

18th Meeting

COLORADO RIVER COMMISSION

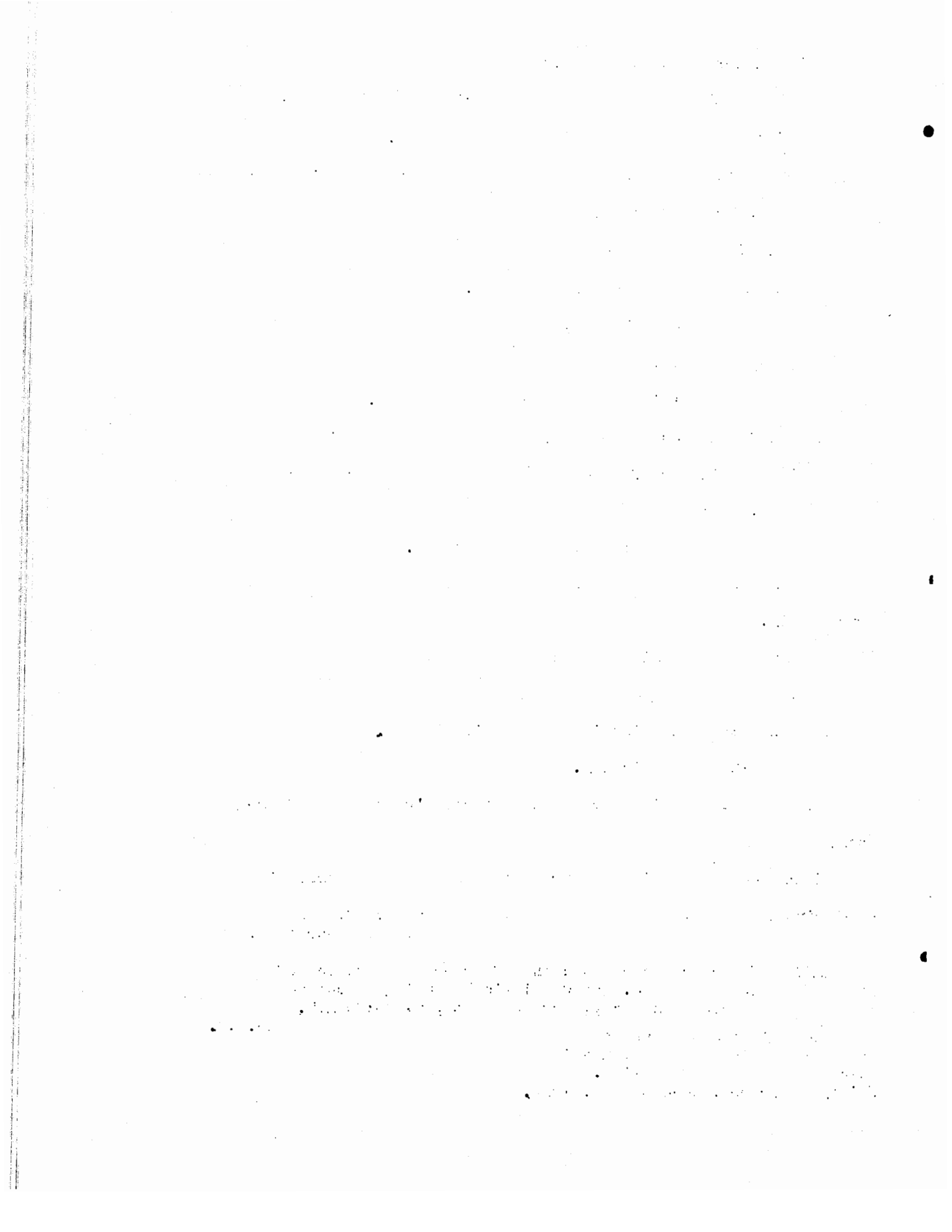
The eighteenth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Thursday morning, November 16th, 1922, at 10:00 A.M.

There were present:

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

In addition there were present:

Thomas E. Campbell,	Governor of Arizona,
James F. Hinkle,	Governor-Elect of New Mexico
Merritt C. Mechem,	Governor of New Mexico
L. Ward Bannister,	Chairman of Committee of Interstate Waters of Denver Civic Association.
Edward W. Clark,	Joint Commissioner and Advisor for Nevada.
Arthur P. Davis,	Director, United States Reclamation Service, Department of the Interior and Advisor to Federal Representative.
Ottomar Hamele,	Chief Counsel, United States Reclamation Service, Department of the Interior and Advisor to Federal Representative.
C. C. Lewis,	Assistant State Water Commissioner and Advisor for Arizona.
R. T. McKisick,	Deputy Attorney General and Advisor for California.
R. I. Mecker,	Deputy State Engineer and Advisor for Colorado.
Richard E. Sloan,	Legal Advisor for Arizona.
P. G. Spilsbury,	President, Arizona Industrial Congress and Advisor for Arizona.
Charles P. Squires,	Joint Commissioner and Advisor for Nevada.
Dr. John A. Widtsoe,	Advisor for Utah.



MR. HOOVER: After discussion yesterday between the different groups, we arrived last evening at a series of rough principles upon which we felt we had secured agreement and which should comprise the basis of a compact. I would suggest that I should read the memorandum in the final form in which we left it paragraph by paragraph and see if we are now broadly, in agreement. We all understand that this is subject to drafting, that the statements here are in many cases rather crude, but so long as they convey our ideas, that is a sufficient statement. It does embrace the primary ideas upon which we are in agreement.

The first paragraph is:

"The Colorado River Basin shall be considered as embracing all of the territory to which the waters of the river and its tributaries can be beneficially applied."

I think we might proceed by way of a motion on these clauses.

MR. McCLURE: That is not clear to me.

MR. HORVIEL: At least we should confine it to the United States - "embracing all of the territory within the United States."

MR. EMERSON: Why the use of the description "beneficial application of the water." The basin includes a wide area of territory upon which water cannot be used at all.

MR. HOOVER: We are seeking for an expression which would cover our ideas.

MR. CARPENTER: The lines conform to the technical drainage of the river?

MR. HOOVER: Yes. This is not the final draft. When we get

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the draft of the compact itself, then we can work over the details, so long as this expresses our general ideas.

MR. CARPENTER: The idea of this memorandum is to express our general intent.

MR. HOOVER: Our general intent.

MR. CARPENTER: I move the adoption of the paragraph as amended to include "all of the territory within the United States of America."

MR. NORVIEL: Wouldn't it be just as well to say <sup>"within</sup> the United States after the word "applied"-, "beneficially applied within the United States."

MR. HOOVER: Yes, that will be the same thing. Do you accept that amendment, Mr. Carpenter?

MR. CARPENTER: Yes.

MR. SCRUGHAM: Is the wording, "within the United States" at the end of the sentence?

MR. HOOVER: Yes.

MR. SCRUGHAM: I second the motion.

MR. HOOVER: Is there any further discussion on that paragraph? If not, those in favor of its adoption say "aye." Those opposed "no." It is carried unanimously.

MR. CARPENTER: The paragraph will be read with the amendment?

MR. HOOVER: "The Colorado River Basin shall be considered as embracing all of the territory to which the waters of the river and its tributaries can be beneficially applied within the United States."

MR. EMERSON: The drafting committee, I had hoped, would say something like "The Colorado River Basin shall be considered as embracing all of the land drained by the Colorado River and its tributaries, and in addition -

MR. CARPENTER: We understand

MR. EMERSON: It is all right if you understand these things.

MR. HOOVER: It would be useful to have Mr. Emerson's remarks in the record.

MR. CARPENTER: I interrupted you, Mr. Emerson, before you finished. I beg your pardon.

MR. EMERSON : Your apology is accepted.

MR. CALDWELL: I understand that this doesn't mean merely applied to the lands, but that it can be used for any purpose within the meaning of the compact.

MR. EMERSON: I believe there should be a limitation there upon the character of the use. We wouldn't want water diverted from the Colorado Basin for power purposes.

MR. HOOVER: Under the provisions here, of priorities I should think it would be possible for agricultural and domestic uses, to stop power uses that interfere with agricultural and domestic uses. If there is nothing more on that paragraph, we will go on to the next.

"2. The Basin is divided into the Upper and Lower Divisions at a point immediately below the mouth of the Paria."

MR. NORVIEL: I suppose everybody knows what the Paria is?

MR. HOOVER: I suppose the drafting committee will know.

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MR. NORVIEL: Depends on who it is, I guess.

MR. CALDWELL: I move the adoption of that article.

MR. CARPENTER: I second the motion.

MR. HOOVER: It has been moved and seconded that this paragraph be adopted. Is there any further discussion? If not, those in favor say "aye." Opposed "no." It is carried.

