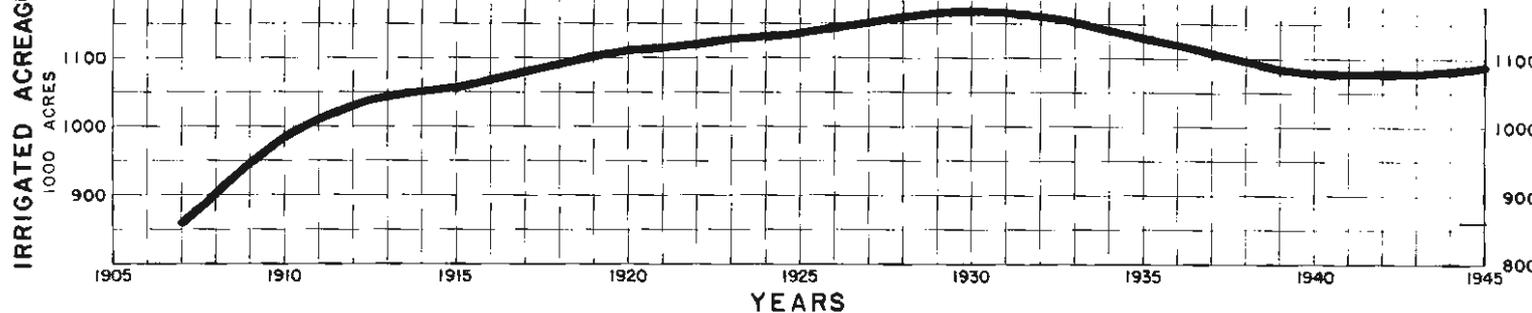
**SOUTH PLATTE RIVER BASIN
ABOVE KERSEY, COLO.**





**SOUTH PLATTE RIVER BASIN
ABOVE JULESBURG, COLO.**

R. J. TIPTON, Consulting Engineer
PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1948



was 315,000, an increase of 370,000 acres.

If the outflow at the state line had been depleted in a direct relationship with the increase in the acreage, the outflow at the state line would have been that which is shown by the dashed red line on the chart, or 357,700 acre feet less than the outflow actually is. In other words, during this period of time when man increased the irrigated acreage in that area by 370,000 acres, he salvaged 357,700 acre feet. The man-made depletion at the state line because of the increase of 370,000 irrigated acres is 220,000 acre feet, or 0.58 acre feet per acre while the consumption or depletion at the point of use is estimated at 1.47 acre feet per acre for the average year, and at 1.56 acre feet per acre for the average of the 1941-1945 period. Man is depleting the flow at the state line by 220,000 acre feet and he is consuming water which was being lost in the state of nature in the amount of 357,700 acre feet.

I now call attention to Plate No. VI which indicates the situation with respect to the South Platte in Colorado above the Stateline gaging station at Julesburg. The results shown by this chart are almost unbelievable. The mean irrigated acreage for the five year period, 1902 to 1907, was 860,000 acres. The mean for the period 1940 to 1945 was 1,088,000 acres, an increase of 228,000 acres. On the lower graph which indicates the situation with respect to water supply, it may be noted that the historic outflow after man increased the irrigated acreage by 228,000 acres does not depart materially from what it was before he made such increases. The depletion rate at the point of use is estimated at about 1.10 acre feet per acre of irrigated land per average year and at 1.01 acre feet per acre for the 1940-1945 period. If this depletion had reflected itself at the Stateline, the flow would have been about 181,000 acre feet less as shown by the red line on the lower graph. In other words, man has salvaged that much water by his activities and has increased the irrigated acreage by over 200,000 acres without diminishing by one acre foot the outflow of the South Platte River at the Nebraska-Colorado Stateline.

The other Plates indicate similar situations. I shall describe only one other one.

Mr. Wallace asks about the rainfall. There has been no change in rainfall except the ordinary variation as between seasons and between periods. The variations in the blue lines on the Plates which are indices of the virgin inflow to the basins, are, some indication of the variations in precipitation, that is, the precipitation which causes the runoff.

One item that I do want to point out, which is indicated on all the Plates, is the wide difference between the line representing the index inflow and the line representing the outflow at the beginning of the period represented by each Plate. In each case, at the beginning of such period, man had not made too much development. The difference between the index inflow and the outflow at the beginning of the period is a measure of the natural losses that are occurring between the point of measurement of the inflow and the point of measurement of the outflow. To this indicated difference should be added the unmeasured inflow. It is out of this large natural loss that man automatically salvages some water when he makes his development, resulting in the depletion at the point of outflow much less than the depletion at the point of use.

I shall now describe the situation portrayed by Plate No. IV. I have chosen this because the inflow, as indicated on the Plate, does represent practically all of the inflow to the area. The difference between the inflow and the outflow shows the large natural losses that take place, some of which are subject to salvage by man.

This Plate portrays the situation in that portion of the Rio Grande

basin lying between El Paso, Texas and Fort Quitman. The average irrigated area for the five year period, 1900 to 1904, was 7,300 acres. During the five year period, 1941 to 1946, the irrigated acreage has been increased by 114,500 acres to 121,800 acres. The rate of depletion in the basin at the point of use by irrigated land is estimated at 2.40 acre feet per acre per average year, and at 2.20 acre feet per acre for the 1941-1946 period. The increase in depletion at the point of use during the 46 year period is therefore estimated at 251,900 acre feet. By comparing the reconstructed outflow with the historic outflow, it may be noted from the Plate that the actual depletion at Fort Quitman has been only 125,000 acre feet. In other words, there was a salvage of about 127,000 acre feet, which is more than one-half of the depletion at the point of use. The difference between the location of the blue line shown on the lower graph of Plate No. IV, and the black dotted line, indicates the amount of natural loss that occurs in this reach of river. This loss amounts to some 200,000 acre feet. Man, by his activities, has salvaged a considerable portion of that natural loss.

I shall not take the time to discuss in detail the results shown on any of the other Plates, however, I shall summarize those results as well as the results shown on the Plates which I have described as follows:

Plate No.	Basin	Period	Increase in irrigated acreage during period	Increased depletion during period-At point of use	At outflow point	Salvage water acre feet
1	2	3	4	5	6	7
I	<u>Rio Grande</u>					
I	S.W. Area San Luis Valley, Colorado	1890-1945	370,000	577,200	219,500	357,700
II	Elephant Butte to El Paso	1897-1945	59,500	124,000	4,400	119,600
III	Mesilla Valley New Mexico	1920-1945	33,400	71,000	-5,600	76,600
IV	El Paso to Fort Quitman, Tex.	1900-1946	114,500	251,900	124,800	127,100
	<u>South Platte</u>					
V	Above Kersey	1902-1945	129,000	131,600	18,800	112,800

Particular attention is called to the large difference between depletion at the point of use in the various basins studied and the depletion at the outflow point occasioned by the activities of man. Attention is also called to the relations between the amount of water salvaged and the depletion at the point of use.

What does this principle mean to the Upper Basin and the States of this basin? It is the difference between the concept that the allocation to Upper Basin means 7,500,000 acre feet at the point of use and the concept that the allocation to the Upper Basin means the depletion of the virgin flow at Lee Ferry by 7,500,000 acre feet.

If we should go on the theory that that which the Colorado River Com

Commission was apportioning was the use of the water at the point of use, it would be necessary to add up all the increments of depletion at the point of use, including transmountain diversions, and when that sum reached 7,500,000 acre feet, the Upper Basin would have reached the limit of its apportionment. By that process the basin would have been charged with all of the water that man will have salvaged automatically, water that never did reach Lee Ferry or the Lower Basin in the state of nature, and water that was not available at Lee Ferry subject to apportionment.

The Engineering Committee has given some consideration to the extent of probable salvage in the Upper Basin. None of us know what it might be. We only know that in other river basins it has been a significant amount. It has varied in amount in accordance with the characteristics of the particular stream. We do know that there will be channel loss salvage of 200,000 acre feet up to 400,000 acre feet. That is in addition to the salvage on the land itself, in other words, the loss that Nature was causing on the land itself. I personally think the salvage will be substantially more than 400,000 acre feet but that is neither here nor there. We are dealing in principles rather than quantities. We are trying to determine what it was that was apportioned to the Upper Basin.

The question has been asked: What is better for the Upper Basin regardless of principle? Let's disregard entirely what it was that the Compact Commission was apportioning, and consider what would be better for the Upper Basin from the standpoint of useable water first on the assumption that the Upper Basin has a right to deplete the virgin flow of the river at Lee Ferry by 7,500,000 acre feet, and second on the assumption that the Upper Basin has only the right to deplete the flow of the river and the tributaries at the points of use by 7,500,000 acre feet. The Engineering Committee by request gave some consideration to that problem.

Taking a most pessimistic viewpoint of three factors which would dominate the problem, the Engineering Committee came up with this conclusion: that if the virgin flow at the International Boundary were only 17,000,000 acre feet--(the Bureau estimated it at 17,720,000 acre feet)---if the channel loss salvage in the Upper Basin were only 200,000 acre feet, which seems to be the absolute minimum; and if that during such a low period of runoff there was being delivered to Mexico its full amount of 1,500,000 acre feet (an unwarranted assumption): then at that point the Upper Basin would be just about as well off under one situation as the other; it wouldn't be quite so well off under the theory that the measurement should be at the point of use, because in the quantities I have given there is no recognition of the amount of water that is salvaged on the land itself, which is a significant amount of water.

Then at almost precisely the point described there enters the picture another factor which controls the situation regardless of the theory of what beneficial consumptive use is or what was apportioned to the Upper Basin, and that is the obligation of the Upper States to deliver to the Lower Basin 75,000,000 acre feet in successive ten year periods. When such a severe condition is reached that the results of both theories on the Upper Basin would be equal, immediately the condition passes to one where the compact delivery at Lee Ferry controls the amount of water that can be used in the Upper Basin.

The importance of the matter can be illustrated further by changing our thinking from a basin-wise standpoint to a state-wise standpoint. Let us for a moment consider conditions in the State of Wyoming, which state might be most affected percentage-wise by the one theory, as opposed to the other theory.

The Bureau of Reclamation in its report estimated the present consumptive uses in Wyoming to be, as I remember it, some 347,000 acre feet per year.

The Engineering Committee after considering this entire matter in a very logical fashion and in a fashion which we believe cannot be attacked, came up with a use by Wyoming, that is, a depletion of the stream by man's activities at the point of use, of 226,400 acre feet. That is a difference of about 120,000 acre feet per year. That is up at the point of use. Some of that difference, not all of it but some of that difference is due to the recognition of the salvage of water on the land itself, in other words, not charging Wyoming with water that was being consumed on the land in the state of nature. There is an additional salvage of channel losses from the state line to Lee Ferry of about 10,400 acre feet. So under the one theory Wyoming immediately would be charged with the 10,400 acre feet of present channel salvage loss plus some part of the 126,000 acre feet which represents salvage on the land.

To illustrate further let us start with rainfall itself. If one has cisterns big enough to catch the rainfall before it started to run off he would salvage about eighty percent of the precipitation that falls on the watersheds. He would have about five times the amount of water that he now has to use if he could start the point where precipitation falls and catch it in cisterns and begin to utilize it.

MR. WALLACE: What percentage of rainfall over the entire Colorado River Basin reaches the Mexican border? Can you make that calculation?

MR. TIPTON: Mr. Wallace, I will not attempt to give you that for the entire basin. I can give you a rough estimate for the Upper Colorado River Basin. Taking a straight average of all of the recorded precipitation, without weighing it for areas, and multiplying that by the drainage area, the results indicate a total average precipitation a year in the Upper Basin of about 75,000,000 acre feet. The Engineering Advisory Committee estimates that the virgin runoff from the basin is slightly over 15,000,000 acre feet. Therefore, in the state of nature, only about twenty percent of the original precipitation reached Lee Ferry.

MR. WALLACE: That is saved and confirms your--

MR. TIPTON: Nature begins to take a toll immediately rainfall touches a leaf or touches the ground.

MR. WALLACE: Eighty percent of the rainfall is consumed in a state of nature before it gets to Lee Ferry as runoff?

MR. TIPTON: Yes sir. A tremendous tonnage of rainfall falls on the Basin and not too much tonnage reaches Lee Ferry or the Gulf of Lower California in the state of nature.

Regardless of what theory the Commission might adopt comes the question: How shall that which is going to be apportioned among the states here at this session be measured? How is the Upper Basin apportionment as made by the Colorado River Compact Commission to be measured?

I am following through now on the theory that I am suggesting, that that which was apportioned to the Upper Basin was the right to deplete the virgin flow of the Colorado River at Lee Ferry by 7,500,000 acre feet. How can that depletion be measured? In my own opinion it can best be measured by change in relation between the runoff at certain key gaging stations located around the rim of the basin above the major development and the outflow from the basin as measured at Lee Ferry.

These rim stations can be considered index inflow stations. I will define that. It is not possible physically to measure all of the inflow to a basin. It is possible to measure a very substantial part of the inflow. It can be very safely assumed that the streams that are not measured will fluctuate percentage-wise in the same fashion as the natural measured inflow. The test of that to a considerable extent is the degree of correlation found to exist between the recorded flow at such stations and the recorded flow at the outflow station.

I have investigated that means of measurement for the Colorado River Basin as a whole above Lee Ferry and for a number of the sub basins. I have had a number of charts prepared which show the results of that study. It is realized that more stations must be installed in order that the results be satisfactory for compact administration. However, some of the relationships which I found, even with the stations in existence, are not bad. The charts which I have had prepared, and which I shall describe, do illustrate the principle. For each basin, there have been prepared three exhibits: The first is an outline map of the area involved on which has been indicated the stream system and the gaging stations used in the study. The second chart shows the indicated relationship between the stream runoff as recorded at the inflow stations and the runoff as recorded at the outflow stations. The third chart in each series shows the relationship between index inflow and the outflow in progressive ten year means.

In my description, I shall start with the Upper Colorado River Basin as a whole. Twenty-six gaging stations located near the rim of the basin above which there is little man made depletion were chosen as index inflow stations. In the process I am describing, the man made depletion occurring above the index inflow stations should be added to the recorded runoff at those stations in order that the indicated runoff shall represent the virgin flow at those particular points. The twenty-six stations are shown on the attached map entitled, "Upper Colorado River Basin." The outflow station is the single station at Lee Ferry. The sum of the recorded inflow at the twenty-six index inflow stations was plotted against the actual recorded outflow at Lee Ferry, which resulted in the relationship shown on the diagram following the map. The scale on the left of the diagram indicates Colorado River index inflow above Lee Ferry, in terms of 1,000 acre feet. The scale at the bottom of the diagram represents the runoff of the Colorado River at Lee Ferry in units of 1,000 acre feet. Each black point represents the index inflow, this being the sum of the flow at the twenty-six stations, as measured on the scale at the left diagram and the corresponding outflow at Lee Ferry as measured on the scale on the bottom of the diagram. Each black point is designated by the particular year which was involved.

There are some departures from what would be considered as an average line. The departure in some years can be very well explained. The year 1935 departs from what would be considered an average line because it was a fairly good year following the extremely low year of 1934. Ground waters being depleted in 1934, some of the runoff during that 1935 went to replenish ground water storage. The same thing happened in the years 1940 and 1941. 1941 was a good year following an extremely low year of 1940.

The values represented by the points on this diagram were averaged in ten year progressive means and were plotted on the next diagram.

Consideration of ten year progressive series is entirely consistent with the Colorado River Compact because of the provision of the delivery at Lee Ferry in progressive ten year series. It will be noted that the correlation between the ten year progressive series of index inflow as measured at the twenty-six stations, and the outflow as measured at Lee Ferry is excellent.

If the method I am suggesting should be adopted, there would be drawn on a diagram similar to this one the relationship between virgin index inflows and the virgin flow at Lee Ferry. The Engineering Committee has estimated the virgin flow at Lee Ferry for a certain period, 1914 to 1945. We know what the index inflow during that period was. There would be indicated at that inflow point the virgin flow at Lee Ferry and there would be projected through that point a curve showing the relationship between the virgin index inflow and the virgin outflow. Then as time went on, the administrative body that is set up to administer this compact each year would determine the relationship between the past ten year average runoff at the index inflow stations and the actual outflow at Lee Ferry. Gradually that relationship would depart from the virgin relationship. The curve would move to the left, and when at the average point that curve deviated from the virgin condition by 7,500,000 acre feet, at that point would the Upper Basin have reached the limit of its apportionment under the Colorado River Compact.

This inflow-outflow method integrates all factors. It accounts for all of the new losses in the channels. It accounts for the depletions that man is causing to be made at Lee Ferry. There is no guess about it. There is no routing of the depletions down the river. It takes everything in one fell swoop and integrates the changes that are taking place in the Basin due to man's activities.

The other sets of charts consisting of one map and two diagrams each indicate the same type of information for the Green River Basin above Linwood, Utah, the Green River Basin above Green River, Utah, the Colorado River Basin above Cameo, Colorado, and the Colorado River Basin above Cisco, Utah, and the San Juan River Basin above Bluff, Utah. I am not going to describe each of these in detail.

In the Green River Basin above Linwood, only three inflow index stations were used as indicated on the map. Nevertheless, a very good relationship was found to exist between such index inflow and outflow of the Green River near Linwood both on a single year basis and on a ten year progressive means basis. A good relationship also exists between the index inflow stations that were used for the Green River Basin above Green River, Utah, and the outflow of the Green River at Green River, Utah.

The single year relationship for the Colorado River Basin above Cameo is not particularly good, but ten year progressive mean relationship can be considered as excellent. The same can be said for the Colorado River Basin above Cisco, Utah.

The most unsatisfactory relationship that was found with the ten year progressive mean was for the relationship between San Juan River index inflow above Bluff, and the San Juan River near Bluff. This relationship is not as good as the single year relationship.

Attachment H is intended, in very rough fashion, to suggest a framework for the inflow-outflow means of measurement of the apportionment which will be made to each state and the apportionment that has been made to the Upper Basin. I shall not describe the attachment in detail because it has been suggested merely as a guide for considering administrative provisions of the compact should the inflow method of measurement be adopted.

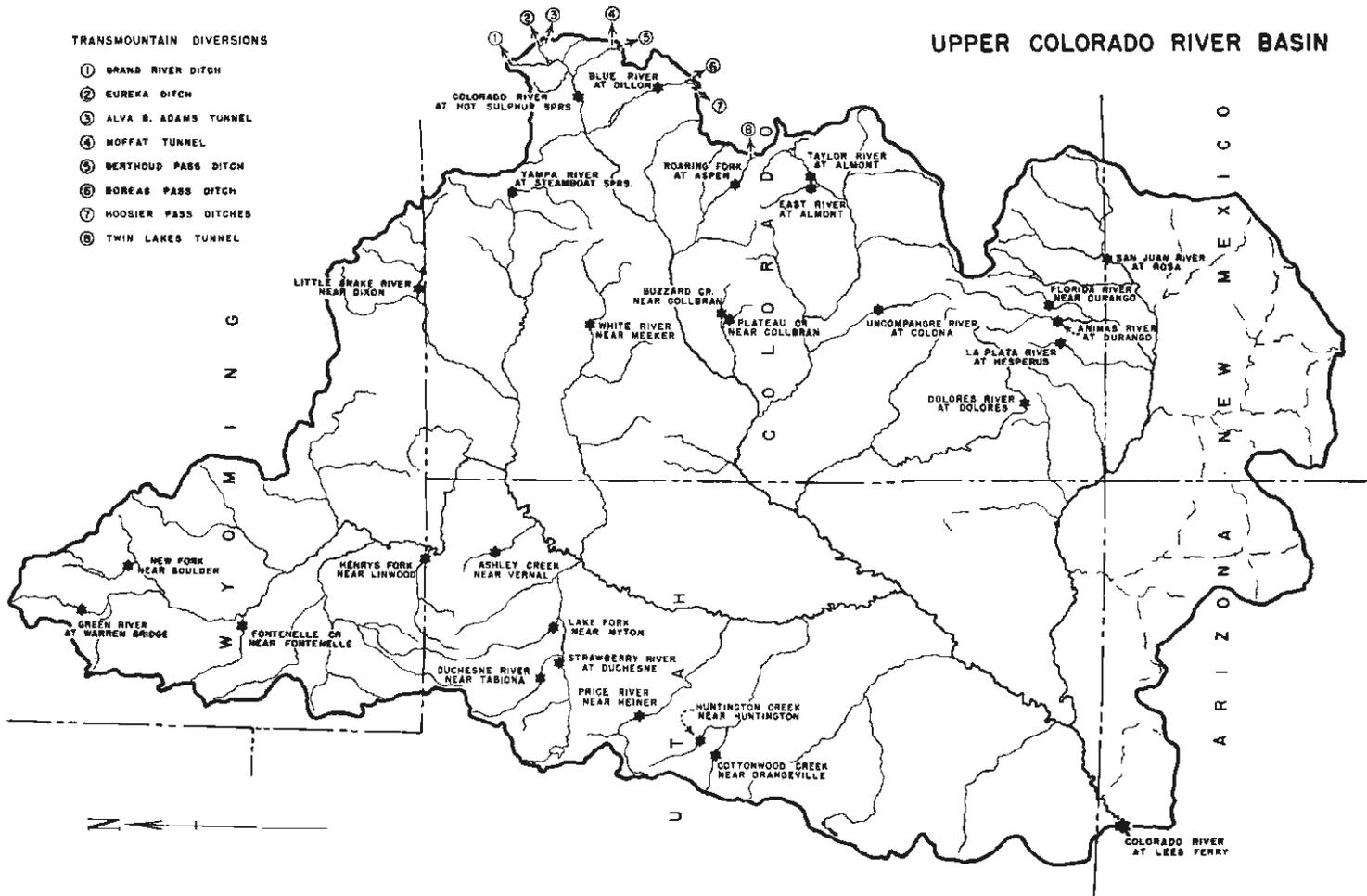
Now, Mr. Chairman, if there are any questions.

MR. WALLACE: Mr. Chairman, I wonder if Mr. Tipton would discuss somewhat for our benefit the right to the use of the surplus water.

UPPER COLORADO RIVER BASIN

TRANSMOUNTAIN DIVERSIONS

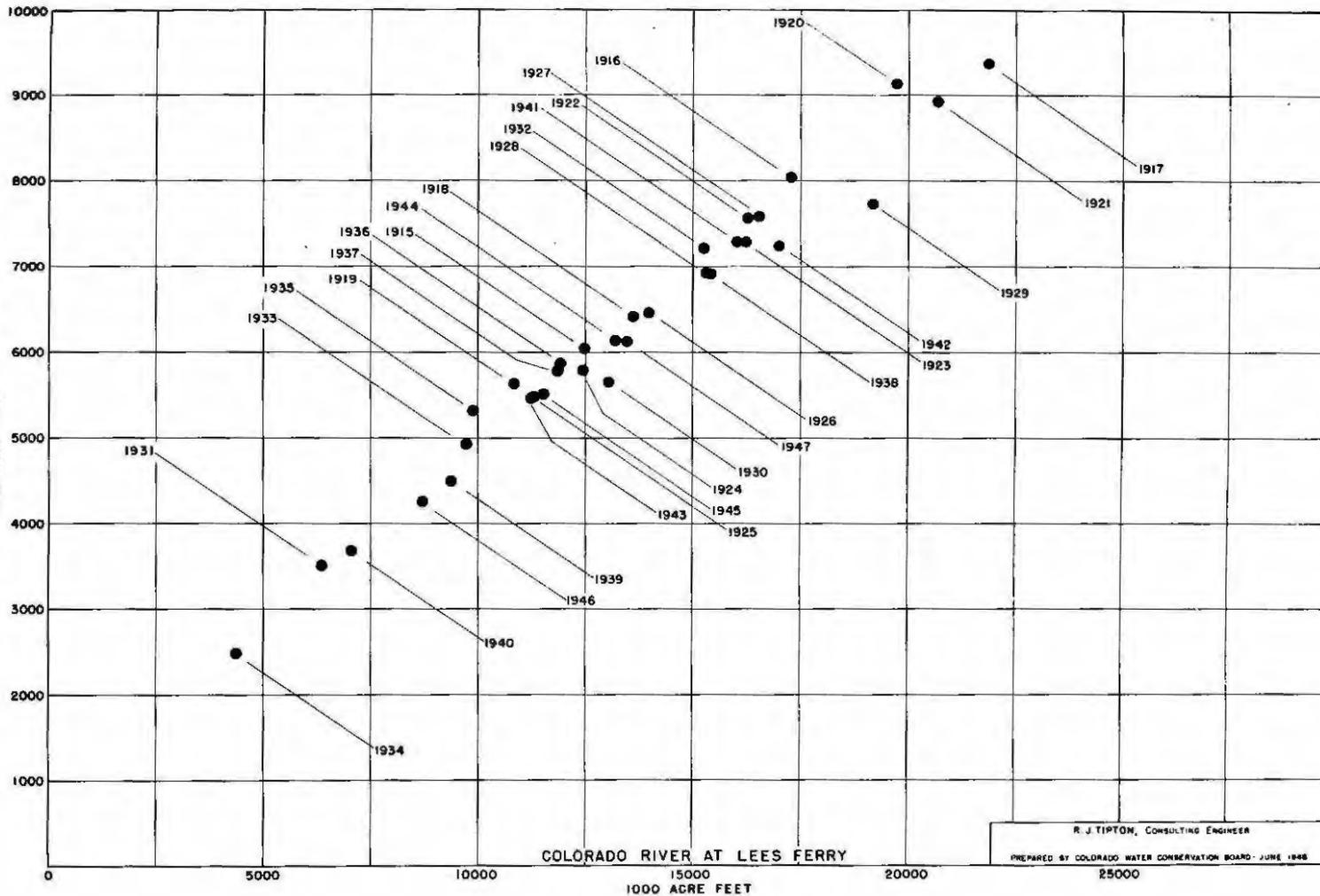
- ① GRAND RIVER DITCH
- ② EUREKA DITCH
- ③ ALVA B. ADAMS TUNNEL
- ④ MOFFAT TUNNEL
- ⑤ BERTHOUD PASS DITCH
- ⑥ BOREAS PASS DITCH
- ⑦ HOOSIER PASS DITCHES
- ⑧ TWIN LAKES TUNNEL



R. J. TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1946

COLORADO RIVER INDEX INFLOW ABOVE LEES FERRY
1000 ACRE FEET



COLORADO RIVER INDEX INFLOW ABOVE LEES FERRY

1000 ACRE FEET

8000

7000

6000

5000

4000

10000

11000

12000

13000

14000

15000

16000

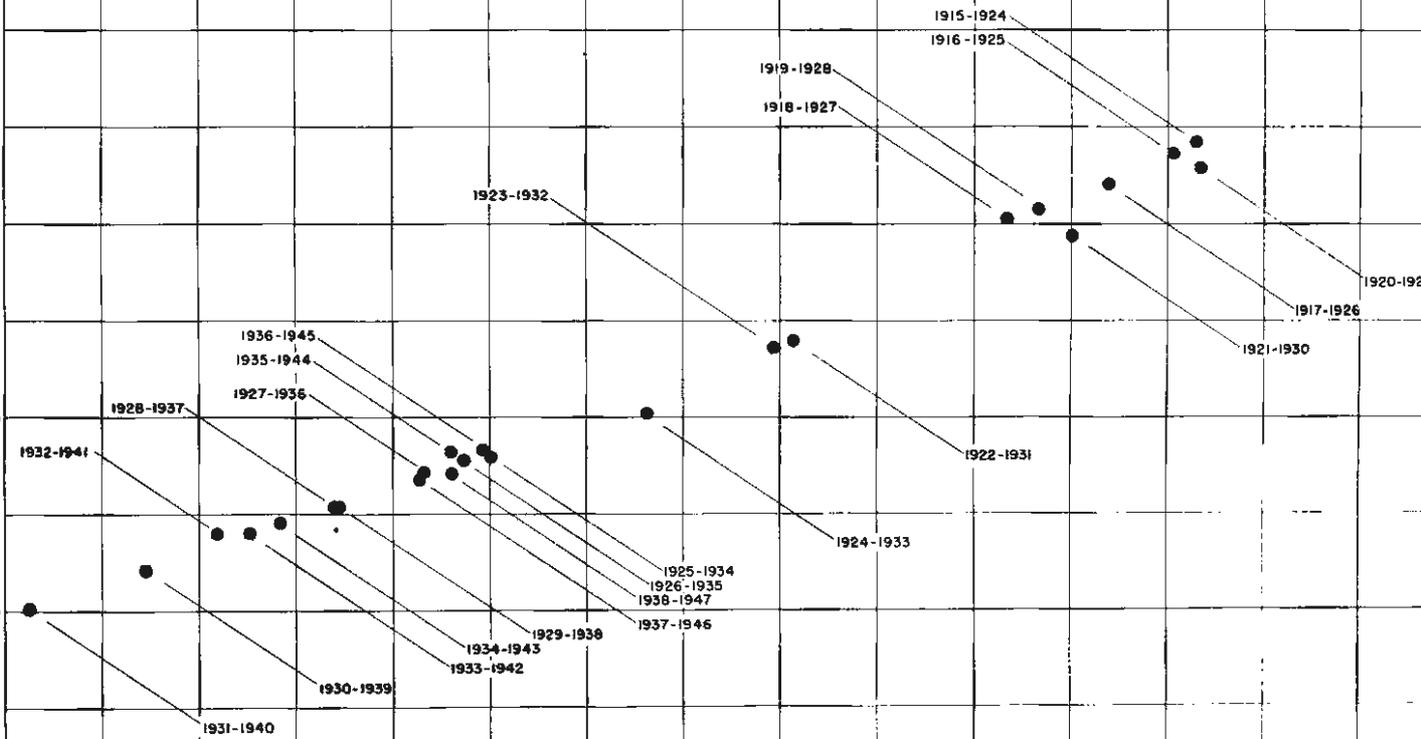
17000

COLORADO RIVER AT LEES FERRY

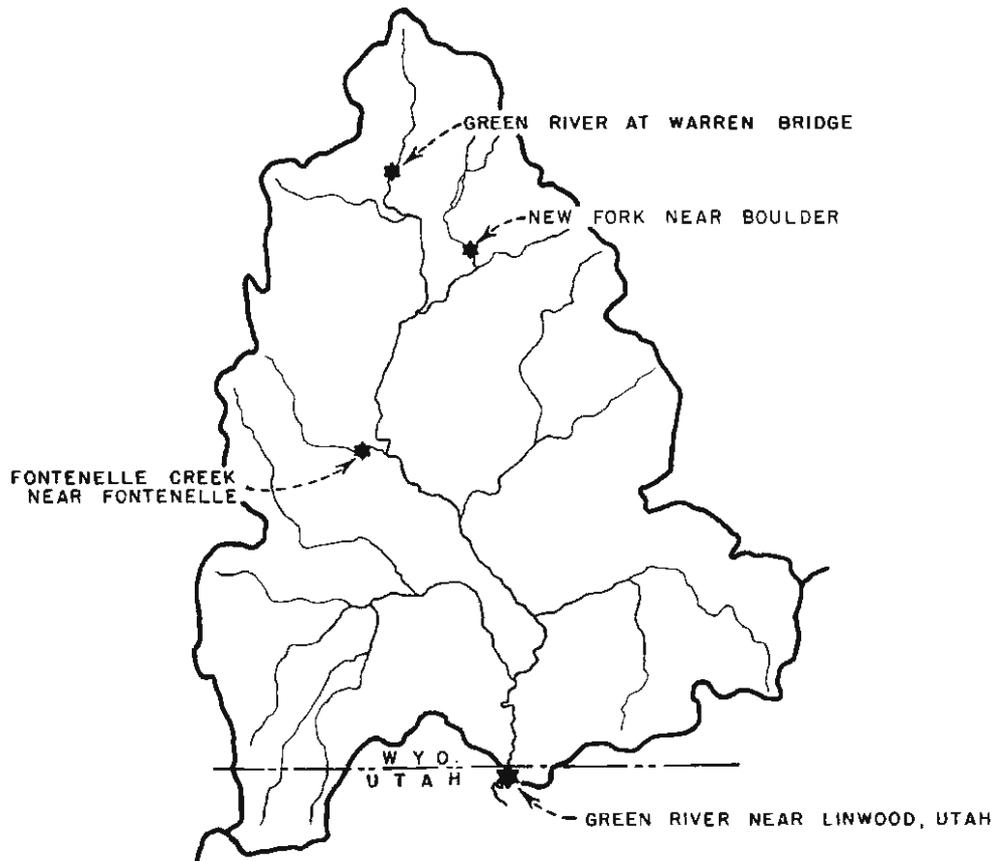
1000 ACRE FEET

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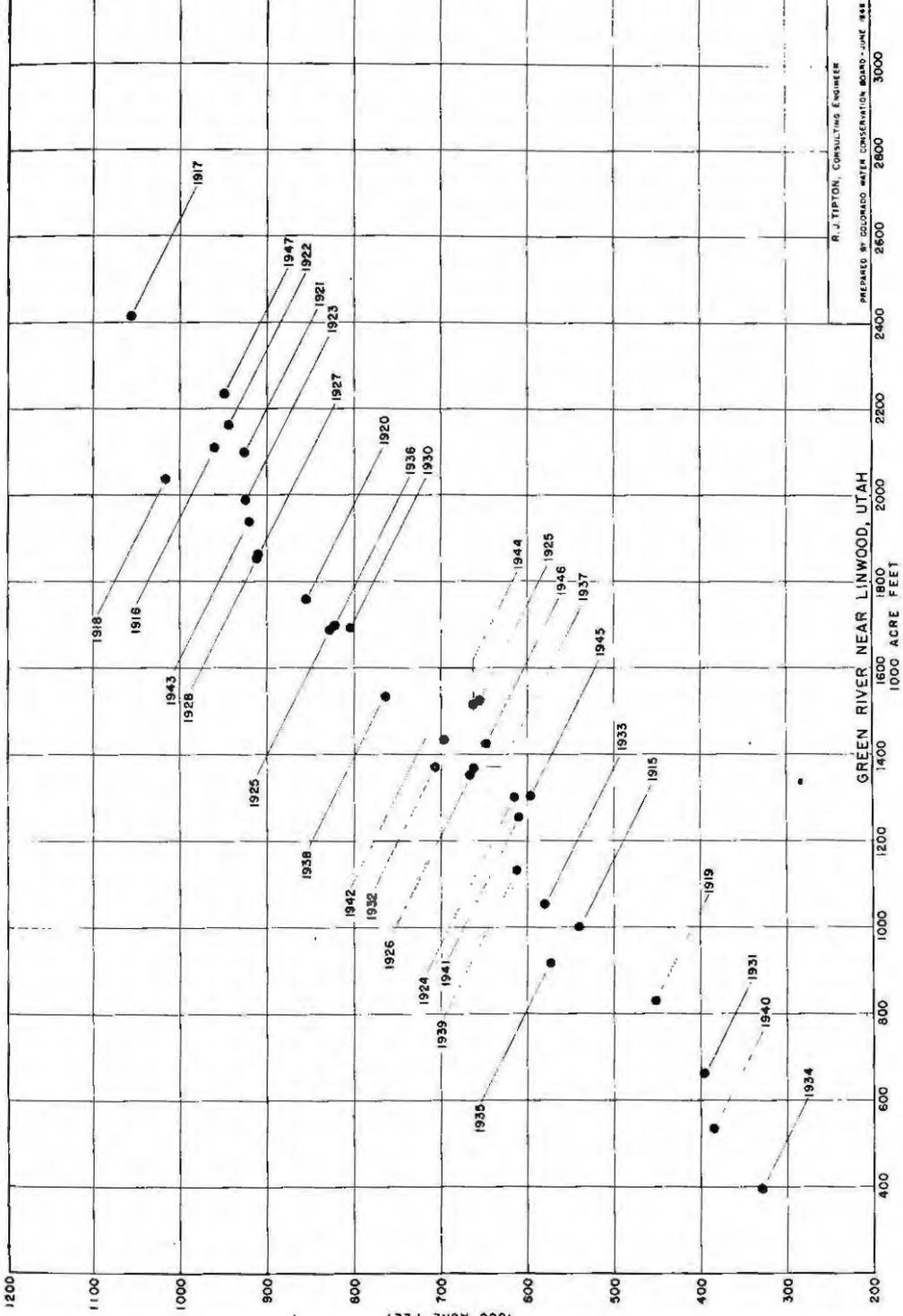
GREEN RIVER BASIN ABOVE LINWOOD, UTAH



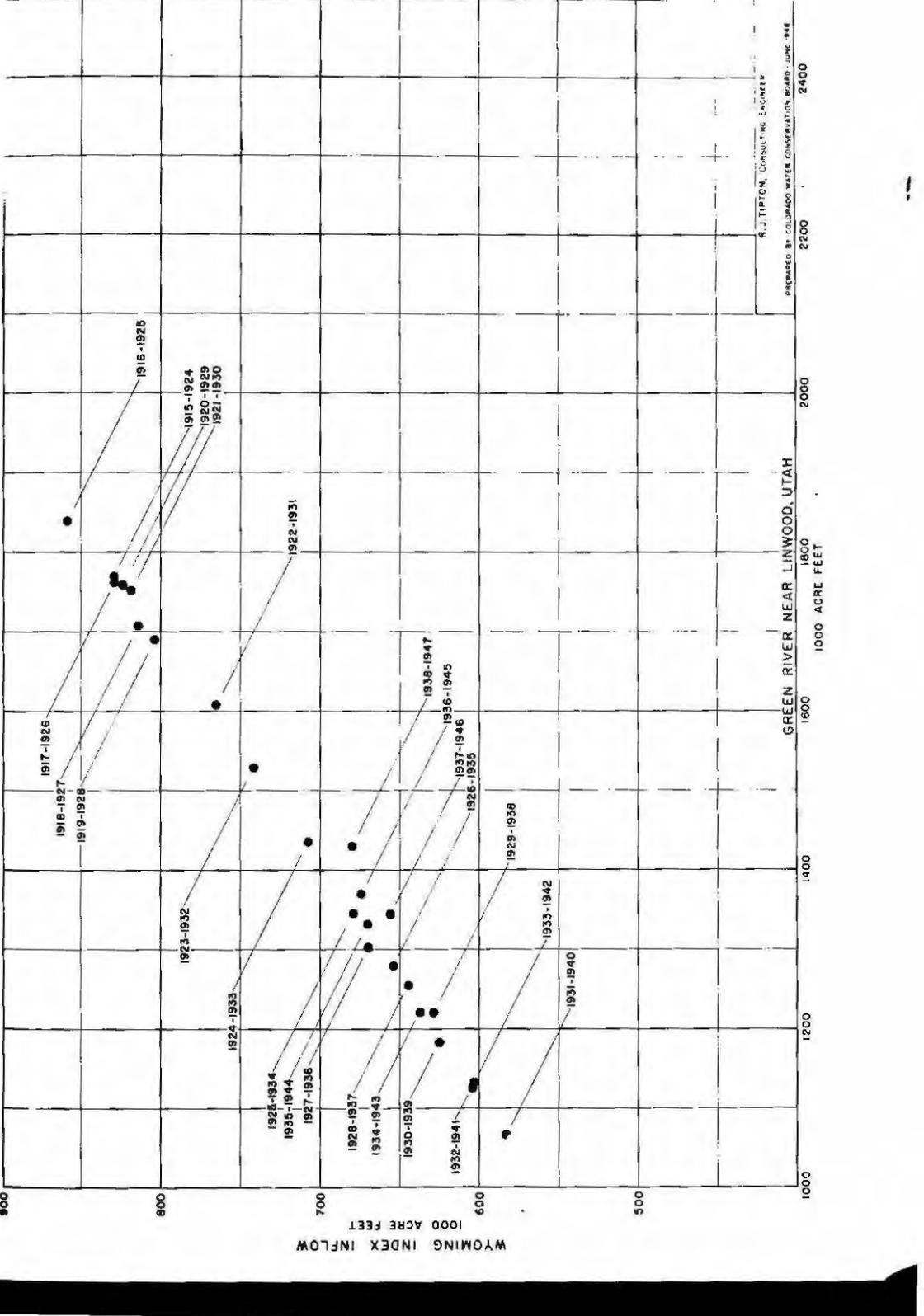
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WYOMING INDEX INFLOW (GREEN AT WARREN BRIDGE PLUS NEW FORK NEAR BOULDER PLUS FOUNTENELLE CR NEAR FOUNTENELLE)



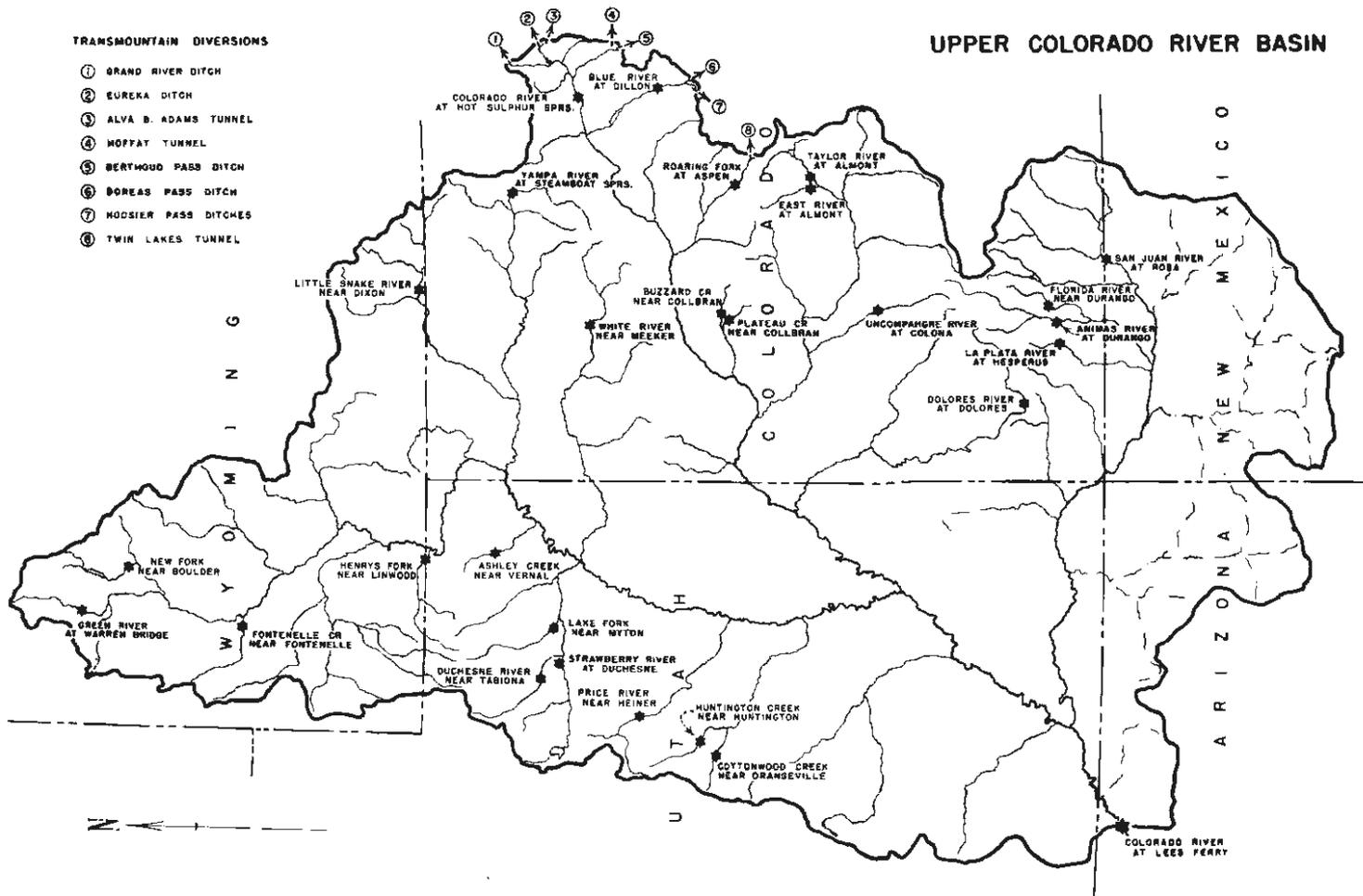
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TRANSMOUNTAIN DIVERSIONS

- ① GRAND RIVER DITCH
- ② EUREKA DITCH
- ③ ALVA B. ADAMS TUNNEL
- ④ MOFFAT TUNNEL
- ⑤ BERTWOOD PASS DITCH
- ⑥ BOREAS PASS DITCH
- ⑦ HOOSIER PASS DITCHES
- ⑧ TWIN LAKES TUNNEL

