



## FOREWORD

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

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

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

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

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

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

April 10, 1956

Ival V. Goslin  
Engineer-Secretary



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EXPLANATION OF INDEX

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

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MINUTES OF THE

19th MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 19, 1922  
10:00 A. M.

MINUTES OF THE  
19th MEETING  
COLORADO RIVER COMMISSION

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

There were present:

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

In addition there were present:

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

The meeting was called to order by Chairman Hoover.

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

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

MR. NORVIEL: Yesterday afternoon?

CHAIRMAN HOOVER: Yes, last evening.

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

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

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

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

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

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

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

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

JUDGE SLOAN: No, I didn't.

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

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

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

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

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

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

MR. NORVIEL: I will get the record.

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

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

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

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

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

MR. SCRUGHAM: That was my understanding.

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

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

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

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

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

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

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

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

MR. NORVIEL: Now what is that notice?

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

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

CHAIRMAN HOOVER: Oh no.

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

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

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

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

CHAIRMAN HOOVER: No, you can write that in.

MR. NORVIEL: All right.

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

MR. NORVIEL: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the basis for it.

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

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

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

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

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

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

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

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

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

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

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

MR. NORVIEL: Let me hear it first.

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

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

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

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

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

CHAIRMAN HOOVER: No.

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

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

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

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

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

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

MR. DAVIS: Mr. Chairman, it seems to me after all it is useless to go back to a rehashing of all the ideas that have been expressed here in the last ten days, or trying to reascertain what the basis is on which we have been proceeding. As I understand Mr. Norviel's position so far it has been that it was up to somebody to make proposition to him which he continually rejects and frankly I have been unable to ascertain, and am unable now to know, just what is acceptable to him. It seems to me the time

has come when Mr. Norviel should do a little something constructive on his own part and should state in writing just exactly what the Arizona idea is of what Article III should be, then let us see whether or not on that basis we can work something out. Without that we are absolutely and utterly up in the air because none of us know what it is Mr. Norviel really wants. I think we

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

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

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

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

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

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

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

CHAIRMAN HOOVER: Why not dictate them right here?

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

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

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

"Whenever controversies or claims may arise between any two or more states:

(a) With respect to the waters of the Colorado River System not covered by the terms of this compact;

(b) Over the meaning or performance of any of the terms of the compact;

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: I guess you are right.

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

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

CHAIRMAN HOOVER: Yes, I think you are right about that.

Could you read in the necessary words to accomplish that?

MR. NORVIEL: There is one further thought. Clause (a) reads:

"With respect to the waters of the Colorado River System not covered by the terms of this compact."

The last paragraph reads:

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

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

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

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

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

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

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

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

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

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

MR. NORVIEL: You think this should be revamped?

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

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

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

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

MR. NORVIEL: The last clause is stricken?

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

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

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

"Should any controversy or claim arise between any two or more states (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the States affected shall, upon request of the Governor of one such State, appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected."

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

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

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

MR. HAMELE: Yes.

CHAIRMAN HOOVER: I see no objection to that.

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: I think that would help.

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

CHAIRMAN HOOVER: It means the same thing.

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

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

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

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

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

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

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

CHAIRMAN HOOVER: I think that is a better suggestion.

MR. HAMELE: "Interstate Controversies."

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

MR. DAVIS: Adjustment of differences.

CHAIRMAN HOOVER: Adjustment of interstate differences?

MR. NORVIEL: There might not be differences.

CHAIRMAN HOOVER: Why not say "Interstate Adjustments?"

Well, we will pass on that for the present:

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

#### "Article VIII

#### INTERSTATE ADJUSTMENTS.

Should any controversy or claim arise between any two or more states (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the States affected, upon request of the Governor of one such state, shall forthwith appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. CARPENTER: Future statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. EMERSON: Certain processes are now set up.

MR. DAVIS: They continue.

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

for controversy arising between two states.

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

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

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

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

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

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

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

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

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

MR. EMERSON: Yes.

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

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

"Should any controversy or claim arise between any two or more states (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as here provided; or (d) as to the construction and operation of works to be situated in two or more states or to be constructed in one state for the benefit of another state, the Governors of the states affected shall, upon request of the Governor of one such state, appoint commissioners who shall consider and adjust such claim or controversy, subject to ratification by the legislature of the States so affected.

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

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

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

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

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

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

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

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

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

MR. CARPENTER: I think you would be.

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

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

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

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

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

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

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

MR. CARPENTER: Yes.

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

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

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

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

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

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

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

CHAIRMAN HOOVER: I think it covers that point.

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: That all revolves around Lee Ferry.

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

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

JUDGE SLOAN: (Interrupting) To a mandamus suit.

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

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

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

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

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

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

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

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

MR. CARPENTER: Before you go to that wording, you might add "And the interchange of available information." "Promote the systematic determination and coordination of the facts as to flow, appropriation consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: "Collation and publication of data."

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

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

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

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

in securing" -

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

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

MR. NORVIEL: By whom?

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

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

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

## Second part

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

As we have it now:

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

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

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

CHAIRMAN HOOVER: It will have to go down anyhow.

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

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

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

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

CHAIRMAN HOOVER: Yes, that is right.

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

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

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

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

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

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

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

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

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

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

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

that situation, which is pretty difficult.

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

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

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

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

MR. NORVIEL: Which is your parts, Judge?

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

MR. NORVIEL: Just read it - your part.

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: An agreement could be made.

MR. CARPENTER: An international treaty would be --

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

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

JUDGE SLOAN: You used it.

MR. CARPENTER: So I did.

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

to Mexico to get the water as it can.

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

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

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

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

CHAIRMAN HOOVER: Yes.

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

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

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

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

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

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

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

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

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

ARTHUR P. DAVIS: Yes.

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

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

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

MR. CARPENTER: You mean for their own benefits.

CHAIRMAN HOOVER: Yes, for their own benefits.

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

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

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

CHAIRMAN HOOVER: But that we can't solve.

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

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

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

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

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

ARTHUR P. DAVIS: Just as it is now.

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

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

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

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

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

in Arizona. Isn't that so, judge?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: Our original language would cover that.

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

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

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

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

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

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

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