The third paragraph reads:

"This compact shall be in force until \_\_\_\_\_ and thereafter shall continue until a notice shall be given by two governors or by one governor and the President of the United States to the other governors in the basin states of the desire for a new commission to equitably apportion the waters of the river then unappropriated, and upon receipt of such notice this compact shall terminate and it shall be the duty of the governors of the several states and of the President of the United States each to make provision for representation on such commission. Such commission may be created by the mutual consent of the seven states and the Federal Government at any time."

I should like to suggest that we leave that date until we get through the agreement. If we adopt the paragraph with the date in blank, we only have two points in this paragraph of wider discussion.

MR. CARPENTER: While we are on that paragraph, it has occurred to me, that the date of termination might become important and therefore should be fixed as nearly as we can. The giving of the notice might involve more or less conflict. My

thought is that the time of forwarding of notice should decide where the rights under the compact should become fixed. It might be thirty days or ninety days or some such figure, after such notice.

MR. NORVIEL: I understand this to mean that when one governor and the President, or two governors, agree to revise the matter and notify the other governors, that this compact shall cease operation instantly thereafter.

MR. SCRUGHAM: No. It is after the date of termination of the contract, as I understand it.

MR. HOOVER: Well, this notice can't be given until after we give this date.

MR. CARPENTER: Is it the intent to say "that when the notice is given the compact shall terminate and no rights shall attach after the date of that notice?"

MR. HOOVER: It states here, "upon receipt of such notice this compact shall terminate."

MR. CARPENTER: Why not have it read "as of the date of notice" and not "of the date of receipt" because the receipt might be on one day with one governor and three days later by another governor, etc., and if the date of receipt is to control, it should be the date of the last to receive.

MR. HOOVER: It will be the date of the dispatch them, instead of the date of receipt.

MR. SCRUGHAM: And on the date of dispatch instead of the receipt of the notice.

MR. HOOVER: Is that agreeable then?

MR. CARPENTER: I think it is, yes.

MR. SCRUGHAM: I think Mr. Carpenter's point is well taken, it should be a definite date.

MR. HOOVER: Make it then, ten or twenty days after dispatch.

MR. SCRUGHAM: What do you suggest, Mr. Hoover?

MR. HOOVER: I would suggest ten days.

MR. SCRUGHAM: "Ten days after date of dispatch of such notice."

MR. NORVIEL: Where will we put it in? After the words "unappropriated and" -

MR. HOOVER: Yes, "ten days after dispatch of such notice."

MR. CALDWELL: I think that article should have the thought connected with it that is in Article 5; in order to think about it clearly I think it ought to be referred to. It should say "subject to the provisions of Article 5." That will probably come out in the draft.

MR. HOOVER: We have a difficult legal point here to settle. That is the difficulty of a contract with a continuing force.

MR. EMERSON: Wouldn't it be better to use the word "suspend" instead of "terminate". "Terminate" is rather a strong expression.

MR. HOOVER: That affects every subsequent clause in this memorandum.

MR. SCRUGHAM: Leave that to the attorneys when they draw up the pact.

MR. CARPENTER: The idea, I take it, is this: That up to the date fixed for the dispatch of the notice, this compact controls and is the law of the land as to all rights that may vest within each division upon the river.

MR. HOOVER: Yes, within the compact.

MR. CARPENTER: And that the compact controls those rights that are so vested thereafter and forever; but that from the day of that suspension or termination, then anything occurring thereafter must come under a new agreement or situation and this compact shall no longer apply as to such, but shall apply to all that went before.

MR. HOOVER: This compact sets up the machinery for a new compact. If the new compact ends, the rights acquired under this compact continue.

MR. CALDWELL: I may be permitted to say at this point that I would prefer that in each case where notice is given, the President of the United States be connected with it. I don't think I would stand on that, but I would like to say that I think I prefer it.

MR. HOOVER: I can visualize conditions under which the Federal Government might refuse to give the notice and it would - under that plan - take it outside of the power of the states to create the new situation. In other words, that would give the Federal Government a veto over whether a new compact could be discussed.

MR. McCLURE: Not only not desirable, but objectionable, I think.

MR. NORVIEL: My understanding of Mr. Caldwell's statement was that the President only should be notified. If the two governors notified the President and the other governors, that terminates the compact.

MR. CALDWELL: It isn't worth discussing, as far as I am concerned.

MR. SCRUGHAM: What do you mean?

MR. CALDWELL: What I mean is that what I say is not so important to me that I am going to stand on my objection.

MR. ELLERSON: I infer, Mr. Chairman - On line 6 of the copy before us, after the word "unappropriated" I would like to see an expression something like this, "or unallocated according to the provisions of this compact."

MR. HOOVER: I do not see any objection.

MR. SCRUGHAM: "Or unallocated?"

MR. HOOVER: Yes, "or unappropriated."

MR. SCRUGHAM: Is there such a word as "unallocated?"

MR. ELLERSON: It is a new coinage for this purpose.

MR. HOOVER: Say then, "unappropriated or unallocated under the terms of this compact, and ten days after dispatch." Is there any further suggestion? If not, will somebody move the adoption of this paragraph.

MR. McCLURE: I move the adoption

MR. SCRUGHAM: I second that motion.

MR. HOOVER: It has been moved and seconded that paragraph three be adopted.

"This compact shall be in force until \_\_\_\_\_ and thereafter shall continue until a notice shall be given by two governors or by one governor and the President of the United States to the other governors in the basin states of the desire for a new commission to equitably apportion the waters of the river then unappropriated or unallocated under the terms of this compact and ten days after dispatch of such notice this compact shall terminate and it shall be the duty of the governors of the several states and of the President of the United States each to make provision for representation on such commission. Such commission may be created by the mutual consent of the seven states and the Federal Government at any time."

MR. EMERSON: At any time?

MR. HOOVER: Yes.

MR. EMERSON: Tomorrow, if you wanted to.

MR. HOOVER: That is a reiteration of what all have the power to do even without specific authority. All those in favor of that paragraph please say "aye." It is carried.

The fourth paragraph reads:

"The appropriation of water shall be considered as its actual application to beneficial use and such beneficial use shall rank in priority first, to agricultural and domestic purposes; second, power, third, navigation; and appropriations shall, as a class, have preference with each division and between the two divisions in the right of use in the water in the order stated."

MR. SCRUGHAM: I am of the opinion that mining, and milling

uses are sufficiently important to include in the compact in addition to those listed. They should rank with power, and be allocated in the same grade. It is conceivable that they might become important factors in future years.

MR. HOOVER: It ought to come in so far as metallurgical uses are concerned.

MR. CALDWELL: I think, Mr. Chairman, we have left out a class of rights there which should be determined by some general clause, giving those rights some priority over navigation. That is to say, we haven't named all of the rights or of the uses to which water can be put, and a general clause ought to be put in there after "power", other uses of the water, or other beneficial uses could come in there.

MR. HOOVER: Before navigation?

MR. CALDWELL: Yes.

MR. S. B. DAVIS: What particular uses have you in mind?

MR. CALDWELL: What I have in mind is trivial in a way, of course. We have manufacturing which may consume some water, manufacturing of various things. We have milling which sometimes consumes a little water, and we have stock-watering purposes which consume a little water, an inferior amount, it is true, but I think the right should be mentioned.

MR. SCRUGHAM: They might all be classified with "domestic purposes."

MR. CALDWELL: It might be defined as such, but up our way we don't define it that way.

MR. CARPENTER: Manufacturing is considered to be synonymous with power. In the constitutions where it occurs, it is placed in an inferior classification.

MR. SCRUGHAM: Except in a mining state, where such uses are frequently placed in a superior classification.

MR. CARPENTER: I think Mr. Caldwell has in mind that border line between domestic and agricultural uses, which in my draft I termed "municipal." My terms were broad. We might say "agricultural, domestic and other similar purposes."

MR. HOOVER: You could narrow it to manufacturing purposes.

MR. CARPENTER: There will be street sprinkling, irrigation of lawns and similar uses which would come in somewhere between domestic and agriculture.

MR. SCRUGHAM: Just put in "industrial processes" to indicate what we mean. I submit that as an amendment. I move that the term "industrial processes" be included in the first classification. Such a priority would be important to the respective communities which might develop from the establishment of industries.

MR. HOOVER: If there are no objections, we will put in the words "and industrial processes" after the word "purposes."

MR. EMERSON: Why not irrigation instead of agriculture

MR. CARPENTER: Agriculture is a broader term than irrigation.

MR. HOOVER: I think we might give instructions on this point to the drafting committee. There are two points, one of which gives me a little anxiety. The intent of the first two

lines of this paragraph are to base the classifications of the water on beneficial, agricultural and domestic use, not contingent upon storage or the accumulation in reservoirs of the water. On the other hand, the wording as it stands, might jeopardize the small appropriator who takes a considerable period before he arrives at beneficial use from the date of his appropriation. In other words, the difficulty here is in terminology. And I suggest we instruct the drafting committee to work out the ideas freely along that line for us, rather than that we should attempt to work them out. Another question arises also on this, and that is the concurrent importance of certain amount of power for irrigation purposes. It should have an equal rank with agriculture itself - because much irrigation is dependent upon the use of power. If we, perhaps, leave those ideas to the drafting committee to try to work out we will get along better.