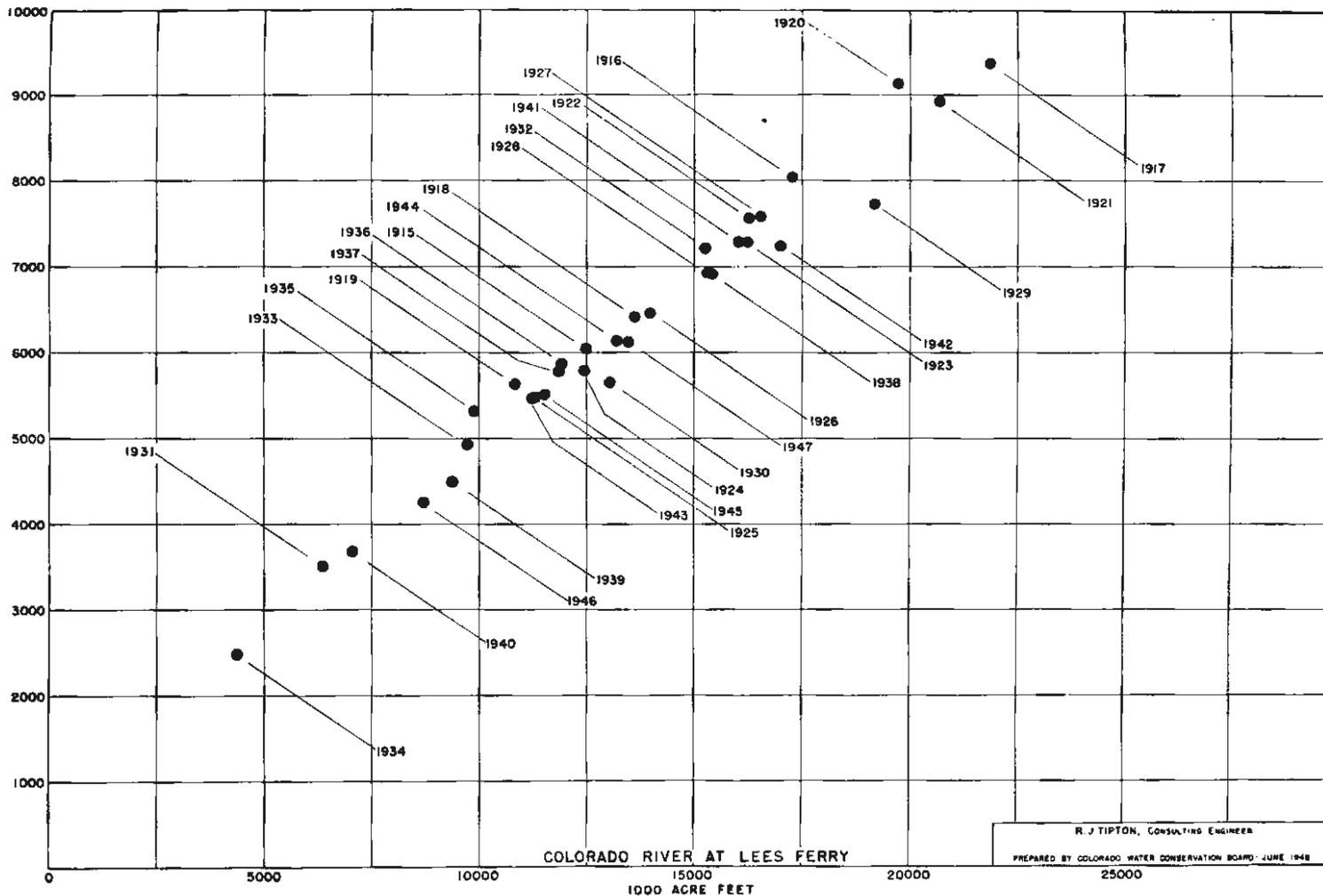
UPPER COLORADO RIVER BASIN



R J TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1948

COLORADO RIVER INDEX INFLOW ABOVE LEES FERRY
1000 ACRE FEET



R. J. TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1948

COLORADO RIVER INDEX INFLOW ABOVE LEES FERRY

1000 ACRE FEET

8000

7000

6000

5000

4000

10000

11000

12000

13000

14000

15000

16000

17000

1000 ACRE FEET

COLORADO RIVER AT LEES FERRY

R. J. TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1948

1923-1932

1919-1928

1918-1927

1915-1924

1916-1925

1920-1929

1917-1926

1921-1930

1936-1945

1935-1944

1927-1936

1928-1937

1932-1941

1925-1934

1926-1935

1938-1947

1924-1933

1922-1931

1929-1938

1937-1946

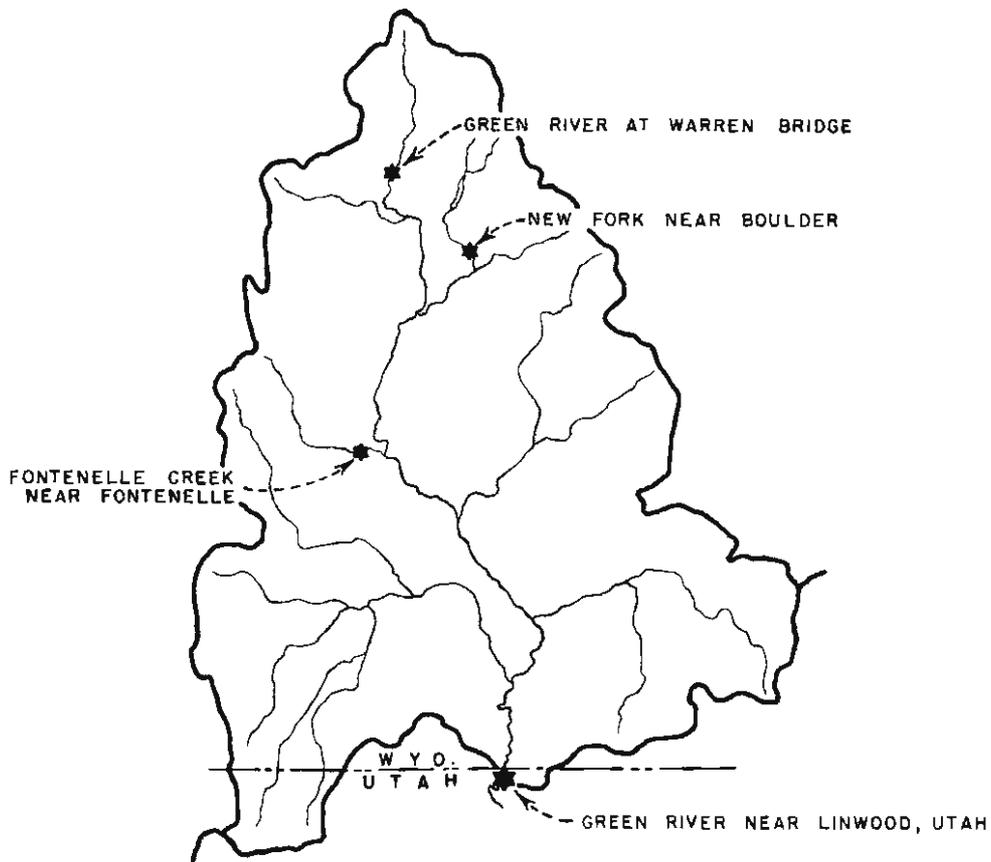
1934-1943

1933-1942

1930-1939

1931-1940

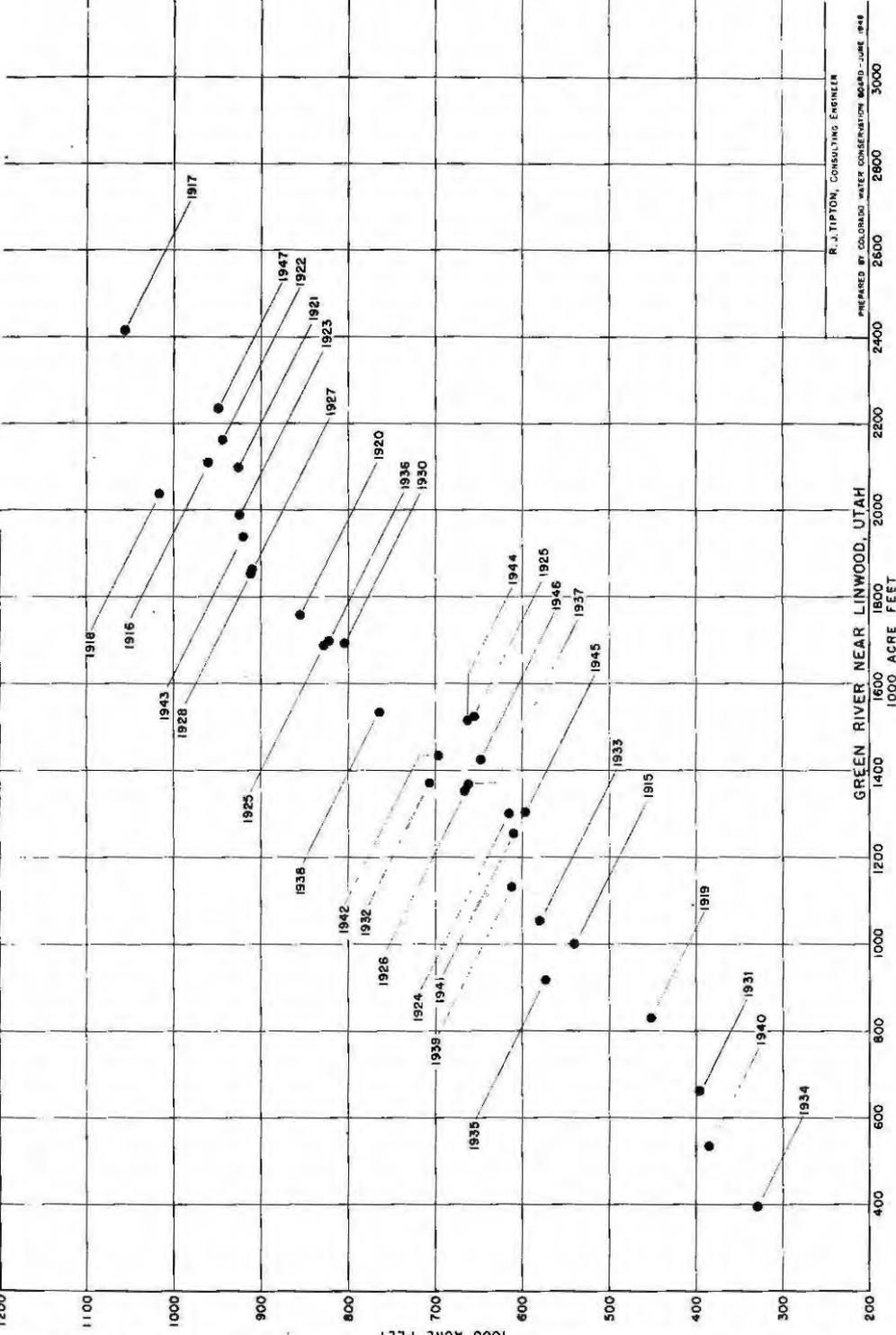
GREEN RIVER BASIN ABOVE LINWOOD, UTAH



R J TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE 1946

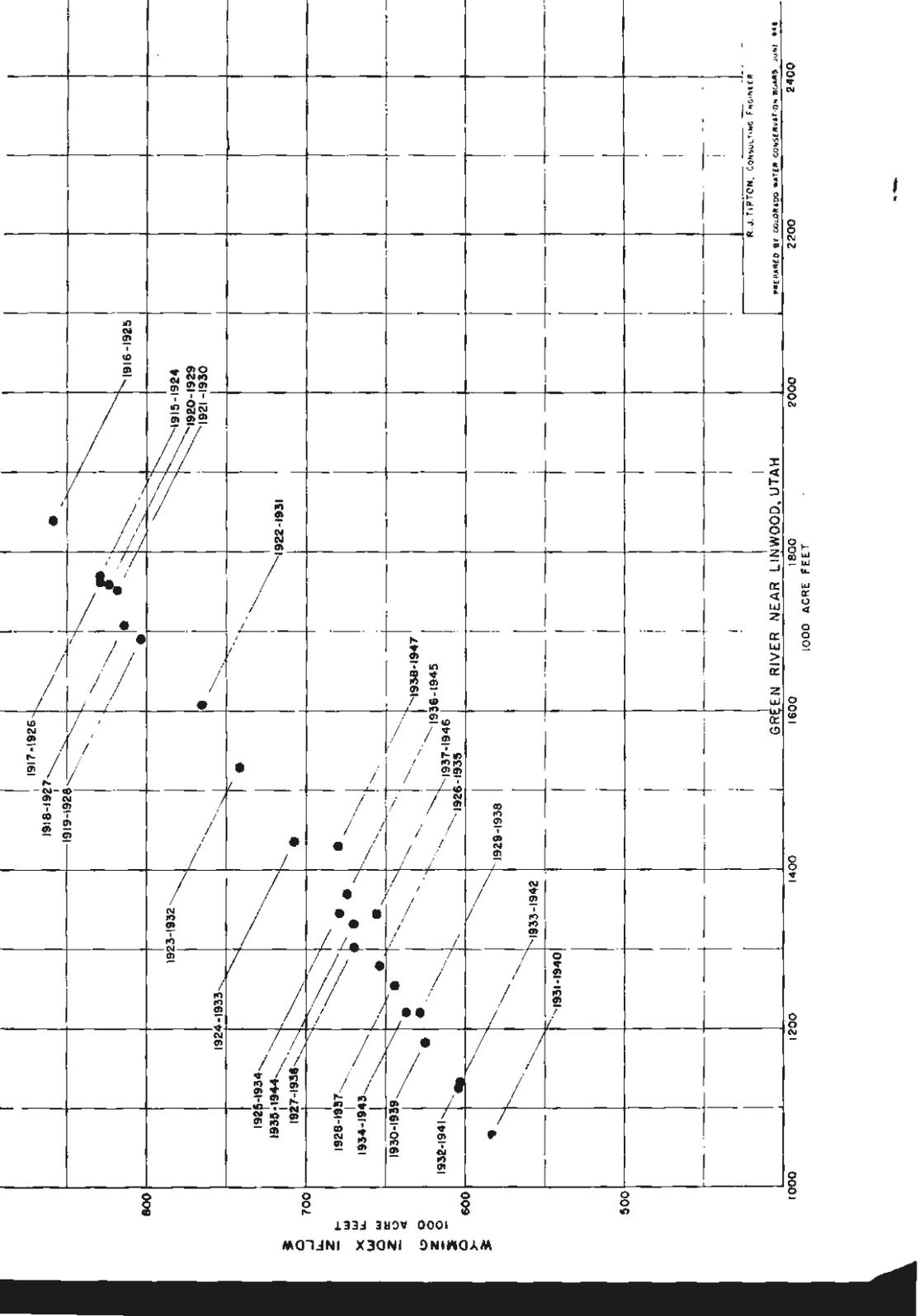
WYOMING INDEX INFLOW
 GREEN AT WARREN BRIDGE PLUS NEW FORK NEAR BOULDER PLUS FONTENELLE CR NEAR FONTENELLE



GREEN RIVER NEAR LINWOOD, UTAH

R. J. TIPTON, CONSULTING ENGINEER

PREPARED BY COLORADO WATER CONSERVATION BOARD - JUNE, 1949



MR. LARSON: We will assume as the first assumption that we will have a dry cycle, a very bad one like we had from 1897 to 1906. Supposing we have a dry cycle like that from 1947 on. That 10-year average would go up above the 7,500,000 for two or three years and then drop down and then go back up to it again.

We also have the right to assume that we may have a very wet cycle come in, say the cycle from 1914 to 1923. Then what would happen to the moving 10-year average? Beginning 1948 then it would keep on going until it even exceeded 10,000,000 acre feet if we had such a cycle as that.

Where it will be of course nobody knows, but taking the long span of years it does show this, and I think that is of interest to your Compact Commission in negotiating this compact and the reason why we are making the explanation: It clearly shows that for the Upper Basin States to get the most out of the river that you must have long-time holdover reservoirs. As Mr. Riter stated yesterday in his preliminary study he had arrived at a figure of live storage of 29,200,000 acre feet. That agrees with our study which is about 30,000,000 acre feet of live storage. So if you had to take five or ten million for silt storage in the reservoirs, it would mean that you would get up around maybe 40,000,000 acre feet of storage capacity that would be desirable for upstream regulation.

And it clearly shows that you would have to store water over in these wet years when the moving 10-year average went above 7,500,000 acre feet, way above, and keep that water for a period of years to bring your 7,500,000 acre-foot yield over in this long period of years from 1934 up to 1946.

THE CHAIRMAN: May I ask how long you are calculating that you are going to carry that holdover?

MR. LARSON: Twenty to 30 years. Now we would have a spill in the year 1929. We would naturally spill in our reservoir operations. So there would be some spills but our studies so far show that we need a long-time holdover from 20 to 30 years.

But that does give you a picture. I won't say any more. It does show you that when a dry year like 1934 does hit you that your moving 10-year average doesn't take the low point until we get way over here to 1940, six years after. I think that is a very important point in planning the regulation and operation of your river.

THE CHAIRMAN: May I ask this question: Do those ordinates on that chart show the depletion by evaporation? You have mentioned a 20 or 30 year period; of course that consumes a lot of water.

MR. LARSON: That is right, Mr. Bashore, and the way we do that, we pick out a group of reservoirs and some that we have tentatively selected as the best ones are on that map in circles, Flaming Gorge, Echo Park, Cross Mountain, Curecanti on the Gunnison, and Dark Canyon and Glen Canyon. Now we will have more reservoirs than that but they will be small. Those are the ones that have the least evaporation and have an appreciable amount of storage.

Now if you have a long-time holdover you must of course figure on the enormous evaporation, but you have a lot of capacity and carryover from the high years and evaporation takes its toll, but you arrive at that point where you get the maximum irrigation yield and that of course is the point which we are striving for and that is why we are making a detailed study on the selection of a group of reservoirs that will provide that necessary long-time holdover to get the maximum yield for irrigation, power being secondary,

and to get the power out of the water as it is being handled for irrigation.

I haven't anything further to say because I assume that the report on our main stem studies as we call them, will be made to the States of the Upper Division when we submit our tentative program for the coming year with the expenditure of Colorado River Development Funds, which under the Boulder Canyon Adjustment Act are to be expended on construction and investigation of projects in the four states of the Upper Division.

COM. WATSON: Mr. Larson, do you recall the evaporation statistics on these various reservoir sites you have chosen? Which are the most efficient in the group?

MR. LARSON: I should consult my records to get the best estimates. I believe that at Glen Canyon, the net evaporation is about 15 acre feet per thousand acre feet of capacity per year, and at Echo Park it is very similar. Cross Mountain I believe is a little less, and Curecanti is less. Flaming Gorge is in that neighborhood as well as Dark Canyon. They are all very similar. They average from $7\frac{1}{2}$ to 15 acre feet of evaporation loss per thousand acre feet of capacity per year.

THE CHAIRMAN: Are there any further questions of Mr. Larson? (No response.) If not, thank you very much, Mr. Larson. I think your charts are informative and instructive and any information of that character that can be brought before the Commission is very much in order.

The Chair would like to ask Mr. Larson if his charts can be made available in a form to be included in the record of the Compact Commission.

MR. LARSON: Yes, sir, we will have them prepared.

THE CHAIRMAN: Is there objection to the inclusion of Mr. Larson's charts in the official record of the Commission? (No response.) Apparently that is satisfactory and will you see that they are available for the Commission in a form to be included in the record, Mr. Larson?

MR. LARSON: Yes, sir.

THE CHAIRMAN: Very well.

COM. STONE: I assume copies of the Colorado Statement will be ready in a few minutes for distribution to the Commission.

MR. WEHRLI: Mr. Chairman, before you recess--in the interest of conserving time I wonder if it would be possible for the other states to present during the forenoon session their views on this matter of percentage so that they would be available for study this afternoon. As far as Wyoming is concerned we will be glad to do that.

COM. BISHOP: Mr. Chairman, I would like to present our views on the matter of percentage and in that respect it will not be any revelation because the percentage that we propose will not vary from the one that was proposed by Wyoming many months ago.

The percentage which Wyoming believes ought to be allocated to Wyoming is 16 percent. That is the same figure that was presented, as I say, some considerable time ago.

With reference to the conditions that Colorado has mentioned, I think I perhaps should give our views on those in the order in which they were presented.

First, we do not agree to insertion in the compact of any provision for measurement of depletion in the Upper Basin at Lee Ferry. We would prefer to leave that matter open as we have heretofore said, and I think I need say nothing more about that subject.

Second, as to the inflow-outflow method of measurement of consumptive use in the respective states, we are not in agreement as to the trans-mountain diversions, which we believe should be measured either at point of diversion from the stream or as nearly as may be to point of departure from the basin.

The next subject that Judge Stone mentioned was reservoir losses in accordance with Attachment "I". I am uncertain what to say about that because Wyoming does not understand the provisions of "I" as they apparently are understood by Colorado and probably by others. At least we cannot at this time agree to Attachment "I". If it means what we believe it does, I think we would probably agree to it. It is a matter we will have to discuss and if possible determine what the meaning is.

The next item that Judge Stone mentioned was the obligation at Lee Ferry, and except for some possible refinement of language I believe Wyoming is fairly well in agreement with Attachment "A". I don't think that we would have any particular disagreement although after having given the article a little thought we are not entirely satisfied with the language. I believe however, from the discussion at Denver that we would be in agreement and it would be merely a matter of perhaps adjusting the language to clarify it to some extent.

I would like to add this further observation, that in making a proposal, or rather, reiterating a previous proposal of 16 percent, we do not believe it safe in our consideration of that percentage to consider it in terms of depletion at Lee Ferry. That may be the appropriate measurement, but if it should turn out at some time in the future to be erroneous, we think it would be unsafe to be making a percentage division upon the thought that depletion at Lee Ferry would necessarily be the controlling principle. Now that has nothing to do with what we put in the Compact. I am merely explaining that we don't want to get into the danger of possibly dividing some water that might not exist.

THE CHAIRMAN: Have you finished, Mr. Bishop?

COM. BISHOP: That is all.

THE CHAIRMAN: Are there further statements to be made at this time?

COM. WILSON: Mr. Chairman, with reference to the proposal made by Colorado and Wyoming as to an allocation of the water, New Mexico prefers to give a statement after I consult with my engineers and after the recess.

COM. WATSON: Mr. Chairman, Utah on the basis of certain facts will consider 28 percent. Those facts are: Present uses estimated by the Engineering Committee, 556,544 acre feet. Future uses as evidenced in the water report issued, 1,441,200 acre feet. One-fourth, the share of the evaporation losses based on 500,000 acre feet makes 125,000, being a total of 2,122,744 acre feet, which is 28 percent.

THE CHAIRMAN: We will recess for ten minutes.

(10:15 a.m. Recess.)

(10:30 a.m. Meeting reconvened.)

THE CHAIRMAN: So far we have heard from Colorado, Wyoming and Utah. The Chair now calls on the Commissioner from Arizona to state his position.

COM. CARSON: Mr. Chairman, I stated Arizona's position at the meeting of this Commission in Santa Fe, New Mexico on September 17, 1946, and it would be to this effect:

"There is hereby apportioned to the State of Arizona for beneficial consumptive use all of the water precipitated on that part of Arizona which is in the Upper Basin as defined in the Colorado River Compact, and in addition thereto, 1,000 acre feet from the Paria River."

Now the situation in that part of Arizona which is in the Upper Basin is this: that our engineers say that it would not be feasible to divert water from either the San Juan River or the Colorado River back up on the high elevations. Therefore Arizona could use only the water that falls and would have to use it before it got into those deep canyons with the exception of a thousand acre feet from the Paria River. There is one dude ranch there now and room for maybe two or three more.

That was stated in the meeting at Santa Fe in 1946 and I think has been at least tentatively agreed to by the other members of the Commission.

THE CHAIRMAN: Would you care to express that in terms of percentage?

COM. CARSON: Well, we will try to see whether we can translate it. I don't know whether we can or not. If we can we will do so. If we can't I thought we could put a special paragraph in the Compact.

MR. RITTER: Mr. Chairman, if you will refer to page 8 of the Engineering Report, the virgin flow in the State of Arizona at the state line is 137,200 acre feet. The out of state channel losses are estimated to be a thousand acre feet, indicating virgin contributions at Lee Ferry of 136,200 acre feet. That is just for your information from the Engineering Report.

COM. CARSON: That is what I am talking about. Arizona should have a right to use that which originates there. There is another point too; that part of Arizona that is in the Upper Basin does not share in the obligation to make deliveries at Lee Ferry under the original Colorado River Compact. So we should have the right to use it and it would not be subject to curtailment to make delivery at Lee Ferry.

THE CHAIRMAN: The Chair now calls on the Commissioner from New Mexico. Are you prepared?

COM. WILSON: Mr. Chairman, I am not prepared to make a written statement but I will state orally for the benefit of the record, the position of New Mexico and its conception of its requirements under the terms of the compact we are trying to make.

I will preface what I am about to say with the statement that all members of the Commission are familiar with the situation in New Mexico. You are familiar with the fact that a fair portion of the water that is allotted to New Mexico will be for the use of the Indians, and due to that situation and due to the fact that physically New Mexico must obtain all the water that may be allocated to it from one of the tributaries of the Colorado, that is, the San Juan and its tributaries, we feel that in giving a figure as to a percentage which we feel will be fair it should be considered as definite and not for horse trading purposes.

We have decided after deliberate study on the part of our engineers to get right down to the very minimum that we feel we could possibly justify in view of the situations I have referred to above.

I will state further that heretofore in meetings of this Commission New Mexico has suggested a formula which we thought was fair and which we thought was based upon a principle that is, to eliminate present uses and divide the water four ways after taking care of Arizona's small percentage. I received very little encouragement on that suggested formula but we figured out that would give New Mexico about 20 percent of the beneficial use of the water we are attempting to divide.

Now my engineers have studied the matter and they feel that due to physical limitations that we perhaps could justify accepting 15 percent as New Mexico's allocation. That of course is subject to provisions being inserted in the Compact that will guarantee to New Mexico the right and opportunity to consumptively use that quantity of water.

We are in agreement with the conditions specified in Colorado's offer in paragraphs 1, 2, 3 and 4, in reference to the provisions of the Compact pertaining to measurement of consumptive use, reservoir losses, and other subjects about which I won't go into in detail.

In brief, Mr. Chairman, that is our position and I want to impress upon you that this is not a figure that I am submitting for the purpose of jockeying or having it reduced.

THE CHAIRMAN: Well, gentlemen, the mimeographed statement made by Judge Stone has now been distributed. Are there any questions on this statement which you wish to ask Judge Stone?

COM. WATSON: Mr. Chairman, I will renew my question asked before this written copy was presented. It applies to page 2, item 4, that is whether or not the obligation at Lee Ferry under this statement is considered to be a state or a basin obligation?

COM. STONE: Mr. Chairman, in answer to that question I would direct Mr. Watson's attention to Attachment "A", Report of the Legal Advisory Committee, and I believe that answers the question. In connection with that you should also read the Attachment "I", Report of the Legal Advisory Committee. Mr. Breitenstein suggests particularly the first paragraph of "I". Mr. Tipton can make a further statement that may clear that up in Mr. Watson's mind.

MR. TIPTON: I think, Mr. Watson, I might clear that up. It certainly would be assumed I think by all of the Commission here that there would be provided sufficient reservoir capacity to take care of the Upper Basin obligation at Lee Ferry and those reservoir losses would be apportioned in accordance with the relevant attachment pertaining thereto.

However, as Mr. Larson has indicated in his presentation, we don't know what might happen in the future. We might have more severe drought periods than anybody has ever anticipated, so that it might happen during some periods there would not be sufficient water in the reservoirs to take care of the situation and there would be a deficiency in the flow at Lee Ferry. That deficiency then would be apportioned among the states in accordance with the attachment just referred to.

COM. WATSON: Then will the water in the reservoirs be common property

MR. TIPTON: Oh, yes.

COM. WATSON: The reservoirs will be common property and the obligation will be common?

MR. TIPTON: That is right.

MR. BREITENSTEIN: No, the obligation is an obligation of the state. The water stored in replacement reservoirs is common water earmarked for no state.

MR. WEHRLI: Mr. Chairman, I would like to be corrected on this if I am wrong: I would assume as far as we have gone at least, each state would have to stand the common reservoir loss apportioned to it from its apportionment of water. Would that be correct?

MR. BREITENSTEIN: That is our theory.

MR. TIPTON: No, reservoir losses that are for the common good of the states. Included within these percentages is the state's share of the reservoir losses which is for the common good of the state.

MR. WEHRLI: In other words, Mr. Tipton, if it should require, for instance, 50,000 acre feet a year from Wyoming that would come out of our 16 percent?

MR. TIPTON: That is our understanding. I say "our understanding"-- that is our proposal and the percentage that Colorado submitted to the Commission includes any of the reservoir losses that would be charged to us on those reservoirs that are for the common good of the states. Another important matter, Mr. Watson, that I think might be lost sight of--we are talking about "common". That water which will be flowing in the stream over and above the allocations to the states becomes common property. That goes automatically down to Lee Ferry to take care of that obligation and that becomes common water just the same as the water in the reservoirs.

COM. STONE: Colorado wishes to state that we shall present here a written justification for the offer which Colorado made this morning. We suggest that each of the states make a similar written justification for the study of the Commission, and that any reference to the Engineering Advisory Committee should be deferred until the written justifications by the states are submitted for consideration of the Commission.

COM. WATSON: Mr. Chairman, with Judge Stone's consent I make that as a motion.

COM. STONE: I think your first procedure is agreeable to Colorado. We made a suggestion and as I understand it you make a motion that that suggestion be adopted by the Commission?

COM. WATSON: Yes.

COM. STONE: I will second the motion.

THE CHAIRMAN: The motion is made and seconded. It is open for discussion.

COM. CARSON: Does that mean just the justification for the percentages of water that are requested, or does that go into the whole thing? I think it

should be confined to the justification for the percentage of water.

COM. STONE: That suggestion I made is confined to the justification for the percentages which the various states have offered to accept.

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. CLYDE: Mr. Chairman, as a matter of procedure now that perhaps further discussion of the percentages put forth by each state cannot proceed until this written justification comes in, and since Colorado conditioned her offer upon certain things that appear in the Legal Committee's report I would like to suggest that we turn to the articles of the Engineering Committee report, not so much with the idea of attempting to get tentative approval on them but as a matter of discussing them so that common understanding can be reached upon what they mean. They have never been read to the Commission other than as being attached to the record, nor appear in the minutes as having been read or set out before the Commission.

THE CHAIRMAN: Mr. Clyde, the Chairman has been hopeful that your suggestion would be carried out by the Commission. And he now asks if there is any objection to taking up the report of the Legal Advisory Committee, article by article.

MR. BREITENSTEIN: That wasn't your proposal, was it?

MR. CLYDE: Mr. Watson said I said Engineering Report. I intended to take up the Legal Committee Report and not take them up for tentative approval but take them up article by article, see if we are in agreement on what they mean.

COM. STONE: Mr. Chairman, as I understand Mr. Clyde's suggestion it is that the article submitted--and I assume he means all the articles?

MR. CLYDE: I do.

COM. STONE: --submitted by the Legal Committee be taken up at this time not for agreement but for the purpose of analysis and determination of what they mean and how they would apply. Am I right on that assumption?

MR. CLYDE: That is what I had in mind. I think Wyoming has already indicated a reluctance to vote on them for tentative approval until discussion and revision proceeds further than it has. I think however that the Commission ought to discuss these and reach a common understanding as to what they mean and after that has been done, then I would think it would be in order to turn to a discussion of them with the idea of tentatively approving or rejecting them but not until after this general discussion is completed and maybe further discussion of this division takes place because I think they are related to the percentage division so closely that many of the states might want to revise the percentage figure depending on what decision is made on such things as depletion and reservoir losses.

MR. WEHRLI: Well, Mr. Chairman, I suppose that this Commission will have to pass upon all of these proposed compact provisions. The only ones that appear to be controversial or upon which we couldn't agree at this time, I think, would be "G", "H", and "I", and perhaps "A" although I think we are in substantial agreement on "A". It might be good use of time to have the Commission pass upon these other provisions, and I think that might well be done.

COM. STONE: May I ask a question? What do you mean by "other provisions", those that are not controversial?

MR. WEHRLI: The provisions that were prepared by the Legal Committee which don't involve any particular question in relation to the matters that we have been unable to agree upon. I think as I said you will find those reflected in "G", "H", and "I". Of course I can conceive that the administrative agency provisions might have to be considered in a different light depending upon what decision might be reached on "G", "H", and "I".

MR. CLYDE: Why don't I modify my suggestion that we proceed with a discussion on those where there appears to be no controversy or disagreement, entertain motions for their approval, and on those that appear to have disagreement, defer tentative action or approval until discussion has been completed both on those and the division.

MR. WEHRLI: That is agreeable.

COM. STONE: Mr. Chairman, if we proceed in that way I think it should be definitely understood that we are approving those articles as to principle and not as to the form in which they now appear because it is very evident that these articles must be carefully considered and in an appropriate manner for the purpose of putting them in precise and the most desirable compact language, so that if any action for approval is taken, it be approval as to principle at this time and not approval of the articles as they are now written.

Mr. Chairman, in connection with the procedure which is now under discussion there arises another matter which might well be brought into the discussion at this time. In order to make progress we might at this time consider the appointment of a Drafting Committee so that in the event we agree upon any particular article as to principle, it could then be referred to a Drafting Committee and perhaps very expeditiously or within a reasonable time be put in final form for approval of the Commission. I offer that in the interest of progress and expediting the work of the Commission.

THE CHAIRMAN: Judge Stone, do you care to present that as a motion? The record shows that--

COM. STONE: No motion has been made.

THE CHAIRMAN: --we have had a motion made and seconded, and passed, to proceed with the consideration?

COM. STONE: I suggest that Mr. Clyde in view of the discussion which has ensued reframe his motion for the consideration of the Commission.

MR. CLYDE: Since I wasn't a commissioner I hadn't stated it in the form of a motion. I will state it and maybe Mr. Watson will care to adopt it: I move that as the next order of business the Commission proceed to discuss article by article Attachment "A" presented by the Legal Committee as a part of its report; that if from the discussion of these articles in principle it appears that there is no controversy, that the Commission then proceed to tentatively approve or reject the principle; on those articles where there is serious disagreement, that the Commission merely discuss the articles so that there is a common understanding of its meaning, and that tentative approval or disapproval be postponed for action at a later time.

COM. WATSON: I adopt that as a motion.

MR. BREITENSTEIN: You referred only to Attachment "A"; there are "A" to "Q".

74
MR. CLYDE: I am sorry. Attachments "A" to "Q", inclusive. I will add to that motion that the Commission appoint a Drafting Committee to which any item tentatively approved may be referred for further study of the language.

COM. STONE: Mr. Chairman, I second that motion.

THE CHAIRMAN: You have heard the motion as stated by Mr. Clyde and accepted by Com. Watson, and seconded by Judge Stone. Is there any discussion of that motion?

MR. WEHRLI: Mr. Chairman, I am wondering if the situation wouldn't be clarified if we agreed at this time to at least consider first "A" to "F", inclusive, of these proposals, and "J" to "P", inclusive, which are the ones that I think involve no particular controversy.

MR. CLYDE: One might develop, Mr. Wehrli. I think all the Commissioners and certainly I would agree that the ones you excluded are controversial, but others may develop to be so.

MR. WEHRLI: I think my suggestion would be in line with Colorado's suggestion this morning as to method of procedure. That was the only thing I had in mind.

COM. STONE: As the one who seconded Mr. Clyde's motion and with his consent I would be willing that the suggestion of Mr. Wehrli be incorporated in the motion.

MR. CLYDE: It is agreeable to me.

COM. WATSON: I will adopt it.

THE CHAIRMAN: You have heard the motion as amended, the amendment is accepted by the framers of the motion. Is there further discussion of the motion as amended? Ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Watson's motion as amended carried unanimously.)

THE CHAIRMAN: Now does the Commission wish to appoint at this time the Drafting Committee to do the work after you have reached some tentative conclusions on these articles?

COM. STONE: Mr. Chairman, I have a suggestion only to make with respect to that Drafting Committee: that the chairman of the Drafting Committee be J. G. Will, the legal adviser to the Federal Representative and Chairman of this Commission; that the other members of that committee be made up of one representative from each of the five states designated by the Compact Commissioner from each state.

THE CHAIRMAN: Is that a motion?

COM. STONE: I will make that in the form of a motion.

COM. WILSON: I will second that motion.

THE CHAIRMAN: Is there discussion of the motion as made and seconded? (No response.) Are you ready for the question?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. CLYDE: May I ask one question on it, Mr. Chairman?

THE CHAIRMAN: Was Utah ready to vote, or what was the situation?

MR. CLYDE: I wanted to ask a question before the vote if I could.

THE CHAIRMAN: Very well.

MR. CLYDE: The suggestion or the motion that there be one representative from each state I think is good and perhaps Utah will have the same person here throughout the negotiations. It is possible it may not in which event I wonder if it would be permissible under that that an alternate be named?

COM. STONE: In my judgment that would be a matter within the discretion of each state.

THE CHAIRMAN: Yes, sir. Certainly.

MR. CLYDE: If that is so explained--I wanted to have that matter cleared up.

THE CHAIRMAN: The motion was carried and as understood by Mr. Clyde. Does the Commission now wish to appoint the Committee?

COM. STONE: Colorado designates Jean S. Breitenstein.

THE CHAIRMAN: New Mexico?

COM. WILSON: New Mexico designates Judge Martin A. Threet.

THE CHAIRMAN: Wyoming?

COM. BISHOP: William J. Wehrli.

THE CHAIRMAN: Arizona?

COM. CARSON: I think I will defer that until I find out how long Judge Udall will be here. If he will be here long enough--I will notify him later.

THE CHAIRMAN: Utah?

COM. WATSON: Judge J. A. Howell.

THE CHAIRMAN: We now have a motion to proceed with the examination of these articles and the appointment of the Committee. I think we are now ready to take them up. Will someone lead off on Attachment "A"?

COM. STONE: Mr. Chairman, would it not be appropriate in this procedure and expedite action if the chairman of the Legal Committee explained what is intended and the meaning of these articles?

THE CHAIRMAN: Yes, I think that is a good suggestion, Judge. Any way to get our teeth into it. Mr. Carson.

MR. CARSON: Attachment "A"--

COM. STONE: Mr. Breitenstein suggests there are those who will not have copies and it might be well if the chairman reads each one before he proceeds with the explanation.

COM. CARSON: Attachment "A". I presume all the members of the Commission and advisers have copies.

THE CHAIRMAN: We will recess until Mr. Clyde returns with the desired copies.

(11:05 a.m. Recess.)

(11:10 a.m. Meeting reconvened.)

THE CHAIRMAN: The meeting will come to order. Is there anyone present who doesn't have his name on this list that was passed around yesterday or the day before? Off the record. (Discussion off the record.)

Now apparently copies of these attachments have been distributed and the chairman of the Legal Committee will proceed with his explanation of the language used.

COM. CARSON: Attachment "A". (Reads Attachment "A").

It seems to me that that principle that is sought to be stated there is understandable without any explanation. It is that the amount of curtailment which might become necessary should be made in proportion to the then consumptive use in that state as compared with the total aggregate consumptive use in all of the states of the Upper Division, but to exclude from the calculation consumptive uses which existed prior to the 24th day of November, 1922. That is the date the original compact was signed and it was thought that the then existing uses should be protected and that any curtailment would be made out of subsequent appropriations and uses; and the further provision that if any state had used more than it was entitled to use during the preceding ten years, that it would have to make up that deficiency, that excess, before any other state would be called upon to curtail its use.

If any member of the Legal Advisory Committee has any different or additional explanation I would be glad if they make it.

MR. CLYDE: Mr. Chairman, I might make a comment on it. It is not at all in disagreement; it is just by way of further explanation.

I think there are four essential parts of this article that everyone ought to understand are present. The first one is that this will only apply after the reservoirs are empty and there is still a shortage at Lee Ferry. If the reservoirs are taking care of it this won't come into operation at all.

Second, if curtailment is necessary because reservoirs are empty, then the curtailment is allocated to the states based upon the use that they are making of the water at the time the shortage occurs or deficiency occurs, rather than on the allocation to the state. If a state is only using half of the water allocated you take the use rather than the percentage allocation.

In taking those uses the uses prior to 1922 are excluded.

And the last thing is the penalty provision that if any state has used more than its allocated share, then it must make it up by returning to

the source, the excess it has used during the previous 10-year period.

I think those are the four essential elements of the article.

COM. STONE: Mr. Chairman, I move the acceptance of the principle set forth in Attachment "A" and that it be referred to the Drafting Committee.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion is made and seconded. Is there further discussion? Are you ready for the question?

MR. BLISS: There is one contingency that should be included in the attachment which may be implied in the attachment and may not be. There might be a condition such that overuses by one or more states would completely make up a deficiency or more than make up a deficiency, in which case presumably the deficiency would be made up in proportion to the overuses of the respective states.

COM. CARSON: We thought that was covered in the latter clause of this article:

"....and provided further that if any state of the Upper Division in the ten years immediately preceding the year in which such curtailment is required to be made shall have consumptively used more water than it was entitled to use under the apportionment made by Article _____ hereof, such state shall be required to supply at Lee Ferry an amount equal to such excess before demand is made on any other state."

MR. BREITENSTEIN: Mr. Carson, it seems that Mr. Bliss has a point there. If there are two states in excess and that excess is more than sufficient to make up the deficiency, the excess should be proportioned between the two states.

MR. TIPTON: In proportion to their use.

THE CHAIRMAN: From the practical aspect of it the Chairman would like a little light on the subject of how a state could exceed its apportionment without having first constructed works in excess of its percentage.

MR. TIPTON: May I suggest to the Chairman that is already happening. We have a compact in existence on the Upper Rio Grande. There is provided in the compact that before certain restrictive measures come into effect there shall be taken care of any excess use by lands below Elephant Butte Reservoir of the water of the Elephant Butte Reservoir. The use specified in the compact is 790,000 acre feet per year. Since that compact went into effect as I remember it the cumulative overuse is 200,000 acre feet.

THE CHAIRMAN: Is that in violation of the state law then?

MR. TIPTON: No, sir.

THE CHAIRMAN: Doesn't the state law limit the diversion and the application?

MR. TIPTON: No, sir; and it isn't in violation of the compact. This would not be in violation of the compact. This merely says before any state is called upon to make up a deficiency a state which has overused shall first be called upon to assist in making up the deficiency to the extent of its overuse.

Exactly the same principle is embodied in the Upper Rio Grande Compact, which states before certain restrictive provisions are placed on New Mexico and Colorado, if there has been released from the Elephant Butte Reservoir more than 790,000 acre feet per year for the purpose of calculation the over-releases shall be brought back into the reservoir. So it can happen. It isn't a remote contingency.

MR. ROLLINS: Mr. Chairman, may I ask a question of Mr. Tipton, if it would be possible for all states then to overuse their allotments?

MR. TIPTON: I think it would be very unlikely because of the lack of water supply.

MR. CLYDE: I would think, Mr. Rollins, if I may make a comment, it would be in any given year. Assume that the Upper Basin had developed on the idea that there would be 6,000,000 acre feet available for use as rather firm water, and the reservoirs were full and then in a given year the amount of water available in the Upper Basin was only 4,000,000 and they didn't cut down and they supplied the water at Lee Ferry from storage and they used 6,000,000 when only 4,000,000 was available for use in the Upper Basin. Every one of them might not cut down sufficiently to get down to the amount that was available for use so on any given year they might use more than was available for use in the Upper Basin.

MR. ROLLINS: That is the purpose of the storage, to regulate that.

MR. CLYDE: Well, but if next year and next year and next year continues the same, why, the reservoirs are going to get empty and the states are going to be above their allocated share.

MR. ROLLINS: My thought is that the Lower Basin will be onto us if a condition of that kind should develop.

COM. STONE: If they did make claims upon us we should have a provision in the compact which would provide adequately for making up that deficiency.

Mr. Chairman, in view of the suggestion made by Mr. Bliss of New Mexico and the discussion which has taken place relative to that suggestion, I amend my motion to contain a directive to the Drafting Committee that the situation suggested by Mr. Bliss, and where two or more states are overusing water, the situation may be taken care of.

MR. RITER: Mr. Chairman--

THE CHAIRMAN: Just a moment. Does the second accept that amendment?

COM. WATSON: Yes, I accept it.

THE CHAIRMAN: The motion has been made and seconded, it is now open for discussion.

MR. RITER: Mr. Chairman, I don't know whether this is a matter of principle or a matter of detail. I notice there about the 12th line of the article the reference to "consumptive use being made". I believe there was discussion of this at the joint meeting of the Legal and Engineering Committees in Denver and as I recall that discussion, we thought that instead of picking out any particular one year that we might use a moving 10-year average on the uses. I notice that the 10-year average was incorporated on the

matter of overdrafts but was not incorporated on the matter of measurement of consumptive use at the time of the overdraft.

It seems to me that since the overdraft which would occur would be cumulative over successive 10-year periods that it would be fair in measuring each state's obligation to make up the overdraft for the measurement of consumptive uses to be in progressive 10-year periods also rather than on a single year. That is the way I recall the discussion of this particular article at Denver.

MR. BREITENSTEIN: That idea was not incorporated, Mr. Riter. The one you referred to on reservoir losses was "I". I thought your point was that so far as reservoir losses were concerned, consideration was given to a 10-year average rather than the use of the preceding year. The thing I was pointing out was that Attachment "I" does not contain the 10-year average.

MR. RITER: I am discussing "A". The particular article under discussion is Attachment "A". I refer to that particular language. Let's go back and read that whole phrase:

".....an amount of water which bears the same relation to the deficiency to be made up as the consumptive use being made by the particular state bears to the aggregate consumptive use of water of the Colorado River System being made at the time by the States of the Upper Division...."

That means then that when the deficiency occurs in any one state, under this article as now written the use being made that year will be the yardstick of measurement of curtailment. Now bearing in mind that the obligation at Lee Ferry, the obligation to refrain from depleting the flow at Lee Ferry, is measured in progressive 10-year series, it seems to me at this particular point in the article, it might be fair instead of referring to the particular year when the deficiency occurs--after all the deficiency is a product of the past 10-years' use--so it seems to me only fair at this particular time we should make it the aggregate of the average of the past 10-years' use.

MR. BREITENSTEIN: I can't agree with that, Mr. Riter. It seems to me that the last project on the stream is the one who should suffer first. This would provide that. Otherwise, if a project irrigating half a million acre feet came on the last year it would prorate with projects that might have been there 20 years.

MR. RITER: As long as that project was not in the class of those that went beyond the allotment aren't they entitled to the use of the water?

MR. BREITENSTEIN: I grant that.