MR. CARPENTER: Navigation should be made subservient to the other uses throughout the entire basin. But, with the exception of navigation, divisional provisions will automatically care for everything else, unless it be the construction of upper reservoirs for the benefit of the lower territory. The relation of other uses should be intra-divisional, leaving the divisions themselves to work out their destinies in that respect. Power development in the upper territory for example, would naturally develop in harmony with local conditions. Whether regulations should apply to the entire basin, or be confined to divisions, is a matter for discussion. Regulations respecting agriculture

and domestic uses must be entirely intra-divisional and also involve the application of local law within each state. It is my thought to confine the preferential uses (if I may use that term) to intra-divisional matters except as to navigation, which would naturally spread all over the entire territory, upon the theory that uses above might be said to interfere with navigation below.

MR. HOOVER: Would not the power also fall in that line. I can conceive a situation where, if you had a purely intra-divisional priority, that prior rights might be established in one division and interfere with agricultural rights in another division.

MR. CARPENTER: No, with the exception of a reservoir to be constructed within the upper division for the benefit of the lower division, as at Lee's Ferry or any point below the mouth of the Green. With that exception, the agreement for delivery at Lee's Ferry automatically takes care of the upper situation and the burden is upon the upper territory to make the delivery; and in making that delivery, the burden and duty is upon the upper division, to control the uses above. The duty of delivery at Lee's Ferry automatically solves the question of claims from the lower as against the upper division. Below Lee's Ferry the problem becomes intra-divisional with respect to the lower territory.

MR. HOOVER: I want to follow Mr. Carpenter's thought a minute. We have based this compact on the division of water for

agricultural beneficial use, and we have made use of a quantitative basis. If we give to power an intra-divisional right, we endanger the whole quantitative basis of right. For instance, we have seven and a half million feet of established right under present conditions in the upper basin, based on agricultural use. Supposing that the upper basin committed itself to ten million feet of the flow for power purposes, the southern basin would have no protection, and vice-versa.

MR. CARPENTER: At first thought it sounds possible, but I am not yet prepared to answer definitely. My own thought, in that respect, is to avoid collision. More mature thought will probably clarify the whole situation.

MR. HOOVER: There is one point you made. I dislike the word "priority." "Priority" doesn't convey what we are intending to convey. What we want to convey is the meaning embraced in the word that you used.

MR. CARPENTER: "Preferential."

MR. HOOVER: "Subservient."

MR. CARPENTER: "Subservient."

MR. HOOVER: Subservient rather than prior. I think that is more the meaning that exists in your mind.

MR. CARPENTER: To follow that line of thought - to make one right inferior to another merely implies that the higher use may condemn the lower. My thought is that by the use of the word "subservient" there would be a servient right of use for power with dominant uses superior to and controlling it, in which

event the dominant estate could always come in to its own without compensating or condemning the servient interest, even though the servient use is long prior to the dominant use.

MR. NORVIEL: I think so; but there is one other thought, perhaps, before we leave this question, which occurs to me, and that is that we have placed navigation in the lowest point of uses. Navigation is controlled by the Government of the United States, and is paramount to every other right in the whole basin.

MR. HOOVER: Except by legislative action under the pact.

MR. NORVIEL: Yes, except that. And I am just wondering what some of our Congressmen may say to us when it comes up to them.

MR. HOOVER: They will say that there has been no ship able to get up the river for the last fifteen years.

MR. NORVIEL: They will say that you attempt to stabilize the flow of the river, and they may then require all of the further use of the water to cease in order to make a navigable stream. We don't know what the future may hold.

MR. CARPENTER: I would like to have the last part of Article read:  
4/"with each division" left out. See how that would sound.

MR. HOOVER: "And appropriations shall, as a class, have preference between the two divisions in the right of use in the water in the order stated." That would take the preference beyond the area within a division and would only make it interdivisional.

MR. CARPENTER: I was just suggesting that for consideration.

MR. ELMERSON: On that point of navigation, Director Davis informs me that the army engineers have given it up and refused to recommend any river improvements, so there isn't much danger of Congress resenting the removal of navigation from the field.

MR. CALDWELL: A situation, Mr. Chairman, with respect to this other matter is conceivable to me which if you don't object, I would like to point out. We want to encourage power interests in the upper division, and I would say also in the lower division. If they know they are secondary in right within a division, there might be conditions under which they would hesitate to go ahead. It is to be remembered that the irrigation development which would hinder them may not take place within 50 years. They may suppose it would take place in ten years and it may not actually take place in 50. In the meantime, if it had been developed it would have created value to pay for itself, and the country would be that much better off, whereas it is now hindered entirely by the mere fear that it may be interfered with. As it stands now power development may go ahead with absolute assurance of its priority in our division over everything,- subject only to proceedings by eminent domain.

MR. HOOVER: If you adopt that line of reasoning, that line of thought, you are going to destroy the entire priority of agriculture over power throughout the basin, because power rights are going to be fixed far earlier than agricultural rights all the way down the line.

MR. SCRUGHAM: That leaves it open to the objection, that otherwise power will limit the agricultural uses.

MR. HOOVER: That will elicit the whole agricultural opposition to the pact.

MR. CARPENTER: For illustration and to further your thought, we all agree that some great control must be placed upon the river. In order to make control effective for floods the capacity of the reservoir must be greater than the minimum annual flow of the river. Now in order to obtain repayment of the monies expended in that construction, the energy of the water must be utilized and converted into power. Flood control must be provided at an early date to avoid disaster. If built in the lower basin and the power titles are such that we, above, have to condemn them, the power monopoly would control agricultural development for all time in the upper basin. That is abhorrent to the whole theory of equitable division.

MR. HOOVER: Yes, it will go further than that because if you erect a dam at Boulder Canyon, which is both a control dam and a storage dam for conserving the high years, it will mean that at a certain season of the year, of each year probably, it will have no discharge at all. There are certain seasons of the year, especially in a period of dry years, when it would be desirable to hold the entire flow of the river for perhaps months and, if a power right had priority, it would mean that there must be a continuous discharge of the reservoir throughout the year. If the agriculture has priority then the reservoir need not be

controlled in such a fashion. Now, from the point of view of the upper states and all states it is undesirable that there should be any super power rights over that reservoir, or any other right which compels discharge of the water at such season of the year as cannot be applied to beneficial use in agriculture.

MR. CALDWELL: In Colorado have agricultural rights had this preference over power which we are now providing?

MR. CARPENTER: By the Colorado Constitution uses of water of the streams for beneficial purposes are defined in the following order; domestic, agricultural and manufacturing, and it is also said that they shall have preference in the order mentioned. Our courts have held that provision to mean, that a domestic right is a higher use, or more necessary use than agriculture. For example, when a city wishes to obtain a domestic supply it can take water even to the detriment of established agricultural rights but it must condemn those rights and pay for them. The same rule applies as between agriculture and power.

It was probably the thought of the framers of the Constitution, at least with those with whom I<sup>have</sup> conversed, that domestic uses should have a superior right. In fact, a reservation in perpetuity to such an extent that domestic requirements might take water as necessity demanded, but the courts have modified that original intention by a different interpretation of the constitutional provision. In other words, the framers of the constitution had in mind the very thing we wish to accomplish and the language in this compact should be of such a character as to clearly signify that the agricultural or domestic use is not only superior but dominant, and that the other interests or

uses are servient, and that there is in legal effect a reservation running through the entire fabric of the law respecting this basin by which the agricultural or domestic interest may later come forward and claim its own whenever it is in readiness to use the water, without compensation to the servient and inferior user.

MR. CALDWELL: Mr. Chairman, I think I see something there that may be of importance, but it isn't as yet sufficiently well developed for me to discuss it here, and it would be a waste of time for the commission. I may find an opportunity to discuss my idea with the drafting committee, or some member of it, and see if I can't develop it. I am sure that if we had proceeded on the theory up in the upper states that a power right was subservient in the sense that an irrigator may at any time interfere with it because he is an irrigator and that the power man merely produces power, we would have hindered our development in our state very very much. But if you merely say that the power is a lower order of use than agriculture and that it is subservient in the sense that it may be condemned and bought out, that would permit development.

MR. SCRUGHAM: I agree with that point of view.

MR. HOOVER: You are setting up very dangerous ground for the North in connection with the development in the South.

MR. CALDWELL: I say I am not taking this stand very strongly, but I do want to develop it and think about it.

MR. CARPENTER: To assume his line of thought, imagine for

example, a development in the lower territory, in Arizona or the Imperial Valley, that may come into being as soon as finances may be arranged and repayment of the cost assured. The people of the upper country, in the pressure for more land and for the production of more crops would be compelled to use more water and thereby to deplete the flow. Would they not find themselves, 20 years from now, in the position of having to condemn the power right at Boulder Canyon, before they could expand their agricultural development.