MR. RITER: And according to the article itself, the only thing that affects the priority is the uses prior to the 24th day of November, 1922. So therefore I do not agree with your argument.

MR. BREITENSTEIN: It seems to me that this provision that you just read is there only for the purpose of determining the proportion. Now in determining that proportion I say that you take into consideration facts as they exist at that time and do not determine it on the basis of any moving average. In other words, your last project on the stream is the one which is going to be considered in determining that relationship.

MR. RITER: I fail to see it that way because at the risk of being repetitious let's emphasize it again: Our obligation at Lee Ferry is measured in a 10-year progressive series of years.

MR. BREITENSTEIN: Granting that, that has nothing to do with this because this is determining the proportion. Say Colorado builds an exportation project taking half a million acre feet out of the Basin. That project was on the river when the deficiency occurs. It seems to me that that project should be taken into consideration in determining the proportion.

MR. RITER: Of course the Commission will have to decide it. I merely want to raise the question at this time. In my opinion it would be fair instead of taking the particular uses at the particular year when the deficiency occurs, to go back and look at the average uses during the past 10 years. After all, it is the 10-year uses that measure our obligation at Lee Ferry.

MR. GILES: Wouldn't cumulative use on a 10-year basis be quite a draft on a state if they had to make it up all at once?

MR. RITER: If they are all made on the same basis it would seem to me to be fair.

THE CHAIRMAN: It seems to the Chairman that this article in some way assumes that a state is going to over use its allotment by failing to contribute to the main stem reservoirs. That is the explanation made by Mr. Clyde. Now I can see how that would happen. Is that what you are shooting at in this article?

MR. CLYDE: If that was what I said it isn't what I intended to say.

THE CHAIRMAN: Well, then, the Chairman stands for correction.

MR. CLYDE: I think this article will only come into operation when the reservoirs are empty.

THE CHAIRMAN: Not necessarily, sir. I don't think you are correct.

MR. CLYDE: Or so low that they can't make up the obligation at Lee Ferry.

MR. RITER: Yes, Mr. Clyde is absolutely right. You operate the reservoirs when the flow approaches the minimum; you start releasing water.

THE CHAIRMAN: This assumes then that some state has not been contributing to the main stem reservoirs in accordance with the provisions of the compact?

MR. BREITENSTEIN: All states. I think that the water is going to be owned in the reservoirs in common and you are not going to attempt to keep track of what each state contributes to the reservoir.

MR. TIPTON: There is no obligation to deliver any amount of water except to make up a deficiency. The delivery of water comes about as a result of the limitation of the allocation. There is an allocation made and there is a certain amount of water over and above that and it runs down the stream. That is not an obligation on the part of any state to deliver. The only time a state is obligated to deliver is under this Attachment "A", except in certain cases like New Mexico and Colorado.

MR. CLYDE: I personally favor leaving that point Mr. Riter raises as it is. I think in determining how much curtailment any state is going to make that if you use the total amount of water being used in the basin at the

time you are making the curtailment, the total use of any state being made at that time less uses prior to 1922, you will fix a proportionate curtailment which will be pretty close to fair and much easier to administer than a 10-year average.

MR. BLISS: Mr. Chairman, I would like to know what is meant by over-use. Just as an example I would like to refer to the example Mr. Tipton mentioned, the Elephant Butte Project. The normal project use is 790,000 acre feet but we do know that project uses do not equal 790,000 acre feet each and every year. They vary considerably with the season, rainfall, and a good many other factors. It is especially true that uses increase in dry years and those would be the very years presumably when we would approach the condition envisioned in the Attachment "A", in which deficiencies would have to be made up.

I think that should be made clear for the record so it isn't conceived that the states are going to continually over-appropriate in the hopes that they can get by with it.

COM. STONE: Mr. Chairman, I call for the question on the amendment and then the question on the motion.

THE CHAIRMAN: You have heard the amendment. The question has been called for. (Thereupon a vote was taken and the amendment carried unanimously.)

COM. STONE: Question on the motion.

THE CHAIRMAN: Question on the original motion as amended. I believe that motion was seconded if I am not mistaken. We are ready for the question on that motion. (Thereupon a vote was taken and Com. Stone's motion as amended carried unanimously.)

COM. CARSON: Attachment "B". In the report of the Legal Advisory Committee it is suggested that this be numbered 10 under the powers and duties of the administrative commission which was tentatively approved at a previous meeting. That would change the existing 10 to 11, and the existing 11 to 12. (Reads Attachment "B".)

The purpose of that of course is to be sure that adequate information concerning any extraordinary drought in the Upper Basin is communicated to the United States Section of the International Boundary and Water Commission so that it could invoke the provision of the Mexican Treaty which enables it to reduce deliveries to Mexico in the event of extraordinary drought in the United States. It seems to me that this article is about as far as the Compact Commission could go in calling that to the attention of the United States Section.

COM. WATSON: Mr. Chairman, I move the adoption of this Attachment "B" and that it be referred to the Drafting Committee.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Motion has been made and seconded for the adoption of Attachment "B".

COM. STONE: Should it be in the form of adoption of the principle?

MR. WILL: May I ask whether it was intended to confine such representations as the administrative body might make to the International Boundary and Water Commission, or would this language be wide enough to make representations to such other agencies or officials as might be appropriate?

COM. CARSON: I don't know who that would be but whoever they are it should be broad enough.

MR. WILL: If you name only the Boundary Commission your administrative body may feel bound to go no further whereas it might be appropriate to do so.

COM. STONE: Mr. Chairman, I concur in the suggestion made by Mr. Will that this requirement should be somewhat broadened. I have in mind that it would be well to include delivery of such a finding to all of the states of the Colorado River Basin and such other officials and Federal administrative agencies and others who may be concerned in the matter.

COM. WILSON: Mr. Chairman, I move the Drafting Committee be authorized to insert appropriate language to carry out this idea.

COM. CARSON: I second the motion.

THE CHAIRMAN: We have a motion before the Commission. Are you offering a substitute motion?

COM. WILSON: The motion was to tentatively approve the article as written, I believe, wasn't it?

COM. CARSON: In principle.

THE CHAIRMAN: In principle.

MR. TIPTON: Mr. Will had in mind, of course, highlighting this one agency and then put in the other relevant agencies, because the United States Section of the International Boundary and Water Commission should be highlighted.

MR. WILL: Yes, and then Judge Stone suggested the other states.

COM. WILSON: Who made the original motion to approve?

COM. WATSON: Mr. Chairman--

THE CHAIRMAN: Com. Watson.

COM. WATSON: I will adopt your suggestion in the original motion.

COM. BISHOP: I will accept the change. I seconded it.

THE CHAIRMAN: Now the Chair will ask our very efficient reporter to read the motion.

COM. STONE: I think it would make time, Mr. Chairman, if in line with the suggested language Mr. Watson would reframe his motion to incorporate the suggestions which have been made since the motion was presented.

COM. WATSON: I will withdraw my motion and let Judge Wilson state the motion.

COM. BISHOP: I will withdraw the second.

COM. WILSON: I move that Attachment "B" be tentatively approved and referred to the Drafting Committee with the authority on the part of the

Drafting Committee to incorporate in Attachment "B" appropriate language to carry out the suggestions that have been made by Mr. Will and Judge Stone.

COM. CARSON: I second it.

THE CHAIRMAN: You have heard the motion as made and seconded. It is now open for discussion.

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

COM. CARSON: Now, Mr. Chairman, if it is possible to go back to the designation of the members of the Drafting Committee I would like to name Judge Jesse A. Udall of Arizona.

THE CHAIRMAN: Yes, that is entirely in order, Mr. Carson.

COM. CARSON: Attachment "C". (Reads Attachment "C",)

That was reported here but it is also contained in a later article. It is referred to here because it was specifically referred to the Legal Committee. I take it it is clear it recognizes the obligations of the United States under the Treaty with Mexico and provides that nothing in the compact shall be deemed to affect those obligations.

MR. BREITENSTEIN: Might I add to what Mr. Carson said? This is the language suggested by the United States Commissioner on the International Boundary and Water Commission, and also is a duplicate of a similar provision of the Rio Grande Compact.

THE CHAIRMAN: Are there further comments on the motion?

COM. CARSON: I move it be accepted in principle and referred to the Drafting Committee.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion is made and seconded. You wish to discuss the motion? (No response. Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. CARSON: Attachment "D". (Reads Attachment "D".)

That was referred to the Legal Committee for appropriate language and to consider whether or not such a clause should be contained in this compact. I think it is self-explanatory and of course it must be clear to us all that the Colorado River Compact to which we are all parties, is in full force and effect, and that what we are apportioning is the quantity of water, the use of water, apportioned to the Upper Basin by that Compact.

I therefore move the adoption in principle and that it be referred to the Drafting Committee.

COM. WATSON: Second the motion.

THE CHAIRMAN: You have heard the motion and the second.

COM. STONE: Mr. Chairman, if that is open for comment, certainly Colorado concurs in the principle but I have some definite recommendations to make to the Drafting Committee. I believe that that should read:

"Each of the signatory states recognizes that the Colorado River Compact is in full force and effect and that all of the provisions of this compact are subject thereto."

I believe it is a little indefinite the way it is written, not well expressed. Of course that is a detail for the Drafting Committee but I should like at this time to make that suggestion.

THE CHAIRMAN: Are there further suggestions on the motion, or discussion? Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. CARSON: Attachment "E". (Reads Attachment "E".)

COM. STONE: Mr. Chairman, I move that in view of the fact that this article includes apportionment and because of the fact that the apportionment matter is subject to further consideration, the Commission pass over Attachment "E" at this time for further consideration at a later time.

COM. CARSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made and seconded? Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. CARSON: Attachment "F". There was referred to the Legal Committee, appropriate language to recognize the La Plata River Compact. (Reads Attachment "F".)

MR. CLYDE: I have one comment to take there. We perhaps ought to use the word, "consumptive" uses made by either Colorado or New Mexico instead of just "uses"; otherwise it might include power uses.

COM. WILSON: As a matter of fact I don't think there is much opportunity for development of power on the La Plata. I don't know.

COM. CARSON: This language I think was worked out, was it not, by New Mexico and Colorado?

COM. WILSON: Is this satisfactory with you, Mr. Breitenstein?

MR. BREITENSTEIN: The principle is satisfactory. We were just having a discussion of the designation of the compact. Judge Stone questions if the date of signing is the date that should appear. I suggest it should be the citation to the United States Statutes at Large.

COM. CARSON: I move it be adopted in principle and referred to the Drafting Committee.

COM. WILSON: Second the motion.

COM. WILSON: Second the motion.

THE CHAIRMAN: The motion is made and seconded. Is there a further discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. CARSON: Under the procedure that was outlined I believe we jump to Attachment "J". (Reads Attachment "J".)

Those paragraphs are taken from the original Colorado River Compact and it was the belief of the Legal Advisory Committee that a similar provision should be included in this compact in order to show that the states intend to apportion among themselves the consumptive use of water of the river; and also to provide that the water impounded and used for the generation of electric power should not interfere with the dominant use for agricultural and domestic purposes.

COM. STONE: Mr. Chairman, I move that subparagraph (a) of Attachment "J" be stricken from this article.

In support of that motion I refer to the fact that the states here are all signatories to the original Colorado River Compact. The subject matter of subsection (a) is controlling upon all of the states so far as it is effective under the provisions of the Colorado River Compact.

If we now again raise this question in a compact which is yet to be submitted to the Congress, we may have a good deal of difficulty over it in obtaining the approval of the Congress and Congress may take some action which may not only affect this compact but the original Colorado River Compact. I think it is in the interest of all of these states not to raise that question in this compact but to stand on the situation as it exists, stand on the rights and the relative priority of use as between navigation and beneficial consumptive use purposes as effected by the existing Colorado River Compact. I believe it is a good policy, certainly, that we not include (a) in this compact.

Mr. Breitenstein wishes to add something to that and before he does I should like to call attention to the fact that the same subject was discussed at a previous session by this Commission and it was my understanding--and in that I may be wrong--that we tentatively agreed to eliminate that provision from the Upper Colorado River Basin Compact.

MR. BREITENSTEIN: I wish to remind the Commission of a fact that has been previously brought out and that is, the first Republican River Compact which contained a similar provision to this. The incorporation of that provision in the original Republican River Compact was the basis for the fight on that compact made by the Federal Power Commission and as I recall was specifically referred to by the President in his veto of the Congressional approval of the original Republican River Compact.

COM. STONE: I confirm what Mr. Breitenstein said because it was my job to support that compact before the Committees of Congress, and we not only had one compact vetoed but it required arduous argument and weeks of discussion with the Federal Power Commission when the second compact was negotiated.

COM. BISHOP: I second the motion.

THE CHAIRMAN: The motion is made and seconded. It is now open for discussion.

Is there further discussion of the motion?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.) Now there remains for the Commission to dispose of the remainder of Attachment "J".

COM. CARSON: Mr. Chairman, I would like to suggest to the Drafting Committee that it consider including in subparagraph (b), which then will become (a), "Subject to the provisions of the Colorado River Compact and of this compact" in this first line. And therefore I move that the balance of this article be approved in principle and referred to the Drafting Committee.

COM. WATSON: Second the motion.

COM. STONE: Mr. Chairman, that motion is made and seconded. Before it is acted upon I should like for Mr. Breitenstein to make an observation about subsection (b).

MR. BREITENSTEIN: The question was just asked me by Mr. Silmon Smith of Colorado as to whether or not the phrase, "agricultural and domestic purposes", would include industrial uses. I don't know just what Mr. Smith had in mind there but there might be some future question arise because water can be used for industrial purposes and not be used to generate power or for domestic use, and so on.

COM. CARSON: In the Colorado River Compact it is defined as follows:

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

And we thought that term should be included in the definitions later made.

MR. BREITENSTEIN: If that were included it would answer your point, would it not, Mr. Smith?

MR. SMITH: Yes.

MR. HOWELL: That definition will presumably be in this compact finally?

MR. BREITENSTEIN: That is what I assume.

COM. STONE: In passing on that I think that assumption should be clear. That is an important point.

MR. HOWELL: The Legal Committee did not present an article with reference to definitions because the Commission had taken the position that deferred that matter until they had gotten further along so they could determine what definitions should be made in addition to those contained in the compact. But I think it was agreed that practically all the definitions in the original compact should be in this compact.

COM. CARSON: Yes, we reported on it in our report. We reported

as follows on that:

"The Legal Advisory Committee considers that the appropriate definitions contained in Article II of the Colorado River Compact should be incorporated without change in the Upper Basin Compact but concluded that the article containing the definitions should be deferred until it is ascertained whether or not any other terms used in the Upper Basin Compact should be defined in such proposed article."

So it was the Legal Advisory Committee's opinion that all of these definitions contained in Article II of the Colorado River Compact insofar as appropriate should be included here without change.

COM. STONE: Mr. Chairman, in order that there may be no misunderstanding and the record may be clear, I amend the motion to the effect that the approval of this section in principle and reference to the Drafting Committee with the elimination of (a), be with the understanding that the definitions be included in the Upper Colorado River Basin Compact covering the domestic uses as defined in the existing Colorado River Compact.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there further discussion of the motion as amended by the original maker of the motion that was before the house? Any further discussion of it? Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion as amended carried unanimously.)

COM. CARSON: Attachment "K".

MR. HOWELL: What about (c)?

COM. CARSON: The motion covered (c).

MR. HOWELL: I want to raise a question in view of the fact that you have stricken out (a) and limit (b), whether it should be as restrictive as it is where you say: "The provisions of this article shall not apply"--does that imply other articles than (a) will interfere with the regulation and control by any state? In other words, I suggest that the word "article" is too restrictive.

MR. BREITENSTEIN: I agree with you.

MR. HOWELL: Yes, that is what I wanted to suggest. I misunderstood. I thought we were still going to discuss (c). With the understanding that the Drafting Committee may change that word "article" to "compact" I have no objection.

COM. CARSON: Attachment "K". (Reads Attachment "K".)

That article was prepared to make it clear that this compact could not and is not intended to affect the rights of the United States or its obligations to the Indian tribes or to Mexico, or to affect its rights adversely to acquire right to the use of water in the Upper Colorado River Basin. It is my understanding that all of the Federal agencies recognize that any rights they acquire would be acquired in accordance with the state law. Then (d), to subject any

property of the United States to taxation.

All of these matters here have been requested by one or more of the Federal agencies to be included in this compact and we tried to combine them all in this article.

COM. BISHOP: I move Attachment "J" be approved in principle and be referred to the Drafting Committee.

COM. WATSON: Second the motion.

MR. HUMPHREYS: I am not a member of the Commission; therefore I don't know if I have any right to make a statement.

THE CHAIRMAN: We will be glad to hear from you, Mr. Humpherys.

MR. HUMPHREYS: On the morning of the 7th under instructions from the Commissioner of Indian Affairs and the Secretary of the Interior, I read into the record language which had been suggested by the Commissioner of Indian Affairs to cover the rights of the American Indians to use waters from the Colorado River and its tributaries. Conceivably (a) might mean what that suggested language contained, but it doesn't say so.

I think probably before I leave and while I am here and while the Commission has under consideration this article, I ought to say this: that the Indians were here before we were or before our grandparents were, and that they used water and practiced the art of irrigation. That early in this century, even prior thereto, the courts of this land began recognizing the rights of the Indians to use water or waters from streams for the irrigation of their lands, and in Mr. Zimmerman's letter he pointed out what generally is considered the leading case on the matter decided by the Supreme Court of the United States, U.S. vs. Winters, wherein it recognized that the Indians had been placed on areas and confined on areas, in some instances areas not of their own choosing, and that in order for them to make a living it was necessary for them to irrigate their land, and the court held that they did have the right to use water as against others, whether they had used it to the full extent to which they eventually could or would use it, or not.

In other words, the court recognized the fact that the American Indian, having been under the guardianship of the United States, had not progressed in the art of agriculture, had not abandoned their old pursuits as rapidly perhaps as some might have expected them, but nevertheless they had the right to use water for the irrigation of their land.

The court as you undoubtedly all are aware held that the Government had the right to reserve water for their use and that when it created a reservation for their use it impliedly, if not specifically, reserved enough water from the streams arising on, running through, bordering on, or running across their reservation, to meet their irrigation requirements. That doctrine has been enumerated many times by the courts.

The Indian Service, the Secretary of the Interior, nor those of us who have been sent here by the Department of the Interior and the Indian Service, could possibly give any of those rights away. We couldn't possibly shrink those rights whatever they may be even though in some instances they still are inchoate or partially or even largely undeveloped if they need the water to sustain themselves and make a living and eventually be relieved from the burdens of guardianship; then we couldn't possibly do it and I hate even to mention it but I don't think this Commission could either and I don't think it intended to. But in view of some of the other provisions and in view of

the explanation of this article that this compact contemplated that all instrumentalities and agencies of the United States were to require or acquire water rights under and in accordance with state laws--

COM. CARSON: Aside from Indians.

MR. HUMPHERYS: I haven't found that in here. Now if it means that, all right.

COM. CARSON: That is what it means. We took (a) from the Colorado River Compact. It is VII of the original Colorado River Compact. It is almost in the exact words.

MR. HUMPHERYS: I realize it is pretty nearly the same as Article VII.

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

MR. HUMPHERYS: If it said: "Nothing in this compact shall be deemed to affect the obligations of the United States to deliver water from the Colorado River and its tributaries to Indian tribes," then there wouldn't be much doubt about it; but as it stands, I think there may be. I am not an Indian but I hope from the bottom of my heart that the Maker of all of us gives you men the vision and the wisdom to make it so clear and so free from doubt that that is the situation that a lot of prolonged litigation may not result in the future. I hope and as I say I pray that you will not leave that in doubt or leave that possibility open for the future.

COM. CARSON: This first one, Mr. Humpherys:

"Nothing in this compact shall be deemed . . . To affect the obligations of the United States of America to the Indian Tribes."

Doesn't that cover it? It is the same as it was in the original compact.

MR. HUMPHERYS: Has that been in dispute?

COM. CARSON: No, not that I know of.

MR. HUMPHERYS: The reason I mention it, I am afraid it has.

COM. STONE: Mr. Chairman, may I remark that the pattern for covering this subject was set by the Colorado River Compact to which these states are all signatories. It would be dangerous for these states to insert language in this compact on this subject which might not be acceptable to the other signatory states of the Colorado River Compact States. I should like to state that these states in this compact cannot define or settle any questions which may exist relative to the obligation of the United States to the Indian tribes. It is not within the power of this Commission to do so. But we can say and make it clear, as was said in the original Colorado River Compact, that nothing in this compact shall be deemed to affect the obligations of the United States of America to the Indian tribes. We don't attempt either to take away or add to that obligation. That is a question which is beyond the power of this Commission.

It is a subject which involves Federal claims as well as state rights and upon which there may or may not be controversy. By this clause we attempt not to interfere with the law as it is and as it may be held by the Courts to apply on that subject. I think that we should not change the language of this article and make it any different from its wording in the original Colorado River Compact.

93
MR. THREET: Mr. Chairman, I was wondering if the language used in the Rio Grande Compact might not meet with Mr. Humpherys' objection. That provides:

"Nothing in the compact shall be construed to affect the obligation of the United States to the Indian tribes or impair rights of the Indian tribes."

MR. HOWELL: I don't see that it is necessary to add that and it seems to me that we ought not to depart from the language that is used in the original compact, and in that connection I invite your attention to the fact that Herbert Hoover, who was the Federal Representative and Chairman of the Colorado River Commission at that time, and Secretary of Commerce as I recollect it, after having received communications from the Department of the Interior made this statement--I read from page 36 of "Interstate Compacts, a Compilation of Articles from Various Sources, 1946", provided by the Colorado Water Conservation Board:

"Because of its duties and obligations toward Indians, the United States has a special interest in certain lands within the areas affected by probable developments on the Colorado River. A considerable area of the lands is embraced within Indian reservations. Some progress in the irrigation of these lands has already been made.

"The interest of the United States in this regard is recognized and protected by Article VII of the Compact, which provides that--

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

So that one Secretary of the Interior thought that language was appropriate and also the special Federal Representative, who happened to be Herbert Hoover at the time the compact was under negotiation.

MR. HUMPHERYS: I am not even questioning but what all the Secretaries have had that thought and, Mr. Chairman, I don't want to be understood as suggesting language other than what you got because I was instructed to present definite language, which you have in your record. I thought if it was appropriate that I should make some comment on it in view of the fact that by the adoption of this, the language which had been suggested I assume would be rejected.

And if the Commission goes on record that it means what Mr. Zimmerman said the Department and the courts had held it to mean, there probably will be no difficulty about it. I make my observations only for that purpose, and thank you very much.

THE CHAIRMAN: Thank you, Mr. Humpherys. I am sure the Commission is pleased to have your comments on the attachment.

COM. STONE: Then I call for the question. I believe the motion was made that this Attachment "K" be adopted in principle and referred to the Drafting Committee. I call for the question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

COM. STONE: Mr. Chairman, before we adjourn I should like to announce that the Colorado group will meet at the same place in this building at two o'clock this afternoon.

THE CHAIRMAN: In accordance with the previous agreement the meeting now stands adjourned until tomorrow morning at 9:30.

(12:25 p.m., Friday, July 9, 1948, recess until 9:30 a.m., Saturday, July 10, 1948.)

Vernal, Utah
July 10, 1948
9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order. Mr. Carson, will you continue with your presentation and discussion of the attachments of the Legal Committee's report?

COM. CARSON: I think we had completed Attachment "K" so the next will be Attachment "L":

"The use of water by the United States or any of its agencies, instrumentalities or wards shall be charged to the state in which the use is made."

THE CHAIRMAN: Are there comments or observations on Attachment "L"?

COM. WATSON: Is that matter before the Commission at the present time?

THE CHAIRMAN: Yes, if you wish. Mr. Carson is chairman of the Committee and he is going through these attachments.

COM. WATSON: Mr. Chairman, Utah has about 77,000 acre of Indian land and that has priority over all other water rights in that area. Since the Indians are the wards of the Government and they are in this state, we are very happy that the United States and the State of Utah are giving them a fair deal. But we realize that according to this schedule, the water that they use will be taken out of Utah's portion. We think ourselves that this is an overall basin obligation. If it is charged to Utah's portion, it should be equated properly so that we are allowed credit for that amount of water.

COM. CARSON: I move that this Attachment "L" be approved in principle and referred to the Drafting Committee.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Is there further discussion of the motion? Ready for the question?

COM. WATSON: Question.

COM. STONE: Mr. Chairman, for the record, is it not a fact that this question and the principle of this Attachment "L" was previously discussed by the Commission and this article reflects a position tentatively taken by the Commission at a former session? May I ask that question?

COM. CARSON: Yes, that is right, Judge.

THE CHAIRMAN: That is the understanding of the Chairman also but there is nothing to prevent you from reconsidering your previous tentative commitments. Any further discussion of the motion? (No response. Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. CARSON: Attachment "M":

"The failure of any state to use the water or any part thereof allocated to it for use under the terms of this compact shall not constitute any relinquishment of such water or the right to use the same, to the Lower Basin or to any other state, nor shall it constitute any forfeiture or abandonment of the right to such use."

I think that is clear, the purpose of that and the intent of it. This Commission tentatively decided to make the allocation in perpetuity.

COM. STONE: Mr. Chairman, I move that Attachment "M" be approved in principle and referred to the Drafting Committee.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion is made and seconded. Is there a discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote is taken and Com. Stone's motion carries unanimously.)

COM. CARSON: That next attachment, "N", is the same as the Attachment "J", the last two paragraphs of Attachment "J", which the Commission has already acted on so I think we can just pass this.

Attachment "O":

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

COM. STONE: Mr. Chairman, I move that Attachment "O" be rejected and not included in the compact. If there is a second to my motion--or perhaps I had better state the reason for it.

THE CHAIRMAN: Yes, you can introduce your motion with a statement, Judge.

COM. STONE: My statement in support of the motion is that Attachment "O" is unnecessary. The right to institute legal proceedings is unquestioned whether this provision is put in the compact or not; but by its inclusion we, from a psychological point of view, give comfort and aid and encouragement to litigation. I think the purpose of making a compact on an interstate stream is to avoid interstate litigation. The right exists without expressing it in the compact and I don't believe it is in the spirit of any compact to include a paragraph of this nature and that from the point of view of policy, and also from a legal point of view--from a legal point of view because the right exists anyway--we should reject this article.

COM. WATSON: I second Judge Stone's motion.

THE CHAIRMAN: Is there further discussion of the motion?

MR. WEHRLI: Mr. Chairman, this article is the same as Article IX of the Colorado River Compact. I am wondering if Judge Stone has any information as to the considerations which led to its inclusion in that Compact.

COM. STONE: I am inclined to believe, Mr. Wehrli, that any discussion on this article or a similar article in the existing Colorado River Compact is evidenced by that portion of the minutes of the original Commission which are now missing. I have gone over the minutes that are available for the first 18 sessions of the original Compact Commission and I don't recall, and as a matter of fact I am quite sure that there existed up to the 19th meeting no discussion of this article.

The probabilities are that the original Compact Commission put it in there as a mere recognition of that right. The matter may not have been given very much discussion. But the fact that it is in the original compact in my judgment at this later time, some 20 years later, does not mean that we should include it. We are signatories to the original compact. It does not seem to me that we include such a clause when it is wholly unnecessary from a legal point of view.

MR. WEHRLI: I note that there is something similar to this thought in Article XV of the Rio Grande Compact. I don't know whether a similar provision appears in other compacts or not. What I am trying to find out is if there is some substantial reason for the inclusion of a clause of this kind. I agree with you of course that if a state's rights are violated it would have the right to go to court without this provision.

COM. STONE: Mr. Wehrli, may I ask do you also agree that any violation of the state's rights in the use of the waters of our interstate rivers, whether it is under the compact or otherwise may be presented to the Supreme Court of the United States irrespective of anything that is in the compact?

MR. WEHRLI: Yes, and my thinking about it, Judge, is that I am just wondering if there is some reason for it that you and I as lawyers might be overlooking. I don't know that there is.

COM. STONE: I admit I can't answer why it was put in. I don't see any reason for putting it in any compact. I think there is no valid reason for it. Mr. Tipton tells me that he might have the reason on the Rio Grande. He was very closely identified with that negotiation and I will ask Mr. Tipton to state what he knows about it.

MR. TIPTON: I do not have before me a copy of the Rio Grande Compact. It is my impression, however, that the provision that was placed in the Rio Grande Compact, which was somewhat similar to this, related essentially to the right of any state to institute a suit with respect to the quality of water. The State of Texas had brought suit in the United States Supreme Court against the State of New Mexico concerning certain alleged depletions of water and deterioration of quality. During the course of that suit, quality became a major issue. Prosecution of the suit was held up pending the outcome of compact negotiations.

Finally the compact was negotiated, the suit was dismissed, and there was placed in the compact, you might say more or less as an expedient, this provision, because at that very time there was still pending that bitterly fought Supreme Court case. The affected state insisted for some time that there be placed in the compact some provision with respect to quality. The other

94
states did not accede. So as I said, there was placed in the compact the provision that does now appear there.

COM. WILSON: Mr. Tipton's analysis of that is correct. As a matter of fact, I wrote Article XI myself, and the idea was that we were settling all differences by the compact, not only the quantity of water but the quality. Texas insisted on a provision that if the quality of the water became worse in the future that we should be liable to be sued for that if Texas thought a suit would be justified. There was a reason for putting that in the Rio Grande Compact.

COM. STONE: I imagine it was an expediency reason rather than a legal reason, was it not, Judge Wilson?

COM. WILSON: I think it was expediency.

THE CHAIRMAN: Are there further comments on the motion? Are you ready for the question?

COM. STONE: I don't believe my motion was seconded.

THE CHAIRMAN: Yes, it was.

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: Mr. Carson.

COM. CARSON: Attachment "P":

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

COM. WATSON: I move its adoption in principle and reference to Drafting Committee.

COM. WILSON: Second the motion.

THE CHAIRMAN: Motion has been made and seconded for the adoption of the Attachment "P".

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.) Off the record. (Discussion off the record.) Mr. Carson.

COM. CARSON: Attachment "Q". (Reads Attachment "Q".)

MR. WEERLI: Mr. Chairman, I believe that was one that it was agreed would be deferred until there would be some general discussion of the subject involved, along with "G" and "H".

THE CHAIRMAN: Without objection, Attachment "Q" is deferred.

COM. STONE: Mr. Chairman, in connection with this article I should

like to call attention to the fact that in all the later compacts more specific provisions were made for the participation of the United States Geological Survey. I recall that on the Republican River Compact, I believe on the Rio Grande and others, the U.S.G.S. submitted the language for such a provision. I know, too, that on the Colorado River U.S.G.S. has had a very definite and it would seem an extensive interest. No article similar to the ones I refer to appears to have been offered or considered for inclusion in this compact. Since that is an engineering matter I wish if it is proper to call on Mr. Tipton to state what he knows about that situation and ask whether or not the Engineering Committee had given consideration to the matter.

MR. TIPTON: The Engineering Committee has not given any consideration to this matter. That which Judge Stone mentions is entirely true. There is a provision in the Republican River Compact which brought the United States Geological Survey squarely into the picture. There is a similar provision in the Costilla Creek Compact. In my opinion there should be that kind of provision in this compact. I don't think it need be further discussed at this time because the decision has been made that consideration of this article be deferred until decision has been reached by the Commission on the method of measurement.

COM. CARSON: There was a little reference to it in the provision for the administrative agency under the powers and duties, which has been tentatively approved by the Commission at a prior meeting. It referred to the maintenance of gaging stations in cooperation with Federal agencies.

Mr. Chairman, that is all except those that were deferred to a later time.

COM. STONE: Mr. Chairman, Colorado moves that those articles not included in this group of articles submitted by the last report of the Legal Committee but which have heretofore been tentatively approved by the Commission at its Denver meetings, be referred to the Drafting Committee.

COM. CARSON: Second the motion.

THE CHAIRMAN: You have heard the motion as made and seconded. Is there a discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

Gentlemen, the meeting is now open for discussion of any question or problem which any Commissioner or his adviser may wish to discuss at this time.

COM. STONE: Mr. Chairman, Colorado is ready if it is proper and the desire of the Commission, to submit its statement on justification of its offer to accept 56 percent as its apportionment.

THE CHAIRMAN: Judge Stone, the Chairman thinks that would be very interesting and informative, and without objection you may proceed at this time to make your statement.

COM. STONE: The presentation for Colorado on that subject will be made by our engineering adviser, Royce J. Tipton. We will pass out copies of that justification. (Copies distributed.)

MR. TIPTON: Mr. Chairman, I shall read the statement by Colorado in

justification of its proposal made July 9, 1948.

"It is obvious that there is not sufficient water available in the Upper Colorado River Basin from the apportionment made to it by the Colorado River Compact to take care of present uses and all potentialities. The best information on ultimate potential depletion by each of the states of the Upper Basin is contained in the report entitled, "The Colorado River", prepared by the Bureau of Reclamation in 1946. This report indicates on page 151, Table LXVIII, that the total ultimate potential depletion of the Colorado River in the Upper Basin is 9,136,500 acre feet. That quantity includes 831,000 acre feet of estimated reservoir evaporation loss, and 500,000 acre feet of depletion by the irrigation of pasture lands."

Parenthetically I will state that those two latter items are not charged to any of the states by the Bureau in its report.

"The report indicates that the ultimate potential depletion by the State of Colorado, not including any part of the reservoir losses, or the depletion by the irrigation of pasture lands, is 4,260,300 acre feet. Colorado's knowledge of the potentialities with respect to the depletion by irrigation of pasture lands results in the conclusion that that potentiality in Colorado is 400,000 acre feet. The Colorado portion of the total ultimate potential depletion is 56 percent as shown by the following table:

Ultimate potential depletion in the State of Colorado, not including reservoir losses and depletion by pasture lands.	4,260,300 acre feet
Depletion by pasture lands (80 percent of 500,000 acre feet)	400,000 acre feet
Reservoir losses (56 percent of 831,000 acre feet)	<u>465,300 acre feet</u>
Total ultimate potential depletion of Colorado River water in the Upper Basin by Colorado at the point of use	5,125,600 acre feet

"This, in round numbers, is 56 percent of the 9,136,500 acre feet estimated by the Bureau of Reclamation as the ultimate potential depletion in the Upper Basin at the points of use.

"In 1929 and 1930, during Upper Colorado River Basin Compact negotiations, the State of Colorado prepared a report showing its potential uses, not including reservoir evaporation losses, to be 4,600,000 acre feet, and at that time made claim to that amount of water. If there is added to the 4,600,000 acre feet 56 percent of the reservoir losses as estimated by the Bureau of Reclamation, there results a total of 5,065,300 acre feet, which is an essential check on the total potentialities for Colorado as indicated above.

"Colorado recognizes there will not be sufficient water available to Colorado for it to make such depletion. By offering to accept 56 percent of that which is apportioned to the Upper Basin by the Colorado River Compact, Colorado is reducing her uses to approximately 4,200,000 acre feet, plus its share of salvage water. This is a substantial reduction in Colorado's former claims.

"In connection with the proposal made by Colorado and this statement, it must be understood that Colorado recognizes the obligation to conform its uses so that the water will be available out of the San Juan River and its tributaries to satisfy the apportionment to New Mexico."

THE CHAIRMAN: Does Colorado have anything further to offer in support of her offer to accept 56 percent?

COM. STONE: At this time, unless there are questions, we have nothing further to offer. We are willing to answer any questions that may be in the mind of any Commissioner.

THE CHAIRMAN: The Chairman is perfectly willing to have questions asked but I think it highly desirable to avoid much argument on the propositions made by the various states just at this time. After all the statements are in it occurs to the Chairman that some of these matters may have to be referred to the Engineering Committee. So if there are no questions of Colorado at this time the Chairman would like to have presented for the benefit of the Commission supporting statements from the other states. Mr. Watson, are you prepared to present a supporting statement for Utah?

COM. WATSON: Yes, sir.

THE CHAIRMAN: Very well, go ahead.

(Statement distributed.)

COM. WATSON: Mr. Chairman, inasmuch as Utah has prepared an economic report and submitted it for the information of this group, our statement is naturally somewhat lengthy, I will not attempt to read all of it, the supporting evidence is there. I shall read the first page.

The existing uses as adduced from the report of the Engineering Advisory Committee amount to 556,400 acre feet.

The potential development as contained in our economic report, which was worked out through the Agricultural College in connection with the Government agencies that know the facts, is as follows:

In the Colorado River Drainage Basin, Schedule A, 216,000 acre feet.

In the Green River Drainage Basin, Schedule B, 265,000 acre feet.

In the Sevier River Drainage Basin, Schedule C, 420,200 acre feet.

In the Weber River-Utah Lake Drainage Basin, Schedule D, 130,000 acre feet.

In the Bear River Drainage Basin, Schedule E, 410,000 acre feet.

Amounting to a total of 1,441,200 acre feet. Adding Utah's estimated share of reservoir losses, 125,000 acre feet, the total is 2,122,744 acre feet.

Now on the last page, skipping the details, the breakdown of the various schedules, I will read the following statement:

"Utah believes:--

"(1) That the water is available at the proposed points of use.

"(2) That the projects listed are economically feasible, especially when considered as part of the overall development of the river and its hydroelectric power.

"(3) Utah is ready to discuss at the proper time what she believes to be controlling factors that should receive consideration in making an equitable apportionment.

"(4) When proper weight is given to the controlling factors, Utah believes she can justify an equitable apportionment of 28 percent of the beneficial consumptive use of the water."

Explanatory of that, we think there are other controlling factors which will come up as the discussion proceeds.

THE CHAIRMAN: Does anyone have a question or observation to make on Com. Watson's statement?

MR. RITTER: Mr. Watson, may I ask if the information contained in the Utah statement was taken from the Bureau of Reclamation report on the Colorado River published in 1946?

COM. WATSON: The information was analyzed by the Agricultural College Irrigation Department, contacts were made with the Bureau of Reclamation, the report studied and analyses made and these totals arrived at. The totals are essentially the same.

THE CHAIRMAN: Any further questions of Com. Watson? (No response.) Arizona, you wish to make a statement in support of your request?

COM. CARSON: Yes, Mr. Chairman. (Distributes copies.) Arizona offers the information as to the basis of the Arizona request as follows:

"That part of Arizona which is in the Upper Basin contains no tributaries of dependable flow into either the San Juan River or the Colorado River.

"The San Juan River and the Colorado River are in such deep canyons that it is not feasible to divert water from either stream in the locality according to our engineers.

"That part of Arizona in the Upper Basin does not share the obligation to make deliveries of any water at Lee Ferry.

"There is one guest ranch on the Paria River and room for more guest ranches.

"Therefore, Arizona claims the right to consumptively use all the water precipitated on that part of Arizona which is in the Upper Basin and in addition thereto one thousand acre feet from the Paria River.

"The need for water is great and it is believed all the water that Arizona requests will eventually be used.

"The Engineering Advisory Committee reports that the water reaching the San Juan River and Colorado River from that part of Arizona which is in the Upper Basin under virgin conditions is 137,200 acre feet to which should be added the 1,000 acre feet from the Paria River, making a total of 138,200 acre feet rounded off at 140,000 acre feet.

"Of the 7,500,000 acre feet being apportioned, 140,000 acre feet amounts to 1.81 percent."

THE CHAIRMAN: Does anyone wish to question Com. Carson? (No response.) We will now pass to New Mexico. Com. Wilson, are you now prepared to make a statement supporting your claim for apportionment?

COM. WILSON: Mr. Chairman, we have mimeographed copies of the statement which Mr. Coury will distribute. I would like to call on Mr. John Bliss, the State Engineer, to present it. (Copies distributed.)

MR. BLISS: I will simply read the statement that has been passed out to all of you:

"At the morning session July 9, 1948, New Mexico stated that she could not accept less than 15 percent of the waters allocated to the Upper Basin by the Colorado River Compact. In justification of this claim, New Mexico presents the following, based on depletions at sites of use.

"In New Mexico a large percent of the potential uses are for Indian projects. In a letter from the Office of Indian Affairs, dated November 27, 1946, addressed to Harry W. Bashore, Chairman of the Upper Colorado River Compact Commission, potential uses on Indian lands in the Upper Colorado River Basin were set forth in some detail. In New Mexico these potential depletions involve projects for purely Indian lands and those in which both white and Indian lands are involved. In order to develop the Indian projects, white lands which are incidental to those projects must also be included. In the tabulation submitted with the letter, estimates were made of the depletion resulting from the proposed projects. Potential development of Indian lands as listed by the Indian Commissioner plus consumption on white lands incidental to those projects totals 686,100 acre feet, depletions at sites of use.

"The final report of the Engineering Advisory Committee, shows that 1914-45 depletions at sites of use on white and Indian lands within the state averaged 72,167 acre feet on 39,000 acres of irrigated land. Depletions by 43,000 acres irrigated at the present time, as shown in the report, are estimated to equal 79,500 acre feet.

"One of the principles adopted by the Compact Commission was that each state should participate in water losses incident to operation of the main channel or replacement reservoirs in proportion to its current uses. On the basis of 15 percent allocation to New Mexico, its share of such reservoir losses will approximate 75,000 acre feet annually. In addition to the above uses, depletions may be made by the extension and improvement of existing irrigation systems, by the development of pasture irrigation, by municipal use and by development of small private irrigation enterprises. None of the potential projects mentioned in the preceding paragraphs include any substantial areas of white lands. A balanced development within the state must include a reasonable acreage of such white lands. These developments will deplete the stream system an additional 417,500 acre feet.

"The ultimate use of Colorado River water in the Upper Basin by New Mexico represented by the above items totals 1,258,000 acre feet. This represents a 16.8 percent allocation to New Mexico on the basis of an allowable Upper Basin depletion of 7,500,000 acre feet at sites of use. Assuming that the salvage of water will permit Upper Basin uses of 8,000,000 acre feet, the New Mexico percentage would be reduced to 15.7 percent."

The percentage, therefore, that New Mexico claims is 15 percent as stated by the Commissioner yesterday.

THE CHAIRMAN: Do you wish to question the Commissioner from New Mexico? (No response.) If there are no questions the Chair calls on Wyoming.

COM. BISHOP:

"In compliance with the direction of the Commission at the session yesterday, Wyoming submits herewith a detailed statement of what we believe to be our reasonable needs for the use of water from the Colorado River System. These needs would require about 21 percent of the water allocated to the Upper Basin. We concede at the beginning, however, that we should share in the Lee Ferry obligation and that our equitable share of the water might be as small as 16 percent.

"In the Green River Basin we have approximately 4,000,000 irrigable acres. Nearly 1,000,000 acres of this land is suitable for agricultural use if water can be made available. The Green River Basin Development Company has a filing that has been approved by the State Engineer Office that includes this entire 4,000,000 acres. The priority is 1939 and it is in good standing at this time. We will have a copy of the map filed with this application by Monday for your information and inspection.

"From the beginning of these negotiations it has been conceded by all that there is not sufficient water for irrigation of all the irrigable land in the basin and care for the Lee Ferry obligation. While this itemization shows the need for 90 percent of the water that falls on the Wyoming portion of the watershed, we only ask for 66-2/3 percent of it or 16 percent of the 7,500,000 acre feet of water allocated to the Upper Basin."

MR. WEHRLI: Mr. Chairman, I will hand out copies of this statement. We will have some mimeographed copies so there will be some additional copies. We haven't had time to get them mimeographed at this time.

COM. BISHOP: I now offer Wyoming's statement of present and potential water use:

	<u>Acres feet</u>
"Present Use--Irrigation and Municipal (From Engineering Committee).	234,000
Supplemental Supply for Present Irrigation 106,000 acres @ .5a.f.	53,000
New Lands (Acreage from USBR Report) 291,330 @ 1.5a.f.	437,000
Pasture and Meadow Lands Adjacent to Potential Projects, 337,000 acres @ 1.0 a.f.	337,000
Industrial--(Coal hydrogenization, trona phosphate, wood pulp, etc.)	300,000
Municipal.	10,000
Transmountain Diversions (Green River--South Pass 125,000; Little Snake to North Platte 75,000)	200,000
TOTAL.	<u>1,571,000"</u>

That concludes the statement.

COM. STONE: May I ask a question? Will the statement which Mr. Bishop made orally be also included in the copies which will be mimeographed and made available to the Commission?

MR. WEHRLI: They will be, yes, sir.

COM. STONE: Mr. Chairman, these statements in support of offers made by the several states to accept certain percentages as an apportionment of Upper Basin water contain a lot of meat, much material for the study of the various states. It seems to me that in the interest of progress and in order that these statements may be studied, it would be well to recess to enable a study and a discussion by each of the states before the matter is further considered by the Commission as a whole.

For that reason I move that the Commission recess to reconvene at nine-thirty Monday morning.

COM. CARSON: Second the motion.

THE CHAIRMAN: You have heard the motion made and seconded. Is there a discussion of the motion? The Chair understands that to mean then that you will have no meetings of the Commission on Sunday.

Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken on Com. Stone's motion and the motion carried with one dissenting vote.)

THE CHAIRMAN: The Chair will call the roll on that motion. Colorado?

COM. STONE: Yes, and in explanation of that I wish to say that in my judgment the Commission should not meet on Sunday and more progress can be made in writing the compact by taking such an adjournment since all this material is before it and must of necessity be discussed by the various states.

THE CHAIRMAN: Utah?

COM. WATSON: Inasmuch as Wyoming voted "No", why not call on Wyoming and then Utah may want to support them after they explain their vote.

MR. WEHRLI: Mr. Chairman, I think Mr. Bishop might want me to explain his "No" vote. It is ten-thirty at the present time, and these sessions may go on for some considerable time. It would seem to me that this might be an appropriate day, since tomorrow is Sunday, to adopt a different procedure, perhaps adjourn at this time until one-thirty and have an afternoon session, because we are spending very short periods of time in these sessions and I believe that the Wyoming people feel that we could devote a little more time to the sessions of the Commission and still get outside work done.