MR. SCRUGHAM: You are defining quantity of water for both basins.

MR. CARPENTER: That is why I say the regulation should be intra-divisional. Right on that line, the lower power development will naturally be first because of the necessity of avoiding calamity in the Imperial Valley. That power use, in turn, should not be able to reach up the river and prevent the construction of later power plants above. There should be no inter-divisional priority between the lower power and the upper power. This and other reasons lead me to believe that power control should be intra-divisional.

MR. SCRUGHAM: Inter or Intra?

MR. CARPENTER: Intra, and that the dividing line at Lee's Ferry, with the delivery of water at that point, gives to the lower territory a supply to be depended upon for power and all other purposes, and no lower river claim should attach above Lee's Ferry.

MR. SCRUGHAM: That is all right.

MR. CALDWELL: It seems very clear to me that as between the divisions it should mean just what we have been thinking all the time - that agriculture should be dominant - absolutely dominant as between the divisions.

MR. CARPENTER: In the final analysis we must leave this preferential development and utilization within the control of the states themselves.

MR. SCRUGHAM: That should be agreed upon in the pact.

MR. HOOVER: I think it reads just as strongly for interdivisional control as it docs/<sup>for</sup> intradivisional control, because I can conceive a situation where power action in the upper states in priority to agriculture may be disastrous to the lower states just as easily as I can conceive one in the lower states that may be disastrous to the upper states.

MR. SCRUGHAM: I will reserve any further discussion of this paragraph until the drafting committee have drawn up the wording intended to cover the point under discussion.

MR. HOOVER: Suppose we leave it to the drafting committee to formulate the ideas in that paragraph.

MR. SCRUGHAM: I regard this as one of the most important paragraphs of the entire pact.

MR. HOOVER: How would it do for us to adopt this paragraph provisionally, subject to revision?

MR. SCRUGHAM: I move that the paragraph be adopted, subject to revision in the final pact.

MR. CALDWELL: I move we adopt it in that form.

(Thereupon, the motion of Mr. Scrugham, having been duly seconded, the same was unanimously passed).

MR. HOOVER: Paragraph five "During the term of this compact appropriations may be made in either division with equality of right as between them, up to a total of 7,500,000 acre feet per annum, for each division. If, upon the expiration of such term, appropriations in one division shall aggregate more in quantity of water than in the other, there shall be vested in the one having the lesser appropriation a continuing and prior right to appropriate further waters until the appropriations in each division shall equal 7,500,000 acre feet."

MR. SCRUGHAM: In quantity.

MR. HOOVER: In quantity.

MR. CALDWELL: Annually.

MR. HOOVER: Yes. To clarify this let's reread this second sentence,- "If upon the expiration of this compact appropriations in one division shall aggregate more in quantity of water than in the other, there shall be vested in the one having the lesser appropriation the continuing and prior right to appropriate further waters until the appropriations in each division shall be equal but neither shall exceed 7,500,000 acre feet annually."  
(Continuing to read) "All waters in excess of such amount shall be equitably apportioned at the expiration of said period among the states by the commission to be created as above provided."

MR. SCRUGHAM: I move the adoption of that paragraph.

MR. CALDWELL: Mr. Chairman, just a word on that. The compact will provide that seventy-five million acre feet be delivered in ten years. This provides for seven million five hundred thousand acre feet annually. It may be necessary to make a distinction there so as not to get into any difficulty on the compact, because during one year, for instance, we may only get four million acre feet down the river, whereas they may claim that priority of right attaches to seven million five hundred thousand under this wording, during every year.

MR. HOOVER: The intention is to cover that with equality of right. That was the intention of those words in the beginning of the paragraph.

MR. CALDWELL: If that covers it, it is all right.

MR. HOOVER: Is there any other comment? If not, all those in favor of the paragraph as it now stands please say "aye."

(Thereupon, the motion of Mr. Scrugham, having been put to a vote, the same was unanimously carried.)

MR. CARPENTER: One moment, I beg your pardon for coming in out of order. Do I understand this to mean, Mr. Chairman, that the equality of rights mentioned in the second line of the first sentence means an equality of right as between people in the two different divisions? As far as the intra-divisional rights are concerned, it doesn't apply to them?

MR. HOOVER: It says "equality of rights as between them," referring back to either division. Of course that may be cleared up.

MR. CARPENTER: There may develop this thought; that certain development may proceed above seven million five hundred thousand at the hazard of those making such development, in which event there might be balancing as to such excess.

MR. HOOVER: That is a matter for the new commission. If anybody has invaded the excess over the apportionment he has gone into water on which the new commission might disallow him. He may have established a moral position in front of the commission, that is all.

MR. CARPENTER: I think your idea is right in that respect.

MR. HOOVER: The fifth paragraph now stands adopted as follows: "During the term of this compact appropriations may be made in either division with equality of right as between them up to a total of 7,500,000 acre feet per annum for each division. If upon the expiration of this compact appropriations in one division shall aggregate more in quantity of water than in the other, there shall be vested in the one having the lesser appropriation the continuing and prior right to appropriate further waters until the appropriations in each division shall be equal but neither shall exceed 7,500,000 acre feet annually. All waters in excess of such amount shall be equitably apportioned at the expiration of said period among the states by the commission to be created as above provided."

(Unanimously adopted)

Paragraph six. "At the expiration of the period above stated all rights to beneficial uses for agricultural and domes-

tic purposes within the limitation herein expressed shall vest and be established."

MR. SCRUGHAM: Should that be "agricultural, domestic and other purposes," or is it specifically intended that power rights shall not vest?

MR. HOOVER: We do not know what the power rights are on the river, and it was not intended here we should venture into that ground.

MR. SCRUGHAM: How about industrial processes? Should that right vest after a certain period?

MR. HOOVER: Yes, it should vest, industrial processes with agricultural and domestic purposes. Any further comment?

MR. NORVIEL: You didn't add "industrial" did you?

MR. HOOVER: We decided before to include with agricultural and domestic purposes the expression "industrial processes." Let us add after the words "domestic purposes" the words "and industrial processes."

MR. CARPENTER: It isn't the thought, I take it, that, as within any state or within any division the rights will not have established as they will have proceeded, but it is merely the thought to be expressed in this paragraph that when this time has arrived the rights then existing are fixed as to future uses.

MR. HOOVER: Yes. This paragraph 6 now reads as follows:

"At the expiration of the period above stated all rights to beneficial uses for agricultural and domestic purposes and industrial processes within the limitation herein expressed shall vest and be established."

MR. SCRUGHAM: I move the paragraph be adopted as just read.

(Thereupon, the motion of Mr. Scrugham, having been duly seconded and put to a vote, the same was unanimously passed.)

MR. HOOVER: At this time I would like to raise a point which Mr. Norviel brought out last evening regarding the inclusion of another paragraph to the effect that all present rights to beneficial use in agriculture, industrial processes and domestic purposes are hereby confirmed. The value of such a provision is purely psychological because if they are rights, they are rights, and they exist, and they are fixed now. On the other hand, the question always comes up in the mind of every possessor of such right as to whether this pact interferes with him, and we could allay any such questions by inclusion in the compact of some such provision.

MR. SCRUGHAM: In conformity with the laws of the states in which they are located. That is the understanding.

MR. HOOVER: If they are rights, they must conform to the state laws.

MR. SCRUGHAM: It would be variable of course. What would be claimed under riparian rights in California would not apply further up. How about that Mr. McKisick? California recognizes riparian rights, the other states do not. Is there any difficulty which would be brought up through such a wording as embodied in this paragraph? Water appropriation in the other states is based upon the doctrine of appropriation.

MR. MERSON: Riparian rights don't apply very much to the Colorado River.

MR. McKISICK: Of course, they do not extend beyond the California limits anyhow.

MR. MERSON: That could be a part of that same paragraph, could it not, a part of that same sentence?

MR. HOOVER: If we have the idea, the drafting committee can work it out.

GOVERNOR MECHEM: You mean to insert a new paragraph?

MR. HOOVER: Or insert an extension in this sixth paragraph so as not to disturb our number.

MR. CARPENTER: If it means confirmation of rights within the states, and does not leave an open gate, as it were, through which the states may later be brought into collision, on the presumption of something now existing, I see no objection to it. Any rights of the lower division, for example, will attach only to the quantity of water allocated to that division and are a preferred claim on the quantity of water to pass Lee's Ferry and which will flow in the Gila and other lower rivers. But we would not wish to stipulate that the present rights below could come in later and claim that they now have a servitude upon the upper river, notwithstanding and in addition to this future delivery at Lee's Ferry. We admit the psychology and think it wise, providing it is properly confined, and when you confine it, you may destroy the psychology.

MR. CALDWELL: It should be provided that the aggregate rights

so vested should not be without the limits of this compact.

MR. CARPENTER: And should attach as a preferred claim upon the water set apart to the division. For example, in the upper territory, there are present conflicts between two states which are being settled separately. Our people would not approve of a compact which would recognize existing rights thus to be settled in a different manner and by a separate compact.