COM. BISHOP: That is right.

COM. STONE: May I ask a question? If we adjourn until this afternoon, what do you suggest we take up?

MR. WEHRLI: I don't know what the next work of the Commission is. It

may be consideration of some of the Engineering Advisory Committee's report. It might be consideration of these matters. I don't believe there has been any determination as to the next work of the Commission whether it is this afternoon or Monday morning.

COM. STONE: It seems to me if we are going to reconvene this afternoon we ought to have definitely in mind the work that we can take up, that which is before us.

MR. WEHRLI: I am not sure from the record if there was any decision made as to what work would follow the report of the Legal Committee, a consideration of that report. Maybe that is a subject that ought to be determined.

THE CHAIRMAN: Gentlemen, the Chairman yields to nobody in a desire to get this compact done quickly, but it is evident that we have more guests than we have food and between now and next Monday, some state is going to have to modify its requested percentage. I think you are going to have to discuss this among yourselves very carefully so that everybody will understand the situation. I think also that the Drafting Committee can do a lot of work between now and Monday. I don't suggest interfering with your religious obligations, but you know there is a Bible admonition about emergencies. And while I would like to go right ahead and wind it up, I don't see how we can accomplish much by these sessions. In my observation of the work that was done in Denver it seemed to me that very little was accomplished in the open meetings and much was accomplished when you got in groups and thrashed the thing out. You ask a lot of foolish questions; so does the Chairman. And if you would discuss these things you could formulate your questions intelligently and have intelligent answers.

MR. WEHRLI: Well, I was just going to make this observation, Mr. Chairman, that it appeared to me that when this adjournment was proposed there wasn't anything particularly to be done except each state to do their own work. Now if it is proposed that the states or any two states or any three states would have an informal conference of some kind this afternoon or between now and Monday and try to adjust some of these matters I think that would be very helpful. But as I understood the proposal about adjournment, it was simply that we adjourn until Monday morning for the purpose of one state studying what the other state had presented here this morning, and I frankly don't think that amount of time is necessary for that purpose.

COM. WILSON: Mr. Chairman, I think I will support the motion to adjourn until Monday. It seems to me obvious that in an open meeting we can't accomplish anything this afternoon, and I would suggest that the Engineering Committee have a formal or informal meeting to discuss these matters and bring back figures to the Commission---there apparently is an engineering problem involved at present on the facts---which will show whether or not any state can lower its request. I second the motion for adjournment until nine-thirty Monday morning.

COM. WATSON: I vote "yes" with the obligation that we do committee work this afternoon to facilitate getting facts together so we can have a successful meeting Monday morning.

COM. STONE: Mr. Chairman, I want to make an observation. Colorado does want to give serious consideration to the justifications submitted by all of these states. We do have in mind that there is considerable work that the Drafting Committee may wish to do. We do think that it is no time for the Engineering Committee to analyze these proposals. They are not in shape for

reference to the Engineering Committee at this time. There are certain inter-state matters where two or more states are involved, such as on the San Juan.

However, if any state such as Wyoming thinks that we can make progress by sitting here and talking, Colorado is willing to sit here. Our suggestion is based upon the belief that more progress will be made by permitting this time for conferences of the states individually and for such conferences as may seem advisable between two or more states where there are matters such as on the San Juan common to those states.

Colorado would oppose the Engineering Committee trying to do anything on this matter until the states have had a chance to analyze these statements. These statements are not a mere gesture. Each state certainly wants to give consideration in good faith to the proposals and substantiating material submitted by any other state, and that can't be done quickly or easily. We could meet here and quarrel and talk about what some other state had submitted, but unless we study these statements we don't accomplish a great deal. It may be against progress rather than in the interest of progress. Colorado will say to Wyoming that if that state believes that we can make progress by coming back here this afternoon or any other time, we are ready to meet.

COM. BISHOP: Judge, if we could have the Engineering Committee come in with some recommendations based on what they think is equitable and fair, I believe we could save a lot of conversation.

MR. BLISS: I was just going to suggest at the last Denver meeting the conferences between the states, such as Colorado and New Mexico had recently, were called for by the action of the Commission and it seems to me that those interstate conferences could very well work out a great deal of the competition for water which does occur in a good many of these claims.

THE CHAIRMAN: If the Chair remembers correctly also the Commission appointed committees to work out something on these tributaries and so far we have heard very little about that. I don't know whether those committees are ready to report or want to report or what the situation is. I judge that they are not ready to report.

COM. STONE: I may say, Mr. Chairman, that Colorado and New Mexico had such a meeting at Durango, Colorado, and it was very helpful but we could not reach any final conclusions until some of the matters included in the framework of the entire compact were considered by the Commission. The further deliberations of those states were delayed until this meeting here and I assume that New Mexico agrees with Colorado that the time is approaching when we may resume those meetings, probably in this interval between now and Monday. That is a matter we shall discuss with New Mexico.

May I also report that Mr. Bishop met with us in Colorado during the time that the joint meeting of the Engineering and Legal Committees was in session and we had a preliminary discussion with the same conclusion, that no final report or final decisions on the Little Snake could be made until further progress had been made by the entire Commission.

We have not yet had the meeting on some of the interstate tributary matters with Utah, but it was the opinion of Utah and in that Colorado concurred, that those matters could be more easily worked out hers.

Now if my statement concerning those matters is not in strict accord

with the understanding of these other states, I trust they will correct me.

THE CHAIRMAN: Com. Stone, is it to be understood then that the time is now ripe for completion of those negotiations during this recess until Monday, or is further action of the Commission necessary?

COM. STONE: You used the word "completion".

THE CHAIRMAN: Well, all right, use any word you want to. You know what I mean.

COM. STONE: I won't say for "completion" but it seems to me progress can be made between now and Monday. That is just my own personal opinion.

THE CHAIRMAN: That answers my question.

The Chairman would like to ask another question: There has been a lot of talk about you can't do this and you can't do that until something else is done. Now can these committees on these two-state matters or interstate tributaries do any productive work between now and Monday in the absence of some instruction by the Commission as a whole? That is the question I am asking. Now I think you can. If the Chair is wrong, please advise us.

COM. STONE: The paramount thing is to analyze these statements and I wish to announce now, the Colorado group if we adjourn over will hold a caucus at two o'clock at the usual place.

COM. BISHOP: Judge Stone, could you find time this afternoon to go into this Little Snake River matter further?

COM. STONE: Mr. Bishop, I think we should find time to have a further meeting on the Little Snake. However, we would prefer, if it is agreeable with you, to have our Colorado meeting this afternoon to carefully consider the justifications made by the various states and defer that until a later time between now and the convening of the Commission on Monday.

COM. BISHOP: In that case the Wyoming group will meet at two o'clock for the same purpose.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: The motion carries. We are now adjourned in accordance with the motion until nine-thirty Monday morning.

(10:50 a.m., Saturday, July 10, 1948, recessed until 9:30 a.m., Monday, July 12, 1948.)

Vernal, Utah
July 12, 1948
9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order. You have had considerable opportunity since Saturday morning to discuss matters pertaining to the compact among yourselves and certainly there should be some progress indicated, some clarification of thinking or further confusion. The Chair would like to hear from the different Commissioners in regard to any progress or observations or questions they have to present to the meeting.

COM. STONE: Mr. Chairman, as indicated to the Commission on Saturday, the State of Colorado proceeded to carefully analyze the justifications of the claims of the other states. The analysis made by Colorado of those claims indicates that except in the case of one state, there was no relation whatsoever of those justifications, the claims made thereunder, to the potentialities in the states as disclosed by the Colorado River report of the Bureau of Reclamation. Colorado in submitting its justification took as a basis the potentialities in Colorado as indicated by that report.

A summation of these claims indicates that they exceed the amount of water found necessary by the Bureau to meet all potentialities by 1,080,000 acre feet. The Bureau's report itself, as everybody knows, indicated that it would require in excess of 9,000,000 acre feet to meet the potentialities set forth in that report. The summation of all of the offers made here by the various states raised that amount to something over 10,000,000 acre feet of water.

It is very evident that some rational approach must be attempted. We believe that the relation of the available water supply to the potentialities is a rational approach. It is the only one which has been suggested. We also have in mind that the Bureau's report is the only impartial statement of potentialities in the State which is available. We are aware of the fact that the Bureau spent much time and a lot of money to get out this report. It was issued at the insistence of these states. We think that it is a reliable basis of potentialities in the states and the only reliable one available.

Colorado at this time takes the position that until there is some effort on the part of the other states to relate their claims to those potentialities, and on the basis of the relation of the available water supply to potentialities, we have nothing further to offer.

COM. WATSON: Mr. Chairman, the Bureau report ignored state lines and considered the evidence on a basin-wide development. It seems to me that we haven't any other basis upon which to act excepting the Bureau's report. In fact, it is actually a common denominator. I think it is idle for us to say we want so much water because we want it. That is simply begging the question. Therefore I am distinctly in agreement with Judge Stone in making the Bureau report a common basis for negotiation.

MR. WEHRLI: Mr. Chairman, I believe the Bureau has recognized the fact that its report is not entirely an impartial analysis as to all of the states included within that report. I may be wrong about that but I believe and my opinion is that the Bureau has recognized the fact that the same thoroughness was not employed in New Mexico and Wyoming as was in Utah and Colorado and that there was land in Wyoming that is not included in the Bureau report. I can give a specific instance.

The Seedskadee Project in Wyoming is listed in the Bureau report at 40,000 acres. It has since been gone over and it has been found that 80,000 acres can be irrigated in the Seedskadee Project. So much for that phase of it.

Now Colorado contends that it is standing squarely upon the Bureau report. We don't find that in the Colorado proposal. I don't know, I may have overlooked something in the Bureau report, but I don't find anywhere in the Bureau report that Colorado has 400,000 acres of pasture land. The Bureau report mentions a total of 500,000 acres and we have been given to understand that a major portion of that is in the State of Wyoming. So we can all say that we are standing on the Bureau report but that doesn't prove whether we are or not. Wyoming can just as well claim that it is standing on the Bureau report as Colorado because we have figured up an amount and we are asking only for 16 percent, which we can get very nicely out of the Bureau report if we wish to place some interpretations on it such as Colorado has.

COM. CARSON: Mr. Chairman, it seems to me that our purpose in being here is to reach an agreement, which means to write a compact. If all of us just present our wishes instead of facing the facts, of course we can't write a compact. If any state refuses to meet in a reasonable way, with a reasonable approach so that the result of a compact would be based on equity and fairness in view of the available water supply, of course there would be no compact. Our difficulty seems to be that all of us are presenting what we wish we could use without regard to the effect on any other state or the total supply of water.

So it seems to me that one method of approach that might begin to get down to cases here would be to go back to the Bureau report and figure it out and see how it works. Of course as everything else we are doing here, it would be tentative until the final draft is worked out here; and even if we worked that out at this meeting, it will still be a tentative draft as I understand it. Each state will have to go home and go over it with our people and then meet again in the fall to see whether or not we can sign it. But until we do have some basis of approach that has some offer or promise of being fair and square and equitable, why then we are stymied now and we can't proceed.

Therefore I move that we do go back to the Bureau report on potentialities and as to the available water supply and figure it out and see where we come out.

COM. WATSON: Second the motion.

THE CHAIRMAN: You have heard the motion as made and seconded. It is now open for discussion.

COM. WILSON: Mr. Chairman, I think New Mexico would be willing to acknowledge that the method suggested might be the proper approach in a determination of the percentages that each state should receive. It is the only one I have heard suggested up to this point. However, I think every member of this Commission is familiar with New Mexico's position so far as potentialities are concerned.

Just as an illustration, take the summation on page 151 of the Colorado River Report. The Bureau used the figure 518,400 acre feet for New Mexico's total potentialities. Now since that time the Indian demands and claims have been increased by written documents filed with this Commission to the extent of about 115,000 acre feet.

In discussing this--I am not sure whether it was before the Commission as a whole--Mr. Riter has admitted that in this 518,000 acre feet the Shiprock Project was carried for only 70,000 acres, and everybody has acknowledged the increase in the demands that have been made since then as legitimate potentials. Mr. Riter has also acknowledged that in that 518,400 acre feet, he charged the San Juan Project with only 150,000 and it has always been contended by Mr. McClure and Mr. Bliss that that entire 300,000 acre feet would be consumed. And I believe I am right in saying--if I am not Mr. Riter can correct me--that he had concluded that Mr. McClure and Mr. Bliss were probably right and that would just fy another 150,000 acre feet there at least.

Further than that we have claimed that the South San Juan Project and the transmountain diversion are not necessarily competitive. Treated as separate potentials this would be an additional 300,000 acre feet. Nobody can say this is something new brought in here to bolster anything. We made this claim, as the record will disclose, at the meeting in Farmington in November 1946. There at a Commission meeting I discussed with Mr. Riter and the others present, the South San Juan Project as compared to the transmountain diversions, which the Bureau assumed were alternates, that they used the same water and both could not be built. That was always the assumption of the Bureau with which we always disagreed. We have insisted all along that we are entitled to an additional 300,000 acre feet of potential use on the theory that the South San Juan Project could possibly be irrigated by pumping later on.

Now outside of that I am not sure just what the Commission would be willing to do in attempting to reconstruct our potentials. I don't want to ask you to go way out of line and ask you to pick up something that really hasn't been considered and thought of or mentioned before. But if the Bureau can reconstruct our potentials on what is a fair and equitable basis, whether they put in everything I have mentioned or not, I believe we would have a basis then on which the states can begin this procedure and figure out where we stand. I don't know where it would leave us. It does appear to me to be a reasonable procedure and if it gets us down too low, we will have to consider other matters which are equitable and should be considered from a basin-wide standpoint.

That is my position and I don't want anybody to think that we are trying to pad anything. I believe most of you realize the position New Mexico is in on account of their Indians. As pointed out in the justification of our request the other day, I believe we gave you a true picture of our situation down there. The State of New Mexico wants the Indians to be protected, wants them to have water for their land to the full extent available, but inevitably a question is coming up when we take a compact back for ratification. They are going to look at it and try to separate the white potentials from the Indian land potentials. When you do that, if we are limited anything as we are in this original report, there is nothing really to interest New Mexico in such a compact. That is just a situation that exists and I am calling your attention to it.

But outside of those things, I am willing to go along with this procedure if we can get a reasonable, reconstructed potential that is on an equitable basis with the other states.

MR. TIPTON: There are two matters I should like to mention: I don't think it was made plain in the record that in the presentation made by each state, Colorado was the only one that made a claim which is less than its potentialities as shown in the Bureau of Reclamation report. Disregarding pasture lands, Colorado's claim is less than the potentialities shown.

Some of us have been familiar with the San Juan situation for a great

many years. Twenty years ago we were very much concerned about the Indian situation, became a little less concerned when the Bureau of Reclamation started its investigation of the basin by starting its soil surveys. It was disclosed that a project which was being set up for the Indians in an area of some 400 to 600 thousand acres did not have that much irrigable area. The Bureau in its report included certain areas for the Indians. The Bureau of Indian Affairs in only the one state so far as we can determine submitted to this Commission an acreage and a consumptive use of water greater than was considered by the Bureau of Reclamation in its report. That exception was in the State of New Mexico.

On the one Indian project, the Shiprock Project, which was the one we were fearful of twenty years ago--it had a different name at that time--the Indian Service did include 47,000 acres more than was included by the Bureau of Reclamation in its report. As far as the State of Colorado is concerned, we would be unwilling to take the position whereby New Mexico would be penalized by that fact. We will recognize in the compact, I assume, that nothing in the compact shall interfere with the obligations of the United States to the Indians. That additional 47,000 acres percentage-wise so far as New Mexico is concerned means a good deal of water.

For New Mexico there is set up in the Bureau report two projects which the Bureau considered on a competitive basis. I think that Colorado would probably consider those on a competitive basis, the San Juan-Chama transmountain diversion or the diversion of water to what is known as the South San Juan project. Without going outside the Bureau report in any fashion whatsoever, the potentialities for New Mexico could be taken as the transmountain diversion rather than the South San Juan project, which would mean 300,000 acre feet of consumptive use for that project, as opposed to 150,000 acre feet for the South San Juan project. As far as the State of Colorado is concerned, it would consider if this formula being discussed were adopted, New Mexico would be operating within the report of the Bureau of Reclamation so far as potentialities are concerned if there were considered for New Mexico the San Juan-Chama transmountain diversion instead of the South San Juan project.

I am saying that on account of our knowledge of the area and our long familiarity with it. We are relieved that over a period of years soil classifications have reduced in New Mexico the Indian potentialities to the point that they have been reduced. Had they not been reduced the entire basin would have been faced with a very grave problem.

MR. WEHRLI: Mr. Chairman, I don't know what the motion means because it purports to say that we are going to follow the Bureau of Reclamation report. Of course it doesn't purport to say how you are going to interpret that report.

Colorado has made a proposal which Colorado in good faith says is within the Bureau report, but as an illustration, they have included in their demand or in their request, 400,000 acre feet for use on pasture lands. The Bureau report includes only 500,000 acre feet for that purpose and I believe the basis is an acre foot per acre, which makes 500,000 acres. We can say equally with Colorado that our proposal is based on the Bureau report if we interpret the report as we think it should be interpreted.

Let us say that in our opinion 80 percent of that land is in Wyoming. You can take the Bureau figure of 967,000 acre feet and if 400,000 acres of pasture lands are in Wyoming as we believe they are, the total would be 1,367,000 acre feet, which is considerably in excess of what Wyoming is claiming. We are claiming 16 percent and 16 percent of 7,500,000 acre feet is

1,200,000. Even on the basis of our own claim where we put in 337,000 acres or 337,000 acre feet--the two being the same for the pasture lands--our total is 1,314,000 and that is something in excess of what we claim. That is, the total of 967,000 under the report and 337,000 for pasture lands exceeds the 16 percent that we claim.

So that it seems clear to us that whether or not any state has made a request within the Bureau of Reclamation report depends upon how you interpret the report. That is just one instance; I could give others. And passing a motion of this kind will not be very meaningful because you will simply get back to the question of how you are going to interpret the report.

In addition to that, we have never agreed that the full potentialities in Wyoming have been set out in the Bureau report and I think that is more or less an admitted fact. It seems to me that the approach to this problem should be to attempt to eliminate from these proposals some water that can't be used in some of the states making the request, and that if you pass this motion you will not accomplish anything because you will simply get back to the question of whether or not the Bureau report is to be interpreted in a particular way. And let me say that as far as eliminating water that can't be used is concerned or may not be available, Wyoming of course has made a very substantial elimination in its own request in that regard.

COM. CARSON: Mr. Chairman, the difficulty is that it is 117 percent or thereabouts of the water set down in these requests. Now we have got to reach a meeting of the minds in some manner and it seems to me that the best approach to have them on an equal basis is to go back to the Bureau of Reclamation report. The question of how you are going to interpret it will come out when you undertake that.

MR. WEHRLI: May I ask you a question? If this motion passes then you are willing to accept the 49,200 in the Bureau report for the State of Arizona?

COM. CARSON: I am willing to do that in order to try to help make a compact. I might want to round it off at 50,000 acre feet or some such matter as that, depletion at Lee Ferry.

MR. WEHRLI: We would be willing to be a little more generous and give you one percent.

COM. CARSON: That would be very satisfactory.

COM. STONE: May I call for the question. We have had considerable discussion.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken on Com. Carson's motion.) The motion carries four to one, Wyoming voting "No".

MR. WEHRLI: I didn't hear Mr. Wilson's vote.

COM. WILSON: I voted "Yes".

THE CHAIRMAN: Gentlemen, it seems to the Chairman that the claim made by every one of you is vulnerable. I don't except anybody. And you have to get together and find the weaknesses in each other's claims. I think the motion that you have passed provides an avenue of approach at least. It is assumed by the Chairman that you are here to make a compact and that you are going to make a compact.

I believe suggestions are in order as to how you are going to proceed as a result of this motion.

COM. STONE: Mr. Chairman, may I suggest we take a ten-minute recess so we can discuss this?

THE CHAIRMAN: We will recess for ten minutes. The Chairman had just about reached that conclusion.

(10:10 a.m. Recess.)

(10:25 a.m. Meeting resumed.)

THE CHAIRMAN: The meeting will come to order, please.

COM. STONE: Mr. Chairman, in order to carry out the motion as to procedure which has prevailed here, I move that the question of procedure in accordance with this motion be as an initial stage referred to the engineering advisers representing each of the five states with the suggestion that those engineering advisers call upon the Federal engineering adviser to the extent that that committee may see fit; and that the committee approach the formula on the basis of total potentialities for each state and not on the basis of individual projects.

COM. WATSON: Second the motion.

THE CHAIRMAN: The motion is now open for discussion.

COM. WATSON: Question.

THE CHAIRMAN: Are there any comments on the motion? (No response.) The question has been called for. The Chair will call the roll on that. Colorado?

COM. STONE: Yes.

THE CHAIRMAN: Utah?

COM. WATSON: Yes.

THE CHAIRMAN: Arizona?

COM. CARSON: Yes.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Pass.

THE CHAIRMAN: New Mexico?

COM. WILSON: New Mexico votes yes.

THE CHAIRMAN: The motion carries with Wyoming not voting.

COM. STONE: I assume, Mr. Chairman, that the engineering advisers are known to the whole Commission, but for the record, Colorado's engineering adviser who will serve on the committee just approved by the Commission is Royce J. Tipton.

COM. WATSON: Mr. C. O. Roskelley.

THE CHAIRMAN: Com. Watson states Mr. C. O. Roskelley is the engineering adviser for Utah.

COM. CARSON: R. Gail Baker for Arizona.

THE CHAIRMAN: New Mexico?

COM. WILSON: Mr. John Erickson.

COM. BISHOP: Dean Goodrich.

THE CHAIRMAN: The next question to be disposed of is when and where, or is it understood that this is to be handled by each state singly or the states collectively?

COM. CARSON: The states collectively.

COM. STONE: The purport of my motion is that these engineering advisers would meet and it seems to me the sooner the better.

THE CHAIRMAN: Meet as an engineering group and not with the Commissioners?

COM. STONE: The engineer advisers of the participating states.

THE CHAIRMAN: Without the Commissioners?

COM. STONE: Yes, sir. In other words, there is a committee of five that will meet together.

COM. WATSON: Mr. Chairman, I move that we recess at the present time, that the committee meets immediately, considers this matter and reports back to the Commission.

THE CHAIRMAN: As I understand your motion, Mr. Watson, the Chair understands that the Commission will recess, the engineer advisers will meet, and after they have reached some conclusion, they will notify the Chairman of the Commission who will then call the Commission together. Is that the intent of your motion?

COM. WATSON: That's it.

THE CHAIRMAN: It might be today at two o'clock or four o'clock or whenever the Chairman in his wisdom decides that the Commission should get together; and in any event the Commission will meet tomorrow morning at nine-thirty. Was that to be included in your motion?

COM. WATSON: Yes.

THE CHAIRMAN: We hope the Commission will meet earlier than that. Is there a second to that motion?

COM. STONE: Second.

THE CHAIRMAN: Is there discussion of the motion?

COM. WATSON: Question.

THE CHAIRMAN: Is there discussion of the motion? (No response.) The

question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

THE CHAIRMAN: The motion carries unanimously. We are now in recess.

(10:35 p.m., Monday, July 12, 1948, recess subject to call of Chairman, and in any event not later than 9:30 a.m., Tuesday, July 13, 1948.)

 Vernal, Utah
 July 13, 1948
 9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will now come to order. It occurs to the Chairman that there are three principal matters to be considered by the Commission today. No. 1 is the report of the engineer advisers. No. 2 is the report of the Drafting Committee. And No. 3 is the decision as to time and place for correcting the minutes of Meeting No. 6. At this time the Chair calls on the chairman of the engineer committee for his report. Mr. Tipton, I believe you are the chairman.

MR. TIPTON: Mr. Chairman, the group did not have a chairman, did not consider itself a committee, merely considered itself as a group of advisers.

The report of the advisers is written and prepared in mimeographed form. I understand copies of the report were distributed to the members of the Commission about five o'clock yesterday afternoon. I shall give only an oral report and submit for the record the formal report.

The engineer advisers conceived its task under the direction of the Commission, to determine the relationship between the potentialities of each state and the total potentialities for the Upper Basin as they were reported by the Bureau of Reclamation in its report entitled, "The Colorado River", dated 1946.

The advisers concluded also that certain adjustments of the potentialities as reported by the Bureau were permissible, the main adjustment being to add to the potentialities as reported by the Bureau any depletions by Indian lands that were reported to the Commission by the Office of Indian Affairs which had not been considered by the Bureau of Reclamation. Those adjustments were made. The two states that were involved were the states of New Mexico and Utah.

In New Mexico the Office of Indian Affairs reported to this Commission 47,000 acres more land on the Shiprock Indian Project than was considered by the Bureau of Reclamation in its report. In the case of Utah, the Office of Indian Affairs reported 22,000 acres of land on what is known as the Uncompahgre Indian Project on the White and Green Rivers that was not reported by the Bureau of Reclamation.

In accounting for those two omissions the depletion rates as assumed by the Office of Indian Affairs in its report to this Commission were assumed.

Adjustment was made for New Mexico where the Bureau reported an alternate project and placed on its summary table one of those projects. New Mexico has

chosen to select the alternate to that project, which was reported by the Bureau of Reclamation as a potentiality.

COM. WILSON: I would like to correct you there for the record, Mr. Tipton. New Mexico has not chosen any project.

MR. TIPTON: I will stand corrected. With respect to New Mexico the advisers added 150,000 acre feet of depletion that was not in the summary table on page 151 and reported by the Bureau of Reclamation. That was for the benefit of New Mexico.

In the case of Utah it was discovered that in the text of the Bureau's report there was reported a potentiality in the Gunnison Valley of 16,000 acre feet which was not carried into the summary table. That omission was inadvertent and admitted by the Bureau.

Those adjustments were made to the depletions as reported on page 151 of the Bureau's report. In that table of the Bureau's report there appears the potential depletions for each state as computed by the Bureau. There appears in the table two items that are not apportioned among the states. One item is 500,000 acre feet of depletion for the irrigation of pasture lands; another item is 831,000 acre feet of reservoir evaporation. The engineer advisers considered that since the Bureau itself did not apportion the depletion by pasture lands among the states it was certainly beyond the function of the engineer advisers to do so. There is no indication in the Bureau's report any place as to where those potentialities are.

The advisers deducted from the total potentialities the 500,000 acre feet, believing that the consideration of that was a Commission matter.

For simplification the advisers deducted the 831,000 acre feet of reservoir evaporation from the total potentialities having in mind that whatever the reservoir evaporation is in the end, the apportionment of it probably will be in about the same proportion as to the uses made by the states. In other words, the states in order to make available their respective shares of the water, including their respective shares of the evaporation of the replacement reservoirs cause reservoir losses which will bear a straight line relation to the amount of water consumed by the respective states.

The base potentiality which was then used by the engineering advisers to determine the relationships of the states' potentialities to that potentiality was a total of 8,115,500 acre feet. The potentialities of each state after making the adjustments I described without including reservoir evaporation or depletions by pasture lands: Arizona, 49,200 acre feet; Colorado, 4,260,300 acre feet; New Mexico, 772,400 acre feet; Utah, 2,066,600 acre feet; Wyoming, 967,000 acre feet, a total of 8,115,500 acre feet.

Let me repeat so it is perfectly clear that these values do not include either pasture land depletion or reservoir evaporation.

The percentages of these potentialities of the total are as follows: Arizona, 0.6 of one percent; Colorado, 52.5 percent; New Mexico, 9.5 percent; Utah, 25.4 percent, Wyoming, 12 percent. Total, 100 percent.

This report, Mr. Chairman, has been signed by Mr. R. G. Baker for Arizona; R. J. Tipton for Colorado, John R. Erickson for New Mexico; C. O. Roskelley for Utah; and R. D. Goodrich for Wyoming.

That completes my report unless any of the advisers have any exception to what I have said or any additions.

THE CHAIRMAN: Does any member of this engineering group have anything further to add? (No response.) Does any member of the Commission or any of the legal advisers have any comments, questions or observations to make on the data submitted by the engineering group?

COM. WILSON: Mr. Chairman, I want to say this, that I think perhaps the report is correct as the engineers interpreted the motion under which it was empowered. However, before adopting that procedure yesterday, I made a statement into the record of the conditions under which New Mexico would agree to this procedure.

Now in that statement I pointed out these two additions and the committee took notice of additional Indian lands that have been submitted since the compilation of the report; the committee however did not see fit to take into consideration what I said about the 300,000 acre feet of additional depletion as a potential project on the theory the South San Juan and Chama are not alternates.

It may be the committee felt it didn't have the power under the assignment to make that decision, but I call the Commission's attention to the fact that on page 148 of the Colorado River Report, Table 64, potential irrigation development in the San Juan Division, there is listed in the San Juan Basin, "South San Juan, New Mexico, 75,000 acres." That project has been entirely omitted from this report. On page 149, "the San Juan-Chama diversion, 300,000 acre feet." Both projects were listed by the Bureau in its original report, but the report shows in small type at the bottom of the page, "Alternative projects excluded from estimates of potential stream depletions in San Juan division."

The Bureau took the position that the water came from the same source and therefore both projects could not be constructed. New Mexico has disagreed with that for the past two years and has made its position known on every occasion when we had an opportunity. And I want to say that if you are going to have paper potentials, both of these projects are just as much paper potentials--and that is all we are dealing with--as any project listed for any of the other states.

It happens that by eliminating this, you eliminate one of the major projects New Mexico is entitled to have considered. And in arriving at this sort of a figure you haven't given New Mexico the benefit of its actual paper potentials; you have gotten right down to the very bottom and considered water supply, the needs of Colorado, and every other detail that you would consider were you going to determine now, once and for all, exactly the quantity of water that can be consumed in that state.

I say these things in order to make my position clear as I tried to do yesterday, and I do believe that this 300,000 acre-foot project should be added as a paper potential for New Mexico. This is the only instance where any state has been called upon to say what projects are going to be selected.

I understood the motion of Judge Stone yesterday to mean, when he said tabulate the potentials by states without going into specific projects, that you would be justified in taking the potentials here as listed without being bound by the conclusion of the Bureau that these two projects are alternates. We take the position they are not alternates. They can both be built and the water is available with which to supply both projects.

COM. STONE: I move that the report of the engineering advisers be

received, referred to the Commission for consideration, and made a part of the official minutes of the Commission.

COM. WATSON: Second the motion.

THE CHAIRMAN: Are there any comments or observations on the motion?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(The report above referred to is as follows:)

"Report of the Engineering Advisers of the Five States of the Upper Colorado River Basin Under Instructions Given to Them by the Compact Commission on July 12, 1948.

The undersigned Engineering Advisers of the five states of the Upper Colorado River Basin understood that the instructions given to them by the Commission on the morning of July 12, 1948, were to determine the relation between each state's potentiality and the total potentiality in the basin as reported by the United States Bureau of Reclamation in its report entitled, "The Colorado River", dated 1946. The Committee understood, also, that certain adjustments to the potentialities as reported in the Table LXXIII, on Page 151 of the Bureau's report, were permissible to account for any depletion by use of water on Indian lands as submitted to the Commission by the Office of Indian Affairs, which were not included as a part of the potentialities reported by the Bureau.

The Committee also understood that in the case of New Mexico where alternate projects were reported, it was permissible to consider the depletion by that project which the States of New Mexico selects. In accordance with these assumptions, the committee found the total potentialities for the State of New Mexico to be as follows:

Reported in Table LXXIII	<u>acre feet</u> 518,400
Added 47,000 acres of land in the Shiprock Indian Project at the unit rate of depletion assumed by the Office of Indian Affairs	104,000
Increased depletion by substituting San Juan-Chama Transmountain Diversion for the South San Juan Project	<u>150,000</u>
Total potentiality for New Mexico	772,400

The Committee found an item in respect to the State of Utah, where in the text of the Bureau's report a small project had been included as a potentiality, but inadvertently the potential depletion by that project had not been included in the table of the total potentialities which appears on Page 151 of the report.

The potentiality found for Utah after making adjustments for depletion on Indian lands that was not included in the Bureau report and the addition of the project that inadvertently was omitted by the Bureau is as follows:

Depletion for Utah as reported in Table LXXIII	acre feet 2,110,600
22,000 acres of land in the Uncompahgre Indian Project on the White and Green Rivers at the unit rate of depletion as assumed by the Bureau of Indian Affairs	40,000
Gunnison Valley lands set up in the Bureau report as a potentiality but inadvertently omitted from the summary table	<u>16,000</u>
Total potential depletion by Utah	2,066,600

In the Table LXXIII on Page 151 in the Bureau's report, the potential depletions by the states are shown, with the exception of two items which the Bureau did not allocate among the states. The first item is 500,000 acre feet of depletion by the irrigation of pasture lands and the second is 831,000 acre feet of reservoir evaporation. In arriving at the relationships, the committee excluded both of these items from the total ultimate potential depletion. It has excluded the 500,000 acre feet of depletion by pasture lands because the Bureau of Reclamation had not distributed this amount among the states and the committee, as a whole, has no knowledge of the manner in which it should be distributed. The distribution of this item is a matter for the consideration of the Commission. The 831,000 acre feet of reservoir evaporation was eliminated because it is assumed that the distribution of the reservoir evaporation in the end would probably be approximately in proportion to the use being made by each state. The depletion value used by the committee in its calculations as a base was derived as follows:

Total depletion as reported in Table LXXIII	acre feet 9,136,500
Additional depletion for New Mexico	254,000
Additional depletion for the State of Utah	<u>56,000</u>
Total estimated potential depletion	9,446,500
Pasture lands	500,000 acre feet
Reservoir evaporation	<u>831,000</u> " "
Deduction	<u>1,331,000</u>
Remaining depletion used as a base	8,115,500

This remaining depletion distributed by states in terms of acre feet and in terms of percentage is shown in the following table:

<u>State</u>	<u>Acres Feet</u>	<u>Percent</u>
Arizona	49,200	0.6
Colorado	4,260,300	52.5
New Mexico	772,400	9.5
Utah	2,066,600	25.4
Wyoming	<u>967,000</u>	<u>12.0</u>
Total	8,115,500	100.0

Respectfully submitted,

(Signed) R. G. Baker
For Arizona

(Signed) R. J. Tipton
For Colorado

(Signed) John R. Erickson
For New Mexico

(Signed) C. O. Roskelley
For Utah

(Signed) R. D. Goodrich
For Wyoming

Vernal, Utah
July 12, 1948."

THE CHAIRMAN: Now as the Chairman understands the situation, this matter of the submission by the engineering group, if you wish to so term that body of engineers, is now before the Commission for further discussion if you so wish.

MR. WEHRLI: Mr. Chairman, yesterday when this motion was proposed Wyoming voted against it. This report fully justifies the position we took at that time. The motion as we understood it was that the Bureau of Reclamation report was to be accepted. What the committee did, and I find no fault with their doing that except that they couldn't and didn't follow the motion, was to make a number of adjustments. They made some adjustments in favor of New Mexico and some adjustments in favor of Utah, and they eliminated 500,000 acre feet of depletion, which probably is divisible between Colorado and Wyoming.

As far as New Mexico is concerned, the adjustments made increase the percentage which they would have under the Bureau of Reclamation report as shown in the table at page 151, about 50 percent. While that was taking place, the lands that Wyoming is particularly interested in, which are not specifically assigned to Wyoming in the report, to the extent of 337,000 acres, were eliminated and that translated into acre feet is 337,000 acre feet. Of course we realize when that elimination was made there was also the elimination of some of those pasture lands which are to be found in Colorado.

Wyoming would be very happy to receive the same consideration and have the figure appearing at page 151 of the Bureau report adjusted upwards 50 percent as was done in the case of New Mexico, and we believe we could show proper justification for it. If that were done our percentage would be 18 percent. We are only claiming 16.

What I wish to point out is that the motion that was passed yesterday as we conceived it then and as now appears to be a fact, can't be made effective. In other words, you can't accept any rigid formula and make it apply. You have got to consider all of the facts. We don't mean by that that we have necessarily got to consider all these various projects, but if we are going to arrive at a compact it seems to us we are going to have to consider the facts that are necessary to be considered as to a particular state. And it can't be reduced to a mathematical formula and neither can any state be compelled to adopt some rigid theory which may be disadvantageous to it and advantageous to someone else.

This report of course has some valuable information in it. I make no

criticism of anyone who worked in its preparation. I am merely trying to point out that you can't fasten some particular formula on this situation and work it out to a mathematical conclusion.

We suggest, Mr. Chairman, that when this meeting adjourns today, and we think it might well be, adjourned soon, we arrange a schedule of two-state conferences for the rest of the day and on into the night if that be necessary, giving the states of New Mexico, Wyoming, Utah and Colorado the right to meet two at a time and see if some of these mutually inter-related problems can be worked out by that method. I didn't mean to slight Arizona but it is recognized that the Arizona percentage here on any theory is not very substantial.

I may say too in connection with Arizona, of course we don't have any intention of trying to hold Arizona to any commitment by reason of the question and answer that took place yesterday. The same question might have been properly propounded to New Mexico and of course they couldn't very well answer that in the affirmative, which I think shows the fallacy of trying to follow the kind of formula that was attempted to be set up yesterday.

What we would like to propose is that this series of conferences be arranged. We would like to meet with Colorado and talk over things with Colorado. We would like to meet with Utah. We would like to meet with New Mexico. We believe that if two states at a time would meet and go over some of these things that we might arrive at some conclusions that would be helpful in solving this problem ultimately.

COM. STONE: Mr. Chairman, we of course recognize we are here to make a compact. So far as Colorado is concerned we are desirous of following any suggestion which would appear to be in the interest of arriving at this apportionment of water among the states of the Upper Basin. And we would be willing as a state to follow the suggestion made by Mr. Wehrli. We are willing at any time to meet with Wyoming or any other state.

We recognize, and I think all of the Commissioners must recognize, that in a very peculiar sense, due to the topography of the Basin, particular problems of the Basin are common to certain states on interstate tributaries of the Colorado River. I refer particularly to the common problems on the San Juan which exist between Colorado and New Mexico. We have already had a meeting with New Mexico; we know that we must have a further meeting. The State of Wyoming and the State of Colorado have common problems on the Little Snake River. It is recognized there too that we must have a meeting. It appears to Colorado from discussion in the Commission and outside the Commission that there is another group where there are particular and very important problems. I refer to the State of Utah and the State of Wyoming.

It therefore appears to Colorado that the suggestion made by Mr. Wehrli is a good one. We in Colorado are willing to accept and proceed in accordance with that suggestion.

THE CHAIRMAN: It is the observation of the Chairman that if you haven't been doing that already it would seem difficult to justify your presence here. I think certainly you have been doing that in the last two or three days. About midnight last night I recognized two voices arguing, and they were voices representing two states, about this water question. As I understand Mr. Wehrli's suggestion it is merely to continue that, which seems to be a good thing. Are there further comments?

COM. WATSON: Mr. Chairman, Utah agrees that Mr. Wehrli's suggestion is timely and we agree that there are problems yet to be ironed out between these

respective states although we have been meeting during the last two days.

I therefore make a motion that this body resolve itself into a series of state meetings between the respective states. Utah would like to meet with Colorado and again with Wyoming.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Motion has been made and seconded.

COM. WATSON: I wish also, Mr. Chairman, to state for the record that the pasture lands as set out here in this report be not allocated wholly to Wyoming and Colorado but that they be divided on a percentage basis.

MR. HOWELL: This is just for the record, that Mr. Wehrli's statement that the pasture lands should be allocated to the States of Colorado and Wyoming should not remain unchallenged so as to indicate any acquiescence in that statement by the State of Utah, but has nothing to do with the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WEHRLI: To get a complete round of sessions here we would like to suggest that a schedule be fixed up now before we adjourn. It doesn't make any difference to us how it is, but for instance, supposing that immediately after this meeting, Colorado and Wyoming would meet, and Utah and New Mexico, separately. At two o'clock let's say Colorado and Utah would meet, Wyoming and New Mexico would meet. And at four o'clock, Colorado and New Mexico, and Wyoming and Utah.

We make that suggestion not because we care what sequence is taken but simply to formulate a kind of program so that when the day is over each of these two states will have had a chance to sit down in conference and see what can be accomplished. If you have some other hours or some other schedule we are entirely agreeable to it. We would just like to have some understanding about it so that we will be able to have those two-state meetings.

THE CHAIRMAN: It occurs to the Chairman that that is an excellent suggestion and it is in furtherance of the procedure adopted.

COM. WILSON: It is agreeable with New Mexico to meet at your convenience.

COM. BISHOP: I move that a schedule be followed as suggested by Mr. Wehrli.

COM. WATSON: Second the motion.

COM. STONE: I would like to have that stated so we can write it down. Colorado and Wyoming---

THE CHAIRMAN: Will you read it again, Mr. Wehrli, so they can all get it?

MR. WEHRLI: Immediately after adjournment, a meeting between Colorado

and Wyoming and one between Utah and New Mexico. At two o'clock, Colorado and Utah, and Wyoming and New Mexico. At four o'clock, Colorado and New Mexico, Wyoming and Utah.

COM. STONE: Call for the question.

THE CHAIRMAN: I was going to do that. Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: The Commission will stand recessed until tomorrow morning at nine-thirty.

(10:30 a.m., Tuesday, July 13, 1948, recess until 9:30 a.m., Wednesday, July 14, 1948.)

 Vernal, Utah
 July 14, 1948
 9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order. Yesterday afternoon the Chairman took the trouble to move around and observe whether or not these state groups were working. It was the observation of the Chairman that they were working faithfully and industriously in order to reconcile their differences. I believe those meetings should continue and without objection the Commission will now recess until tomorrow morning at nine-thirty or subject to an earlier call of the Chairman when the states have indicated they have reconciled their differences. Is there objection to that procedure?

COM. STONE: Mr. Chairman, if we do adjourn now I should like to call a meeting of the Colorado group at the room where we have been meeting immediately following adjournment.

THE CHAIRMAN: Are there any other observations or announcements in regard to the continuation of the state meetings?

MR. WEHRLI: Judge Stone, if you are going to meet there could we meet with you about ten minutes before you go into your session?

COM. STONE: That will be agreeable, Mr. Wehrl.

MR. WEHRLI: Wouldn't take but just a few minutes.

COM. STONE: That is all right, all the time you want.

THE CHAIRMAN: I believe it should be understood how these meetings are going to be held, the time and the place, and the Chair would like to hear suggestions.

COM. STONE: Couldn't this be on a voluntary arrangement since this thing has gotten started off, with the states calling what meetings they want to have?

THE CHAIRMAN: That is entirely satisfactory provided that is understood.

COM. WATSON: Mr. Chairman, I think that in the case of Utah and Wyoming we should arrange for a meeting soon this morning to go into these projects further that we have discussed on which we lack information, and I would invite several of the Bureau of Reclamation representatives to be there to answer questions that we can't answer ourselves.

MR. WEHRLI: We will be very glad to meet with you as soon as we have a very short session with Colorado. You wish to meet here?

COM. WATSON: Right here with this map in the background.

MR. WEHRLI: That will be fine.

THE CHAIRMAN: Mr. Watson, what Bureau of Reclamation employees do you have in mind for that?

COM. WATSON: We would like to have Mr. Riter, Mr. Jacobson, Mr. Skeeh, and Mr. Dugan, those four if we could get them or any group of them.

THE CHAIRMAN: Perhaps the Chairman wasn't understood. I would like to know if you will be satisfied with facts and not with conclusions. You don't expect conclusions from the Bureau of Reclamation employees?

COM. WATSON: We expect to draw our own conclusions.

THE CHAIRMAN: Very good. Are there any further observations or comments?

We now stand adjourned until nine-thirty tomorrow morning unless an earlier meeting is called.

(9:50 a.m., Wednesday, July 14, 1948, recess until 9:30 a.m., Thursday, July 15, 1948, unless an earlier meeting is called by the Chairman.)

Vernal, Utah
 July 15, 1948
 9:30 o'clock, a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order.

The Chairman is of the opinion that much progress has been made in these state and interstate informal meetings which have been held. The Chairman believes that more progress has been made than would have been made in the regular sessions of the Commission.

Therefore, unless there is serious objection on the part of some member of the Commission this meeting will recess subject to the call of the Chairman for re-assembling not later than nine-thirty tomorrow morning but with the hope that we may re-assemble sometime today or tonight.

Some people who have been attending these meetings are doing so at considerable sacrifice and others have important engagements and commitments which must be met, and it is the hope of the Chairman that by Friday night we will have drawn the loose ends of this negotiation together.

Without objection the meeting is recessed subject to the call of the Chairman but not later than nine-thirty tomorrow morning. We now stand adjourned.

(9:35 a.m., Thursday, July 15, 1948, recessed subject to the call of the Chairman but not later than 9:30 a.m., Friday, July 16, 1948.)

Vernal, Utah
 July 16, 1948
 9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order. Does anyone have any comments to make on the progress of the negotiations as to whether or not there is any progress or any nearer agreement? (No response.) Well, does anyone have any observation to offer on any subject what that might properly come before this Commission?

COM. CARSON: Mr. Chairman, it seems to me that more progress could be made by adjourning this until further conferences between these interested states are held.

THE CHAIRMAN: You mean to adjourn here at Vernal?

COM. CARSON: No, to adjourn this open meeting and stay here in Vernal.

MR. WEHRLI: To what time do you suggest that we adjourn or recess, Mr. Carson?

COM. CARSON: Subject to the call of the Chair or until tomorrow morning.

COM. CARSON: Mr. Chairman, I move that we recess subject to the call of the Chair.

THE CHAIRMAN: Is there a second to the motion?

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are you ready for the question? (No response.) Are you ready for the question?