MR. NORVIEL: That is the purpose I had in view, that all rights now established within the basin should remain unaffected by this compact.

MR. HOOVER: If you are going to introduce the words "now established" I think you make a limitation on it that might solve all questions now raised.

MR. CARPENTER: I hesitate to express a final opinion on any such clause, Being desirous of accomplishing the objective of psychology suggested by the Chair, suppose we adopt this clause subject to a direction to the drafting committee that they shall consider and present to us a further expression in respect to the confirmation of all established present rights.

MR. EMERSON: I think it is desirable to have that kind of a clause in. Another thought carries me back to paragraph five,- that there should be incorporated in that paragraph a definition or a stipulation that this right to make appropriations, to the extent of seven million five hundred thousand acre feet per annum, should include existing rights as well as the rights that will be established.

MR. HOOVER: Your seven million five hundred thousand is in addition to present rights?

MR. EMERSON: It is not so expressed in the present language.

MR. CARPENTER: In other words, in both territories, what we are doing is allocating enough water to take care of the now existing conditions, and future developments.

MR. HOOVER: Yes, I think that needs careful safe-guarding and drafting. We can leave that at that point, and go on to paragraph seven. "During the term of this compact the states in the upper division shall not deplete the flow of the river ( at the point of division ) below seventy-five million acre feet for any ten year period, or below a flow of four million acre feet in any one year. Provided, however, that the lower division may not require delivery of water unless it can reasonably be applied to beneficial agricultural and domestic uses; and the upper division shall not withhold any water which may not be applied within such division to beneficial agricultural and domestic use."

MR. EMERSON: Just for information, I would like to ask the opinion as to when this ten year period would start, at what time. Would it start immediately upon the adoption of the compact by the acts of the legislatures and the Congress, or will we make provision that it shall start at a certain definite time of the year? That is rather an important consideration in my mind, because the upper states could possibly make up deficiencies if the year ended at a certain time in a better manner than they could if it ended at certain other times I know of.

MR. HOOVER: What would be the most favorable situation, July or January?

MR. EMERSON: As I think of it now it would be toward the end of the flood water season and before the low water season, and our flow would be limited. That is if we have to face the conditions where we must turn an extra amount of water down we can do it better when we have reserves than we can when our water supply is depleted by nature.

MR. HOOVER: I should think it would be more suitable to the southern states, as well, to make it July, because any water after that date doesn't do them much good for storage.

MR. CARPENTER: That might be said to begin on the first day of a certain month following the final ratification.

MR. HOOVER: And it is inclusive of the nine previous years.

MR. CARPENTER: Yes, it is a progressive ten year period.

MR. NORVIEL: Mr. Chairman, I can't get away from the idea that the figures are too low. While there is in it an element of a guaranty it is lower than the lowest ten year period we have any knowledge of and it is also after the division is made, - after the whole use in the upper division is taken out and would include the total use in the lower division. In other words, it is the excess over and above what the upper states have not heretofore used, and, then, it is less than half of the lowest ten year period that has ever existed.

MR. CARPENTER: That we have any record of.

MR. NORVIEL: Yes, and I rather think that former years, if they had been measured, would have shown perhaps a worse condition, so I can't think that that is a fair division over a ten year period, nor one which gives the fullest protection.

MR. HOOVER: In our discussions yesterday we got away from the point of view of a fifty-fifty division of the water. We set up an entirely new hypothesis. That was that we make, in effect, a preliminary division pending the revision of this compact. The seven and a half million annual flow of rights are credited to the South, and seven and a half million will be credited to the North, and at some future day a revision of the distribution of the remaining water will be made or determined.

An increasing amount of water to one division will carry automatically an increase in the rights of the other basin and therefore it seemed to me that we had met the situation. This is a different conception from the fifty-fifty division we were considering in our prior discussions.

MR. NORVIEL: If this includes reconstruction of the river, then, I concede it is a more nearly fair basis. But if it does not, - if it is a division of the water to be measured at the point of demarkation, I still insist that it is not quite fair, because it is simply dividing what remains in the river.

MR. HOOVER: We are leaving the whole remaining flow of the basin for future determination.

MR. NORVIEL: What I am getting at is this: That the upper basin takes out and uses a certain amount of water, and then, as

this reads, it proposes to divide the rest of it, seven million five hundred thousand acre feet per annum.

MR. HOOVER: No.

GOVERNOR CAMPBELL: That is inclusive, Mr. Norviel.

MR. NORVIEL: It reconstructs the river?

GOVERNOR CAMPBELL: Yes, in effect, as I understand it.

MR. NORVIEL: Well, if it does that, then my objection will be removed.

MR. HOOVER: Any other comment? If not all those in favor of this clause seven as read please say "aye."

(Thereupon a vote having been taken upon the paragraph numbered 7, the same was unanimously passed.)

We will now consider paragraph 8 which reads: "The duty and burden of supplying water from the flow of the Colorado River to the Republic of Mexico shall be equally apportioned between the two divisions and deducted from the amount above stated."

MR. McCLURE: I should like to omit the words "duty and" and add after the word "burden" the words "if any." I should also like to eliminate the words "and deducted from the amount above stated."

MR. HOOVER: With Mr. McClure's suggestions paragraph 8 would read: "The burden, if any, of supplying water from the flow of the Colorado River to the Republic of Mexico shall be equally apportioned between the two divisions." Any further discussion on that section? All those in favor of that section please say "aye."

(Thereupon a vote having been taken upon the adoption of the paragraph numbered 8, the same was unanimously adopted as amended)

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Paragraph 9 reads as follows: "A technical commission shall be established which shall continuously collect data upon water consumption, water flow, etc." I might mention that paragraph contains no explanation of the machinery. I think it might be desirable to have some little discussion of this machinery so that the drafting committee may have some instructions on this point. So far as the section itself is concerned, it is simply an indication that something of this kind will have to be created. I suggest that such commission, - let us change the word "commission" to "committee", - should be comprised of the state engineers, or of the state water commissioners, together with the Director of the Reclamation Service or his delegate, and that it should be the function of that committee to secure gaugings at Leo's Ferry and to collate and prepare data annually for the instruction of the various states on the technical phases of development of the basin.

MR. CARPENTER: Your theory being, I take it, that through this instrumentality the states would proceed in units and then the units collaborate for the compilation of the final data?

MR. HOOVER: Yes, each unit would collaborate in order to make the data systematic and comprehensive.

MR. EMERSON: I would suggest the United States Geological Survey in place of the Reclamation Service as that bureau is more concerned with the measurement of water.

MR. HOOVER: On the other hand, there is a great deal of data in connection with consumption and other matters of importance that is within the purview of the Reclamation Service.

MR. NORVIEL: Under this paragraph I understand the committee is to be charged with the reconstruction work?

MR. CARPENTER: Simply to ascertain the facts.

MR. NORVIEL: What kind of facts?

MR. HOOVER: As to flow, consumption,--

MR. NORVIEL: I would like to know exactly what it means.

MR. HOOVER: The intention was that the committee should collect facts as to water consumption and water flow. It should collate the work of the different states and direct the preparation of such data as may be of use to the second commission when it assembles. In a word, we should have a careful coordination of data on the river generally and on the conditions at Lee's Ferry particularly.

MR. CARPENTER: In other words, as far as this compact is concerned, the work is for the distant future, except at Lee's Ferry, which has annual significance.

MR. HOOVER: Yes, I take it that during a long period there will be an enormous acquisition of technical data which ought to be formulated in comprehensive shape under the direction of such a committee. This would enable the reconstruction of the river in accordance with Mr. Norviel's wants. If data were available the river could be reconstructed by most anybody.

MR. CARPENTER: Your suggestion meets with hearty approval from my state. Placing these additional duties upon a department of state government already created will be looked upon with favor but the creation of anything in the line of new appointees, new commissioners, or new departments, will meet with objection.

MR. EMERSON: This committee is a clearing house for information and has no particular powers.

MR. HOOVER: Except it will make a determination of the gaugings at Lee's Ferry. I would suggest this committee should embrace both the Reclamation Service and the U. S. Geological Survey.

MR. CALDWELL: This committee would have no determining power as to the fact, it is just for the collection of data. That is what you mean?

MR. HOOVER: It will determine the fact as to the flow at Lee's Ferry, or that would be done under its direction.

MR. CALDWELL: It would have no official capacity which would bind the parties to this compact?

MR. HOOVER: No, none whatever. If that sense of the paragraph is agreeable, all those in favor of adopting it in the following form say "aye." "A technical committee shall be established which shall continuously collect data upon water consumption, water flow, etc." (Passed Unanimously)

MR. HOOVER: We now come to paragraph 10. You will recollect paragraph 10 has already been a stumbling block. It reads;-"Where water may be advantageously or economically diverted from the Colorado River in one state for use in another state, or where proper development within the basin requires that water be stored in one state for use in another state, such diversion or storage shall be permitted."

MR. CARPENTER: With the addition of the words "with previous

consent of the other states" there would be no objection to it.  
The consent of the state is usually given through its legislature.

MR. CALDWELL: Mr. Chairman, whoever drafted this article, it seems to me, may have had some specific thing in mind which, if it were stated, might help to clarify it somewhat.

MR. HOOVER: Shall we call upon Judge Sloan?

MR. SLOAN: I have had something to do with the suggestion that paragraph 10 be incorporated in the tentative draft. I conceived that the original suggested draft was wholly inadequate to cover all contingencies and I had in mind the suggestion of a line or two in addition and the reshaping to some extent of the whole article. I suggest that the Commission consider the paragraph as follows: "Where water may be advantageously or economically diverted from the Colorado River in one state for use in another state, or where proper development within the basin requires that water be stored in one state for use in another state and such diversion or storage may be made without prejudice to any beneficial use of such water that the latter state may properly make, such diversion or storage shall be permitted."

MR. CARPENTER: That leaves an open question respecting what will or will not disturb. If the consent of the servient state is first, that of itself will determine definitely.

MR. SLOAN: The objection to that, in my judgment, is that such provision would be of no effect,-- no use. I apprehend that such consent, if had, would answer every requirement of this provision, but if that consent be withheld, there would be no expression in

this compact which would make it the legal or moral obligation of the other state to grant such consent.

MR. HOOVER: Have you any specific case in mind, Judge Sloan, that will illuminate this proposal.

MR. SLOAN: Yes sir, two or three cases. Mr. Norviel will perhaps be able to illustrate those better than myself, but for instance if a dam shall be erected at or near Lee's Ferry, storage would necessarily extend into Utah very extensively. It is probably true that such storage would not interfere in the least with the proper use of the Colorado River by the State of Utah, yet, for some reason or another that consent might be withheld. The purpose of this, in respect to that particular situation, would be that there be here now expressed the consent of the State of Utah. The same is true, perhaps, at Boulder Canyon. The dam there and the storage there would be largely in the State of Nevada, while the works themselves would be partially in the state of Nevada and partially in the State of Arizona. There are two or three other places within our state that may require such consent in order to remove friction and difficulty of development in the future. Mr. Norviel could give those instances, if they are desired.

MR. CARPENTER: There are many instances that may occur in the future and of varying types, as varying as the prismatic colors and more so. Each will involve its own local and surrounding conditions and should be left to conditions as they develop. Such a provision would meet with immediate opposition I know in our

state. Our law specifically declares that no such right shall exist or be fastened upon our territory. This law was brought about by a series of unfortunate past events which the present generation has not forgotten. But, with the proper adjustment in the first instance, all possible friction may be avoided. In fact, I suggested in the draft that I submitted that no such easements should ever exist until consent had first been obtained. This was for the<sup>very</sup> purpose of carrying into effect the underlying reason for the creation of this Commission,- the establishment of a regular order of doing things and not a method of acting first and quarreling afterwards.

MR. HOOVER: Would this draft of Judge Sloan's be cured in your mind if it stated such consent should not be unreasonably withheld.

MR. CARPENTER: No, that leaves still open the question as to what is unreasonable?

MR. HOOVER: That could be determined by the courts.

MR. CARPENTER: It is for the local legislatures of the states to determine the matter of reasonableness. As said by Justice Holmes in the case of Hudson Water Company vs. McCarter, a state may have reasons that do not appear to the layman or to a technical man. And what she has, she may withhold and ask no man to reason for her will. Collision / will be invited. It may be invited by the incorporation of such a provision in this compact. These matters usually arise from a feeling of unnecessary and unusual burdens without any compensation to the areas affected.

I can imagine (but I could not seriously conceive), for example, the state of Utah arbitrarily withholding its consent to the building of a structure at Lee's Ferry, although treated equitably in the whole transaction. But it certainly would have a right to have some consideration before the consent is given. Unless the broad principle will apply over the entire drainage it appears dangerous.

MR. NORVIEL: That is the reason why I think it ought to be in this compact. Then it covers the whole basin. Just as Mr. Carpenter says to go before the legislature with a specific instance to ask for such a thing as we suggest in this paragraph, would probably meet at once with a refusal. We can see his standpoint, - seated as his state is on the top of the hill where there is no drainage into the state, all drainage out of the state, and, as he says where his state has a specific law preventing anyone from interfering beyond their state line in just such cases as this. Yet we can see perhaps how it would be better for all of the other states and wouldn't hurt Colorado if this very provision was incorporated within this pact. In fact, I think it is a very important bit of legislation that should be included in the pact and accepted. I see no reason why it should not be accepted by Colorado.

MR. EMERSON: Mr. Chairman, as long as this paragraph is mandatory as it now is by the phraseology, it wouldn't stand any possible show of being adopted by Wyoming, and would defeat the entire compact. It seems to me, the main purpose would be served,

if we adopt some plan for authorization whereby the state engineer or other proper official in any state would be authorized to consider an application for the diversion within his state although the use might be in another state, and whereby he would have the privilege of using his discretion as to whether or not the proposed use of water would be detrimental to the public welfare. Under such plan he would have discretion to act upon the application according to the interests of his state.

I have in mind the reciprocity agreement now existing between the State of Wyoming and the State of Utah, whereby either state engineer is authorized to receive applications for interstate use and to consider them upon their merits. Wyoming would not be willing to go any further. For instance, we have a series of lakes at the head of the Green river, at the very headwaters of the Colorado. The State of Wyoming would not want to be in a position whereby she would have to allow the use of those lakes as reservoir sites for the use of water upon the Snake River. I might also apply a situation we have upon the Snake River. I have, during my term of office, granted two permits for the conservation and storage of water in Wyoming for use in Idaho and I have been subjected to very considerable criticism by reason of allowing those permits. It is simply prejudice against anything of that kind. Unfortunately it does exist. So that while we might incorporate the reciprocity measure so to speak, in this compact, and authorize the proper official of any state to give fair consideration to an application, I do not believe that we can go any further. We certainly cannot agree to a mandatory

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clause.

MR. NORVIEL: Wouldn't it be better for you providing you were to remain State Engineer of Wyoming for all times, if you had such a clause as this? You would not then be subject to criticism when giving such permission.

MR. CARPENTER: The consent of a state may be granted either by specific legislation directed to one structure or one item, or it may be granted through general legislation giving to some official the right to exercise a discretion. Now, that matter will work itself out as time proceeds and the danger of coming into collision should be avoided, it seems to me, by language the very opposite of this provision and requiring that very concurrence. For example,, take Flaming Gorge Reservoir,-Mr. Norviel's state may be eliminated for the time being. The State of Wyoming might well say to the State of Utah that while the damsite is in Utah the great body of the reservoir is in Wyoming and in the matter of claim to some part of the power from that reservoir we feel we should be treated equitably; it is in part our resource. Proceeding upon the same theory the Federal Power Commission, with respect to public lands, may withhold certain lands and make certain conditions running with the grant to use these lands. Both States might wish to be considered in the distribution of financial returns, electric energy and many other items involved in the erection of a dam between here and Arizona, and it becomes merely a localized problem in which there are two states involved and it is up to those two states to work out their differences in

their own way. It is not in the power of one of the states from the North to go down and regulate the situation between Arizona and Nevada. Neither should it be within their power to come up and tell Wyoming and Utah what they shall do at Flaming Gorge, All can be handled either by specific legislation on each item or by general laws such as obtain in most states, but not in my own.

MR. NORVIEL: Let me ask a question. Suppose the engineer of this state should request of your state, Colorado, permission to go above the state line on the Animas River five miles in order to divert the unused water from the Animas River and to take it out upon certain lands that would be impossible of irrigation without such diversion. It would be necessary then to go to your legislature for a permit.

MR. CARPENTER: It would at this time, yes, but I anticipate -

MR. NORVIEL: (Interrupting) And would your state be interested enough to take the matter up, if there was any objection on the part of the State Engineer of your state to take it up and make such grant.

MR. CARPENTER: Our state would naturally give due consideration to the argument presented by the State Engineer, but to say what the legislature might or might not do would be too prophetic. This is true, Mr. Norviel, that as the comity between the states is built up rather than torn down all these things will come to pass in their proper order. We are now proceeding upon the big problem of building up a comity. The minute we get into matters of refine-

ment and detail we are getting into trouble. As comity is established, this great proof of a result of comity will grow and be encouraged in specific localities as between two or more states. I am informed, for example, that Utah would look with great favor upon the Lee's Ferry site. I am informed that the Wyoming people look with great favor upon the Flaming Gorge site. Hence, any structure put in the position of such as those would naturally meet a receptive mind, speaking legislatively, but it is up to those states, after all, to work out that individual problem, localized in its influences and its effects.

MR. HOOVER: This particular question is raised by the <sup>State</sup> of Arizona. Its relations are solely between them and the States of Utah and Nevada. I am wondering whether, if those three states were to get together and formulate something for the compact that is agreeable to them, such plan would be objectionable to the other states as long as it did not apply outside the area of those three states.