COM. STONE: Question.

(Thereupon a vote was taken and Com. Carson's motion carried.)

THE CHAIRMAN: We are now in recess.

(10:00 a.m., Friday, July 16, 1948, recess subject to the call of the Chairman.)

Vernal, Utah
July 19, 1948
9:30 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will come to order.

This Commission convened here in Vernal, Utah, on July 7th for the express purpose of negotiating a compact. On July 10 each state submitted figures which represented its ideas of the percentage which should be allocated to it. The sum of the percentages thus submitted was 116.8.

On July 12 the engineer advisers of the states prepared a report on the states' potential uses in percentages. The report was submitted to the Commission on July 13. Since that time informal meetings have been had between groups of states and all of the states. It now appears to the Chairman that while considerable progress was made for a while, no progress has been made for several days, and there is still lack of agreement on the percentage of use of water to be allocated to each state. The states are claiming percentages which, in the aggregate, exceed 100 percent. The Chairman has carefully, courteously and patiently listened to the arguments made by each state in support of its position, but in so doing he has refrained from giving comfort to any state in support of its claims.

In consultation with his engineer adviser, Mr. Riter, and after giving full consideration to the claims, needs, potentialities, sources of water supply for each state, and rights of the Indians, the Chairman believes that the percentages which he is about to submit are fair and equitable. No Commissioner for any state nor any adviser has agreed with the Chairman or any of his advisers that the percentages are satisfactory.

These percentages are submitted with the understanding that Arizona will have the use of not to exceed 50,000 acre feet, and that the remaining water available for use in the Upper Colorado River Basin will be divided on the following percentages:

Colorado	51.75
New Mexico	11.25
Utah	23.0
Wyoming	<u>14.0</u>

Total 100.0

In order that you may have the opportunity to consider carefully and in the same spirit of cooperation as they are submitted the percentages which the Chairman and his engineer adviser have agreed upon, with the sole objective of starting the Upper Basin States as a unit in the development of the great water, land, power, and mineral resources of the Upper Colorado River Basin, for the benefit of the nation as a whole, the meeting stands recessed until eight p.m. today when it is hoped that you will indicate approval of the percentages as stated.

We are now adjourned.

(9:38 a.m. Recess.)

(8:00 p.m. Meeting reconvened.)

THE CHAIRMAN: The meeting will come to order, please. Gentlemen, you have had all day to consider the percentages proposed by your Chairman and his engineer adviser for the settlement of the differences between you in regard to the allocation of the consumptive use of water in the Upper Colorado River Basin. In disposing of this question the Chairman believes that the fair way to do it would be in accordance with the accepted traditions of America and that is by secret ballot. The Chairman has prepared ballots which he will hand you and on that ballot the state will indicate "yes" or "no" in regard to the acceptance of the percentages.

Now of course if everybody votes "yes" the Chairman will be most happy to so announce. However, the Chairman promises you that if there is not a unanimous vote that the vote of no Commissioner will be disclosed by the Chairman to anyone and the envelopes containing the ballots will be returned to you. I don't know of any fairer way. You may criticize or suggest in regard to that if you have a better method. What your Chairman is trying to do is protect all of you in your position.

Mr. Riter, will you hand each Commissioner a ballot?

COM. WATSON: Mr. Chairman, part of the members of the Utah Water and Power Board arrived this afternoon and there will be probably two arrive in the morning. And before I express the sentiments of the State of Utah I wish to take this matter up with the Power and Water Board officials, and I therefore ask for a continuation of this meeting until tomorrow morning at ten o'clock. May I add this, however, I am hoping for these two members that I want to have here to be here early. I shall try to meet requirements by ten o'clock.

THE CHAIRMAN: In other words, if the Chair understands your position, you wish to have this meeting postponed until tomorrow morning at ten o'clock when the Commission for Utah will be prepared to vote as outlined by the Chairman?

COM. WATSON: Yes.

THE CHAIRMAN: Mr. Watson, I think we shall have to comply with your

request. However, I do say this, without blaming anyone, that it seems like that the State of Utah has been attending this Commission meeting in relays, and we certainly ought to get down to business one of these days.

COM. STONE: Mr. Chairman, I think we ought to make as much progress as possible; we have had several days of delay. A considerable amount of work remains to be done. It was suggested to me today, if Utah doesn't have to be away from this meeting tonight, we could make progress by consideration of the report of the Drafting Committee and work for an hour and a half or two hours. I am not urging that. If those here feel there are other things more pressing at the moment and Utah has to meet, why, we are not trying to embarrass anybody and I just put that out as a feeler.

THE CHAIRMAN: Well, the Chairman doesn't understand, Judge Stone, how you can consider the report of the Drafting Committee or any other committee or group without the presence of Utah and as I understand Mr. Watson, his presence is required at the meeting of this board, is that correct?

COM. WATSON: Mr. Chairman, we should meet in session here for an hour and then after adjournment our board can meet.

COM. STONE: I wouldn't under that situation, Mr. Chairman, if it is going to delay their meeting. I withdraw my suggestion.

THE CHAIRMAN: I think the withdrawal is in order, Judge Stone, because I don't like to see anything interfere with a meeting of the Utah Board at this time, and I think all the time that remains between now and ten o'clock tomorrow morning should be at its disposal.

COM. CARSON: Mr. Chairman, it might be a good idea to inquire whether all the other states are ready to vote or will be ready at ten o'clock in the morning.

THE CHAIRMAN: Very well, I think that is a good suggestion. Com. Wilson, are you prepared to vote now or tomorrow morning?

COM. WILSON: We are prepared to vote now, Mr. Chairman, or in the morning at ten o'clock.

THE CHAIRMAN: Com. Bishop?

COM. BISHOP: Wyoming is prepared to vote now.

THE CHAIRMAN: Com. Carson?

COM. CARSON: Yes, we are prepared to vote now or in the morning.

THE CHAIRMAN: Com. Stone?

COM. STONE: Colorado is prepared to vote now.

THE CHAIRMAN: Now, gentlemen, of course it would be possible to take a vote on this which wouldn't bind anybody but yourselves, but it occurs to the Chairman that the vote should be deferred until tomorrow morning at ten o'clock.

COM. CARSON: I move we adjourn until tomorrow morning at ten o'clock.

THE CHAIRMAN: You have heard the motion.

COM. WILSON: Second the motion.

THE CHAIRMAN: Any discussion? (Question is called for. Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

We now stand adjourned until tomorrow morning at ten o'clock.

(8:15 p.m., Monday, July 19, 1948, recess until 10:00 a.m., Tuesday, July 20, 1948.)

Vernal, Utah
July 20, 1948
10:00 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: The meeting will please come to order. The Chairman believes that the procedure which he outlined last evening in regard to the balloting should be modified somewhat and he will attempt to state his modified ideas at this time.

The ballots will be submitted to the Chairman in an envelopes and there will be only one ballot. When all ballots are in, the Chairman will then announce how each state has voted. The reason for that is this: to protect the Commissioner of each state from the possible criticism that if he had not led off on this balloting he would probably have gotten a larger allocation of this water.

Gentlemen, are you now ready to ballot?

COM. WATSON: Mr. Chairman, in line with our discussion last night I would like to state Utah's position. We are united. We have seven members of the Water and Power Board here who are advisers and we have gone over this thing carefully. But that is not a quorum. It will take eight for a quorum. Mr. William R. Wallace will be here shortly.

I would like to have the consent of this Commission to defer voting for a short while, say two o'clock.

COM. STONE: Mr. Chairman, may I say in connection with the suggestion made by Com. Watson and in view of our long years of collaboration with Utah and particularly with William R. Wallace, who has been active in the Colorado River for many years, it seems to me that by all means we should cooperate on the suggestion made by Mr. Watson.

THE CHAIRMAN: It appears to the Chairman that there is no object in taking a ballot if the Commissioner for Utah is not ready to vote at this time. There is nothing to do except recess until the Commissioner for Utah has indicated to the Chairman that he is ready to vote, and then please hold yourselves ready to convene here today on call of the Chairman.

Now it occurs to the Chairman that possibly some work may be done during the interim by the Drafting Committee. There are some articles which were passed over and it is the understanding of the Chairman that Utah now has three very able lawyers here and I am in hopes that some work can be done on the articles of the Compact. Does the Chair hear a suggestion?

COM. STONE: May we have a suggestion from a member of the Drafting Committee on that question?

MR. WEHRLI: Mr. Chairman, I see no reason why we can't hold a meeting of that committee immediately following this adjournment. We could hold it here and there is some work that could be done. I believe we could save quite a lot of the time of the sessions of the Commission if such a meeting were held. We would be very glad to do that.

THE CHAIRMAN: May the Chair ask Mr. Clyde if he can participate in that, or do you wish to attend a meeting of the Utah people?

MR. HOWELL: He is not a member of the Board, if I may answer that question. I happen to be. So with the understanding that I may substitute Mr. Clyde for myself, because I want to be at this meeting of course of the Board, then there would be no question about the lawyer from Utah being able.

THE CHAIRMAN: Judge Howell, we include all the lawyers from Utah as being able, but I think that is an excellent suggestion on your part. And is that satisfactory to you, Mr. Clyde?

MR. CLYDE: It is.

THE CHAIRMAN: The Chairman also wants to say that Mr. Skeen, who is a very competent attorney in the employ of the Bureau of Reclamation, is here substituting as legal adviser for the Federal Representative in the place of Mr. Will, who had to leave for Washington on account of very serious illness in his family, and Mr. Skeen will be very glad to work with the Drafting Committee.

MR. HOWELL: May I say, Mr. Chairman, the reason I didn't include Mr. Skeen as being from Utah is that we gave him up to the larger organization, the Reclamation Service. My own opinion is that he is the most able lawyer on irrigation matters in the State of Utah.

THE CHAIRMAN: Mr. Skeen, I hope you won't get swelled up by that very fine compliment paid you by the legal adviser to the Commissioner for Utah. Are there further suggestions?

MR. BREITENSTEIN: I would like to suggest that the legal advisers for the states of Arizona and New Mexico have left town.

COM. CARSON: I named Judge Udall as the member of that Drafting Committee for Arizona. He had to leave so I will substitute myself for him for this meeting today.

THE CHAIRMAN: Thank you, Com. Carson. Are there further observations or suggestions?

MR. WEHRLI: Mr. Chairman, you mentioned the time of reconvening of this Commission as two o'clock. We have no complaint about that time but I am wondering if events transpired making it possible to call us together at one or one-thirty, if it may not be done?

THE CHAIRMAN: Pardon me, Mr. Wehrli. I believe the suggestion of the Chairman was that the present meeting recess subject to the call of the Chairman after the Chairman has been notified by the Commissioner for Utah that he is ready to submit his ballot.

MR. WEHRLI: I didn't understand it that way. I think that is fine.

COM. WILSON: Mr. Chairman, Judge Threet of New Mexico is on this

Drafting Committee. He found it necessary to go home a day or two ago. I will be glad to sit in with the Drafting Committee representing New Mexico.

THE CHAIRMAN: Thank you, Com. Wilson. Are there further matters to be brought up at this time?

MR. GILES: Mr. Chairman, I am not a member of the Commission; however, I am its secretary and early in the negotiations the Chairman said it was perfectly all right for me to make a comment if I saw fit.

The comment I have to make now is that I am sure the Commissioner for Utah and his advisers, and also the members of the Board and others who might be here from Utah, join me in expressing to this group and to the Chairman our deep appreciation for your indulgence on this very important matter and for your further indulgence in awaiting the arrival of Mr. Wallace. We are grateful to you for this attitude.

THE CHAIRMAN: If there are no further comments or observations this meeting stands recessed subject to the call of the Chair.

(10:10 a.m. Recess.)

(8:00 p.m. Meeting reconvened.)

THE CHAIRMAN: The meeting will please come to order. The Chairman observes that some of the members of the Utah Water and Power Board are present this evening and we are delighted that they are here. We are particularly delighted that Mr. Wallace, who has worked on these river problems for longer than most of us, is with us and without whose counsel and guidance it is doubtful if the states could come into agreement within a reasonable time, and the Chair at the proper time will make further remarks to substantiate what he has said.

At this time the Chair will call on Com. Watson to introduce the members of the Utah Board, omitting of course Mr. Wallace whom everybody knows.

COM. WATSON: Mr. Chairman, in addition to Mr. Wallace, who is Chairman of the Board, there is present Judge Howell, who is Vice Chairman. If you gentlemen when called will rise, we can see who you are.

Mr. Wallace Mathis of St. George. Mr. Joseph W. Johnson, Davis County. Mr. Wallace Yardley from Beaver. Dr. P. L. Jones of Nephi. Mr. B. O. Colton from Roosevelt. Mr. Raymond Hammond of Grantsville.

In addition to these gentlemen who are members of the Board, I have contacted three others who are unable to come and who join with us in our decision: Charles Redd, La Sal; L. B. Johnson of Rich County; and Mr. Orson Christensen of Brigham City--also Dr. J. A. Widtsoe.

Mr. Chairman, we would like to have Mr. Thomas Jensen, who does field work, arise. (Applause.)

THE CHAIRMAN: Thank you, Com. Watson, and gentlemen. Certainly Tom Jensen doesn't need any introduction in any meeting where there is something to eat or water to drink and talk about.

Now, gentlemen, are you prepared to cast your ballot on the question of the percentages. Is New Mexico ready?

COM. WILSON: New Mexico is ready.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Ready.

THE CHAIRMAN: Arizona?

COM. CARSON: Ready.

THE CHAIRMAN: Utah?

COM. WATSON: Ready.

THE CHAIRMAN: Colorado?

COM. STONE: Colorado is ready.

THE CHAIRMAN: Now we will cast only one ballot. The decision will be made on the first ballot. Mr. Riter, will you please pass around the ballots so that the Commissioners may examine them as to form and see whether or not they are satisfactory? (Mr. Riter distributes ballots.)

The idea of the ballot is so that any critic of the action which you may take here tonight cannot accuse you of being the first one to lead off. Perhaps some of you would wish the honor, but as long as the Chairman has proceeded on the basis of the ballot, it is requested that you sign your ballots, submit them to the Chairman and the Chairman will announce the result of the balloting.

(Ballots collected.)

THE CHAIRMAN: The Chairman now has five ballots. New Mexico votes "Yes". (Applause.)

Colorado votes "Yes". (Applause.)

Utah votes "Yes". (Applause.)

Wyoming votes "Yes". (Applause.)

Arizona votes "Yes". (Applause.)

MR. BARLOW: Mr. Chairman, how did the Chairman vote?

THE CHAIRMAN: The Chairman will now explain his vote.

To each of the Commissioners, legal advisers, engineer advisers, and common-sense advisers--by the latter I mean such men as my friend Dan Hunter from Dove Creek, Colorado, who has attended faithfully all meetings and whose patience has been a stabilizing influence on your Chairman:

First I want to say to all of you that you have ably and with determination represented your state.

Second, you have stubbornly tried to get all you could get for your state. This refers to every one of you.

Third, no man or group of men could have done better.

Fourth, you have gotten all you could get. No state would have given

up at this meeting or any other meeting another percent.

You have made an extremely important decision. You have rendered a great service to your state, the Upper Colorado River Basin, and to the Nation as a whole. You may now look with satisfaction and an untroubled mind on what you have done and forget about the impossible percent which you had hoped for but which you did not expect to get. (Laughter.) You can now view with great satisfaction the performance of a duty which you have not shirked. (Applause.)

MR. WEHRLI: Mr. Chairman, may we of Wyoming lead in an expression of appreciation to our Chairman, in which expression of appreciation I am sure that every state will join and may we all say together to the Chairman, it is a job well done. (Applause.)

THE CHAIRMAN: Mr. Wehrli, of course the Chairman is very much pleased with the outcome of the balloting and your expression of appreciation. I can't figure that I did much here except to sit around and growl at all of you--I didn't make any exceptions.

COM. CARSON: Mr. Chairman, I would like to add to that the Bureau engineers and lawyers. We all appreciate their service and assistance.

THE CHAIRMAN: Yes, I believe the Bureau of Reclamation people have helped to the limit of their capacity. And the Chairman wants to say this also, that whenever the occasion demands it he will be very glad to defend the action of each and every one of you at any place or at any time.

The Drafting Committee made very good use of its time this morning and this afternoon, and you now have copies of that report before you. The Chairman will now ask Mr. Skeen to read the report, I believe it should be read through before there is any argument or discussion of it, and also to insure that all of you read it. Mr. Skeen.

MR. SKEEN: The Drafting Committee met on July 12 and prepared approximately 14 articles. The Committee met again today and revised some of those articles and I will read the draft of the Upper Colorado River Basin Compact as revised.

"UPPER COLORADO RIVER BASIN COMPACT

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah, and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,
Clifford H. Stone for the State of Colorado,
Fred E. Wilson for the State of New Mexico,
Ed. H. Watson for the State of Utah, and
L. C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I

(a) The major purposes of this Compact are to provide for the equitable division and apportionment of the use of water of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of its waters, and the protection of life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II

As used in this Compact:

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

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

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

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

(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) "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, and by Herbert Hoover, representative of the United States, and proclaimed effective by the President of the United States, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the agency created by this Compact for the administration thereof.

(k) The term "water year" means that period commencing October 1 of any year and ending September 30 of the following year.

(l) The term "acre-foot" is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand five hundred sixty (43,560) cubic feet.

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

The next article will be the article relating to the division of the water in terms of percentages. That has not been drafted in final form as yet. The articles from here on are unnumbered. I will read them in the order in which they have been gathered.

"ARTICLE _____

In the event curtailment of use by the States of the Upper Division shall at any time become necessary in order that the flow at Lee Ferry shall not be depleted below that flow required by Article III of the Colorado River Compact, the extent of curtailment by each such State of the consumptive use of water, apportioned to it by Article _____ of this Compact, shall be such as to result in the delivery at Lee Ferry of an amount of water which bears the same relation to the deficiency to be made up as the consumptive use which was made by each such State during the water year immediately preceding that in which the deficiency occurs bears to the aggregate consumptive use of water which was made pursuant to the apportionment made by Article _____ hereof by the States of the Upper Division during the water year immediately preceding that in which the deficiency occurs; provided that, for the purpose of computing the curtailment that must be made by any such State as required by this Article, uses being made prior to November 24, 1922, shall be excluded; provided further, that if any State or States of the Upper Division, in the ten years immediately preceding the water year in which such curtailment is required to be made, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article _____ of this Compact, such State or States, as the case may be, shall be required to supply at Lee Ferry an amount equal to its or the aggregate of their overdraft or such proportionate part thereof as may be necessary to supply such deficiency before demand is made on any other State.

ARTICLE _____

(a) No State shall deny the right of the United States and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing, or regulating water in an upper State for consumptive use in a lower signatory State when such use is within the apportionment.

to such lower State made by this Compact. Such rights shall be subject to the rights in a State in which such reservoir or works are located to receive and use the water, the use of which is apportioned to it by this Compact.

(b) Any signatory State, any person, or any entity of any signatory State shall have the right to acquire property rights necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase, or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining of the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by finding of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed, and, in the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located shall, in permitting the storage and release of water, comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land, in full reimbursement for the loss of taxes in such political subdivisions of the State, said payments to be in lieu of any and all taxes on said property, improvements and rights.

(e) The signatory States recommend to the President and the Congress that, in the event the United States shall acquire property in one of the signatory States for the benefit of another signatory State or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE _____

(a) The storage capacity of reservoirs and the water stored therein for the purpose of and utilized in making deliveries of water at Lee Ferry in compliance with the provisions of Article III of the Colorado River Compact shall be considered to be for the common benefit of the States of the Upper Division, and water so stored for such purpose shall not be earmarked for nor charged to any individual State.

(b) Reservoir losses resulting from the storage of water for the joint benefit of such States in making deliveries of water at Lee Ferry shall be charged to the States of the Upper Division in proportion to the consumptive use of water in each State of the Upper Division during the year for which the charge is made.

(c) Reservoir losses resulting from the storage of water for purposes other than those covered by paragraphs (a) and (b) of this article by one or more states shall be charged to the State or States for whose benefit the water is so stored in proportion to the benefits received.

ARTICLE _____

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE _____

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

(b) The provisions of this Compact 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, the consumptive use of which is apportioned to such State by Article _____ hereof.

ARTICLE _____

The signatory States recognize the La Plata River Compact entered into between the States of Colorado and New Mexico, dated the 27th day of November, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this compact shall not affect the apportionment therein made; provided, that consumptive uses of water made by either Colorado or New Mexico from La Plata River shall be charged as uses under the apportionment made to such State by Article _____ of this Compact.

ARTICLE _____

(a) There is hereby created an interstate administrative agency to be known as "Upper Colorado River Commission." The Commission shall be composed of one representative of each of the States of the Upper Division, namely; Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such state and, if designated by the President of the United States, one representative of the United States. The President of the United States is hereby requested to designate a Commissioner for the United States. If a Commissioner is so designated for the United States, he shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which

are incident to the administration of this compact, and which are not paid by the United States, shall be borne pro rata by the four States according to the percentage of consumptive use apportioned to each. On or before November 1st of each year, the Commission shall adopt and transmit to the governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount thereof payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1st of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, and who shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other aid as may, in its judgment be necessary for the performance of its functions under this compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission shall have the power to:

- (1) Adopt rules and regulations not inconsistent with this compact;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
- (5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;
- (6) Make findings as to the quantity of water of the Upper Colorado River System used each water year in the Upper Colorado River Basin and in each State thereof;
- (7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;
- (8) Make findings as to the necessity for curtailment of use, if any, pursuant to Article _____ hereof;
- (9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article _____ hereof to each of the States;
- (10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United

Mexican States dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such Treaty may be reduced;

- (11) Acquire, hold and dispose of such personal and real property as may be necessary for the performance of its duties hereunder;
- (12) Perform all functions required of it by this compact and do all things necessary, proper or convenient in the performance of its duties hereunder;
- (13) Make and transmit annually to the Governors of the signatory States and the President of the United States, with the estimated budget, a report covering the activities of the Commission for the preceding year.

(e) The concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the Federal Government.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

ARTICLE _____

(a) The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of stream depletion at Lee Ferry and at State lines; unless the Commission, by unanimous action, shall adopt a different method of determination.

(b) The water year shall be used as the basis of computing all annual measurements of stream flows, use and delivery of water.

ARTICLE _____

The use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made.

ARTICLE _____

Nothing in this compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE _____

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

ARTICLE _____

This compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States. Notice of ratification by the legislatures of the signatory States 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 hereby requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in a single original, which shall be deposited in the archives of the Department of States of the United States of America, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of _____,
this _____ day of _____, _____."

THE CHAIRMAN: Thank you, Mr. Skeen, for the reading of the report of the Drafting Committee. It appears to the Chairman that you have performed an excellent job.

(9:50 p.m., Tuesday, July 20, 1948, recess until 9:00 a.m., Wednesday, July 21, 1948.)

Vernal, Utah
 July 21, 1948
 9:00 o'clock a.m.

(All Commissioners present.)

THE CHAIRMAN: Gentlemen, will you please come to order.

MR. HOWELL: Mr. Chairman, Utah moves that the articles as submitted by the Drafting Committee be accepted and written into the Compact subject to such revision as to language as may be made by the final drafting committee, with the exception of the article relating to curtailment which commences as follows: "In the event of curtailment of use by the States of the Upper Division shall at any time become necessary...." and so forth--- so as to make more clear the language in the last portion thereof--Mr. Wehrli, will you give me the language you wrote in?

MR. WEHRLI: Judge Howell, in the next to the last line in accordance with the suggestion you made, the word "thereof" might be stricken and in lieu of that word, the following words inserted, "of such overdraft".

MR. HOWELL: I shall accept your language then, the article may be amended to read that way. The article relating to storage capacity of reservoirs and at the beginning of the article, insert, "As determined by the Commission:". With those exceptions and the amendments, Utah moves the articles be accepted as amended.

MR. BLISS: Mr. Chairman, I was merely asking about the last correction Judge Howell made.

MR. HOWELL: It is in the article--it isn't numbered of course--but it starts off like this--it has (a), (b), (c) in it: "The storage capacity of reservoirs and the water stored therein. . ." and so forth. Now does that identify it?

MR. BLISS: Yes.

MR. HOWELL: Now my amendment is to insert at the beginning and before the letter (a), "As determined by the Commission:".

COM. STONE: Mr. Chairman, the short article which commences with the words, "The Commission shall determine the quantity of the consumptive use of water. . .", in the fourth line--

Colorado suggests that the word "stream" be stricken and insert the words, "man-made"; and after the word "depletion" insert the words, "of the virgin flow" so that it would read: "in terms of man-made depletion of the virgin flow. . ."

MR. HOWELL: We accept that amendment as part of our motion.

COM. STONE: I have another suggestion which has to do with it but it goes to another article. In line with that then it would be necessary to include in the article covering definitions, a new definition which would read: "The term 'virgin flow' means the flow undepleted by the activities of man."

MR. HOWELL: We will also accept that amendment as part of the motion.

MR. BLISS: Will you repeat that?

COM. STONE: The definition would read: "The term 'virgin flow' means the flow undepleted by the activities of man."

MR. HOWELL: The motion has not been seconded as yet.

THE CHAIRMAN: Are there further additions to the motion?

COM. STONE: Was the motion seconded?

THE CHAIRMAN: No, it was not.

COM. STONE: I will second the motion subject to these corrections and changes that I have suggested.

THE CHAIRMAN: Are you ready for the question?

MR. HOWELL: Question.

MR. WEHRLI: Mr. Chairman, Judge Stone, in your definition of virgin flow, of course we all know what the definition means, but wouldn't it be better to put in that definition after "flow", "of any stream"? "The term 'virgin flow' means the flow of any stream undepleted by the activities of man."

COM. STONE: That would be agreeable.

MR. WEHRLI: There might be some thought that it might relate to Lee Ferry or some particular situation.

COM. STONE: Very well, that may be added.

MR. HOWELL: There is no objection to that either.

THE CHAIRMAN: You have heard the motion and the amendments which have been suggested and accepted by the maker of the motion and the second. Are you ready for the question?

COM. STONE: Question.

(Thereupon a vote was taken and Utah's motion as amended carried un-animously.)

COM. STONE: Mr. Chairman, we agreed yesterday on the apportionment of the water among the states of the Upper Basin. That article has never been referred to the Drafting Committee. Accordingly, I move now that article be referred to the Drafting Committee.

COM. CARSON: Second the motion.

THE CHAIRMAN: You have heard the motion which has been seconded.

COM. BISHOP: Question.

THE CHAIRMAN: Are there comments? Question has been called for.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. CARSON: Now, Mr. Chairman, I would like to suggest the consideration of another article to be referred to the Drafting Committee which I have with others outlined as follows:

"The State of Arizona, a signatory to this compact, reserves all of its

rights and interests under the Colorado River Compact as a state of the Lower Division and as a state of the Lower Basin."

I think that is necessary to have in there because we are in that position in Arizona. We have a big interest in the Lower Basin and a relatively small interest in the Upper Basin and I don't want to have anything in here that would give any comfort to anybody that might attack such compact as we might make that we varied its terms, and it is necessary as I see it that we have such a clause.

THE CHAIRMAN: Do you make that as a motion?

COM. CARSON: I therefore move it be approved in principle and referred to the Drafting Committee.

MR. HOWELL: May I ask you a question?

COM. CARSON: Yes.

MR. HOWELL: If you word it that way, may it not be argued that the other states which are also states of the Lower Basin might give up some of their rights? Why can't you make that more inclusive to include all the states of the Lower Basin?

COM. CARSON: That is agreeable.

MR. HOWELL: That would include New Mexico and Utah.

COM. CARSON: Do you approve of that, Fred?

COM. WILSON: I think something like that is very appropriate.

COM. CARSON: I move it be approved in principle and referred to the Drafting Committee with those corrections.

THE CHAIRMAN: Is there a second to the motion?

COM BISHOP: Second.

THE CHAIRMAN: Seconded by Com. Bishop. Ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and the motion of Com. Carson carried unanimously.)

MR. HOWELL: On behalf of the Commissioner of Utah and speaking for him, I move the adoption in principle of an article reading as follows that may be referred to the Drafting Committee to use appropriate language:

"In the event water from another drainage basin is now being or may hereafter be diverted into the Upper Colorado River Basin by the United States or jointly or severally by any of the states signatory hereto, the state having the right to the use of such water shall not be charged therewith in the allocation of the right to the use of water by Article III hereof."

COM. STONE: I second that motion.

THE CHAIRMAN: You have heard the motion and the second. Is there a discussion of the motion? (No response.) Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Utah's motion carried unanimously.)

THE CHAIRMAN: The Chairman wishes to make this observation at this time. So far as he is aware, the idea of the percentage allocation was first conceived in the mind of one of the men who has attended all of these meetings. I refer to Mr. Wallace. And that idea of a percentage allocation, according to my recollection, was first presented at a meeting called by Governor Hunt of Wyoming about a year ago, and that idea was expressed by Governor Maw of Utah at the suggestion of Mr. Wallace. In the opinion of the Chairman that idea alone has done more than anything else to facilitate the allocation of water in the Upper Basin.

COM. STONE: Colorado moves that two articles, one relating to the delivery of water by Colorado to New Mexico and the other relating to the delivery of water by Colorado to Utah, be referred to the Drafting Committee with the understanding that the articles as submitted express principles and in each instance require engineering studies, and that a note be incorporated in the draft calling attention to that fact, namely, that they express principles and require engineering studies.

COM. WILSON: Second the motion.

MR. HOWELL: Without reading them?

COM. STONE: I will read them. Very well. Here is the first one relating to the San Juan:

"Subject to the provisions of this compact, the consumptive use of the water of the San Juan River and its tributaries are hereby apportioned between Colorado and New Mexico in accordance with the following principles:

(a) Colorado shall deliver to New Mexico during each water year the sum of these quantities set forth in the following tabulations of relationship which correspond to the quantities at the upper index stations.

(b) All consumptive uses of water of the San Juan River and its tributaries made by either Colorado or New Mexico shall be charged as uses under the apportionment to such state by Article ____ of this Compact."

Then this contains the note:

"Here set forth schedules as in the Rio Grande Compact, such schedules to be worked out as to give reasonable assurance to New Mexico that it will receive San Juan water in quantities sufficient to give reasonable anticipation of having available a quantity of water which will make possible the consumptive use apportioned to New Mexico by this Compact. These schedules are to be fair and equitable and are to be so made as to provide for an equitable sharing of unavoidable shortages." That is the note.

The other one reads:

"Subject to the provisions of this Compact, the waters of the Yampa River, a tributary entering the Green River in Colorado, are hereby apportioned between Colorado and Utah in accordance with the following principles and procedures:

(a) Colorado shall deliver at the mouth of the Yampa River during each water year a quantity of water which will assure Utah of a flow of water out of

the Yampa River reasonably adequate for Utah water use projects partly dependent upon the flow of the Yampa River.

(b) All consumptive uses of water of the Yampa River made by either Colorado or Utah shall be charged as uses under the apportionment to such state by Article _____ of this Compact.

Then there is a note here which will be called to the attention of the Drafting Committee by the submission of this tentative draft of the article which reads:

"The details of the formula or procedure to be incorporated into the Compact for the purpose of carrying out the above provisions are to be worked out by the Engineering Advisory Committee for insertion in the Compact before the next meeting and shall be based upon the water requirements as finally determined by the Bureau of Reclamation report on the Central Utah Project." That is the end of the note.

With that explanation we make those proposals and I feel my motion should prevail that they go to the Drafting Committee.

THE CHAIRMAN: Is there a second to the motion?

COM. WILSON: I seconded the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. STONE: I should like to have the draft which this Commission will submit at this time contain a reference to the fact that an article concerning the Little Snake is to be included in this Compact.

MR. WEERLI: We agree with you on that completely and I have no doubt but that we will be able to prepare that article and have it ready at the next meeting of this Commission.

THE CHAIRMAN: Gentlemen, are you now ready to consider the time and place of the next meeting?

COM. STONE: Mr. Chairman, there is another matter of considerable importance which I believe should take precedence over the consideration of the time and place of the next meeting and that's with reference to certain work that should be done by the Engineering Committee in the interim between this meeting and the next and we hope the final meeting of this Commission. It would seem well at this time the Commission might agree upon those items in order that the Engineering Committee, the members of which are here, could get together and decide the tasks which should be done between now and the next meeting. That will expedite the accomplishment of that work and if there is no objection I should like to have Mr. Tipton explain those items as he understands them as the engineering adviser to the Commissioner for Colorado.

THE CHAIRMAN: Go ahead, Mr. Tipton.

MR. TIPTON: Mr. Chairman, as I have studied these articles as they have tentatively been approved by the Commission it occurs to me that there are several items of importance that must be given consideration by the Engineering

Advisory Committee. Those items will require considerable work.

Take for instance the problems that were outlined in two articles proposed by Judge Stone, the one having to do with the delivery of water by Colorado to New Mexico and the other having to do with the delivery of water by Colorado in the Yampa River to Utah. Those two items must be given study by the Engineering Advisory Committee.

The Commission has adopted in principle that the beneficial consumptive use shall be measured by the man-made depletion of the virgin flow. It has adopted in principle that that measurement shall be made by the inflow-outflow method. In my opinion it is important that the Engineering Advisory Committee between now and the time the Commission meets next, prepare a report to the Commission outlining the gaging stations that should be established and maintained to accomplish that purpose and outlining methods, not having in mind that they would be written in the Compact, but that it would be matters the Commission could consider as means for implementing the methods that the Commission may finally adopt of measurement of beneficial consumptive use. Then if such a report of the Engineering Advisory Committee were adopted, it would provide a connection between the activities of this group and its advisers and the administrative body that is set up. In other words, it would form the foundation for some of the major rules and regulations that such a body would adopt.

I believe those matters are ones that should be considered by the Engineering Advisory Committee. I believe at this session they should be referred to the Committee. The Committee should meet, consider the problems, and should assign tasks to smaller groups and should arrange for further meetings of the Engineering Advisory Committee prior to the time that the Commission holds its next meeting.

COM. STONE: Mr. Chairman, to implement and to carry out the suggestion made by Mr. Tipton, I move that there be referred to the Engineering Advisory Committee for its study and report at the next meeting of the Commission, the matters which were suggested by Mr. Tipton and any other engineering matters which in the judgment of that Committee should be included in its report at the next meeting of the Commission.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WILSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. STONE: Mr. Chairman, I move that the Drafting Committee be authorized to determine the order of the various articles which have been approved by the Commission as they will appear in the completed Compact.

COM. BISHOP: Second the motion.

THE CHAIRMAN: You have heard the motion. Is there discussion of the motion? (No response.) Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. WILSON: There has been something said about another meeting and I would like to know what the ideas of the Commissioners are as to when another meeting should be held and whether we are going to have one or two. New Mexico is very desirous of having the Commission meet in New Mexico. If we are going to have a preliminary meeting, we would prefer to have the final meeting in New Mexico at Santa Fe.

We have been told that the early part of October or the early part of November would be the most desirable dates to get the proper accommodations either in Santa Fe or at Bishop's Lodge. And if it is determined by the Commission to have a final meeting either in October or November, we would very much like to have you there at that time. If there are going to be two meetings or if you are meeting earlier, I am afraid we can't arrange it in New Mexico.

COM. BISHOP: Mr. Chairman, we had in mind inviting the Commission to meet at Jackson beginning on the 11th of September. Of course we would like to have that be the final meeting. If it takes two or three or four days we could take care of it at Jackson just as well as we could at Bishop's Lodge; I believe, if we need another meeting it will be all right to go to New Mexico. We would like to have you consider that suggestion.

COM. WILSON: Mr. Chairman, I move the next meeting be October 4th at Santa Fe.

COM. BISHOP: Second the motion.

(Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

COM. CARSON: I move that we recess until one-thirty and the Drafting Committee immediately go into session.

MR. WEHRLI: Mr. Carson, maybe I missed something this morning. What were the two new articles which were supposed to be referred to the Drafting Committee?

COM. CARSON: One was this that I suggested that the states of Arizona, New Mexico and Utah, signatories to this compact, reserve all their rights.

MR. HOWELL: The other was the importation of water.

MR. WEHRLI: Is there any essential dispute about those articles?

COM. CARSON: I think when we go home, Mr. Wehrl, we should have assurance that they are tentatively approved by the Commission as drafted by the Drafting Committee.

COM. STONE: Then there are the two articles with the notation regarding the interstate streams.

COM. CARSON: It won't take long to do it and I think it will be very much worthwhile if we go as far as we can while we are in Vernal.

MR. CLYDE: I suggest one-thirty might be later and give the Drafting Committee more time than it needs. I anticipate it won't take very long to re-arrange these articles in proper sequence and the two that have been suggested are practically in the form wanted. We have all worked at least two

or three times before on the article that makes an apportionment. I think we might get back here by eleven-thirty and be through by noon.

MR. WEHRLI: I suggest a half hour because it isn't going to take long.

MR. CLYDE: The Commission can go back in session as soon as the Drafting Committee completes its report.

THE CHAIRMAN: The Commission now stands recessed subject to the call of the Chairman.

(10:15 a.m. Recess.)

(12:30 p.m. Meeting reconvened.)

THE CHAIRMAN: The meeting will please come to order. At this time the Chairman wishes to express appreciation to Mr. Untermann for making the facilities of this building available at any time of the day or night and keeping up with us in the indefiniteness of time of the meeting. Somebody want to say something now?

THE CHAIRMAN: We will be glad to have a report of the Drafting Committee.

MR. SKEEN: The last revised draft of the Upper Colorado River Basin Compact includes the articles that were approved this morning by the Commission and also articles which were prepared pursuant to the direction of the Commission.

New articles are Article III, Article XI is a blank article, Article XII is a blank to be filled in later, Article XIII is an article relating to the Yampa River which has been prepared in rough. Article XIV relates to the San Juan. Article XVII relates to the importation of water from other drainage basins into the Colorado River Basin. Article XVIII refers to the reservations by Arizona, New Mexico and Utah of rights under the Colorado River Compact.

(Reads Articles III, XIII, XVII, and XVIII as set forth below in the complete draft of the Compact.)

The draft which has been handed out contains the numbered articles and they are tentatively put in the order that the Drafting Committee thought proper.

THE CHAIRMAN: Thank you, Mr. Skeen.

MR. CLYDE: I believe you omitted Article XIV in the reading.

MR. SKEEN: Oh, yes. (Reads Article XIV.)

COM. STONE: Mr. Chairman, I move that the report of the Drafting Committee be approved and that this report of the Drafting Committee be inserted in the record and shall be taken as a draft of the Upper Colorado River Basin Compact subject to the following:

1. Technical revision of language.
2. Final agreement between the affected states as to articles

concerning the Little Snake, Henry's Fork, Yampa, and San Juan Rivers.

COM. CARSON: I second the motion.

THE CHAIRMAN: In making that motion, Judge Stone, I suppose that you understand that the attorneys of the Federal Government will scrutinize this draft for omissions and language so that nothing will be overlooked which might imperil the ratification of the Compact by the Congress of the United States? Is there discussion of the motion?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(The draft of the Upper Colorado River Basin Compact referred to in Judge Stone's motion is as follows:)

"UPPER COLORADO RIVER BASIN COMPACT

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah, and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,
Clifford H. Stone for the State of Colorado,
Fred E. Wilson for the State of New Mexico,
Ed. H. Watson for the State of Utah, and
L. C. Bishop for the State of Wyoming.

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I

(a) The major purposes of this Compact are to provide for the equitable division and apportionment of the use of water of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of its waters, and the protection of life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II

As used in this Compact:

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

(b) The term "Colorado River Basin" means all of the drainage area

of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

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

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

(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) "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, and by Herbert Hoover, representative of the United States, and proclaimed effective by the President of the United States, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the agency created by this Compact for the administration thereof.

(k) The term "water year" means that period commencing October 1 of any year and ending September 30 of the following year.

(l) The term "acre-foot" is the quantity of water required to cover an acre to the depth of one foot and is equivalent to forty-three thousand five hundred sixty (43,560) cubic feet.

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

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

ARTICLE III

The use of water as such use is apportioned in perpetuity to the Upper Basin and available for use by the States of the Upper Basin under the Colorado River Compact is hereby apportioned among the States of the Upper Basin in perpetuity subject to the provisions and limitations appearing in the

Colorado River Compact and in this Compact, as follows: To the State of Arizona the consumptive use of 50,000 acre feet annually and the remainder to the States of Colorado, New Mexico, Utah and Wyoming in the following proportions:

Colorado	51.75 Per cent
New Mexico	11.25 Per cent
Utah	23.00 Per cent
Wyoming	14.00 Per cent

The apportionment made to each State shall include all water necessary for the supply of any rights which now exist.

No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact, and any apportionment of such uses shall be made in accordance with the terms of such paragraphs.

ARTICLE IV

In the event curtailment of use by the States of the Upper Division shall, at any time, become necessary in order that the flow at Lee Ferry shall not be depleted below that flow required by Article III of the Colorado River Compact, the extent of curtailment by each such State of the consumptive use of water, apportioned to it by Article III of this Compact, shall be such as to result in the delivery at Lee Ferry of an amount of water which bears the same relation to the deficiency to be made up as the consumptive use which was made by each such State during the water year immediately preceding that in which the deficiency occurs bears to the aggregate consumptive use of water which was made pursuant to the apportionment made by Article III hereof by the States of the Upper Division during the water year immediately preceding that in which the deficiency occurs; provided that, for the purpose of computing the curtailment that must be made by any such State as required by this Article, uses being made prior to November 24, 1922, shall be excluded; provided further, that if any State or States of the Upper Division, in the ten years immediately preceding the water year in which such curtailment is required to be made, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States, as the case may be, shall be required to supply at Lee Ferry an amount equal to its, or the aggregate of their overdraft or the proportionate part of such overdraft as may be necessary to supply such deficiency before demand is made on any other State.

ARTICLE V

As determined by the Commission:

(a) The storage capacity of reservoirs and the water stored therein for the purpose of and utilized in making deliveries of water at Lee Ferry in compliance with the provisions of Article III of the Colorado River Compact shall be considered to be for the common benefit of the States of the Upper Division, and water so stored for such purpose shall not be earmarked for nor charged to any individual State.

(b) Reservoir losses resulting from the storage of water for the joint benefit of such States in making deliveries of water at Lee Ferry shall be charged to the States of the Upper Division in proportion to the consumptive use of water in each State of the Upper Division during the year for which the charge is made.

(c) Reservoir losses resulting from the storage of water for purposes other than those covered by paragraphs (a) and (b) of this article by one or more States shall be charged to the State or States for whose benefit the water is so stored in proportion to the benefits received.

ARTICLE VI

(a) The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry and at State lines; unless the Commission, by unanimous action, shall adopt a different method of determination.

(b) The water year shall be used as the basis of computing all annual measurements of stream flows, use and delivery of water.

ARTICLE VII

The use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made.

ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as "Upper Colorado River Commission." The Commission shall be composed of one representative of each of the States of the Upper Division, namely: Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such state and, if designated by the President of the United States, one representative of the United States. The President of the United States is hereby requested to designate a Commissioner for the United States. If a Commissioner is so designated for the United States, he shall be the presiding officer of the Commission and shall be entitled to the same power and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incident to the administration of this compact, and which are not paid by the United States, shall be borne pro rata by the four States according to the percentage of consumptive use apportioned to each. On or before November 1st of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount thereof payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1st of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, and who shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other aid as may, in its judgment, be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission shall have the power to:

- (1) Adopt rules and regulations not inconsistent with this Compact;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries.
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
- (5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River and any of its tributaries;
- (6) Make findings as to the quantity of water of the Upper Colorado River System used each water year in the Upper Colorado River Basin and in each State thereof;
- (7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;
- (8) Make findings as to the necessity for curtailment of use, if any, pursuant to Article IV hereof;
- (9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;
- (10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accidents to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such Treaty may be reduced;
- (11) Acquire, hold and dispose of such personal and real property as may be necessary for the performance of its duties hereunder;
- (12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder.
- (13) Make and transmit annually to the Governors of the signatory States and the President of the United States, with the estimated budget, a report covering the activities of the Commission for the preceding year.

(e) The concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the signatory States, or their representatives, or authorized representatives of the Federal Government.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

ARTICLE IX

(a) No State shall deny the right of the United States and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing, or regulating water in an Upper State for consumptive use in a lower signatory State when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights in a State in which such reservoir or works are located to receive and use the water, the use of which is apportioned to it by this Compact.

(b) Any signatory State, any person, or any entity of any signatory State shall have the right to acquire property rights necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase, or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by finding of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed, and, in the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located shall, in permitting the storage and release of water, comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land, in full reimbursement for the loss of taxes in such political subdivisions of the State, said payments to be in lieu of any and all taxes on said property, improvements and rights.

(e) The signatory States recommend to the President and the Congress that, in the event the United States shall acquire property in one of the signatory States for the benefit of another signatory State or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE X

The signatory States recognize the La Plata River Compact entered into between the States of Colorado and New Mexico, dated the 27th day of November, 1944, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made; provided, that consumptive uses of water made by either Colorado or New Mexico from La Plata River shall be charged as uses under the apportionment made to such State by Article III of this Compact.

ARTICLE XI

(Here inset provisions relative to the Little Snake to be agreed upon by Wyoming and Colorado.)

ARTICLE XII

(Here insert provisions relative to Henry's Fork to be agreed upon by Utah and Wyoming).

ARTICLE XIII

Subject to the provisions of this Compact, the right to the use of the waters of the Yampa River, a tributary entering the Green River in Colorado and Utah in accordance with the following principles and procedures:

(a) Colorado shall deliver at the mouth of the Yampa River during each water year a quantity of water which will assure Utah of a flow of water out of the Yampa River reasonably adequate to assure Utah of a water supply for projects partly dependent upon the flow of the Yampa River; the amount of such flow to be based upon the water requirements as finally determined by the Bureau of Reclamation for the Central Utah and allied project and Colorado hereby agrees that Utah may divert water from the Yampa River and the Green River in Colorado for exportation to and use within Utah for the Central Utah and allied projects.