MR. CARPENTER: I would rather suggest, if these three states wish to agree, they may agree now among themselves, and submit their separate pact. Even though ultra vires at this time, if approved by their legislatures, it would become binding. But to here inject a clause for a specific case might open the door for clauses for other specific cases. I know of none at present. We have no objection (unless it is an opening of the door) to these three states agreeing on anything they may wish, so long as it does not destroy the general plan or interfere with the machinery here provided.

MR. NORVIEL: There is this point,- that if it is an agreement between the three states, then the legislatures of the three states might object to the whole pact on account of that particular clause.

MR. CARPENTER: It had better be segregated.

MR. CALDWELL: I might say I never have any objection to discussion or else I think I never could have been a member of the Colorado River Commission, but I don't see any hope for paragraph 10, nor for the pact if paragraph 10 is attached to it. There might be some reason that I can see right now why we would wish to have an article of this kind in this pact if I considered it appropriate. We are going to take the White River out of Colorado - I did not mean to tell Mr. Carpenter that,- but we have a scheme already on foot.

MR. CARPENTER: Our scouts have your every footstep marked.

MR. CALDWELL: We don't have any desire to take the White River away from Colorado regardless of any rights that Colorado may think they have.

MR. NORVIEL: If you confine your remarks to what this intends, it does not take away any right at all from the other state.

MR. CALDWELL: Well, may be I am all wrong. But anyway it would seem to me to have an application in that case. Utah does not have any desire to get power from the Flaming Gorge site, for instance, by jeopardizing or demanding any rights the State of Wyoming may have with respect to its territory in that site. Utah, I think, would be very much pleased if Arizona would build Lee's

Ferry dam and back the water up into Utah, because we think it would probably create about \$37,000,000 of value to us in the southeastern section. But notwithstanding that, I believe that I have no right as a member of the Colorado River Commission to compact upon anything more than water rights. The State Engineer is empowered to do certain things in the State of Utah with respect to water rights; he might entertain an application for water of the Colorado River to be stored in Utah, but as to the right of way for that storage I think it is entirely out of my province as a member of this Commission. Conceivably that storage site may be all privately owned and, if I understand the intent of this paragraph 10, it might give Arizona the right of condemnation at least, whereby those private citizens might be dispossessed of their property for a consideration. I am sure that the legislature would not desire such a thing as that intermixed with this pact and if any agreement is to be had on that matter it should be separately done between the states.

MR. SCRUGHAM: Between the specific states interested.

MR. CALDWELL: Outside of the pact.

MR. HOOVER: That brings up a matter which I had intended to mention this morning and perhaps this idea might be worked into it. It might be desirable in this pact to prepare the machinery for interstate discussion within divisions, or between any two states. This pact obviously does not establish any basis for action within the groups on questions which may come up between two states, and it would make for peace in the basin perhaps if we went no further than to establish the machinery. In other words, if we had a

provision in this pact by which, upon the application of any state to another state, it should be mandatory upon each to appoint a delegate for discussion, it might result in pacts that would avoid further litigation.

MR. CARPENTER: That should be stated in the negative, and some such provision as you made might be incorporated, in order to avoid necessity of legislation/<sup>in</sup>each specific case. Time, energy and expense is consumed in legislating and organizing an interstate compact commission. We have, between New Mexico and Colorado, an interstate compact commission respecting one of the interior streams of the Colorado River Basin. That required specific legislation.

MR. HOOVER: To even establish the commission.

MR. CARPENTER: The commission itself. Now if it is provided that this shall not occur except by consent and then make it mandatory that a commission be appointed, we force diplomatic relations between the states and exhaustion of that method of procedure before further action. The plan contemplated is simply this,- that upon application of one state to another, the Governor would, by virtue of confirmation of this compact, have authority to appoint commissioners. It would be obligatory on them to appoint delegates for such diplomatic discussion, but would involve no obligation of confirmation or conclusion. But they will get together and discuss the question involved. It would set up a diplomatic and arbitration relationship, and many such questions would be brought to conclusion in that way which otherwise might linger to the point of conflict.

MR. EMERSON: What would be the objection to the plan I suggested? Each state has an official now that is charged with guarding its water resources and part of his duties are to consider matters just of that kind. Right now, as I stated, Wyoming has a reciprocity agreement with Utah whereby we do consider matters of interstate diversion. There is an official now created in each state who has matters of that nature in charge. Of course I recognize the need of removal of the obstacle that now exists, as I understand, by virtue of the statute of Colorado.

MR. HOOVER: We have many states in which they do not have the relationship which this would in effect provide.

MR. EMERSON: Why wouldn't a clause be proper, then, that would permit of the consideration by each state of an application that may come from the proper official in another state upon a matter of interstate diversion and use of water?

MR. HOOVER: If you appoint a delegate to consider such application you have done that same thing.

MR. EMERSON: You are setting up additional machinery and that to my mind would not be necessary.

MR. MORVIEL: Still we wouldn't get anywhere unless we had reciprocal relations.

MR. CARPENTER: A provision of that kind in this compact, if adopted, would become the law, and it would be the law to the same degree as any reciprocal and specific legislation. In our state we have been somewhat unfortunate at times in the personnel of our State Engineers. Our legislators know such to have been the

case and they would not care to delegate a matter of this kind to any given official. Secondly, it might involve many factors upon which the State Engineer would not be informed so that, this suggestion, you have made, is much more elastic and permits the exercise of a sounder discretion in each particular instance. But reciprocal laws may be passed in the future by each legislature as they may be advised and we can not force them to pass specific legislation.

MR. HOOVER: My only thought was if you had such a machinery the revolution of that machinery would ultimately bring out recommendations to the legislatures and would carry with it a specific formulation of the problem that would expedite settlement.

MR. CARPENTER: It would be a most pronounced step in interstate relations respecting rivers. I refer to two or more states.

MR. SCRUGHAM: (Addressing the Chairman) Will you suggest a wording?

MR. HOOVER: I think this requires a little thought for formulation. What I had in mind was that in matters of dispute between any two states over questions of water supply, then upon the application of the Governor of any one of the states to the Governor of the other, a special commissioner shall be appointed by both Governors to consider and, if possible, agree upon recommendations to their respective legislatures for settlement of such questions.

MR. SCRUGHAM: Special delegates, instead of commissioners.

MR. HOOVER: Yes, special delegates is better than commissioners.

MR. CARPENTER: Disputes respecting water rights or interstate servitudes.

MR. SLOAN: Isn't the term "water rights" a little too narrow there?

MR. HOOVER: We might put in establishment of interstate water surplus, storage or diversion.

MR. NORVIEL: This reaches further than I had anticipated. The specific instance I have in mind and have had in mind is this. A group of our people in Arizona have for many years been trying to change the head of the ditch in another state and they have at times made their application for this matter and while about 90%, or between 75 and 90% of the lands are in Arizona, the others are in New Mexico, and they were simply told that they must eliminate all Arizona lands before consideration would be given to the matter at all. We have been held in that condition for a number of years and I had hoped we could have some sort of relations established in this matter that would reach throughout the basin.

MR. S. B. DAVIS: I think that is a very good reason for eliminating the article because it becomes apparent at once that the commission is trying to lay down rules applicable to only two states. I will be very glad to get together with Mr. Norviel and try to settle the matter.

MR. HOOVER: What does the commission think of the question of providing here specific machinery for consideration of interstate compacts.

MR. NORVIEL: I think there should be a paragraph of that kind written into it.

MR. HOOVER: Would that not go a long ways toward settlement of the question you have in mind?

MR. NORVIEL: If properly drafted, I think it would.

MR. HOOVER: It can be drafted in a form that makes no commitment to a state to give up anything.

MR. NORVIEL: No, the only thing to give up is to give permits/<sup>and</sup> properties the right of way or something of that kind. That is all there is to do. It isn't taking any water or water rights or anything of this kind, but a right of way.

MR. S. B. DAVIS: The difficulty comes in, that it is a change in the affirmative law of the particular state and the minute we attempt to do that we are going to have trouble with our legislatures.

MR. HOOVER: Not the thing I propose.

MR. S. B. DAVIS: No, not the thing you propose, but Mr. Norviel's idea.

MR. SCRUGHAM: I move the suggestion made by the Chairman be adopted as Paragraph 10 in place of the paragraph as now written.

MR. S. B. DAVIS: I second the motion.

MR. NORVIEL: It goes a good deal further, of course.

MR. EMERSON: The only difference between my plan and Mr. Hoover's is my plan gives the engineers a job.

MR. HOOVER: We could overcome your trouble by specifying

that they appoint the State Engineer or some other delegate.

MR. NORVIEL: In our specific case we have had the case up with the State Engineer a long time and have always been turned down flat.

MR. HOOVER: Questions may arise between California and Arizona. The least we can do is to set up a piece of machinery by which they can get together instead of fulminating in the newspapers. When brought together, there is always an inherent pressure on men to find a solution. The very fact that men are compelled to meet and discuss is a very forward step. Perhaps we could adopt this idea so far as to direct the drafting committee to formulate something for our further consideration. Would that be agreeable to you Mr. Emerson.

MR. EMERSON: Surely.

MR. HOOVER: I take it that is in substitution of Article ten.

That completes the consideration of the principles except in one particular and that is the determination of a date for the termination of this agreement. On the date question there can be much argument from the point of view that the southern states hope to enter on large development which will require large finances; it would seem to me desirable that the date should be sufficiently extended from that point of view to cover such periods. It would seem to me also there is a physical fact underneath all this, for as I pour over all the various projects proposed in the upper and lower divisions and the views of the Reclamation Service upon them, I am impressed with the fact that

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we are not likely to see the completion of even the enumerated projects before 40 and 50 years. We should have a period of complete stability during this time of development. My own inclination, therefore, and I only make that suggestion to both states is that this period should be fairly long.

MR. SCRUGHAM: In order to get the matter before the Commission I move a period of 50 years be adopted.

MR. S. B. DAVIS: I second it.

MR. NORVIEL: That is entirely too long as far as I am concerned. How about forty years?

MR. SCRUGHAM: I am willing to accept 40 years as an amendment.

MR. CARPENTER: The 50 year period would tend to equalize construction on the upper river so that there would be less shock on the stream than there would be occasioned by the hasty development forced by a shorter period.

MR. SCRUGHAM: What is the argument for a less period?

MR. NORVIEL: I feel that the lower division may fairly reach the limit that is given them in this amount of water within the period of 40 years at most, and that anything beyond that is a hazard and that the matter should be again taken up at that time.

MR. HOOVER: I would suggest this thought. If you should succeed before the period of 50 years in utilizing seven and a half million acre feet, progress will, no doubt, be such that your citizens will continue to develop and will be willing to take the hazard, especially from their knowledge of the upper basin,-

for they will realize that the water is still going to come down. This will result in what might be called some "Class B" water rights which have no immediate foundation. When, however, the new commission considers the situation there will be a moral position in favor of this class of rights.

MR. NORVIEL: We don't know how people will look at matters of that kind at that time but at this time it would be almost impossible to finance a hazardous water right.

MR. CARPENTER: You will have seventy years recorded flow at that time. You will have a forty or fifty year record, whatever the term may be, at Lee's Ferry.

MR. NORVIEL: Yes, but I see no reason for putting it off any longer.

MR. SCRUGHAM: Stability.

MR. NORVIEL: I question that stability. When you have used up all you are entitled to as a first-class water right, and then you undertake to do anything beyond that and finance it, that is an unstable situation.

MR. HOOVER: From January 1, 1923, which will soon be upon us, fifty years would take us to 1973, forty years would take us to 1963.

MR. NORVIEL: I suggest a forty year period.

MR. McCLURE: I move that June 30, 1963 be the period.

MR. NORVIEL: I second the motion.

MR. SCRUGHAM: I withdraw my motion.

MR. HOOVER: We might take a poll on this.

(Thereupon a poll having been taken upon the above and Mr. Caldwell, Mr. Carpenter and Mr. Davis having voted "no., the Chair declared the motion to have been lost.)

MR. SCRUGHAM: Now, may I substitute the motion for a fifty year period?

MR. HOOVER: Yes, we will take a vote on the fifty year period, June 30, 1973.

(Thereupon a poll having been taken upon the fifty-year period, the result was as follows: Aycs: Mr. Emerson, Mr. McClure, Mr. Carpenter, Mr. Scrugham, Mr. Davis, Mr. Caldwell. Nays: Mr. Norviel.)

You might try an even number here, 1970, and see how that will go.

MR. NORVIEL: I can't think beyond forty years.

MR. S. B. DAVIS: I think it ought to be settled.

MR. HOOVER: There is one argument in Mr. Norviel's favor. That is, there are a lot of people who will think a shorter period will mean more rapid procedure.

MR. S. B. DAVIS: I move, Mr. Chairman, that a date between the two dates already considered, be determined by the Chair and accepted by the members of the Commission.

MR. SCRUGHAM: I second the motion.

MR. CALDWELL: Mr. Chairman, this may be a matter of nothing more than psychology. The State of Arizona has kept that matter of psychology pretty continuously before us. We haven't made much of a point up our way of psychology and we have conceded the sit-

uation in Arizona, but for the matter of the modification of any agreement that we may enter into here, I have discussed with many people the period of fifty years and if fifty years can be agreed upon, it will help the matter through our legislature very much indeed, and inasmuch as there is one negative vote here to that period, perhaps that much might be conceded by Arizona,- a matter of five years if it is left to the Chairman.

MR. NORVIEL: Mr. Chairman, I think we have conceded on every point up to date. I feel we have been borne down at every stage of the game to a minimum and I don't think we should be asked to concede anything more. If we do, we are very liable to go to a point where I myself could not go before my legislature and say I am satisfied with this pact.

MR. SCRUGHAM: Would you be willing to leave it to the compact committee to recommend some definite date and later discuss it.

MR. NORVIEL: If they eliminate Mr. Carpenter and Judge Davis.

MR. HOOVER: I don't feel that there is any difference in either date. So long as it is over forty years and under fifty, it is very immaterial. I think they are worrying about a period that is somewhat immaterial. Mr. Emerson had this in mind when he voted in favor of both periods.

MR. CARPENTER: I agree with you.

MR. S. B. DAVIS: I suggest my motion be put.

MR. NORVIEL: What is the motion?

MR. S. B. DAVIS: That the Chair fix the date as between

forty or fifty years at some intermediate period. In other words, we are apparently deadlocked. Let's have arbitration.

MR. SCRUGHAM: I second the motion.

MR. HOOVER: How about you, Mr. Norviel.

MR. NORVIEL: I think the Chair has expressed himself too much.

MR. HOOVER: If left to the Chair he would obviously be obligated to make it 1968, and I wonder if Mr. Norviel wouldn't come to that.

MR. NORVIEL: Well, I have had in mind, thirty years and can't get away from it. But, in order to get together with these high-up people, I have gone up.

MR. CARPENTER: We have come down from a hundred.

MR. NORVIEL: (Addressing Governor Campbell) Do you think we can get by with that, Governor, forty-five years.

GOVERNOR CAMPBELL: I think so.

MR. NORVIEL: We will agree on forty-five years.

MR. HOOVER: Is that agreeable to everybody? (The answer was in the affirmative.) June 30, or 1st?

MR. S. B. DAVIS: Thirtieth.

MR. HOOVER: Now we have one other point, the one Mr. Emerson raised, that is as to when the ten year period calculations should have a specific beginning. I am wondering whether we could make it June 30 for that as well.

MR. EMERSON: It sounds all right to me.

MR. SCRUGHAM: I move such date be adopted.

MR. HOOVER: All those in favor of June 30 as the calculation period on the ten-year annual flow -

MR. SCRUGHAM: At the expiration of June 30.

MR. HOOVER: All those in favor of fixing the fiscal year as the year of calculation in water flow, please say "aye."

(Thereupon a vote having been taken, the motion was unanimously passed.)

MR. CARPENTER: I vote "aye" with the understanding that it may appear advisable to change the date later. I don't want it to be concluded, but it is a forward step.

MR. HOOVER: I have one other point to bring up. I think we ought to appoint a Drafting Committee and that committee should furnish us with the paragraphs as they draft them, and that the commission should meet to consider the paragraphs one by one, so that we may get along so that we may have no delay. If the Drafting Committee can get us out a preliminary draft we will probably cut it up a lot and send it back. If it is agreeable to the whole Commission, that we should have a Drafting Committee, then the question arises as to how it should be appointed.

MR. SCRUGHAM: I move that the Chairman appoint a Drafting Committee.

MR. ELLERSON: I second the motion.

(Thereupon the motion having been put to vote the same was unanimously passed.)

MR. HOOVER: I will appoint at once, Judge Davis, Judge Carpenter, Judge Sloan, Mr. McKisick, and Mr. Hamole, as a Drafting Committee.

MR. CARPENTER: I move you that it be the express wish of the Commission that the Chairman be an ex-officio member of that committee.

(Thereupon the motion of Mr. Carpenter having been duly seconded and put to vote, the same was unanimously passed.)

MR. HOOVER: We might set a date for the Drafting Committee to meet. I suggest the Drafting Committee start at 3:00 o'clock and use this room. They will have stenographic help and everything furnished to them.

Thereupon the meeting adjourned to meet again at 11:00 o'clock, A.M., Friday, November 17th.

Clarence C. Stetson,  
Executive Secretary.

NOTE: The Drafting Committee continued its work during November 17th and 18th, the Commission resuming executive sessions Sunday, November 19th, at 10:00 a.m.

The above minutes were approved at the 27th meeting of the Commission held at Santa Fe, New Mexico, Friday afternoon, November 24, 1922.

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