(b) All consumptive uses of water of the Yampa River made either by Colorado or Utah shall be charged as uses under the apportionment to such States made by Article III of this Compact.

(Note: The details of the formula or procedure to be incorporated into the Compact for the purpose of carrying out the above provision are to be worked out by the Engineering Advisory Committee for insertion in the Compact before the next meeting).

ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the water of the San Juan River and its tributaries are hereby apportioned between Colorado and New Mexico in accordance with the following principles:

(a) Colorado shall deliver to New Mexico during each water year the sum of those quantities set forth in the following tabulations of relationship which correspond to the quantities at the upper index stations:

(Here set forth schedules as in the Rio Grande Compact, such schedules to be worked out as to give reasonable assurance to New Mexico that it will receive San Juan water in quantities sufficient to give reasonable anticipation of having available a quantity of water which will make possible the consumptive use apportioned to New Mexico by this Compact. These schedules are to be fair and equitable and are to be so made as to provide for an equitable sharing of unavoidable shortages).

(b) All consumptive uses of water of the San Juan River and its tributaries made by either Colorado or New Mexico shall be charged as uses under the apportionment to such State by Article III of this Compact.

ARTICLE XV

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

(b) The provisions of this Compact 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, the consumptive use of which is apportioned to such State by Article III hereof.

ARTICLE XVI

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII

In the event water from another drainage basin is now being or hereafter shall be imported into the natural basin of the Upper Colorado River System by the United States, or jointly, or severally, by any of the States signatory hereto, the State having the right to use such water shall not be charged therewith in the allocation of the right to the use of water made by Article III hereof.

ARTICLE XVIII

The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

The State of New Mexico and the State of Utah reserves their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

ARTICLE XIX

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities to taxation by any state or subdivision thereof, or creating any obligation on the part of the United States, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX

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

ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States. Notice of ratification by the legislatures of the signatory States 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 hereby requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of _____, _____, this _____ day of _____, _____.

Approved:

COM. BISHOP: Mr. Chairman, I move that a final drafting committee to be composed of one Federal representative and one representative from each state be created to prepare the final draft of the Compact for submission to the Commission at its next meeting and that such committee meet prior to the next meeting of the Commission.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there discussion of the motion? Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

COM. BISHOP: Mr. Chairman, I move we adjourn.

COM. CARSON: Just a minute, Mr. Bishop, before that motion is made.

COM. STONE: We had better appoint that committee.

COM. CARSON: Yes.

COM. STONE: Colorado designates Jean S. Breitenstein.

COM. WATSON: Judge J. A. Howell for Utah.

COM. BISHOP: I will designate Mr. Wehrli for Wyoming.

COM. CARSON: I will serve for Arizona.

COM. WILSON: I will serve on the committee for New Mexico.

THE CHAIRMAN: And Mr. Will will serve for the Federal Representative.

COM. CARSON: Before that motion is made I would like to make a motion that the Commission express its appreciation to the people of Vernal and the Uinta Basin for the many courtesies shown us and the many conveniences furnished us at this meeting.

COM. BISHOP: I second the motion.

THE CHAIRMAN: Is there discussion of the motion?

(Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

COM. BISHOP: I move that we recess to meet at Santa Fe, New Mexico, October 4th, 1948.

COM. WILSON: Second the motion.

THE CHAIRMAN: Are you ready for the question? (Question is called for. Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

(12:45 p.m., Wednesday, July 21, 1948, recess until October 4, 1948, at Santa Fe, New Mexico.)

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UPPER COLORADO RIVER BASIN COMPACT COMMISSION

OFFICIAL RECORD OF MEETING NO. 8

October 4 - 11, 1948

Bishop's Lodge
Santa Fe, New Mexico

EIGHTH MEETING
 Santa Fe, New Mexico
 October 4 - 11, 1948

	Vol.	Mtg.	Page
Appearances	2	8	1
Call to Order	2	8	3
Krug Statement and Press Release	2	8	3
Engineering Committee Report by Mr. Riter	2	8	5
Text of Report	2	8	5
Motion by Com. Stone That Engineering Report be Received and Made Part of Record; Seconded by Com. Bishop	2	8	9
Vote taken; Carried	2	8	9
Drafting Committee Report	2	8	10
Explanations by Mr. Will	2	8	10
Comments by Com. Stone re Compact Copies	2	8	11
Motion by Com. Stone for One Original Draft of Compact for Government and One Original Draft for Each of Signatory States; Seconded by Com. Watson	2	8	11
Vote taken; Carried	2	8	11
Report on Colorado-Wyoming Conference (Little Snake River)	2	8	12
Comments by Com. Stone	2	8	12
Text of Agreement	2	8	12
Motion by Com. Bishop That Article XI (Little Snake River) Be Adopted and Referred to Drafting Committee; Seconded by Com. Stone	2	8	13
Vote taken; Carried	2	8	13
Report on New Mexico-Colorado Conference (San Juan River)	2	8	14
Comments by Com. Wilson	2	8	14
Comments by Com. Stone	2	8	14
Motion by Com. Wilson That Article XIV (San Juan River) Be Adopted and Referred to Drafting Committee, Subject to Language Refinement and Possible Changes Affecting Indians' Use of Water; Seconded by Com. Stone	2	8	14
Vote taken; Carried	2	8	15
Report on Utah-Colorado Conference (Yampa River)	2	8	15
Comments by Com. Watson	2	8	15
Comments by Com. Stone	2	8	15
Motion by Com. Watson That Article XIII (Yampa River) Be Adopted; Seconded by Com. Stone	2	8	15
Vote taken; Carried	2	8	15

October 4 (Afternoon) 2:20 p.m.

Call to Order	2	8	15
Motion by Com. Watson to Adopt Engineering Committee Recommendation re Preference of Storage of Water for Consumptive Use, and Refer to Drafting Committee; Seconded by Com. Stone	2	8	16
Vote taken; Carried	2	8	16
Recess	2	8	16
Motion by Com. Watson That Principles Set Forth in Article III (e) of Original Compact re Withholding of Water Be Adopted as a Principle for Upper Basin Compact and Referred to Drafting Committee (withdrawn)	2	8	17

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Com. Watson That Principle That Beneficial Use is the Measure, Limit and Basis of Right to Use Water Be Adopted, and Referred to Drafting Committee; Seconded by Com. Stone.	2	8	17
Vote taken; Carried.	2	8	18
Discussion on Charging of Reservoir Losses.	2	8	18
Comments by Com. Stone	2	8	18
Analysis by Mr. Breitenstein	2	8	18
Motion by Com. Stone to Approve Breitenstein Outline In Principle and Refer to Drafting Committee for Redraft of Article V; Seconded by Com. Watson	2	8	19
Vote taken; Carried.	2	8	19
Discussion on Receipts and Disbursements Under Compact.	2	8	20
Comments by Mr. Howell	2	8	20
Motion by Com. Watson That Outlined Procedure for Receipts and Disbursements be Approved in Principle and Referred to Drafting Committee for Appropriate Language for Article VIII, Subsection (b); Seconded by Com. Wilson.	2	8	20
Vote taken; Carried.	2	8	20
Motion by Com. Stone to Recess to October 5; Seconded by Com. Bishop.	2	8	20
Comments by Mr. Clyde.	2	8	21
Comments by Mr. Wehrli	2	8	21
Arrangements for Utah-Wyoming Conference	2	8	22
Vote on Motion to Recess; Carried.	2	8	22
October 5 (Forenoon) 10 a.m.			
Recess continued, Subject to Call of the Chair.	2	8	22
October 5 (Afternoon) 2 p.m.			
Call to Order.	2	8	22
Introduction of Commissioner Straus, Bureau of Reclamation	2	8	22
Report of Drafting Committee	2	8	22
Analysis by Mr. Will.	2	8	23
Motion by Com. Stone That Drafting Committee Report be Received and Made Part of the Record; Seconded by Com. Watson.	2	8	26
Vote taken; Carried	2	8	26
Motion by Com. Stone That Compact, When Complete, be Produced by Offset Photo-Lithograph Method in Sufficient Copies to Supply Needs of All States, plus Six Copies Executed by Commission; Seconded by Com. Bishop.	2	8	26
Vote taken; Carried.	2	8	27
Report on Contacts With Atomic Energy Commission	2	8	27
Comments by Chairman Bashore	2	8	27
Comments by Mr. Will	2	8	27
Comments by Mr. Merriell.	2	8	27
Adjournment to October 6	2	8	28

October 6 (Forenoon) 10 a.m.

	Vol.	Mtg.	Page
Meeting Continued Until 2 p.m.	2	8	23

October 6 (Afternoon) 2 p.m.

Remarks by Chairman Bashore.	2	8	28
Review of 1946 Comments by Commissioner of Reclamation re Colorado River Development.	2	8	28
Text of Comments.	2	8	28
Appearance of Commissioner Straus, Bureau of Reclamation	2	8	29
Comments by Commissioner Straus	2	8	29
Telegram from Assistant Secretary of Interior, re Language for Article XIX.	2	8	34
Comments by Com. Wilson.	2	8	34
Motion by Com. Wilson to Accept Language Proposed for Article XIX, Subsection (c); Seconded by Com. Stone	2	8	35
Vote taken; Carried.	2	8	35
Discussion of Release of Copies of Blaney Agriculture Consumptive Use Report	2	8	35
Comments by Mr. Riter	2	8	35
Motion by Com. Bishop to Grant Blaney Request for 15 Copies for In-Service Use; Seconded by Com. Watson	2	8	36
Vote taken; Carried.	2	8	36
Motion by Com. Watson to Recess to October 7; Seconded by Com. Bishop.	2	8	36
Vote taken; Carried.	2	8	36

October 7 (Forenoon) 10 a.m.

Meeting Continued Until October 8	2	8	37
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October 8 (Afternoon) 2 p.m.

Call to Order.	2	8	37
Motion by Com. Stone for Adoption of Language for Subsection (b) of Article III; Seconded by Com. Wilson.	2	8	37
Text of Article	2	8	37
Vote taken; Carried	2	8	37
Motion by Com. Bishop for Adoption of Language for Article XIII of Compact; Seconded by Com. Watson.	2	8	37
Text of Article	2	8	38
Vote taken; Carried	2	8	39
Riter Statement re Adequacy of Water Supply for Central Utah Project.	2	8	39
Text of Statement	2	8	39
Motion by Com. Watson for Adoption of Original Article on Allocation of Benefits of Power; Seconded by Com. Stone	2	8	40
Vote taken; Carried	2	8	41
Motion by Com. Stone to Recess, Subject to call of Chair; Seconded by Com. Watson	2	8	41
Vote taken; Carried.	2	8	41

October 9 (Afternoon). 3:30 p.m.

	Vol.	Mtg.	Page
Call to Order	2	8	41
Reading of Compact Articles and Vote on Each	2	8	41
Text of Preamble	2	8	41
Motion by Com. Stone for Adoption of Preamble as Read;			
Seconded by Com. Bishop	2	8	41
Vote taken; Carried Unanimously	2	8	42
Text of Article I	2	8	42
Motion by Com. Wilson for Adoption of Article I as Read;			
Seconded by Com. Carson	2	8	42
Vote taken; Carried Unanimously	2	8	42
Text of Article II	2	8	42
Motion by Com. Carson for Adoption of Article II as Read;			
Seconded by Com. Watson	2	8	43
Vote taken; Carried Unanimously	2	8	43
Text of Article III	2	8	43
Motion by Com. Carson for Adoption of Article III as Read;			
Seconded by Com. Watson	2	8	45
Vote taken; Carried Unanimously	2	8	45
Text of Article IV	2	8	45
Motion by Com. Stone for Adoption of Article IV as Read;			
Seconded by Com. Watson	2	8	45
Vote taken; Carried Unanimously	2	8	46
Text of Article V	2	8	46
Motion by Com. Stone for Adoption of Article V as Read;			
Seconded by Com. Bishop	2	8	47
Vote taken; Carried Unanimously	2	8	47
Text of Article VI	2	8	47
Motion by Com. Bishop for Adoption of Article VI as Read;			
Seconded by Com. Watson	2	8	47
Vote taken; Carried Unanimously	2	8	47
Text of Article VII	2	8	47
Motion by Com. Stone for Adoption of Article VII as Read;			
Seconded by Com. Watson	2	8	47
Vote taken; Carried Unanimously	2	8	48
Text of Article VIII	2	8	48
Motion by Com. Watson for Adoption of Article VIII as Read;			
Seconded by Com. Wilson	2	8	50
Vote taken; Carried Unanimously	2	8	50
Text of Article IX	2	8	50
Motion by Com. Wilson for Adoption of Article IX as Read;			
Seconded by Com. Bishop	2	8	51
Vote taken; Carried Unanimously	2	8	51
Text of Article X	2	8	51
Motion by Com. Bishop for Adoption of Article X as Read;			
Seconded by Com. Watson	2	8	52
Text of Article XI	2	8	52
Comments by Com. Bishop	2	8	52
Comments by Com. Stone	2	8	52
Motion by Com. Bishop for Adoption of Article XI as Read;			
Seconded by Com. Stone	2	8	53
Vote taken; Carried Unanimously	2	8	53
Text of Article XII	2	8	54

	<u>Vol.</u>	<u>Mtg.</u>	<u>Page</u>
Motion by Com. Watson for Adoption of Article XII as Read;			
Seconded by Com. Bishop.	2	8	55
Vote taken; Carried Unanimously.	2	8	55
Text of Article XIII.	2	8	55
Motion by Com. Wilson for Adoption of Article XIII as Read;			
Seconded by Com. Stone	2	8	55
Vote taken; Carried Unanimously.	2	8	56
Text of Article XIV	2	8	56
Motion by Com. Stone for Adoption of Article XIV as Read;			
Seconded by Com. Wilson.	2	8	57
Vote taken; Carried Unanimously.	2	8	57
Text of Article XV.	2	8	57
Motion by Com. Bishop for Adoption of Article XV as Read;			
Seconded by Com. Watson.	2	8	57
Vote taken; Carried Unanimously.	2	8	57
Text of Article XVI	2	8	57
Motion by Com. Stone for Adoption of Article XVI as Read;			
Seconded by Com. Bishop.	2	8	57
Vote taken; Carried Unanimously	2	8	58
Text of Article XVII.	2	8	58
Motion by Com. Watson for Adoption of Article XVII as Read;			
Seconded by Com. Bishop.	2	8	58
Vote taken; Carried Unanimously.	2	8	58
Text of Article XVIII	2	8	58
Motion by Com. Watson for Adoption of Article XVIII as Read;			
Seconded by Com. Wilson.	2	8	58
Vote taken; Carried Unanimously.	2	8	58
Text of Article XIX	2	8	58
Motion by Com. Bishop for Adoption of Article XIX as Read;			
Seconded by Com. Watson.	2	8	59
Vote taken; Carried Unanimously.	2	8	59
Text of Article XX.	2	8	59
Motion by Com. Watson for Adoption of Article XX as Read;			
Seconded by Com. Bishop.	2	8	59
Vote taken; Carried Unanimously.	2	8	59
Text of Article XXI	2	8	59
Motion by Com. Carson for Adoption of Article XXI as Read;			
Seconded by Com. Bishop.	2	8	60
Vote taken; Carried Unanimously.	2	8	60
Text of Compact Conclusion.	2	8	60
Motion by Com. Stone for Adoption of Concluding Clause as Read;			
Seconded by Com. Bishop.	2	8	60
Vote taken; Carried Unanimously.	2	8	61
Motion by Com. Wilson for Adoption of Entire Compact as Read;			
Including Preamble and Articles I to XXI Inclusive, and the Concluding Paragraph; Seconded by Com. Carson.	2	8	61
Vote taken; Carried Unanimously (Ayes-Arizona, Colorado, New Mexico, Utah and Wyoming).	2	8	61
Complete Text of Adopted Compact.	2	8	61
Compact Approval by Commission Chairman	2	8	74
Congratulatory Telegram from William W. Warne	2	8	75
Text of Telegram.	2	8	75
Congratulatory Telegram from Governor Mabry	2	8	75
Text of Telegram.	2	8	75

	Vol.	Mtg.	Page
Discussion of Procedures for Compact Ratification.	2	8	76
Comments by Com. Stone.	2	8	76
Comments by Mr. Wallace.	2	8	76
Comments by Chairman Bashore.	2	8	78
Comments by Mr. Breitenstein.	2	8	78
Motion by Com. Stone to Delay Decisions on Procedures;			
Seconded by Com. Bishop.	2	8	79
Roll Call; Carried Unanimously.	2	8	79
Motion by Com. Stone Commending Chairman Bashore and Federal			
Agencies and Individuals for Roles in Compact Negotiations;			
Seconded by Com. Bishop and Com. Watson.	2	8	80
Vote taken; Carried Unanimously.	2	8	80
Recess, Subject to Call of the Chair.	2	8	80

October 11 (Afternoon) 2 p.m.

Call to Order.	2	8	81
Remarks by Chairman Bashore.	2	8	81
Introduction of Governor Mabry of New Mexico.	2	8	81
Remarks by Governor Mabry.	2	8	82
Introduction of Mrs. Francis C. Wilson.	2	8	82
Introduction of William R. Wallace.	2	8	82
Remarks by Mr. Wallace.	2	8	83
Introduction of Ralph I. Meeker.	2	8	83
Remarks by Mr. Meeker.	2	8	83
Introduction of Mrs. Thomas McClure.	2	8	83
Statement of Bureau of Reclamation Position re Compact.	2	8	83
Comments by Mr. Hill.	2	8	83
Official Signing of Compact.	2	8	84
Distribution of Signed Originals.	2	8	84
Commendation for Mrs. Lois Price Crowder.	2	8	84
Motion by Com. Stone That Compilation of Data re Compact, for			
Use in Obtaining Ratifications, Be Delayed Until Official			
Record is Approved; Seconded by Com. Carson.	2	8	84
Vote taken; Carried.	2	8	84
Motion by Com. Wilson That Commission Meet in Denver,			
November 29, 1948; Seconded by Com. Bishop.	2	8	84
Vote taken; Carried.	2	8	84
Motion by Com. Stone Commending State of New Mexico and City			
of Santa Fe for Hospitality; Seconded by Com. Watson.	2	8	85
Vote taken; Carried.	2	8	85
Motion by Com. Watson to Adjourn; Seconded by Com. Wilson.	2	8	85
Vote taken; Carried.	2	8	85
Adjournment.	2	8	85

APPEARANCES
UPPER COLORADO RIVER BASIN COMPACT COMMISSION

HARRY W. BASHORE, CHAIRMAN
Federal Representative
Mitchell, Nebraska

GROVER A. GILES, SECRETARY
Attorney General of Utah
State Capitol
Salt Lake City, Utah

COMMISSIONER FOR THE STATE OF ARIZONA:

Charles A. Carson 419 Title & Trust Building,
Phoenix, Arizona

COMMISSIONER FOR THE STATE OF COLORADO:

Clifford H. Stone Director, Colorado Water Conservation Board,
State Office Building, Denver, Colorado

COMMISSIONER FOR THE STATE OF NEW MEXICO:

Fred E. Wilson 806 First National Bank Building,
Albuquerque, New Mexico

COMMISSIONER FOR THE STATE OF UTAH:

Edward H. Watson State Engineer, State Capitol,
Salt Lake City, Utah

COMMISSIONER FOR THE STATE OF WYOMING:

L. C. Bishop State Engineer, Cheyenne, Wyoming

ADVISERS

ARIZONA:

R. Gail Baker	State Reclamation Engineer, Phoenix, Arizona
Wayne M. Akin	Chairman, Arizona Inter-State Stream Commission, 309 Security Building, Phoenix, Arizona
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Jesse A. Udall	Member, Arizona Inter-State Stream Commission, Thatcher, Arizona
John A. Roberts	Member, Arizona Inter-State Stream Commission, Casa Grande, Arizona
Alfred Atkinson	Member, Arizona Inter-State Stream Commission, University of Arizona, Tucson, Arizona
Ray Killian	Executive Secretary, Arizona Inter-State Stream Commission, Phoenix, Arizona
R. I. Meeker	Engineer, Arizona Inter-State Stream Commission, Phoenix, Arizona
O. C. Williams	Land and Water Commissioner, Phoenix, Arizona
Ben Avery	Reporter, "Arizona Republic," Phoenix, Arizona

COLORADO:

Jean S. Breitenstein Attorney, Colorado Water Conservation Board,
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Dan B. Hunter	Member, Colorado Water Conservation Board, Dove Creek, Colorado
R. M. Gildersleeve	Engineer, Colorado Water Conservation Board, Denver, Colorado
A. P. Gumlick	Chairman, Denver Water Board, Denver, Colorado
Glenn Saunders	Attorney, Denver Water Board, Denver, Colorado
Harry Potts	Engineer, Denver Water Board, Denver, Colorado
A. W. McHendrie	Arkansas Valley Ditch Ass'n., Thatcher Bldg., Pueblo, Colorado
Chas. J. Beise	Southeastern Colorado Water Users Ass'n., First National Bank Bldg., Denver, Colorado
Harold Christy	Southeastern Colorado Water Users Ass'n., Pueblo, Colorado
John Beaty	Southeastern Colorado Water Users Ass'n., Manzanola, Colorado
Robert J. Steinbruner	Reporter, "Denver Post", Denver, Colorado

NEW MEXICO:

John H. Bliss	State Engineer, State Capitol Bldg., Santa Fe, New Mexico
Martin A. Threst	Attorney, Interstate Streams Comm., 302½ W. Central, Albuquerque, New Mexico
Jeff D. Atwood	Chairman, New Mexico Interstate Stream Commission, Roswell, New Mexico
Arch Hurley	Member, New Mexico Interstate Stream Commission, Tucumcari, New Mexico
Pearce C. Rodey	Member, New Mexico Interstate Stream Commission, Albuquerque, New Mexico
I. J. Coury	Member, Interstate Streams Comm., Farmington, New Mexico
John R. Erickson	Engineer, Interstate Streams Comm., Santa Fe, New Mexico
Ed. H. Foster	President, San Juan County Reclamation Ass'n., Farmington, New Mexico

UTAH:

J. A. Howell	Special Counsel for the Water & Power Board, 625 Eccles Bldg., Ogden, Utah
Edward W. Clyde	Director, Utah Water & Power Board, Attorney, State Engineer's Office, State Capitol, Salt Lake City, Utah
C. O. Roskelley	State Engineer's Office, State Capitol, Salt Lake City, Utah
Fred W. Cottrell	State Engineer's Office, State Capitol, Salt Lake City, Utah
William R. Wallace	Chairman, Utah Water and Power Board, Salt Lake City, Utah
Thomas W. Jensen	Utah Water and Power Board, Salt Lake City, Utah
Mitchell Melich	State Senator, Moab, Utah
Alonzo F. Hopkin	State Senator, Woodruff, Utah

WYOMING:

W. J. Wehrli	Special Counsel for Wyoming, Casper, Wyoming
R. D. Goodrich	Engineering Adviser, Laramie, Wyoming

R. D. Goodrich	Engineering Adviser, Laramie, Wyoming
H. Melvin Rollins	Assistant Compact Commissioner, Cheyenne, Wyoming
Norman W. Barlow	Assistant Compact Commissioner, Cora, Wyoming
Ernest B. Hitchcock	Assistant Compact Commissioner, Rock Springs, Wyo.
Leeland U. Grieve	Assistant Compact Commissioner, Savery, Wyoming
David P. Miller	Assistant Compact Commissioner, Rock Springs, Wyo.

BUREAU OF RECLAMATION:

N. B. Bennett, Jr.	Assistant Director, Branch of Project Planning, Washington, D. C.
J. G. Will	Assistant Chief Counsel, Washington, D. C.
E. O. Larson	Regional Director Region 4, Salt Lake City, Utah
John R. Riter	Chief, Hydrology Division, Denver, Colorado
H. P. Dugan	Engineer, Hydrology Division, Denver, Colorado
E. J. Skeen	Attorney, Region 4, Salt Lake City, Utah
C. B. Jacobson	Engineer, Region 4, Salt Lake City, Utah

UNITED STATES GEOLOGICAL SURVEY:

M. T. Wilson	District Engineer, Salt Lake City, Utah
Berkeley Johnson	District Engineer, Santa Fe, New Mexico

PROCEEDINGS

The meeting was called to order by Chairman Bashore at ten o'clock a.m., Monday, October 4, 1948, at Bishop's Lodge, Santa Fe, New Mexico.

THE CHAIRMAN:

Subsequent to the Vernal meeting the Chairman received a letter dated July 29, 1948, which reads as follows:

"My dear Mr. Bashore:

Attached is a copy of a statement I issued on learning from Bill Warne and Mike Straus that a firm agreement had been reached among the Upper Basin States. Please convey my heartiest congratulations to all members of the Commission.

Sincerely yours,
(Signed) J. A. Krug
Secretary of the Interior."

The press release issued by the Secretary of the Interior shows very plainly the approval of the Department of the progress which we have made and without objection I will submit that press release for the record. But I want to read just one part of it which I think is quite important. The Secretary says that:

"The Upper Basin States agreement is a second great forward step in the development of the Colorado River which is the primary resource of its region. I am especially pleased that the agreement, if approved by the State legislatures next spring and the 81st Congress, will clear the way for the Secretary of the Interior, through the Bureau of Reclamation, to proceed to the actual development of the main stream reservoirs of the upper basin. This will mean that power and irrigation water and storage to secure the needs of the lower basin will be provided. It will not be necessary to lay the river away in cotton batting while the fight continues over who is going to use what water where."

Is there objection to including the press release in the record?

THE CHAIRMAN: Without objection it will be made a part of the record.

(The release referred to is as follows:)

"BUREAU OF RECLAMATION
For Release JULY 26, 1948

Secretary of the Interior J. A. Krug today made the following comment on a reported agreement among Upper Basin States of the Colorado River with respect to division of river waters:

'I am delighted by a report from Harry W. Bashore, Federal Commissioner of the Colorado Upper Basin States Compact Commission, that firm agreement has been reached by the Upper Basin States--Colorado, New Mexico, Utah, Wyoming, and Arizona--with regard to the division of the waters allotted to them from the Colorado River. More than 25 years have elapsed since, in Santa Fe, New Mexico, the original 7-State agreement dividing the river between the upper and lower basins was initialed in 1922. The Upper Basin States agreement is a second great forward step in the development of the Colorado River which is the primary resource of its region. I am especially pleased that the agreement, if approved by the State legislatures next spring and the 81st Congress, will clear the way for the Secretary of the Interior, through the Bureau of Reclamation, to proceed to the actual development of the main stream reservoirs of the upper basin. This will mean that power and irrigation water and storage to secure the needs of the lower basin will be provided. It will not be necessary to lay the river away in cotton batting while the fight continues over who is going to use what water where.

'I congratulate Commissioner Bashore and every member of the Colorado Upper Basin States Commission on the job that has been done and the successful completion of many months of arduous work.'

The agreement was reported in a telegram from Commissioner of Reclamation Michael W. Straus.

'Presidential Commissioner to the Colorado Upper Basin States Harry Bashore today reports firm agreement reached by Upper Basin States for allocating Colorado River water on the basis of 7,500,000 acre-feet less 50,000 allocated to Arizona and balance of 7,450,000 acre-feet percentage-wise....51.75 per cent to Colorado, 11.25 per cent to New Mexico, 23 per cent to Utah, and 14 per cent to Wyoming.

'Agreement has been reduced to writing and will be formally ratified by the Upper Basin Compact Commissioners at a meeting October 6 at Bishop's Lodge, Santa Fe, the site of the original Colorado Compact....Agreement presupposes continual development under Reclamation Law of main-stream reservoir space required above Lee's Ferry to meet terms of Santa Fe compact regarding releases to lower basin below Lee's Ferry.'

At the Vernal meeting a motion was made to refer certain matters to the Engineering Advisory Committee and to the Drafting Committee or Editing Committee, and it appears that a report of the Engineering Advisory Committee in line with that reference from the Commission should be heard at this time. Mr. Riter, you are the chairman of the Engineering Advisory Committee. Are you ready to submit a report?

5
MR. RITER: Yes, sir.

THE CHAIRMAN: Very well.

MR. RITER: I will hand the Chairman a signed copy of the report and I have available a number of mimeographed copies for the Commissioners.

(Copies of report distributed.)

THE CHAIRMAN: Mr. Riter, you may now render your report.

MR. RITER: There has been passed to each member of the Commission and their advisers, a mimeographed copy of the report prepared by the Engineering Committee. For the sake of keeping the record straight I will read the report as submitted.

"Santa Fe, New Mexico
October 4, 1948

MEMORANDUM FROM ENGINEERING ADVISORY COMMITTEE
TO UPPER COLORADO RIVER BASIN COMPACT COMMISSION

At the Vernal, Utah meeting of the Compact Commission, the Engineering Advisory Committee was instructed to:

- (a) Prepare additional studies of the inflow-outflow method of measuring uses in the Upper Colorado River Basin.
- (b) Prepare a formula for incorporation in Article XIII pertaining to the Yampa River.
- (c) Prepare a formula for incorporation in Article XIV pertaining to the San Juan River.

Subsequent to the Vernal meeting, Commissioner Watson of Utah requested the Committee to make a study of the future flows of the Green River at Linwood, Utah, above the mouth of Henrys Fork.

In addition to the above tasks, the Committee gave additional consideration to completion of its basic report.

The Engineering Advisory Committee has met several times since the Vernal, Utah meeting and reports progress as follows:

Supporting Data for Engineering Report

A rough draft of a document containing the supporting data for the report summary submitted July 7, 1948, has been prepared. This rough draft is now being reviewed by members of the Engineering Advisory Committee and will be revised and edited and is expected to be ready for submission to the Commission during December 1948.

Inflow-Outflow Manual

Assignments have been made to various engineers to study inflow-outflow relationships on tributaries as follows:

Green River near Linwood
 Henrys Fork at Linwood
 Yampa River at Maybell
 Little Snake River near Lily
 White River near Watson
 Brush Creek near mouth
 Ashley Creek near mouth
 Duchesne River near mouth
 Colorado River near Colorado-Utah line
 Dolores River near Colorado-Utah line
 Price River near mouth
 San Rafael River near mouth
 Dirty Devil River near mouth
 Escalante River near mouth
 Paria River near mouth
 San Juan River and tributaries near Colorado-New Mexico line
 San Juan River and tributaries between state line and Bluff
 Chinle Creek near mouth
 Main stream between key gaging stations (Cisco, Green River and Bluff) and Lees Ferry

While much progress has been made, the studies have not been completed. It is anticipated that a manual describing the inflow-outflow method will be prepared and submitted to the Compact Commission during December 1948. The purpose of the manual is for the guidance of the future administrative body to be created by the proposed compact.

Yampa River

After considering the stream flows of the Yampa River at Maybell and the prospective future uses of water in Colorado and Utah, the Committee recommends that Article XIII, in substance, be as follows:

ARTICLE XIII

Subject to the provisions of the compact, the rights to the use of the waters of the Yampa River, a tributary entering the Green River in Colorado, are hereby apportioned between Colorado and Utah in accordance with the following principles:

(a) Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval by Congress of this Compact. In the event any diversion is made for the benefit of any Utah water use project from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station, then the gross amount of all such diversions for use in Utah less any returns from such diversions to the river above Maybell shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive uses of water of the Yampa River made either by Colorado or Utah shall be charged as uses under the apportionment to such states made by Article III of this compact.

San Juan River

The Vernal draft of the Compact contemplated the definition of schedules of water delivery to New Mexico. However, a review of project potentialities indicated this to be impractical in view of the alternative possibilities for use of water from the San Juan River and tributaries in both Colorado and New Mexico. A statement of principles for use of the water of the San Juan River and tributaries was prepared. The following suggested redraft of Article XIV has been approved as to principle by representatives of Colorado and New Mexico.

ARTICLE XIV

Subject to the provisions of this Compact, and within the apportionment made by Article III of this Compact, the consumptive use of the water of the San Juan River and its tributaries is hereby apportioned between Colorado and New Mexico as follows:

Colorado agrees to deliver to New Mexico from the San Juan River and its tributaries which rise in Colorado an amount of water which shall be sufficient, together with water originating in the San Juan Basin in New Mexico, to enable New Mexico to make full use of the water apportioned to New Mexico by Article III of this Compact, subject, however, to the following conditions:

(a) All uses of water made in either state at the time this Compact becomes finally effective and all uses of water now contemplated under water use projects authorized by the Congress of the United States shall be recognized as having a first and prior right.

(b) Colorado assents to diversions and storage of water in Colorado for use in New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of water of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such an amount so that the resulting consumptive use in each state will bear the same proportionate relation to the consumptive use made in each state during times of average water supply as determined by the Commission, provided that, if Indian uses of water shall be entitled under Article XIX to any preferment, then such Indian uses shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either state in order to make up deficiencies in Lee Ferry deliveries as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provision of this Article.

(e) All consumptive uses of water of the San Juan River and its tributaries made by either Colorado or New Mexico shall be charged as uses under the apportionment to such State by Article III of this Compact.

Green River Flows at Linwood

Historically, the flow of the Green River at Linwood (above the mouth

of Henrys Fork) averaged about 1,500,000 acre-feet annually during the period 1914-1945, inclusive. The flow has varied from a low of 396,000 acre-feet in 1934 to a high of 2,415,000 acre-feet in 1917. Preliminary studies by the Bureau of Reclamation for the Central Utah Project show that with historic flows about 200,000 acre-feet of active storage capacity would be required above the dead storage pool of a dam constructed below the Utah-Wyoming line should it be decided that the project make its replacement to the Uinta Basin by gravity diversion in lieu of pumping from a reservoir at the Echo Park site.

Studies by the Engineering Advisory Committee indicate that ultimately the stream flow at the Linwood Gaging Station may be depleted to an average of about 790,000 acre-feet annually due to future developments permitted in Wyoming by the proposed Upper Basin Compact. The flow at Linwood would be further reduced by Utah uses of Green River water above the Linwood Station.

A number of studies have been made to estimate the probable depleted flow by years. The results vary in accordance with the assumptions made as to upstream storage, diversions, and return flows. These studies indicate, however, that it will be possible, through use of holdover storage capacity, to regulate the ultimate depleted stream flows and supply the quantities of water needed for the gravity replacement diversion plan for the Central Utah Project. The exact amount of live storage capacity can not be determined at this time. Within the various assumptions that were considered, the studies indicate that the live storage capacity ultimately needed at the site of the gravity diversion will lie between 500,000 acre-feet and 1,000,000 acre-feet.

It is concluded that the water supply of the Green River, if regulated, is of adequate quantity to permit Wyoming to use the water allocated to that state by the proposed Upper Colorado River Basin Compact and also to permit Utah to make a gravity replacement diversion to the Uinta Basin in connection with the Central Utah Project.

To permit the ultimate development of the water resources of the Green River Basin, both Utah and Wyoming will need annual regulation and holdover storage capacity at or above the sites of diversion. Holdover storage capacity should be reserved to the extent needed to regulate the water supply for project diversion purposes and should not be dedicated for the benefit of the entire Upper Basin in meeting the Lee Ferry demand. Similar situations will probably arise on other tributaries and in other states.

The regulation of flow required at any given time will depend upon the stage of development which has been reached on the new projects in both of the States of Utah and Wyoming. It is considered that during the early stages of development in both Utah and Wyoming, only sufficient storage will be necessary for annual regulation of the Green River. As additional projects are constructed in the Upper Green River Basin they will first include additional annual storage capacity to be followed later by carryover storage which will ultimately be required by both states. This carryover capacity may be initially available in reservoirs primarily constructed for power development. The investment in these developments probably will be largely retired from power revenues, prior to the time that these reservoirs will be needed for consumptive purposes. The reservoir operations should, therefore, be gradually modified to accommodate these dominant uses which will arise at some distant future time.

Provision for change in use of reservoirs

In line with the preceding discussion, the Committee recommends that

Article V of the Vernal draft of compact be modified to include the substance of the following principle:

In the event that a reservoir site is available both to equate Lee Ferry flows and to store water for consumptive use in a state of the upper division, the storage water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to equate Lee Ferry flows shall by order of the Commission be used to store water for consumptive use in a state provided the Commission finds that such storage is required to permit a state to make the use apportioned to it by Article III of this compact.

Respectfully submitted,

- J. R. Riter, Chairman
- R. I. Meeker, Arizona
- R. J. Tipton, Colorado
- F. C. Merriell, Colorado
- R. M. Gildereleeve, Colorado
- John R. Erickson, New Mexico
- C. O. Roskelley, Utah
- R. D. Goodrich, Wyoming
- H. P. Dugan, Bureau of Reclamation
- C. B. Jacobson, Bureau of Reclamation."

THE CHAIRMAN: Thank you, Mr. Riter. We might have a short discussion of the Engineering Report at this time if you so desire, although I think we can come back to it more properly if we proceed a little further with our program.

COM. STONE: Mr. Chairman, I move that the report be received and made a part of the record.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made and seconded? (No response.)

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: Yesterday most of us arrived and the Chairman was very much pleased to note that the Chairman of the Drafting Committee called his group together promptly at about two-thirty and they went to work and worked all yesterday afternoon and until about ten o'clock last night. There were in attendance at that meeting the chairman, Mr. Will, Judge Howell and Mr. Clyde from Utah, Mr. Carson from Arizona, Mr. Wehrli from Wyoming, Mr. Breitenstein from Colorado, and Judge Threet and Judge Wilson from New Mexico.

Is the chairman of the Drafting Committee prepared to make a progress report at this time?

MR. WILL: Yes, Mr. Chairman.

THE CHAIRMAN: Very well, Mr. Will.

MR. WILL: At the conclusion of the Vernal meeting it had been decided that the Drafting Committee or Editing Committee would meet in advance of the meeting of this Commission at Bishop's Lodge. The chairman, however, had not been aware of that decision, having had to leave Vernal hastily before the conclusion of the business there, and that was called to his attention by Judge Howell. It was too late for the chairman to get away in time to hold a meeting several days before this Commission gathered together. The best we could do was to start yesterday afternoon at approximately three o'clock.

It was evident to me that the members of the Committee had done a good deal of work since the meeting in Vernal going over the draft that had been prepared at Vernal, and they were ready with many suggestions. Many modifications of minor character were adopted by the Drafting Committee during the course of this meeting yesterday.

There were certain articles which were referred to a subcommittee consisting of Mr. Breitenstein, Mr. Clyde and Mr. Wehrli. Those articles were Articles III, IV, VII and XVII. Then there were two proposals with respect to which the Committee felt matters of substance were involved. The chairman of the Committee was instructed to call those to the attention of the Commission for such action as the Commission might see fit to take.

One of these involved a suggestion that there be added to Article VIII (b) of the Compact a provision along the following lines:

"All receipts and disbursements of funds handled by the Commission shall be audited yearly by a Certified Public Accountant and the report of the audit shall be included and become a part of the annual report of the Commission."

That was the first proposal I was instructed to report to the Commission for such action as the Commission might see fit to take. (Confers with Judge Stone.) Judge Stone asked me to read this again. There would be added to an appropriate point in Article VIII (b):

"All receipts and disbursements of funds handled by the Commission shall be audited yearly by a Certified Public Accountant and the report of the audit shall be included and become a part of the annual report of the Commission."

Now the second proposal involved the question whether there should be inserted at some appropriate point in the Compact a provision similar to the provision which is included in a tentative draft of the agreement between Colorado and Wyoming on the Little Snake to the effect that in connection with "usse" under the apportionment made by the Compact, beneficial consumptive use should be the basis, the measure and the limit of the right to use.

Mr. Chairman, as I said at the beginning, there were a number of minor amendments that the members of the Drafting Committee agreed upon. Those will all be made the subject of a written report in due course. I hardly think it necessary to report them to the Commission at this time unless there is some feeling that I should do so.

COM. STONE: I thought you said there were three matters of substance.

MR. WILL: No, there were two matters of substance and three articles referred to the subcommittee. (Confers with Mr. Breitenstein.)

Mr. Breitenstein reminds me of a discussion we had in the Drafting Committee as to what is the wish of the Commission regarding the number of originals that there shall be of this compact. Right now the concluding clause of the Compact suggests that there will be a single original. The suggestion was made to the Committee by one of its members I think, or at least reported by one of the members of the Committee, that perhaps there would be six original copies of the Compact. Another suggestion that was considered was whether it wouldn't be adequate perhaps if you wanted six originals, to have an original and six copies run off and they could all be executed and you could change this last clause perhaps to read that it had been executed in six counterparts or words to that effect. That was considered to be a matter of substance beyond the jurisdiction of my committee. I don't think there is anything else.

THE CHAIRMAN: Thank you, Mr. Will. Now in regard to the last item which you mentioned it seems that that should be disposed of at this time. In line with that we will check into the sufficiency of the stenographic help that may be available for the use of the Commission during these meetings here. Does the Chair hear a suggestion?

CCM. STONE: Mr. Chairman, perhaps the Commissioner from Colorado is largely responsible for that suggestion. The reason for the suggestion is this: According to the draft of the Compact as approved at the Vernal meeting, there is only one official copy made available; that official copy would be filed in Washington. If in the future it is necessary for any state to take official action respecting this Compact, the states that actually make the Compact and are responsible and bound by it, are required to get an official copy from Washington.

It seems to me that each state should have available and filed in its official records, an official copy of this Compact which would be available to any state at any time without having to go to Washington and obtain a certified copy. Since we are making the Compact we surely ought to be able to have an official copy that each of us can take to our states and be made a part of the official state record.

In order to get this matter before the Commission I move that the Compact be executed in such a manner that there will be available to each of the signatory states and to the United States, one official copy of the Upper Colorado River Basin Compact, and the Drafting Committee be instructed to incorporate on the Compact such language as will make the intent of the motion effective.

COM. WATSON: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: At the Vernal meeting the motion was made by Com. Stone as follows:

"Mr. Chairman, I move that the report of the Drafting Committee be approved and that this report of the Drafting Committee be inserted in the record and shall be taken as a draft of the Upper Colorado River Basin Compact subject to the following:

- "(1) Technical revision of language;
- "(2) Final agreement between the affected states as to articles concerning the Little Snake, Henrys Fork, Yampa, and San Juan Rivers."

Now in accordance with that motion which was adopted by the Commission, the Chairman now calls on Colorado for a report on the progress made with Wyoming on an agreement on the Little Snake River.

COM. STONE: Mr. Chairman, on the 16th of September, Colorado met with Wyoming at Rawlins, Wyoming, and agreed upon a provision, which is to become Article XI, for insertion in the Upper Colorado River Basin Compact.

Before reading this article and for the record I should like to state that that conference at Rawlins between Colorado and Wyoming was attended by the Commissioners from the two states and for Colorado: George Pughe, Craig, Colorado, who was designated as Commissioner for Colorado on the Little Snake; Jean S. Breitenstein, R. M. Gildersleeve, Frank C. Merriell, George R. Salisbury, who is a Water Commissioner, were in attendance. For Wyoming, besides the Commissioner, R. D. Goodrich, the consulting engineer; W. J. Wehrli, special counsel; Alfred P. Anderson, Water Compact Commissioner; J. A. Cole, State Planning and Water Conservation; Ambrose D. Hemingway, Commissioner, Casper, Wyoming; and Leeland U. Grieve, Assistant Streams Commissioner, and also State Senator of Savery, Wyoming, were in attendance. The following were in attendance representing the Bureau of Reclamation: C. B. Jacobson, Bureau of Reclamation, Salt Lake City, Utah; C. H. Jex, Bureau of Reclamation, Grand Junction, Colorado; and J. R. Riter, Bureau of Reclamation, Denver, Colorado, were in attendance. We also were fortunate in having present the Chairman of this Commission, H. W. Bashore.

The agreement which was made between the two states on the Little Snake River is as follows:

"Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

- (a) Water used under rights existing prior to the signing of this Compact.
 - (1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down stream points.
 - (2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States.
- (b) Water used under rights initiated subsequent to the signing of this Compact."

You will note that (a) covers water used under rights existing prior

to the signing of this Compact. That is what I have read. Now, under (b):

- "(1) Direct flow diversions shall be so administered that in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.
- (2) The storage of water by projects located in either state, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both states.
- (c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.
- (d) Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State.
- (e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of Colorado and Wyoming on the Commission it is otherwise provided."

Of course the Commission there referred to is the administrative Commission:

- "(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the basin in the most feasible manner of the water of the Little Snake River and its tributaries without regard to the State line and so far as is practicable shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.
- (g) All consumptive use of water of the Little Snake River and its tributaries made by either Colorado or Wyoming shall be charged as a use made under the apportionment made by Article III of this Compact."

Colorado states that the agreement on the Little Snake River is acceptable to Colorado and that Colorado assents to it being included in the Upper Colorado River Basin Compact as Article XI of that Compact, and if Wyoming states that it is acceptable to that State, as a matter of the record, then Colorado would move that this article as now submitted and read into the record be included as a part of the Upper Colorado River Basin Compact, subject to revision and refinement of language.

COM. BISHOP: I move the adoption of Article XI and it be referred to the Drafting Committee.

COM. STONE: Second the motion. The question.

(Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: Now the Chairman calls on New Mexico for a report on progress made on the agreement with Colorado on the San Juan River. Judge Wilson, are you ready to report on that matter?

COM. WILSON: Yes, Mr. Chairman. At the Vernal meeting paragraph XIV of the tentative draft contemplated that New Mexico and Colorado would agree on language to cover the San Juan River and its tributaries between Colorado and New Mexico. At that time it was thought that the engineers would make a schedule of deliveries at the state line between the two states. After that we had various discussions and the Engineering Advisory Committee determined that it is impracticable to make a schedule of deliveries at this time that would meet the situation. So after that we had a meeting in Denver just last Thursday at which Com. Stone was present and Mr. Tipton, Mr. Breitenstein, and other representatives of water users in Colorado, and Mr. Bliss and Mr. Erickson and myself. At that time we agreed on paragraph XIV substantially as it appears in the report of the Engineering Advisory Committee which has been read here this morning. There are extra copies of Article XIV here available for anyone who might want to see them.

I will say as far as New Mexico is concerned we agreed in principle on Article XIV and it is just possible that there may be some changes in language that may yet be desired; but so far as New Mexico is concerned, Article XIV as included in the Engineering Advisory Committee report is agreeable to New Mexico.

I don't know whether this is the appropriate time to bring it up or not but since this draft has been made, certain representatives of the Indian Bureau have examined it.

I will call your attention to paragraph (c) of Article XIV dealing with certain curtailments by both states in case of water shortage. That provision is as follows in paragraph (c):

"...provided that, if Indian uses of water shall be entitled under Article XIV to any preferment, then such Indian uses shall be excluded in determining the amount of curtailment to be made under this paragraph."

As I understood Mr. Humpherys, he didn't make the point that he wanted that language changed or that he objected to it, he simply wanted an explanation of it. It was suggested it might have an implication in it that under Article XIV Indian rights were subject to certain limitations.

I believe that the Drafting Committee has under consideration some changes in paragraph (e) of Article XIV so as to make similar provisions with reference to Wyoming, Utah, Colorado and New Mexico in reference to tributaries.

Outside of that again I will say this is satisfactory to New Mexico.

COM. STONE: For Colorado may I state that the draft of Article XIV as explained by Mr. Wilson and as it appears in the report of the Engineering Committee is satisfactory and acceptable to Colorado subject to such refinement of language as the Drafting Committee may see fit to make.

COM. WILSON: Mr. Chairman, I move that Article XIV as it appears in the report of the Engineering Advisory Committee be adopted and included in the Compact subject to such changes as may be made by the Drafting Committee and such disposition as the Commission may make of the Indian question which I have discussed.

COM. STONE: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion? (No response.)
Ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

THE CHAIRMAN: The Chairman now calls on the Commissioner for Utah for a report on progress made on agreement with Colorado on the Yampa River.

COM. WATSON: Mr. Chairman, Article XIII was adopted in the tentative compact considered at Vernal, which covered the proposed agreement on the Yampa River between Colorado and Utah. The Article XIII as set out by Mr. Riter in the Engineering Advisory Committee report this morning, contains a modification of that article referred to, in that it contemplates the probable development of another project, namely the Deadman's Bench; hence the Article XIII has been modified to encompass that fact. Utah assents to the article contained in the report of the Engineering Advisory Committee covering the water of the Yampa River.

COM. STONE: Colorado assents to Article XIII as contained in the report of the Engineering Advisory Committee and is willing that it be incorporated in the Upper Colorado River Basin Compact.

COM. WATSON: I move that this Commission adopt Article XIII as contained in the report of the Engineering Advisory Committee, as creating a compact between Colorado and Utah on the waters of the Yampa River.

COM. STONE: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WILL: Mr. Chairman, the subcommittee of the Drafting Committee will meet immediately.

(11:35 a.m., Recess.)

(2:20 p.m., Meeting reconvened.)

THE CHAIRMAN: The Commission will come to order, please. You had a report of the Engineering Committee this morning and that was passed. Are you ready at this time to take any action or make any further comments and suggestions concerning this Engineering report?

COM. WATSON: Mr. Chairman, you wish a comment on the report as it pertains to the flow of the Green River at Linwood?

THE CHAIRMAN: Any way you want to discuss it, Mr. Watson.

COM. WATSON: May I say that Utah appreciates the efforts of Mr. Riter, the chairman of the Engineering Committee, and also the members, in collecting the data contained in the report. And in line with the suggestion at the bottom of page 5, I move the adoption of the paragraph at the bottom of the page and continuing over into the next page, that this Commission adopt this paragraph and refer it to the Drafting Committee for any further change in language or clarification.

(The paragraph referred to is as follows:)

"In the event that a reservoir site is available both to equate Lee Ferry flows and to store water for consumptive use in a state of the upper division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to equate Lee Ferry flows shall by order of the Commission be used to store water for consumptive use in a state provided the Commission finds that such storage is required to permit a state to make the use apportioned to it by Article III of this compact."

THE CHAIRMAN: Is there a second to Com. Watson's motion?

COM. STONE: Mr. Chairman, Colorado is favorable to the principle of the article recommended by the Engineering Committee and accordingly is favorable to the intent of Mr. Watson's motion. However, Mr. Watson, I am informed that that article and the statement of the article would have to be considered in connection with probably a rewriting of the article on reservoir losses; and if that is true, may it be understood that we approve the article recommended by the Engineering Committee and the intent and purpose of it, and refer it to the Drafting Committee for appropriate inclusion? Would that be agreeable?

COM. WATSON: Yes.

COM. STONE: I second the motion.

THE CHAIRMAN: You have heard the motion. Is there further discussion of the motion as made by Com. Watson?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

Gentlemen, we will recess for ten minutes.

(2:45 p.m. Recess.)

(2:55 p.m. Meeting reconvened.)

THE CHAIRMAN: The Commission will please come to order. Are there any further matters at this time?

COM. WATSON: Mr. Chairman, I would like Mr. Clyde to make a statement.

THE CHAIRMAN: Very well.

MR. CLYDE: With the permission of Mr. Watson I would like before we

pass on beyond the legal Drafting Committee's report to note that there were two other substantive matters that were called to the attention of the Commission, one of which was the problem of writing into the compact a provision which would make beneficial use the basis and the measure and the limit of the right to use water under the Compact. The matter was discussed in the Drafting Committee but the Committee was of the opinion that the matter was substantive in nature and that it ought to be brought to the attention of the Compact Commission, and that was done by the report of the chairman.

Utah has since discussed that matter and with Mr. Watson's consent I would like to now move that the Compact Commission adopt in principle the idea that beneficial use will be made the basis and the measure and the limit of the right and that principle which is also contained in Article III (e) of the original compact, which in effect says that no state will call for water unless it has a use for it, nor withhold water unless it has a beneficial use for it --my motion is to adopt that in principle and refer it to the Drafting Committee for appropriate language.

THE CHAIRMAN: You have heard the motion as made by Mr. Clyde for Utah.

COM. STONE: Mr. Chairman, may I ask if Mr. Clyde will separate those two? It seems to me it raises two questions. Make a motion on the first one separate from the second part. It is a double-barrelled question, it seems to me.

MR. CLYDE: It is. I thought they were closely enough allied they could be voted on together and perhaps if they can't, the way to find it out is to make the motions separately.

So as the first motion I will move that the principles set forth in Article III (e) of the original compact to the effect that no state will withhold water for which it has no use, nor demand water unless it needs it, be adopted as a principle in this compact and be referred to the Drafting Committee for appropriate language.

THE CHAIRMAN: You have heard the motion. Is there a second?

COM. STONE: As far as Colorado is concerned on that we prefer not to be called upon to take any action.

MR. WEHRLI: As far as Wyoming is concerned, I don't think we are ready to take any action on III (e) because on the face of it it would appear that such a provision would not be appropriate or workable in an Upper Basin Compact.

MR. CLYDE: Well, perhaps for the time being that motion should be withdrawn and the second phase put and with the permission of Mr. Watson I will do that.

COM. WATSON: All right.

MR. CLYDE: I move that the Compact Commission adopt in principle the doctrine that beneficial use is the measure, the limit and the basis of right to use water and that that principle be referred to the Drafting Committee for appropriate language.

COM. STONE: Colorado seconds such motion.

THE CHAIRMAN: Is there a discussion of the motion as made and seconded?

MR. CLYDE: I think if I may comment that practically every state, I think every state in this group uses that basis for handling its own water rights in its state--I know Utah does--and I think the others do, almost in that language.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Utah's motion carried unanimously.)

THE CHAIRMAN: Are there further matters to be brought before the Commission?

COM. STONE: Mr. Chairman, Colorado has a thought concerning reservoirs and the possible necessity of a matter which should be included in the Compact. We are not offering language at this time but the idea which we have I believe should be considered by the Commission because it may be substantive in nature. For that reason I will ask Mr. Breitenstein to discuss the matter which we have in mind.

MR. BREITENSTEIN: I am sure that all the members of the Commission realize that Article V covering the charging of reservoir evaporation losses was hastily prepared at Vernal. When that article was presented to the Commission, Judge Howell raised a question as to by whom certain determinations should be made and to take care of that point, a line was inserted at the beginning of the article, "As determined by the Commission. . ." Upon further consideration of that article it is my personal belief that it is not entirely understandable or workable.

I believe the intent of the Commission covered these points: First, that as to water stored in reservoirs used to equate Lee Ferry flows, the water should not be earmarked for any state and the losses should be borne in proportion to the use in the state.

Second, that on reservoirs which are constructed for the benefit of another state, the evaporation losses from those reservoirs should be charged to the state receiving the benefit. For example, if the Echo Park Reservoir is built in Colorado for the furnishing of certain water to Utah, so far as that capacity used for furnishing water to Utah is concerned, Utah will bear the share of the reservoir evaporation losses.

It has occurred to us that as that article is now prepared there is perhaps some doubt as to the charging of losses occurring on reservoirs located in one of the states which might or might not be used to equate Lee Ferry flows. We are thinking particularly of some reservoirs in Colorado which are now constructed. Colorado might see fit to use the capacity of some of those reservoirs to make up any burden or obligation which Colorado had to get water down to Lee Ferry. But as to those reservoirs which are already constructed and now in use, it would seem fair that the determination as to whether or not the reservoirs are used for that purpose should be a question for decision in the state in which the reservoirs are located; and that as to such reservoirs, the evaporation losses should be charged entirely to the state in which the reservoirs are located.

The substantive matter which we have in mind--at least I think it is

substantive--is that on reservoirs which are constructed and in use when this compact is signed, those reservoirs are for the benefit of the state in which they are located, the water is earmarked for that state, and all losses are chargeable to that state. As to reservoirs which are constructed in the future, the principles stated in the Vernal draft would apply and that as to the preferential use of reservoir sites, a subdivision or subparagraph such as that suggested in the Engineering report is desirable. But to me it would seem those thoughts all together require a complete revision of Article V of the Vernal draft.

I would like to see action by the Commission such as to refer Article V to the Drafting Committee with right given to the Drafting Committee to consider not only the matter which was covered by Mr. Watson's motion taken from the report of the Engineering Committee, but also the additional thought which I have mentioned relative to reservoirs now constructed and in use and located in one of the states.

MR. HOWELL: The effect of that would be if I understand it right to make an exception of those reservoirs to the principle as announced in the article?

MR. BREITENSTEIN: It is not necessarily an exception, Judge Howell. It leaves those reservoirs in the same status that they now have. It doesn't change the status of those reservoirs. And the Commission could not come up into Colorado or Utah or any other state and say that as to some reservoir which has been built before this Compact was signed, "You got to release some water to go down to Lee Ferry." The state can order that if it sees fit but the Commission can't do it. The order of the Commission would only go to the state and if the state wanted to release the water from A reservoir, B reservoir, or C reservoir, it could do it so far as its obligation to make up any curtailment would be concerned.

COM. STONE: Mr. Chairman, assuming that the matter which Mr. Breitenstein has mentioned is substantive in nature, I move that the subject which he described be approved in principle and referred to the Drafting Committee in order that that Committee may consider it in a redraft of Article V of the Compact.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made and seconded?

COM. WATSON: Question.

THE CHAIRMAN: Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: Are there further matters to be brought before the Commission at this time?

COM. STONE: Mr. Chairman, the Drafting Committee called to the Commission's attention another matter this morning suggested by Utah. Does Utah wish to bring that up in order that we may dispose of it, on receipts and

disbursements of funds and so forth. You know, Judge, what I refer to?

MR. HOWELL: Yes, I do.

COM. STONE: I think that is a matter Utah should bring up.

MR. HOWELL: I think so to. That was a suggestion which was made by the Agricultural College of Utah, which went over this Compact very carefully with a committee of its faculty, as I understand it, and that is one of the suggestions they make, which I think is a very appropriate suggestion because it will give to the states definite information from an approved authority showing what expenses and disbursements have been made by the Commission. And on behalf of Utah I would like to move that that be inserted in the appropriate paragraph in the Compact--what is it? I haven't the Compact before me.

MR. WILL: It is in Article VIII, Subsection (b).

MR. HOWELL: Article VIII, Subsection (b), then, that those words be inserted as reported by the Drafting Committee.

MR. WEHRLI: Judge Howell, I don't quite like the implication of your motion. I think the Drafting Committee should have the right to work on it.

MR. HOWELL: Agree on it in principle.

MR. WEHRLI: We will agree on the principle.

MR. HOWELL: That is perfectly satisfactory, to approve the principle and leave the language to the Committee.

COM. CARSON: And to be inserted in the appropriate place.

MR. HOWELL: Right. If I may adopt all those suggestions as a part of my motion.

THE CHAIRMAN: Yes, certainly. Is there a second to the motion made by Judge Howell for Mr. Watson?

COM. WILSON: I second the motion.

THE CHAIRMAN: Is there a discussion of the motion? (No response.) Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Utah's motion carried unanimously.)

THE CHAIRMAN: Are there further matters to be brought before the Commission?

COM. STONE: Mr. Chairman, if we have concluded the action on reports and other matters before the Commission, it would seem to me appropriate that we adjourn in order that the Drafting Committee may resume its duties. For that reason I move that we recess until ten o'clock tomorrow forenoon.

THE CHAIRMAN: That is a very good motion.

MR. WILL: May I suggest, Mr. Chairman, that it was the subcommittee of the Drafting Committee that was to meet this afternoon.

THE CHAIRMAN: Do you include in that that the states during the interim between now and ten o'clock tomorrow morning have further conferences in regard to these tributaries and resolve their differences?

COM. STONE: No, I don't include that. I am not speaking for any other state, but so far as Colorado is concerned we have some matters on the Little Snake River, but I was just talking to Mr. Wehrli and he suggest I think very wisely that we do not have that meeting until the Drafting Committee has concluded revision of the language on the Little Snake article. Mr. Wilson suggests that the matter on the San Juan relative to the Indians be discussed by the two states; that is somewhat related to a further discussion with representatives of the Indian Service. We are not going to neglect that but I wouldn't want to include that in my motion because I think you have to leave some latitude to the states as to how they handle it.

THE CHAIRMAN: I hope they will handle it with free latitude and accomplish something. Is there a second to the motion?

COM. BISHOP: Second the motion.

THE CHAIRMAN: Is there discussion of the motion?

MR. CLYDE: Before you adjourn, Mr. Chairman, I think that there was one interstate tributary--the rest of them were all called other than the one between Utah and Wyoming, that one of course wasn't called because it isn't ready and little progress has been made on it--it seems to me that one of the most important problems left toward getting to a compact is that problem and that there ought to be some time between now and the next meeting when Utah and Wyoming could meet and see what progress we can make on that.

MR. WEHRLI: We are very anxious to meet with Utah any time and continue our discussions on Henrys Fork that we started at Vernal. I don't know just how we can do this. Mr. Clyde, you and I are on these drafting committees and I suppose when Wyoming and Utah meet we should be there. But I am hopeful that sometime before tomorrow morning at ten o'clock we can have a Utah-Wyoming meeting.

MR. CLYDE: It would be my thought that we perhaps with the larger number being necessary for the Utah-Wyoming meeting could meet now and then the smaller group, which is a subcommittee of only three, could meet perhaps this evening and turn the larger group free. I don't think that there is enough work left with this subcommittee--we only have one article left and then the few other matters that were referred to us--that presents an insurmountable problem but what we can spend sometime on the Wyoming-Utah problem this afternoon.

MR. WEHRLI: On this subcommittee on drafting, if we could finish that I think it would accommodate Mr. Will because then he could get the report together.

MR. CLYDE: That is right.

MR. WEHRLI: I am wondering if we couldn't do that but set some definite time later this afternoon for the Wyoming-Utah meeting, say four o'clock or four-thirty.

COM. WATSON: That will be acceptable.

MR. CLYDE: I think we could make it by four-thirty easily, have our work done; or an hour from now at four-fifteen.

MR. WEERLI: All right, where shall we meet, Mr. Clyde?

MR. CLYDE: We can get one of those rooms where the Committee has been meeting. I will have to let you know which one it is.

THE CHAIRMAN: A motion to adjourn is before the Commission. Are you ready for the question?

COM. WILSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(3:20 p.m., Monday, October 4, 1948, meeting recessed until 10:00 a.m., Tuesday, October 5, 1948.)

Santa Fe, New Mexico
October 5, 1948
10:00 o'clock a.m.

(All Commissioners present.)

(Discussion off the record and recess subject to the call of the Chairman.)

(10:05 a.m. Recess.)

(2:00 p.m. Meeting reconvened.)

THE CHAIRMAN: Will the Commission please come to order. Gentlemen, we have with us today a man whom most of you know. He came here to Santa Fe at the special invitation of your Chairman and sometime tomorrow, probably tomorrow afternoon, he will give us a few observations; but today I would like to introduce to all of you, Mike Straus, the Commissioner of Reclamation. Mr. Straus will you stand up and let us see what you look like. (Applause.)

Now, sir, you may sit with us in our deliberations this afternoon or retire at your own convenience. We will be glad to have you with us.

MR. STRAUS: Thank you.

THE CHAIRMAN: The first order of business it appears is a report of the Chairman of the Drafting and Editing Committee. Mr. Will, are you ready to make your report?

MR. WILL: Yee, sir. I have here a limited supply of mimeographed copies of the latest progress report of the Drafting Committee. Perhaps it would be well, Mr. Chairman, if I waited to proceed until they have been

distributed because there are some typographical errors I would point out as I go along. (Report is distributed.)

The following provisions have been agreed upon, as to text, by your Drafting Committee:

Then there is set forth the full text of the Preamble. I need not read it. I will point out that the only change in the Preamble was to add the word "signatory" before "State".

(The revised Preamble as set forth in the Report of the Drafting Committee is as follows:)

"The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah, and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,
Clifford E. Stone for the State of Colorado,
Fred E. Wilson for the State of New Mexico,
Ed. H. Watson for the State of Utah, and
L. C. Bishop for the State of Wyoming.

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:"

There was no change in Article I.

The only change so far recommended by the Drafting Committee in Article II is in subsection (1) in which the first word "is" would be changed to read "means". The purpose of that simply is to conform to the text of the other subdivisions of that Article.

The Drafting Committee proposes to confer with Mr. J. R. Riter with respect to the text of subsection (k), relating to the definition of the term "water year".

Article III: A subcommittee, consisting of Messrs. Breitenstein, Wehrli, and Clyde, to whom the task of redrafting this Article was referred, has produced the following, which is now being considered by your Committee. In other words, the Committee is not yet ready to report more than this that it has this redraft of Article III before it. In those circumstances it seems to me that I can spare you my reading of it and that you will read it with your people and that the Drafting Committee may perhaps have some instructions on the subject of Article III.

(Article III as set forth in the Drafting Committee Report is as follows:)

"(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water in the following amounts:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water annually;

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use annually of the quantities resulting from the application of the following percentages to the total amount of annual consumptive use apportioned in perpetuity to and available for the Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet annually, made in the State of Arizona:

Colorado	51.75 per cent,
New Mexico	11.25 per cent,
Utah	23.00 per cent,
Wyoming	14.00 per cent.

(b) The apportionment made to each state shall include all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact."

The same subcommittee produced a draft of Article IV which the Drafting Committee has approved and recommends to the Commission. Article IV:

"In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such amounts and at such times as shall be determined by the Commission upon the application of the following principles:

(1) The amounts and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(2) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry an amount of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(3) Except as provided in (2) above, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of an amount of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation, uses of water under rights perfected prior to November 24, 1922, shall be excluded."

There is a typographical error I want to correct there. Delete from the third line from the bottom, "the consumptive use of water in each State of the Upper Division," so that it reads: ". provided, that in determining such relation, uses of water under rights perfected prior to November 24, 1944, shall be excluded."

Article V: At its meeting of October 4, the Commission approved, in principle, certain suggestions made with respect to Article V. A first draft of revision of Article V is now under consideration by your Drafting Committee, which is not prepared to report thereon at this time.

No change in Article VI.

Article VII: The subcommittee has prepared the following draft of substitute for Article VII. Your Committee recommends it.

"(a) The consumptive use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made; provided, that consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to such latter state.

(b) Beneficial use shall be the basis, the measure and the limit of the right to use any and all of the waters of the Upper Colorado River System."

The Committee has not yet resolved the question whether the substance of subparagraph (b) should be located elsewhere in the Compact either as a separate article or as part of some other article.

Article VIII: The following changes were agreed upon by your Committee in connection with Article VIII;

After the word "States", at the end of the present subparagraph (b), insert a comma followed by:

". however, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission."

In subparagraph (c), after the second word "Commission," insert: "or employee of any signatory State or of the United States while so acting."

In subdivision (8) of subparagraph (d), after the word "for", insert "and the extent of the"; after the word "use" insert: "required".

Article IX: In subparagraph (b), after the word "acquire", insert "such"; after the word "rights", insert "as are".

In subparagraph (d), after the word "facilities", insert a comma followed by the expression, "as a condition precedent to the use thereof,"; make the present subparagraph (e) a part of subparagraph (d).

Article X: Put "(a)" at the beginning of the Article; delete the semi-colon after the word "made"; substitute a period; delete the balance; and add the following:

"(b) All consumptive use of water of the La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made, provided, that consumptive use incident to the diversion, impounding, or conveyance of water in one state for use in another shall be charged to the latter state."

Article XI: Your Committee has not completed its examination of this Article.

Article XII: Your Committee does not have a draft of this Article before it.

Article XIII: Your Committee reports that it has not completed its examination of the draft that was revised by the Engineering Advisory Committee and which is contained on pages 2 and 4 of that Committee's report of October 4.

Article XIV: Your Committee has not completed its examination of this Article, which is contained on pages 3 and 4 of the Engineering Advisory Committee's report of October 4.

Article XV: In paragraph (b), delete the term: "regulation and control by any State"; substitute therefor: "right or power of any signatory State to regulate"; delete "of"; delete the word "distribution"; substitute therefor the word "control"; after the word "apportioned", insert "and available"; delete "by Article III hereof"; and substitute "by this Compact".

Article XVI: No change.

Article XVII: Substitute the following:

"The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any state under the apportionment of consumptive use made by this Compact."

No changes in Articles XVIII, XIX, XX, and XXI.

With respect to the conclusion of the Compact, the Committee has not completed consideration of the clause.

That concludes my report, Mr. Chairman.

COM. STONE: Mr. Chairman, I move the report be received and made a part of the record.

COM. CARSON: I second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made and seconded? (No response.) Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. STONE: I move that the Compact when completed and ready for signing be produced by the offset photo-lithograph method and be in sufficient

numbers to supply the various States, it being understood of course that there would be the six copies to be executed by the Commission, and that the Compact as thus prepared be suitably bound.

COM. BISHOP: Second the motion.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

THE CHAIRMAN: You will remember that at the meeting at Vernal--I believe it was at Vernal--the question of the possible interest of the Atomic Energy Commission in this Compact was brought up and it was decided that the Chairman should ascertain what interest if any the Atomic Energy Commission might have in the negotiation of this Compact, and the Chairman then requested Mr. Will to find out how the Atomic Energy Commission might view this Compact. Now, Mr. Will, can you give us any light on that subject at this time?

MR. WILL: Mr. Chairman, I got in touch with Mr. Volpe, who is the Associate General Counsel of the Atomic Energy Commission, and he told me that the Commission would not care to make any special representations to this body on the subject; that it felt that its interests as well as the interests of other Federal agencies were well protected through Mr. Bashore as the representative of the United States.

MR. MERRIELL: I checked with the Atomic Energy Commission in the field and their demands are very limited.

THE CHAIRMAN: Apparently the requirements, if any, of the Atomic Energy Commission would be taken care of under a provision that is already in the Compact.

Are there further instructions or delegations to the Drafting Committee at this time by the Commission?

COM. STONE: Mr. Chairman, it appears to me that the Drafting Committee has given us a progress report and this report indicates the status of its work. As shown by the report, there are other articles to be considered by the Drafting Committee. Some of them have been considered and approved by the subcommittee but not yet acted upon by the Drafting Committee itself. It would seem to me inadvisable to take any action at this time on a progress report and that the Subcommittee has before it a clearly outlined program, namely, the consideration of such articles as are referred to them by the Drafting Committee, and the further consideration of certain articles shown by this report that have not yet been considered by the Drafting Committee for the refinement of language. For that reason it seems to me the receiving of this report and a making it a part of the record is all that should be done now. More time would be gained by limiting this session in order that the Drafting Committee may continue its work.

THE CHAIRMAN: That appears quite sensible and reasonable to the Chairman, and this is off the record.

(Discussion off the record.)

So far as the Chairman can see, time can be better used if we adjourn at this time to let the Drafting Committee meet and for consideration of the

matters on the tributaries or matters that may interest Wyoming and Utah. If there is no objection, we stand adjourned until ten o'clock tomorrow morning.

(2:45 p.m., Tuesday, October 5, 1948, meeting adjourned until 10:00 o'clock a.m., Wednesday, October 6, 1948.)

Santa Fe, New Mexico
October 6, 1948
10:00 o'clock a.m.

(Meeting continued until 2:00 o'clock p.m.)

(2:00 o'clock p.m., Meeting reconvened.)

(All Commissioners present.)

THE CHAIRMAN: The Commission will please come to order. The Chairman will ask our secretary, General Giles, to read for the record a paragraph from a report entitled, "The Colorado River"; more specifically, this paragraph is from a letter dated June 6, 1946, from the Commissioner of Reclamation to the Secretary of the Interior.

MR. GILES:

"There is not enough water available in the Colorado River system for full expansion of existing and authorized projects and for development of all potential projects outlined in the report, including those possibilities for exporting water to adjacent watersheds. The formulation of an ultimate plan of river development, therefore, will require selection from among the possibilities for expanding existing or authorized projects as well as from among the potential new projects. Before such a selection for ultimate development can be made it will be necessary that, within the limits of the general allocation of water between upper basin and lower basin States set out in the Colorado River Compact, the Colorado River Basin States agree on suballocations of water to the individual States."

THE CHAIRMAN: The Chairman will also request General Giles to read an extract from the Conclusions of the Commissioner of Reclamation in a letter to the Secretary of the Interior dated July 19, 1947.

MR. GILES:

"My conclusions are:

"(1) That a comprehensive plan of development for the Colorado River Basin cannot be formulated at this time;

"(2) That further development of the water resources of the Colorado River Basin, particularly large-scale development, is seriously handicapped, if not barred, by lack of a determination of the rights of the individual States to utilize the waters of the Colorado River system. The water supplies for projects to accomplish such development might be assured as a result of compact among the States of the separate basins, appropriate court or congressional action, or otherwise;

"(3) That the States of the upper Colorado River Basin and States of the lower Colorado River Basin should be encouraged to proceed expeditiously to determine their respective rights to the waters of the Colorado River consistent with the Colorado River compact."

THE CHAIRMAN: Now those are statements made by the Commissioner of Reclamation. The first quotation was made prior to the organization of the Commission and furnished the prime reason for the organization of the Commission.

The Commissioner of Reclamation is here with us today. The Chairman would like to know now whether the Commissioner of Reclamation regrets making those statements; and if not, if he has anything to say to us today concerning the negotiations which we have been conducting for the last two years: Commissioner Straus. (Applause.)

COMMISSIONER MICHAEL W. STRAUS: Thank you. Chairman and Commissioners: I did make those statements and I have no regret whatsoever for having made those statements. In fact, today I am a good deal happier about having made those statements than I was when I had to make them. This I believe, including the organization meeting, is the ninth meeting of this Commission, and what I have to say today is based on the happy assumption that this is the ninth and final meeting of the Upper Colorado River Basin Compact Commission. And while I made those statements and stand with them, I want to point out that in coming here today--and I am very happy to come here--I am breaking a self-imposed rule which I have abided by implicitly since I became Commissioner in 1945, which was to refrain from any active participation in the deliberations of the Upper Colorado River Basin Compact Commission.

I think there was wisdom in that rule. It was no boycott whatsoever of the Commission, but I undertook that self-imposed rule because it was my firm belief--I even stated in the material that General Giles has just read--that the five Upper Basin States and the Upper Colorado River Basin States alone were the best qualified and the only ones with jurisdiction to divide amongst themselves their share of the use of waters of the Upper Colorado River. I think perhaps now the wisdom of refraining from participating as Commissioner in the deliberations has been established by the success that this Commission has achieved, and I think that that same success may be taken as my warrant for abandoning that rule today as being no longer necessary.

I don't believe that as Commissioner I have ever travelled so far to meet with such a numerically small group. And I am certain I have never met with any group, large or small, that is as potent as this is in background, knowledge, and experience in Western water development, as represented in this room here today. I think that in this room here today--and I have travelled all over the West--there is assembled for the Colorado River Basin, the people who really do the work. I want to say that I am more than delighted to accept the invitation that I got in behalf of the Commission through Mr. Bliss, and I am particularly glad to come because coming at this time, I feel I have come when you have already done the most difficult part of the job.

It is a solemn truth that the West in general and the Bureau of Reclamation and the Department of the Interior in particular have been following every move of this Commission since it came into being and proceeded with its work over the past two years. Personally, I have been so anxious about the work of this Commission and the results ever since the Commission started work that I have been just bursting with advice that I had difficulty suppressing. Now, ex post facto, I think it is well it was suppressed because it is now

established by your success that it would have been irrelevant and possibly a positive handicap to reaching the decisions that you have now attained. But while we contained ourselves in Reclamation, we have done everything that we possibly could to serve this Commission in the way of providing all the data, the reports and stream gagings and flows, and the technical data that were necessary prerequisite to your deliberations. And we feel that we should have done that and we are going to continue to do that until the end.

Now we haven't got a compact yet and we won't get it when you finish your final work in making the draft. We won't get it until it is ratified by the legislatures and approved by the Congress. The first part of the job is done and done well. Soon it is going to become the task of the legislatures and of the Congress, and that is a long road and I think I know there is going to be some opposition. I could even guess where some of that opposition might come from but I won't do so.

So that when you sign on that dotted line--I hope this week--you are not going to be done. You have just done a wonderful job on the first step down the long road. I was talking here with Mr. Wallace of Utah, who was at some of the meetings on the original compact in Santa Fe, and with Mr. Meeker, who I believe was at most or all of the meetings, and we were trying to calculate what lies ahead on the basis of the adventures of the last compact that was drawn here. It was six years after the original compact was drawn by the then Commissioners, your predecessors, before partial ratification or I believe six-state ratification, if I remember correctly, was achieved on the occasion of the passage of the Boulder Canyon Act--six long years--and then quite a few more years before there was complete ratification. Those were six adventurous years, but we don't have six years to wait now. We can't wait that long. The needs for water are too tremendous in the Upper Basin States. And I hope that when you finish your work in Santa Fe, none of you will consider that the end of the road because the end of the road is not until after there is a compact through the legislatures and through the Congress.

I don't know of a single act that is more important to the future welfare of these states than that one in which you are here engaged. And I don't know of a single act that will be of greater service to Reclamation in carrying forward its program than the task that you have put upon yourselves. I also don't know of any more involved and difficult task than the one in which you are succeeding, I hope this week.

I am not here to run any risk of unbalancing any of your work by discouraging upon any of the technicalities of decisions that the Commission is making. I am not going to try to mix the landscape up by offering any definitions for consumptive use, depletion, acre-feet, evaporation, storage, source of water, or any of those items which you have wrestled with, and I won't do it. Neither will I undertake to pass upon the wisdom of your deliberations and your decisions, other than to say they are momentous and they are going to affect not only all our lives and all your lives, and your children's and your grandchildren's lives, but all who come after us in the Upper Basin States as long as water runs down hill, which is probably forever.

For twenty-six years, and I set that forth in more detail in the report from which Mr. Giles read, development in this state and these Upper Basin States has been increasingly handicapped by failure to reach any final agreement on the division among your states of the Upper Colorado. Last year I believe we celebrated the silver jubilee of that disagreement and it was not too silently commemorated. This year and next, because of the sterling efforts of this Commission, that question should and I believe will be solved. And I

believe the Commissioner of Reclamation and the Secretary of the Interior thus may be enabled, for the first time, to do their part in carrying forward the development with the prerequisite knowledge of what water is whose in the Upper Basin States.

Now, after standing mute for these years, has come the time when I can confess to you that you have before you here today a cured, or an about-to-be cured pessimist on the subject of state compacts and the states' ability to do this type of job. Some of you have been following this compact and working on this problem far longer than I have. I am a novice of only sixteen years on it. And I had scarcely assumed the duties and responsibilities of Commissioner of Reclamation before your problem here kicked me square in the face and I realized and Reclamation realized that no matter what Reclamation tried to do --and we really did try--we could not go forward with the vitally needed full development program of the waters of the Colorado until it was determined and written down and agreed upon and ratified as to what water was whose. And to say that I was a pessimist on your making progress might possibly have been an understatement. In truth, it was with a rather forlorn hope that I wrote down those things that I did not know General Giles was going to read at the beginning of this meeting. I am glad I did and the issuance of that interim report may have been just one of many minor contributions in the sense that it laid forth so anybody could see it, the work of the technicians and the sketching of the possibility that lay ahead were these decisions made. Today on the basis of the progress in the nine meetings--and this is the final meeting of this Commission--I as a cured pessimist feel that I can call upon other states and other basins of other rivers--and there are many of them that have the same problem they have been wrestling with--to gaze upon your work and go forth and do likewise.

When that report was gotten out, the lines were drawn so tightly and the competition for water was so keen and the effects on the very way of living by those who follow us in the Upper Basin were so transparent in the decisions that had to be made, I can now confess to you that I was gloomy, and so was Reclamation, when the interim report was issued. But nonetheless, it seemed to us that it might lead to a possible escape from the Basin's dilemma, which is the dilemma and the almost inexcusable crime for reclamation, of sitting by while water wastes unused to the sea from an area that needs every drop of that water, and it went on wasting because nobody knew what water was whose, and that was the decision which the Bureau of Reclamation should not make, which the Bureau of Reclamation could not make, because it was not authorized to make such a decision and the decision could only have been reached by the way that you undertook to reach it here, by the states acting among themselves.

Well, now we are talking in the now-it-can-be-told category, and if we are doing that, I can report that I only received the mildest sort of encouragement when there was an original stirring among the Upper Basin States that indicated a very serious desire to get to work on the allocation of these Upper Basin problems. Now if I recall correctly, and I think I do, the first positive official action that indicated that there might come into being a commission and there might be some positive action from the Basin, was reverberations from the State of Wyoming with a request that there be under the original compact appointed a Presidential representative to sit with any commission that might come into being. I think that first came from the State of Wyoming but it was almost immediately followed by other and parallel requests from the other Upper Basin States.

A lot of talk followed. All our thoughts turned to who might be the Presidential representative. I recall talking with five governors, I believe.

Naturally our thoughts turned to Harry Bashore as about the only man that we could think up that could do the job. We didn't know whether he would do the job as Presidential representative; we thought he could do the job.

Now Harry has told me that if I say anything about him personally he will get even with me but he isn't going to get even with me for a long time so I will give you a little of the background of what went on at that time.

Pretty soon after conversations with the states it came to pass that there were unanimous requests from all the Upper Basin States that there be appointed by the President as Federal Representative to a Commission as then yet to be formed, such a representative, and by that time everybody was in agreement on who that representative should be, and I was enthusiastic about it from the start. Then came the hard job. But I have known Harry for a long time and I knew that he said he had done his bit and earned his retirement and rest, and passed in a resignation. Among those that turned it back to him on various occasions were myself, and the then Secretary of the Interior and the President, and he said, "Oh, no. I am going to resign," which he proceeded to do against everybody's wishes and took off for the metropolitan center of Mitchell, Nebraska. We had to find a way to lure him out of that and get him back into service.

So I recall calling him up on the party line and getting him on the line, and in your behalf, Mr. Commissioners, I did a very saccharine job. I don't think I fooled him for a minute. I made it sound simple--he knew it wasn't simple--and spread the tanglefoot all around him so he couldn't possibly escape. But I didn't fool him. It was a question of he knew better than I did. There was a great job to be done and you can't keep an old fire horse in the stable when the whistle blows, and he said, "Yes," and he knew what he was getting into, and he proceeded to get even with me almost immediately.

The Commission had no more than been organized when he--and quite properly--proceeded to loot the Bureau of Reclamation of all the skilled employees and demanded the services of its technicians, lawyers, regional directors, hydrologists, and all category of skills, for the Commission, which was quite proper. And ever since then he has in behalf of this Commission insisted upon and received priority on the services of the Bureau of Reclamation serving this Commission. And I might add for the benefit of some of the state engineers here that may be the reason why some of the other work was delayed from time to time.

Well, anyway, we got Harry to work and I know perfectly well what you have been through in the interim. I have been through it a good many times myself. Harry is not only a world-known water expert but he is also somewhat of an administrator and a good deal of a psychologist. I haven't been at any of these previous meetings, but I know what has been going on. He has been huffing and puffing and swearing at you, getting mad and threatening you and doing everything else to get the job done. I know that because he has done it to me for years with great success. And perhaps some of the success of this Commission has been, I believe, due to the services of Harry Bashore as your chairman.

Now each of the states of the Upper Basin is represented here by a Commissioner who was carefully chosen by the states and who to my knowledge is thoroughly experienced in the problems with which you have been dealing and with which those states have been dealing. I have probably known all of them for four or five years, and some of them many more years, and it has been in

that sense, the most unusual commission I have ever had to deal with. We have Mr. Bishop from Wyoming who for many years has been in charge of the Wyoming water problems and knows all about the water requirements and situation in Wyoming; Mr. Watson, the Commissioner from Utah; Mr. Stone, the Commissioner from Colorado; Mr. Wilson, Commissioner from New Mexico; and Mr. Carson, Commissioner from Arizona, who are each in their own specialty acknowledged experts in this line.

That is of course as it should be. But it is also true that each of the gentlemen of this Commission has risen to the necessity of considering the welfare of the whole basin, for without that you could not have progressed, and the evidence of this lies in your accomplishments to date. Those very accomplishments augur well for the successful negotiation of a compact which must be completed and ratified by the states and consented to by the Congress if the development of the Upper Colorado River Basin is to proceed.

This development has waited long enough. We can't afford to wait much longer; you can't afford to wait much longer. Any program for the conservation and development of water and power resources of a given area must necessarily be preceded by investigations. For many years the facilities of the Department of the Interior in its various branches, the Geological Survey and others, in addition to the Bureau of Reclamation, have been devoted in large part to determining many basic physical facts that must be found as a condition precedent before projects can be undertaken. Many of the states of the Upper Basin contributed to this investigation work, both financially and otherwise, and an inventory of the possible projects was in due course transmitted to the Congress with the gloomy qualifications that were just read to you. It was rather breath-taking in its scope, but the printed pages of that blue back report scarcely begin to convey the full significance to the citizens of the respective states and to those who come after them.

The task entrusted by your respective states to each of you arises out of the physical fact that there is not enough water to go around, and it is a task which you have attacked with ingenuity and vigor and great success. Through the prompt completion of these negotiations and with the ratification, you will have served to break the log jam which up until today, and even including today, is still blocking development.

Now it might not be inappropriate for us to bear in mind just one or two of the total figures that are in that report and see exactly the scope of things about which we are talking here. That report gives a picture involving for the Upper Basin States construction to a total of two billion dollars as of the day that report was written, you can make your own additions according to the increased cost since that, but construction of two billion dollars at the time that report was signed. And it provides for additional irrigated acreage, new acreage, of close to a million acres, supplemental water to some four hundred thousand acres which now are receiving an admittedly inadequate supply. And finally, that report, provided there is a compact that is ratified, outlines procedure for works that will produce something approaching ten billion kilowatt hours per year of electrical energy coming from and used in the Upper Basin States.

Surely those things are worth striving for. This is no political speech but it might also not be inappropriate to observe that nowadays there is a lot of talk about such things. But more to the point than a lot of talk that is going on in general is that here and in this room, something specific is actually being done about it.

You will I am confident complete your labors here in short order, and still actuated by a basin-wide concept, and having demonstrated the breadth and depth of vision in arriving at agreement on the compact, you will not fail to realize, I am sure, that the very same breadth and depth of vision and the very same enthusiasm must continue to actuate you and the state legislatures and your governors and your representatives in Congress if your states are all to go along throughout the years bringing this picture into life. And in the years to come, that task will have to go forward if it is to succeed and if the benefits are to be derived from your successes here, in the same spirit, and then we can attain for the Upper Basin of the Colorado River and for the nation as a whole, one of the wealthiest and happiest areas in the world.

I hope that here in The Bishop's Lodge in Santa Fe, where the over-all basin compact was first engaged in, you are now having your final meeting of the Commission, and before you leave this spot, your part of the first leg on the task will be done. Then it's going to be up to you and others to complete the ratification so that reclamation can go forward over a long period of years bringing Utah, Colorado, Wyoming, New Mexico, and Arizona to their rightful rendezvous with destiny.

Now it is really for your states and for the people of the nation as a whole rather than for me to express the appreciation and thanks for this historic performance; but nevertheless, let me say in behalf of the Department of the Interior and the Bureau of Reclamation, "Well done!"

Mr. Chairman, I don't want to take any longer of your time and wish to retire so that the Commission can go ahead with its work. (Applause.)

THE CHAIRMAN: Thank you, Commissioner Straus. Excluding the remarks you made concerning the Chairman, the Chairman is of the opinion that your talk was very good and inspirational and thank you very much.

Now the Chairman has received a telegram dated October 5, 1948, Washington, D. C., from William E. Warne, Assistant Secretary of the Interior, and he will request that General Giles read the telegram for the record.

MR. GILES:

"MR. HARRY BASHORE
COMMISSION UPPER COLORADO COMPACT

BELIEVE CHANGE SHOULD BE MADE IN PROPOSED ARTICLE XIV (B) UPPER COLORADO RIVER COMPACT BEGINNING WITH PROVIDED THAT TO READ "PROVIDED THAT ANY PREFERENTIAL USES OF WATER TO WHICH INDIANS ARE ENTITLED UNDER ARTICLE XIX SHALL BE EXCLUDED IN DETERMINING THE AMOUNT OF CURTAILMENT TO BE MADE UNDER THIS PARAGRAPH". IT IS NOT SEEN HOW THIS CHANGE SHOULD BE OBJECTIONABLE TO THE INTERESTS OF STATES AND ITS ADOPTION IS RECOMMENDED."

THE CHAIRMAN: Com. Wilson, I believe you are familiar with this telegram and do you have any comments to offer on the suggested change?

COM. WILSON: I will state first, Mr. Commissioner, that it is satisfactory to New Mexico to incorporate that language in Article XIV. I believe it is subparagraph (c), though.

COM. STONE: It is subsection (c).

COM. WILSON: I would like to know if it is satisfactory to Colorado.

COM. STONE: The language is satisfactory to Colorado.

THE CHAIRMAN: Do you offer that as a motion, Judge Wilson?

COM. WILSON: Mr. Chairman, I move that this language be accepted and referred to the Drafting Committee with instructions to the Drafting Committee to incorporate it in the final draft of the Compact to be submitted back to the Commission.

COM. STONE: I second the motion.

THE CHAIRMAN: You have heard the motion and second. Are there any comments on the motion? (No response.) Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

THE CHAIRMAN: Com. Stone, are you prepared at this time to report any further progress on agreement with the Commissioner from New Mexico on the San Juan?

COM. STONE: Mr. Chairman, as announced before by New Mexico and Colorado, Article XIV as submitted to the Commission was agreeable to those two states. Final action was deferred because of the desirability of having some word from the Department of the Interior and the Office of Indian Affairs regarding the language which has just been submitted. I understand Mr. Wilson's motion to carry with it approval of the entire article with the change submitted by the Secretary of the Interior, and the article, as I understand it, is now approved with the direction to the Drafting Committee to include this in the redraft of the Compact. Mr. Breitenstein calls attention to the editorial changes. I understand that goes to all the articles, there are editorial changes possible. That is understood, of course, that there may be editorial changes in various articles of the Compact.

THE CHAIRMAN: Does the Chairman understand, then, that it is simply a matter now of having the Editing Committee put this paragraph in final shape? No disagreement between Colorado and New Mexico?

COM. STONE: That is the entire article, yes.

COM. WILSON: That is correct, Mr. Chairman.

THE CHAIRMAN: Very well. Now Mr. Ritter, I believe you had some matter you wished to bring before the Commission.

MR. RITTER: Yes, sir. The Commission will recall that the Engineering Advisory Committee secured the services of Harry Blaney of the Department of Agriculture to assist us in determining consumptive use rates for use in our engineering studies. Mr. Blaney has now completed a report as a result of his investigations. The report, however, is still in confidential form. Copies of the report by Mr. Blaney have been received and we have today supplied the engineer adviser of each member of the Commission with a copy of that report.

Mr. Blaney, however, requests that he be furnished with fifteen copies

of the report in its present form for confidential in-service use within the Department of Agriculture, and then he also requests that after final acceptance by the Compact Commission, he would like thirty-five more copies for limited distribution.

This problem has been discussed by the Engineering Committee and it is our recommendation to the Commission that the Engineering Committee be authorized at this time to supply Mr. Blaney with fifteen copies of the report as he requested for confidential in-service use within his own organization.

COM. BISHOP: Mr. Chairman, I make a motion that the request of Mr. Blaney be approved by the Commission.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: The Commission will now recess for ten minutes.

(3:15 p.m., Recess.)

(3:40 p.m., Meeting reconvened.)

THE CHAIRMAN: Will the meeting please come to order.

COM. WATSON: Mr. Chairman, as to Article XII, Wyoming and Utah are making substantial progress.

THE CHAIRMAN: The Chairman is delighted to hear that. What are your further wishes, Com. Watson?

COM. WATSON: That we have a little more time in doing the good work.

THE CHAIRMAN: Do you make a motion then to recess?

COM. WATSON: I so move.

THE CHAIRMAN: Until ten o'clock tomorrow morning? Is there a second to the motion?

COM. BISHOP: I will second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

(3:45 p.m., Wednesday, October 6, 1948, meeting recessed until 10:00 o'clock a.m., Thursday, October 7, 1948.)

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Santa Fe, New Mexico
 October 7, 1948
 10:00 o'clock a.m.

(Meeting continued until October 8, 1948.)

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Santa Fe, New Mexico
 October 8, 1948
 2:00 p.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission meeting will please come to order.

COM. STONE: Mr. Chairman, I offer and move the adoption as subsection (b) of Article III of the Upper Colorado River Basin Compact, the following:

"(b) The apportionment made to the respective states by the preceding paragraph (a) is based upon, and shall be applied in conformity with, the following principles and each of them:

- (1) The apportionment is of any and all man-made depletions;
- (2) Beneficial use is the basis, the measure and the limit of the right to use;
- (3) No state shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another state of its apportioned use during that water year; provided that this subparagraph (b)(3) shall not apply to the tributary streams covered by Articles XI, XII, XIII and XIV; provided, further, that this subparagraph (b)(3) shall be construed neither as purporting to apportion among the signatory states such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact, nor as countenancing average uses by any signatory State in excess of its apportionment.
- (4) The apportionment to each State includes all water necessary for the supply of any rights which now exist."

I wish to add to my motion that the subparagraph (b) to Article III be referred to the Drafting Committee.

COM. WILSON: Mr. Chairman, I second the motion.

THE CHAIRMAN: The motion has been made and seconded.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. BISHOP: Mr. Chairman, I offer the following to become Article XII of the Compact:

"Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in Utah and flowing into Wyoming and thence into the Green River in Utah; Beaver Creek, originating in Utah and flowing into Henry's Fork in Wyoming; Burnt Fork, a tributary of Henry's Fork in Wyoming; Birch Creek, a tributary of Henry's Fork originating in Utah and flowing into Henry's Fork in Wyoming; and Sheep Creek, a tributary of Green River in Utah, and their tributaries, is hereby apportioned between Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) Waters used under rights existing prior to the signing of this compact:

(1) Water diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the states affected in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Water used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this compact shall be divided 50 percent to Wyoming and 50 percent to Utah and each state may use said water as and where it deems advisable.

(c) Wyoming assents to the exclusive use by Utah of the waters of Sheep Creek, a tributary of Green River in Utah, except that lands, if any, presently irrigated in Wyoming from the waters of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such amounts as is in conformity with the Laws of the State of Utah.

(d) In the event of importation of water to Henry's Fork, or any of its tributaries from any other river basin, the State making the importation shall have the exclusive use of such imported water unless there is a written agreement between representatives of Utah and Wyoming to the contrary.

(e) All consumptive uses of the waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek and their tributaries, made either by Utah or Wyoming shall be charged as a use under the apportionment made by Article III of this Compact,

(f) Utah and Wyoming each assent to the diversion and storage of water in one state for use in the other state and it shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either Utah or Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of its lands thereunder.

(g) In order to measure the flow of water diverted, suitable measuring devices shall be constructed by each State at or near the

point of diversion of each ditch.

(h) The State Engineers of the two States shall appoint a special Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expenses of such special Commissioner shall be paid 30 percent by Utah and 70 percent by Wyoming."

Mr. Chairman, I move the adoption of the foregoing as Article XII and that it be referred to the Drafting Committee.

COM. WATSON: Second the motion.

THE CHAIRMAN: You have heard the motion. Is there a discussion of the motion? (No response.) If not, are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

THE CHAIRMAN: Mr. Riter, the Chairman understands that you have a statement to make for the record.

MR. RITER: Mr. Chairman, this statement was prompted by a request from you regarding the adequacy of the water supply for Central Utah Project. With your permission I would like to read the statement. It is in the form of a letter.

"The Bishop's Lodge
Santa Fe, New Mexico
October 8, 1948

The Honorable Harry W. Bashore,
Federal Representative and Chairman
of the Upper Colorado River Basin Compact Commission
The Bishop's Lodge
Santa Fe, New Mexico

Dear Mr. Bashore:

You have asked my opinion regarding the adequacy of the water supply for the gravity diversion plan of the Central Utah Project, under the terms of the proposed Upper Colorado River Basin Compact.

Assistant Chief Counsel of the Bureau of Reclamation, Mr. J. G. Will, advises me that under the Federal Reclamation Laws, the determination of the adequacy of a water supply for a proposed Federal reclamation project is a function of the Secretary of the Interior, acting on the advice of the Commissioner of Reclamation. As Chief Hydrologist of the Bureau of Reclamation, I am charged, among other things, with responsibility for studies regarding the physical availability of water supplies for proposed or prospective Federal reclamation projects.

I have carefully considered the question whether there would be physically available an adequate quantity of water from the Green River for the gravity diversion plan of the Central Utah Project. Upon the basis of historical records, depleted to reflect conditions of ultimate development

in Wyoming under the proposed Upper Colorado River Basin Compact, it is my opinion that, by utilizing storage which can be made available in any one of several known reservoir sites, there would be an adequate quantity of water in the Green River for the gravity diversion plan of the prospective Central Utah Project, as that project is presently envisioned by the Bureau of Reclamation:

My opinion accords with the findings in this connection made by your Engineering Advisory Committee, and set forth in its report of October 4, 1948.

(Signed) Respectfully yours,
John R. Riter
Chief, Hydrology Division
Branch of Project Planning
Bureau of Reclamation
Denver, Colorado."

THE CHAIRMAN: Thank you, Mr. Riter. And the Chairman wishes to add his endorsement of the report of the distinguished engineers and hydrologists who signed the Engineering Report and to the statement which you have now made.

MR. WALLACE: That is the unanimous opinion, I take it, of the--what is the Committee of which you are chairman?

MR. RITER: The Engineering Advisory Committee?

MR. WALLACE: That is right. Is it?

THE CHAIRMAN: That is correct, and signed by all of them.

MR. RITER: This is a statement I am making as Chief of the Hydrology Division of the Bureau of Reclamation.

THE CHAIRMAN: Is there any further business to come before the Commission?

COM. BISHOP: Mr. Chairman, the Commissioner from Wyoming appoints Mr. R. D. Goodrich on the Drafting Committee in place of Mr. Wehrli, who is absent.

COM. WATSON: Mr. Chairman, I propose as an original article or as any article the Drafting Committee may wish to designate, the following:

"The apportionment made by Article III (a) shall not be taken as any basis for the allocation between the signatory states of any benefits resulting from the generation of power."

I move the adoption of this article and that it be referred to the Drafting Committee for perfection of language.

COM. STONE: I second the motion.

THE CHAIRMAN: Motion has been made and seconded. Is there a discussion of the motion?

COM. BISHOP: Question.

THE CHAIRMAN. Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

COM. STONE: Mr. Chairman, if there is no further business that any Commissioner has in mind I move we recess subject to the call of the Chairman.

THE CHAIRMAN: Do I hear a second to the motion?

COM. WATSON: Second the motion.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

(2:40 p.m., Friday, October 8, 1948, recess subject to the call of the Chairman.)

Santa Fe, New Mexico
October 9, 1948
3:30 o'clock p.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission will please come to order. The Chairman now calls for a report of the chairman of the Drafting Committee and requests that each article of the Compact be read and that each article be acted upon and the Chairman will ask for the vote by "Aye" or "No", and at the conclusion of the reading, the Chairman will call the roll on the acceptance of the Compact. Mr. Will, are you now ready to make your report?

MR. WILL: Mr. Chairman, the Preamble reads as follows:

"UPPER COLORADO RIVER BASIN COMPACT

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

- Charles A. Carson for the State of Arizona,
- Clifford H. Stone for the State of Colorado,
- Fred E. Wilson for the State of New Mexico,
- Edward H. Watson for the State of Utah and
- L. C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:"

COM. STONE: I move the adoption of the Preamble as read.

COM. BISHOP: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. WILL:

"ARTICLE I

(a) 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, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water, and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto."

COM. WILSON: I move the adoption of Article I as read.

COM. CARSON: I second the motion.

THE CHAIRMAN: You have heard the motion to adopt Article I as read.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

MR. WILL:

"ARTICLE II

As used in this Compact:

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

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

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

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

(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 Colorado River 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 Colorado River System below Lee Ferry.

(h) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the administrative agency created by Article VIII of this Compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

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

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

COM. CARSON: Mr. Chairman, I move the adoption of Article II as read.

COM. WATSON: Second the motion.

THE CHAIRMAN: You have heard the motion by Com. Carson that Article II as read be adopted.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

MR. WILL:

"ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona,

Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by the Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona:

State of Colorado	51.75 per cent,
State of New Mexico	11.25 per cent,
State of Utah	23.00 per cent,
State of Wyoming	14.00 per cent.

(b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided, that this subparagraph (b)(3) shall not be construed as:

(1) Altering the apportionment of use, or obligations to make deliveries as provided in Article XI, XII, XIII or XIV of this Compact;

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) Countenancing average uses by any signatory State in excess of its apportionment.

(4) The apportionment to each State includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power."

THE CHAIRMAN: You have heard the reading of Article III. What is your pleasure?

COM. CARSON: I move its adoption as read.

COM. WATSON: Second the motion.

THE CHAIRMAN: It has been moved and seconded that Article III be adopted as read. Ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

MR. WILL:

"ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

(a) The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(b) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded."

THE CHAIRMAN: Gentlemen, you have heard the reading of Article IV.

COM. STONE: Mr. Chairman, I move the adoption of Article IV as read.

COM. WATSON: Second the motion.

THE CHAIRMAN: Ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. WILL:

"ARTICLE V"

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b)(2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a

State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact."

THE CHAIRMAN: Gentlemen, you have heard the reading of Article V. What is your pleasure?

COM. STONE: I move the adoption of Article V as read.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. WILL:

"ARTICLE VI

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination."

THE CHAIRMAN: You have heard the reading of Article VI. What is your pleasure?

COM. BISHOP. I move its adoption as read, Mr. Chairman.

COM. WATSON: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

MR. WILL:

"ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State."

THE CHAIRMAN: You have heard the reading of Article VII. What is your pleasure?

COM. STONE: I move the adoption of Article VII as read.

COM. WATSON: Second the motion.

THE CHAIRMAN: You have heard the motion. Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. WILL:

"ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The Commission shall be composed of one Commissioner representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President, one Commissioner representing the United States of America. The President is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount thereof payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have the power to:

- (1) Adopt rules and regulations;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;

(3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;

(4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;

(5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;

(6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;

(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of act in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such Treaty may be reduced in accordance with the terms of such Treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the

Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the Commission shall be held within four months from the effective date of this Compact."

COM. WATSON: Mr. Chairman, I move adoption of Article VIII as read.

COM. WILSON: Second the motion.

THE CHAIRMAN: Ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WILL:

"ARTICLE IX

(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be

paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment in reimbursement of loss of taxes."

COM. WILSON: Mr. Chairman, I move the adoption of Article IX as read.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WILSON: Question on the motion.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

MR. WILL:

"ARTICLE X

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to

the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State."

COM. BISHOP: I move the adoption of Article X as read.

COM. WATSON: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

MR. WILL:

"ARTICLE XI

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this Compact.

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States."

COM. BISHOP: Just a minute. There is a point there we straightened out in the other one--"prepared by the Commission." We already have that prepared and I believe that should be, "prepared by the States." We decided in the one with Utah that we already have one prepared and it is all ready for use over there.

COM. STONE: I noticed that change in the agreement between Utah and Wyoming and here we agreed on "prepared by the Commission." Personally I feel that "prepared by the Commission" is the better procedure. It injects the idea of an impartial party and if you leave it to the States there might be some controversy. I think we are safe in letting the Commission do it. That is my reaction.

COM. BISHOP: There is still room for controversy if the Commission does it.

MR. BREITENSTEIN: I think there is less room for controversy in having it "by the Commission." When you have it "by the Commission" the two states submit their priority schedules to the Commission and the Commission then just works them together.

COM. BISHOP: We agreed on it once and we won't argue about it.

MR. WILL: (Continuing with the reading of Article XI.)

"(b) Water used under rights initiated subsequent to the signing of this Compact.

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State."

COM. BISHOP: I move the adoption of Article XI as read.

COM. STONE: I second the motion.

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

MR. WILL:

"ARTICLE XII

Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries, are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) Waters used under rights existing prior to the signing of this Compact.

Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty per cent to the State of Wyoming and fifty per cent to the State of Utah and each State may use said waters as and where it deems advisable.

(c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

(d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

(f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either the

State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expenses of such Special Water Commissioner shall be paid, thirty per cent by the State of Utah and seventy per cent by the State of Wyoming."

COM. WATSON: I move the adoption of Article XII as read.

COM. BISHOP: I second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Watson's motion carried unani-
mously.)

MR. WILL:

"ARTICLE XIII

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State."

COM. WILSON: I move the adoption of Article XIII as read.

COM. STONE: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

THE CHAIRMAN: The question has been called for. (Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

MR. WILL:

"ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The State of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact; and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provision of this Article.

(e) All consumptive use of waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use

incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State."

read. COM. STONE: Mr. Chairman, I move the adoption of Article XIV as

COM. WILSON: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unani-
mously.)

MR. WILL:

"ARTICLE XV

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

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact."

COM. BISHOP: I move the adoption of Article XV as read.

COM. WATSON: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Bishop's motion carried unani-
mously.)

MR. WILL:

"ARTICLE XVI

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use."

COM. STONE: I move the adoption of Article XVI as read.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Are you ready for the question?

COM. WATSON: Question.

(Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

MR. WILL:

"ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact."

COM. WATSON: I move the adoption of Article XVII as read.

COM. BISHOP: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WILL:

"ARTICLE XVIII

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin."

COM. WATSON: I move the adoption of Article XVIII as read.

COM. WILSON: Second the motion.

THE CHAIRMAN: Ready for the question?

COM. BISHOP: Question.

(Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WILL:

"ARTICLE XIX

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact."

COM. BISHOP: Mr. Chairman, I move the adoption of Article XIX as read.

COM. WATSON: Second the motion.

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Bishop's motion carried unanimously.)

MR. WILL:

"ARTICLE XX

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

COM. WATSON: I move the adoption of Article XX as read.

COM. BISHOP: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

MR. WILL:

"ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America."

COM. CARSON: I move the adoption of Article XXI as read.

COM. BISHOP: Second the motion.

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Carson's motion carried unanimously.)

MR. WILL: The conclusion:

"IN WITNESS WHEREOF, the Commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October, 1948.

Charles A. Carson
Commissioner for the State of Arizona

Clifford H. Stone
Commissioner for the State of Colorado

Fred E. Wilson
Commissioner for the State of New Mexico

Edward H. Watson
Commissioner for the State of Utah

L. C. Bishop
Commissioner for the State of Wyoming

Approved:

Grover A. Giles, Secretary

Harry W. Bashore
Representative of the United States of America."

COM. STONE: Mr. Chairman, I move the adoption of the concluding clause as read.

COM. BISHOP: Second the motion.

COM. STONE: Question.

THE CHAIRMAN: The question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. WILSON: Mr. Chairman, I move the adoption of the entire Compact as read, including the Preamble and Articles I to XXI, inclusive and including the concluding paragraph.

COM. CARSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. STONE: Question.

THE CHAIRMAN: The question has been called for. The Chairman will call the roll. Arizona?

COM. CARSON: Aye.

THE CHAIRMAN: Colorado?

COM. STONE: Aye.

THE CHAIRMAN: New Mexico?

COM. WILSON: Aye.

THE CHAIRMAN: Utah?

COM. WATSON: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: The motion carried unanimously and the Upper Colorado River Basin Compact is declared adopted by the Commission and reads as follows:

UPPER COLORADO RIVER BASIN COMPACT

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,
Clifford H. Stone for the State of Colorado,
Fred E. Wilson for the State of New Mexico,
Edward H. Watson for the State of Utah and
L. C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I

(a) 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, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II

As used in this Compact:

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

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

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

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

(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 Colorado River 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 Colorado River System below Lee Ferry.

(h) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the administrative agency created by Article VIII of this Compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

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

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona.

State of Colorado - - - - -	51.75 per cent,
State of New Mexico - - - - -	11.25 per cent,
State of Utah - - - - -	23.00 per cent,
State of Wyoming - - - - -	14.00 per cent.

(b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:

(1) The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided, that this subparagraph (b)(3) shall not be construed as:

(i) Altering the apportionment of use, or obligations to make make deliveries as provided in Article XI, XII, XIII or XIV of this Compact;

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) Countenancing average uses by any signatory State in excess of its apportionment.

(4) The apportionment to each State includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power.

ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

(a) The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

(b) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

ARTICLE V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b)(2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact.

ARTICLE VI

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The Commission shall be composed of one Commissioner representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President, one Commissioner representing the United States of America. The president is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have the power to:

- (1) Adopt rules and regulations;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
- (5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;
- (6) Make findings as to the quantity of water of the Upper Colorado

River System used each year in the Upper Colorado River Basin and in each State thereof;

(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such Treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

ARTICLE IX

(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the

State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE X

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XI

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this Compact.

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States.

(b) Water used under rights initiated subsequent to the signing of this Compact.

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XII

Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries, are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) Waters used under rights existing prior to the signing of this Compact.

Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty percent to the State of Wyoming and fifty percent to the State of Utah and each State may use said waters as and where it deems advisable.

(c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

(d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

(f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either the State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expenses of such Special Water Commissioner shall be paid, thirty percent by the State of Utah and seventy percent by the State of Wyoming.

ARTICLE XIII

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The State of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact; and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provision of this Article.

(e) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XV

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

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact.

ARTICLE XVI

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact.

ARTICLE XVIII

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

ARTICLE XIX

Nothing in this Compact shall be construed as:

- (a) Affecting the obligations of the United States of America to Indian tribes;
- (b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);
- (c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;
- (d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;
- (e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX

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

ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, the Commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October, 1948.

Charles A. Carson
Commissioner for the State of Arizona

Clifford H. Stone
Commissioner for the State of Colorado

Fred E. Wilson
Commissioner for the State of New Mexico

Edward H. Watson
Commissioner for the State of Utah

L. C. Bishop
Commissioner for the State of Wyoming

Grover A. Giles, Secretary

Approved:

Harry W. Bashore
Representative of the United States of America

The Chairman expresses his approval of the Compact and intends to sign it.

THE CHAIRMAN: Now, gentlemen, you recall that at the meeting called

by the Governors in Cheyenne on July 22, 1946, there was attendance by William E. Warne, acting in the capacity of Assistant Commissioner of the United States Bureau of Reclamation. On account of the great interest that Mr. Warne showed in the starting of the work of this Commission, the Chairman wired him yesterday that the Compact would probably be signed next Monday afternoon. It was the hope of the Chairman that possibly Mr. Warne might fly out and witness the ceremonies of signing. In response to that telegram the following telegram was received by him dated 10-9-48, which without objection the Chairman will read for inclusion in the record:

"HARRY W. BASHORE
ANSWER 8th
BISHOP'S LODGE
SANTA FE, NEW MEXICO

MY CONGRATULATIONS TO YOU AND THE COMPACT COMMISSIONERS OF THE UPPER BASIN STATES UPON THE COMPLETION OF THE DRAFTING OF THE DOCUMENT THAT IS DESTINED TO BE A MILESTONE IN THE DEVELOPMENT OF THE COLORADO RIVER. THE AGREEMENT THAT HAS BEEN REACHED DEMONSTRATES THE ABILITIES OF MEN AND STATES TO FACE AND SOLVE THEIR MUTUAL PROBLEMS.

SECRETARY KRUG HAD HOPED THAT HE MIGHT BE PRESENT WHEN THE SIGNATURES WERE PLACED ON THE COMPACT BUT COMMITMENTS MADE ON HIS TRIP WEST PREVENT HIS JOINING YOU IN SANTA FE IN TIME. SINCE I ATTENDED THE ORGANIZATION MEETING AT CHEYENNE JULY 22, 1946, AND HAVE FOLLOWED YOUR WORK WITH ADDED INTEREST IT WOULD HAVE GIVEN ME PLEASURE TO JOIN WITH YOU IN SOLEMNIZING THE COMPLETION OF YOUR LABORS THAT HAVE EXTENDED OVER MORE THAN TWO YEARS BUT OWING TO THE ABSENCE OF OTHER DEPARTMENTAL OFFICIALS I CANNOT LEAVE WASHINGTON AT THIS TIME.

AGAIN CONGRATULATIONS. THE WHOLE NATION OWES A DEBT OF GRATITUDE TO THE UPPER BASIN STATES COMPACT COMMISSION.

WILLIAM E. WARNE."

And of course, Mr. Warne is Acting Secretary of the Interior in signing this telegram.

MR. BLISS: Mr. Chairman, I would like to read a telegram I have here. Governor Mabry expected to reach you personally last Monday when we first convened and was unable to make it because of prior commitments. He did send a telegram which reached me this morning, and if I may, I will read it into the record:

"JOHN BLISS
STATE ENGINEER
SANTA FE, NEW MEXICO

HAPPY TO HEAR BY RADIO THAT AGREEMENT ABOUT TO BE REACHED WITH NEIGHBORING STATES ON COLORADO RIVER WATERS. PLEASE CONVEY MY BEST WISHES TO ALL OUR GUESTS AND EXPRESS MY REGRET THAT MY CAMPAIGN DATES HAVE KEPT ME AWAY FROM SANTA FE. I AM SURE YOU ARE EXTENDING EVERY COURTESY TO OUR GUESTS.

THOMAS J. MABRY, GOVERNOR."

He hoped he would be here but he could not make it.

THE CHAIRMAN: Thank you, Mr. Bliss. That will be included in the record without objection.

COM. STONE: I made an outline here in order that what I have to suggest may be as brief as possible. The original suggestion came from the Chairman. It concerns the work of the Commission subsequent to the signing of the Compact and before the time that it becomes finally effective by approval of the Congress. It appears--

MR. WALLACE: And approval of the States, I take it.

COM. STONE: Yes. It appears to me that there are three matters to consider in this regard: (1) Preparation and preservation of the record of the Compact Commission including the report of the Engineering Advisory Committee; (2) Ratification by the States through their respective legislatures; (3) Approval by the Congress of the United States. I shall take these up in order.

It has been demonstrated through our experience with the Colorado River Compact that the preparation and preservation of the record is of great importance. It is that record which will disclose in some instances, perhaps in many, the intent of the Commission in adopting the articles and provisions of this Compact.

I may suggest that in the view of Colorado, we should reproduce a number of copies of the record of the Commission, appropriately bound and so forth. It would appear to me that it would be less expensive for each state and desirable for these signatory States to join in the reproduction of this record. It would save much expense. And I suggest to the Commission that we attempt to agree on ways and means of reproducing the record in order that it may be available prior to the time the States consider ratification. In some of the States questions may be asked; some question may relate to intent. In that instance the record itself will be the best evidence. If it is going to be reproduced, it should be done, of course, prior to the time that the State Legislatures consider the Compact.

Then, too, when this Compact comes before the Congress, the Senators and Congressmen representing the signatory States, many of them if not all of them will be interested in looking over the record and may find occasion in the consideration of this Compact to use the record.

If that is done, the work should be started quite soon. That is my suggestion. In that connection, if it is done jointly, each State should indicate the number of copies required. We are in the habit of doing this work in my office in Colorado, and if it is the desire of the Commission, we should be glad to undertake this particular task. It will be such an extensive job we would probably arrange with some mimeographing company to do the work and then we would send out the copies as soon as they were completed.

Mr. Breitenstein states that the cost of printing would not be substantially more and it would be a more permanent record. I agree with Mr. Breitenstein in that suggestion. This record should include the final report of the Engineering Advisory Committee.

Relative to the ratification or consideration of ratification by the legislatures of the States, it involves two principal procedures. In Colorado where we now have six compacts, it has been the practice for a Compact Commissioner to prepare and print a statement which includes the negotiated compact, reasons for it, and explanation of the various articles. In this case it would probably be desirable to include such necessary references to the Colorado River Compact. That procedure will be followed in my State and I suggest it

as desirable procedure in all of the States. In that manner it will make available to all of the members of the legislatures if it is properly prepared, all pertinent information. It will reduce, I believe, hearings on the subject and will present the matter in a more concise manner.

MR. WALLACE: Question, Judge Stone, please: Why shouldn't that document be prepared jointly by the States? It will be the same argument to each State. Why should each State prepare a separate document?

COM. STONE: I may say that Mr. Carson suggested that. However, I think that we should weigh that suggestion a little, Mr. Wallace. In the first place, the argument for the Compact may not be identical in all of the States. In other words, there are certain local conditions which a Commissioner would like to stress in explaining the Compact and in recommending its adoption. I believe that such a document for each State and prepared by each State to meet the conditions and the views of those supporting the Compact in that State, would be more desirable than attempting to get out a type of presentation which would be common to all of the States. That is only my view, and I may not be right on it but it is my attempt to answer your question.

Then it is, I believe, the job of the Commissioner to prepare or have prepared the statute which effectuates the ratification of the Compact. That is quite a simple matter but it should be done by the Commissioner if that meets with the procedure in the various legislatures.

COM. STONE: If there are no other questions under "Ratification", I pass now to the heading, "Approval by Congress."

Under "Ratification"--it has relation to that--it appears in this Compact that we have created when the Compact becomes effective, an administrative commission. That will require certain moneys be available by the signatory States for the use of the Commission. The Commission would be quite helpless if during the first two-year period after it becomes effective no money was made available for its operations. Accordingly, there ought to be some discussion at the meeting of the Commission next time, some consideration in the interim, as to the amount of money that should be appropriated and recommended to the appropriation committees of the legislatures of the States.

MR. WALLACE: That is exactly what I had in mind when I opened the discussion off the record, Judge.

COM. STONE: And that is a question we can be thinking about and at our next meeting be prepared to go into a discussion of it.

MR. WALLACE: You are referring to the next meeting of this Commission?

COM. STONE: Of this Commission.

Now are there any other questions or suggestions under that heading? (No response.) If not, may I pass to the approval by Congress. This perhaps presents a tough job. A compact of this importance and having relation to an existing compact will be very carefully considered by the Congress. It will be referred to the appropriate committees in Congress.

There is the matter of the preparation of material for presentation to Congress. The approval by Congress of this Compact may well require extensive hearings. Accordingly, it will mean that all of these signatory States

must be prepared to appear before the Congress and that we organize an effective presentation.

Now, Mr. Chairman, I have not gone into any details. I believe at the next meeting of the Commission we should be prepared to go into detail as to these matters I have presented. I believe we should decide now how we want to prepare the record of this Commission since that work should be started immediately; and if it is decided that we shall join our forces so far as expenses in preparation of this record are concerned, then we should know how many copies each state will want. We shall have to keep in mind too the necessary copies for our Senators and Congressmen and others who are interested in the matter.

THE CHAIRMAN: Judge Stone, may I ask you if you have in mind two more meetings of this Commission, one for the coordination of effort in presentations before the legislatures; and, two, after that has been accomplished, a meeting to coordinate the activities for presentation to Congress?

COM. STONE: I believe that is a detail we can't decide now. But in connection with that, Mr. Chairman, you will recall that Mr. Riter, Chairman of our Engineering Advisory Committee, recommended, and I think we agreed, that we would have another meeting to receive the report of the Engineering Advisory Committee, and also to have submitted to us any other matters which that Committee desires to submit. That meeting probably would be held sometime after the first of December because if I recall correctly, Mr. Riter said that the report would not be ready until about December 1st.

THE CHAIRMAN: Of course, it would appear to the Chairman that if one or two meetings are contemplated, there should be an understanding as to what subjects are to be particularly disposed of. It would appear to the Chairman further that an attempt at the next meeting to coordinate your efforts for presentations to the Congress prior to the ratification by the legislatures would be a little difficult if not impossible. You are assuming that the legislatures will pass it. There is a slight possibility they will not.

COM. STONE: I think that, Mr. Chairman, is just a matter of detail. Mr. Breitenstein suggests that we might defer some of these details as to the number of copies of this record until after the Commission has completed its editing of the records of the last three meetings. But I think we might well decide whether we want to go in jointly and prepare such a record.

MR. WALLACE: Judge, how soon should a meeting be called?

COM. STONE: You mean this next meeting of the Commission?

MR. WALLACE: Yes, sir.

COM. STONE: It seems to me, the same as the answer to Mr. Bashore's question, that we can't very well decide that now. There will have to be one or two meetings, and it seems to me that it would be well to defer deciding that matter until later. That is just my judgment.

MR. BREITENSTEIN: I don't want to have the date fixed until after we have had a chance to talk it over a little bit in Colorado. We are going to have another meeting to correct the record here; why can't the date of the next meeting be deferred until that time? We are not opposing the idea at all.

MR. WALLACE: As I understand, the States must ratify before Congress will take up your matter, probably.

COM. STONE: It is obvious that such a meeting would have to be held well in advance of the first of January. This matter having been presented, I suggest that we make our decisions on these matters at the meeting when the Compact is signed.

Mr. Chairman, I move that as soon as the Upper Colorado River Basin Compact is finally signed, it may be released to the public and that the official records of the commission, report of the Engineering Advisory Committee, and other documents and material pertinent to the negotiation of this Compact shall not be made available to the public until they are officially approved by the Commission at a subsequent meeting and authorized for such public release.

COM. BISHOP: I second the motion.

THE CHAIRMAN: You have heard the motion. Is there a discussion of the motion?

COM. BISHOP: Question.

THE CHAIRMAN: The question has been called for. I will call the roll on that. New Mexico?

COM. WILSON: Aye.

THE CHAIRMAN: Colorado?

COM. STONE: Aye.

THE CHAIRMAN: Wyoming?

COM. BISHOP: Aye.

THE CHAIRMAN: Utah?

COM. WATSON: Aye.

THE CHAIRMAN: Arizona?

COM. CARSON: Aye.

THE CHAIRMAN: Motion carries unanimously.

COM. STONE: Mr. Chairman, I offer and move the adoption of the following resolution:

WHEREAS, Harry W. Bashore, Federal Representative member and Chairman of the Upper Colorado River Basin Compact Commission, has served in a capable and impartial manner, and, in such capacity, he has had the respect and confidence of the members of the Commission; and

WHEREAS, the Bureau of Reclamation, Department of Interior, has rendered technical and consultant services which have been in the interests of the negotiation of a Compact, particularly in these respects:

J. R. Riter, Chief of the Hydrology Division, Bureau of Reclamation, Denver, Colorado, has served as chairman of the Engineering Advisory Committee, and devoted a large amount of time and effort in the study of basic data and preparation of a report for the advice of the Commission.

E. P. Dugan, a member of the staff of the Hydrology Division, Bureau of Reclamation, Denver, Colorado, has assisted in the study of basic

information and preparation of the report of the Engineering Advisory Committee.

C. B. Jacobson, Regional Hydrologist, Region 4, Bureau of Reclamation, Salt Lake City, Utah, has collaborated with the Engineering Advisory Committee and participated in its numerous meetings.

J. G. Will, a member of the staff of the Chief Counsel of the Bureau of Reclamation, Washington, D. C., has served as legal adviser to the Federal Representative, chairman of the Drafting Committee, and as a member of the Commission's Legal Advisory Committee, and in such capacities rendered capable and impartial service in the interest of compact negotiation.

AND WHEREAS, the United States Department of Agriculture, Soil Conservation Service, Division of Irrigation and Water Conservation, has rendered a service of great value to the Engineering Advisory Committee by making available to the Committee as a consultant, Harry F. Blaney, Senior Irrigation Engineer, on the subject of consumptive use of water.

NOW, THEREFORE, BE IT RESOLVED BY THE Commissioners representing the signatory States:

1. That they express their appreciation and high commendation for the impartial and capable services rendered by Harry W. Bashore, Federal Representative member and chairman of the Upper Colorado River Basin Compact Commission.
2. That they express their appreciation for the services rendered in the negotiation of the Upper Colorado River Basin Compact by the Bureau of Reclamation.
3. That they express their high regard and appreciation for the ability, devotion to the task and capable services rendered by J. G. Will, J. R. Riter, H. P. Dugan, and C. B. Jacobson, being the persons who rendered services as above mentioned, during the negotiation of the Upper Colorado River Basin Compact.
4. That they express their appreciation for the services of Harry F. Blaney as consultant to the Engineering Advisory Committee and for the Department of Agriculture making such services of an outstanding expert on the subject of consumptive use of water available for the advice of the Commission.

The motion to adopt the resolution was seconded by Com. Bishop and Com. Watson.

Thereupon a vote was taken and the motion prevailed and the resolution declared unanimously adopted.

(5:45 p.m., Saturday, October 9, 1948, recess subject to the call of the Chairman.)

Palace of Governors
 Santa Fe, New Mexico
 October 11, 1948
 2:00 o'clock p.m.

(All Commissioners present.)

THE CHAIRMAN: The Commission will please come to order.

We are gathered here today in the Palace of Governors at Santa Fe, New Mexico, on an occasion which marks a turning point in the history of the Colorado River Basin. There is about to be signed here a document which will forever be an example of fairness, a demonstration of statesmanship of the highest order, and finally, a proof of the ability of States to deal with their mutual problems no matter how complex through the traditional and constitutional compact method.

The Upper Colorado River Basin Compact which we are now about to execute will be a tower of strength to the States of Arizona, Colorado, New Mexico, Wyoming and Utah, perhaps for centuries to come. It is a structure for the completion of which we have labored long. It is sound in design. Each part of it has been wrought with great care by men who are notably skilled in their professions and experts in the compact process. It has been builded by men of good faith, it has been builded by men of good will; and because it has been so builded, it will endure.

I have already announced my intention as representative of the United States of America to approve the Upper Colorado River Basin Compact. I shall approve it because it fully recognizes the interests of the Federal Government; because it creates conditions that will positively foster the conservation and development of the water resources of this vast area for agricultural and domestic purposes; and because it is equitable and sound from every point of view.

It has been an honor to preside over the meetings of the Upper Colorado River Basin Compact Commission. It has been a privilege to participate in the negotiations that have finally culminated in these ceremonies today.

There is honor and glory for each Commissioner and his staff. No delegation need leave here with a feeling other than one of high achievement for its State and for the Basin as a whole. I congratulate each one of you. I wish you God-speed on your trip home; and I trust that you will work just as hard for ratification by your state legislatures and by the Congress of the United States of America as you have during these many months of meeting and negotiation. Your work is not done. You have taken but the first and I believe the most difficult step on the long road toward full development of this Upper Basin.

Let me conclude with a word of thanks to the State of New Mexico for the hospitality which has been extended to us here and for the effective and efficient manner in which the many administrative details that attend our proceedings have been handled.

Today we are fortunate to have with us some distinguished people. I will ask Com. Wilson to introduce the distinguished Governor of New Mexico.

COM. WILSON: Mr. Chairman, I desire to present the Governor of New Mexico, the Honorable Thomas J. Mabry. (Applause.)

GOV. MABRY: Mr. Chairman, representatives of the States here with us, and friends: First I want to apologize for having, as Governor of the host State, been absent all the time excepting at this moment, but I have had a little business, one that comes every other year out here in New Mexico. It probably doesn't happen in Wyoming and Utah but we do have it in New Mexico and it kind of keeps us busy, so I haven't had a chance to be with you.

I have kept in touch with your work. Mr. Wilson, our representative here, speaks for us and of course it is unnecessary for me to say that we are all happy that you finally reached agreement and are able to sign a compact. I think Mr. Wilson and I both can say that New Mexico will go along very promptly in ratification. We all feel that we have got to get this thing settled and get these projects underway. We have been patiently waiting.

I want to say to you that I am happy you came to my State, New Mexico, to be with us. I am only sorry that I couldn't have been around to help a little bit in the entertainment of you gentlemen. Thank you. (Applause.)

THE CHAIRMAN: Thank you, Governor. There is another distinguished gentleman here today, a friend of long standing of the Chairman. This gentleman was one time Under-Secretary of the Interior, recently a Governor of New Mexico, and the Chairman would now like to have a few short remarks by Ex-Governor Dempsey.

MR. JOHN J. DEMPSEY: Mr. Chairman and Members of the Commission, and ladies and gentlemen: I am extremely happy to be here today. Mr. Bashore and I are old friends. That accounts for his telling me to speak briefly.

I think the job you all have accomplished has been a most outstanding one. The life blood of the States involved is water, and to have the Upper Basin States get together and agree on a division is something that doesn't happen very often. I congratulate you and I hope and I am sure it will redound to the benefit of every state involved because you have done a fair job to each state. After all, an unfair job isn't good for anybody.

You have been fortunate in having to preside over this meeting and all your meetings, Harry Bashore, who probably knows more about the water problems of this country than any other man I have the pleasure of knowing in the country.

And I wish in carrying through on these water divisions and constructing, as you will, the various dams and reservoirs that you will have as a result of it, that all our States will benefit and our problems in the future will be settled as you have settled this one today, by being unanimous. Thank you very much. (Applause.)

THE CHAIRMAN: We are fortunate indeed in having with us a gentleman who was one of New Mexico's advisers in the negotiation of the original Colorado River Compact. Mr. Francis C. Wilson. (Applause.)

MRS. FRANCIS C. WILSON: He hasn't been feeling very well lately.

THE CHAIRMAN: We have with us another gentleman who started in studying the Colorado River about 1920, I believe, and followed the negotiations of the original Colorado River Compact, and has been with us to give us his advice and counsel during all the deliberations leading up to the completion of the Upper Colorado River Basin Compact. I refer to the Honorable William R. Wallace of Salt Lake City, Utah. (Applause.)

MR. WILLIAM R. WALLACE: Mr. Chairman, it is a very great pleasure for me to be here today in the company of my friend, Mr. Wilson of New Mexico, with whom I worked many years ago. And it is a very great pleasure indeed to ask all of you to send a message to my old friend, Delph Carpenter of Colorado who is really the man with his practical vision who saw this development so many years ago. He is now, as you know, lying ill. We came down on the River a number of times together. And about all I would like to ask of you today is a message from all of you go to Delph Carpenter. I am sure he can receive it through the words of his wife and I am sure it is a proper thing to do and I hope you will so do. (Applause.)

THE CHAIRMAN: Thank you, Mr. Wallace. There is another gentleman present who participated in all of the original negotiations of the basic Colorado River Compact, and whose valuable assistance and guidance was available to this Commission: I refer to Mr. Ralph Meeker of Arizona. (Applause.)

MR. RALPH I. MEEKER: Mr. Chairman, it is a matter of much gratification to be here after the long road of twenty-six years from the first compact to this one. I say Godspeed to the future development of the Colorado River. (Applause.)

THE CHAIRMAN: Now there is a lady here whose husband was an able champion for the water rights of New Mexico and who was originally the Commissioner for New Mexico, and I would like to have that lady stand up so we may all see her, and I refer to Mrs. Tom McClure. (Applause.)

At this time I will call on Mr. Jeff Will to act in his capacity as Assistant Chief Counsel of the United States Bureau of Reclamation and state very briefly the position of the Bureau of Reclamation with reference to this Compact.

MR. WILL: Mr. Chairman, I was instructed this morning over the telephone by Com. Straus to advise this Commission that the Compact is highly satisfactory to the Bureau of Reclamation and seems to us to afford a magnificent basis for development in this Basin on a broad front. (Applause.)

THE CHAIRMAN: Thank you, Mr. Will. Of course there are many distinguished people here today and the Chairman regrets that time is not available to call on each one of you because you have all contributed greatly to the success of these negotiations.

It appears that we are now ready for the signing of the Compact and the Chair will first ask Mr. Will if he has checked these six counterparts, or these six originals, to see if they are correct in all respects and correspond to the Compact in the form approved at our last meeting.

MR. WILL: Yes, Mr. Chairman, I certify to that.

THE CHAIRMAN: Thank you, Mr. Will. We will now have the copies of the Compact. (Copies are handed to the Chairman.)

The Chairman has before him six originals of the Upper Colorado River Basin Compact. He requests that the Commissioners sign in the order in which their names appear on the back page, signing all six copies for his State, and then pass the same to the next name appearing on the page. After each Commissioner has signed, the Compact will be signed by the Secretary of the Upper Colorado River Basin Compact Commission, and thereafter it will be approved by the Chairman for the Government of the United States.

(2:25 p.m., Commissioners, Secretary and Chairman begin signing copies of Compact, which signing was completed at 2:30 p.m.)

THE CHAIRMAN: The Compact has now been signed by the Commissioner of each State, by the Secretary of the Commission, and approved by the Federal Representative. The Chairman has handed to each Commissioner an original of the Compact, and the Compact for the United States is in custody of the legal adviser to the Chairman.

At this point the Chairman wishes to express his appreciation to our most efficient reporter, Mrs. Lois Price Crowder, who has with great patience and much ability carefully recorded the remarks and the data presented in all of the deliberations of this Commission.

Now the immediate question of the signing of the Compact has been disposed of but before we adjourn here we should make some disposition of the question as to the number of copies which each State desires of the data relating to the Compact which Colorado expects to prepare and have printed in advance of meetings of the legislatures.

COM. STONE: Mr. Chairman, to dispose of that matter, may I explain that it appears that the official record is subject to further review and I move accordingly that this matter go over for approval of the official record at the next meeting of this Commission.

COM. CARSON: I second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

Now the question of the time and place of another meeting of this Commission must be disposed of today. It appears to the Chairman that a meeting is necessary on account of the motion which you have just passed and the matter of receiving and disposing of the engineering report, the final action on the engineering report. What are your wishes concerning the time and place of the next meeting.

COM. WILSON: Mr. Chairman, I move that the Commission hold its next meeting in Denver, Colorado on the 29th of November, 1948.

COM. BISHOP: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion as made by Com. Wilson?

COM. WATSON: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Wilson's motion carried unanimously.)

It appears that a motion for adjournment is now in order.

COM. STONE: Mr. Chairman, before we adjourn, I move that the Commission expresses its appreciation and thanks to the State of New Mexico and

the City of Santa Fe for the many courtesies that have been extended to this Commission during the negotiations of the past week.

COM. WATSON: Second the motion.

THE CHAIRMAN: Is there a discussion of the motion?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Stone's motion carried unanimously.)

COM. WATSON: I move we adjourn.

COM. BISHOP: Have we decided how many of these we are going to have printed?

COM. STONE: Yes. It was 3,000.

THE CHAIRMAN: Is there a second to the motion made by Com. Watson to adjourn?

COM. WILSON: I second the motion.

THE CHAIRMAN: The motion was made and seconded. Are you ready for the question?

COM. BISHOP: Question.

THE CHAIRMAN: Question has been called for. (Thereupon a vote was taken and Com. Watson's motion carried unanimously.)

THE CHAIRMAN: We now stand adjourned.

(2:40 p.m., Monday, October 11, 1948, at Santa Fe, New Mexico, adjourned until Monday, November 29, 1948, at Denver, Colorado.)

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UPPER COLORADO RIVER BASIN COMPACT COMMISSION

OFFICIAL RECORD OF MEETING NO. 9

November 29-30, 1948

Shirley-Savoy Hotel
Denver, Colorado

MEETING NO. 9
 Denver, Colorado
 December 29 - 30, 1948

	Vol.	Mtg.	Page
Appearances.	2	9	1
Call to Order.	2	9	3
Agenda for Meeting No. 9	2	9	3
Motion by Com. Stone to Proceed with Approval of Official Records, Meetings No. 1 to 6, Inclusive	2	9	3
Seconded by Com. Bishop	2	9	4
Vote taken; Carried.	2	9	4
Noon Recess.	2	9	4

Afternoon Session
 December 29, 1948

Motion by Com. Stone for Approval of Record of Preliminary Meeting and of Meetings 1 to 8, Inclusive; and for Adoption of Final Report of Engineering Advisory Committee for Official Record; and Providing for Printing and Distribution of Copies	2	9	4
Seconded by Com. Watson.	2	9	5
Addition to Motion to Divide Cost of Printing According to Number of Copies Ordered	2	9	5
Vote taken on Amended Motion; Carried.	2	9	5
Submission of Final Report of Engineering Advisory Committee.	2	9	5
Comments by Mr. Riter.	2	9	5
Motion by Com. Stone That Final Report of Engineering Advisory Committee be Accepted and Made Part of the Record.	2	9	7
Seconded by Com. Bishop.	2	9	7
Vote taken; Carried.	2	9	7
Motion by Com. Bishop to Provide 35 Additional Copies of Blaney Report to Mr. Blaney.	2	9	7
Seconded by Com. Bliss.	2	9	7
Vote taken; Carried.	2	9	7
Consideration of Costs of Printing Records.	2	9	7
Comments by Com. Stone.	2	9	7
Motion by Com. Watson to Accept Colorado Offer for Indexing and Supervision of Printing of Records	2	9	8
Seconded by Com. Carson	2	9	8
Vote taken; Carried	2	9	8
Report on Preparation of Engineers' Manual.	2	9	8
Consideration of Procedures to be Taken to Obtain Ratification of the Compact.	2	9	9
Comments re Appropriations Needed.	2	9	9
Motion by Com. Stone that Adjournment, When Taken, Be Subject to Call of the Chairman	2	9	10
Seconded by Com. Bishop.	2	9	10
Vote taken; Carried.	2	9	10
Motion by Com. Watson to Adjourn to 9 a.m., November 30, 1949; Seconded by Com. Carson.	2	9	10
Vote taken; Carried.	2	9	10
Adjournment.	2	9	10