

MINUTES OF THE

21st MEETING

COLORADO RIVER COMMISSION

Bishop's Lodge
Santa Fe, New Mexico

November 20, 1922
10:00 A. M.

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

There were present:

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

In addition there were present:

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

The meeting was called to order by Chairman Hoover.

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

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

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

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

That is a separate obligation of the Federal Government.

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

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

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

MR. HAMELE: I think that would be appropriate.

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

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

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

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

"Article X.

INDIAN RIGHTS.

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

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

CHAIRMAN HOOVER: Have you got it there?

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

CHAIRMAN HOOVER: The article drafted by Judge Davis reads:

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: Then it would read:

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

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

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

CHAIRMAN HOOVER: Any further comment?

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: The constitutional provision is "consent."

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

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

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

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

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

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

JUDGE SLOAN: Approval is a consent too.

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

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

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

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

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

MR. HAMELE: They can.

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

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

CHAIRMAN HOOVER: Consent is not necessarily approval, though.

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

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

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

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

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

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

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

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

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

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

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

MR. DAVIS: Absolutely.

CHAIRMAN HOOVER: Otherwise is there any comment?

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

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

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

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

MR. DAVIS: No compact.

MR. NORVIEL: It goes on to the next.

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

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

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

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

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

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

MR. DAVIS: The time is indefinite.

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

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

MR. DAVIS: No, it would be, Mr. Emerson, just like an individual signing a compact. Suppose we seven were drawing up a compact for ourselves personally. Six may sign it today and the seventh one may say he would have to think it over and might not sign it for six months. Once it is signed it would be binding upon everybody.

MR. NORVILL: In the meantime might not one of these six withdraw?

JUDGE SLOAN: Yes, but with the consent of the others he may be restored.

MR. DAVIS: In other words, there is nothing binding until the seven have signed.

MR. EMERSON: Shouldn't there be some time limit? It might be possible that six legislatures would agree and sign the compact and that the seventh wouldn't. That condition shouldn't continue indefinitely whereby the seventh state possibly twenty years hence would come in.

MR. DAVIS: Anyone of the six, as you state, could withdraw up to the time that all seven have signed and Congress had approved.

CHAIRMAN HOOVER: I am desirable to have a term in there if we can help it. If you put five years in there certain members might feel that this is going to be a long delayed process.

JUDGE SLOAN: It might be a purposeful delay.

CHAIRMAN HOOVER: If there is no more comment,—

MR. EMERSON: I understand the word "approval" has been left?

CHAIRMAN HOOVER: Yes. If there are no further comments, all those in favor of that Article please say "Aye."

(Thereupon Article XII was unanimously adopted in the following form)

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

MR. NORVILL: It remains as written, - no changes?

CHIEFMAN HOOVER: No changes. The witness clause on the end reads: IN WITNESS WHEREOF, the respective commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America of which a duly certified copy shall be forwarded to the Governor of each of the signatory states."

JUDGE SLOAN: Certified by whom? The Department of State?

MR. EMERSON: Is the Governor of the State the proper custodian of records and should he therefore receive the copies on behalf of the State?

MR. CARPENTER: Mr. Emerson, in my proposed draft I requested our Executive Secretary to make inquiry of the State Department, proper departments, both as to the keeper of the archives, and second as to the language which should be used in this particular paragraph, not being fully informed myself, presuming that the State Department was, I nevertheless left the words "Department of State" out. Upon investigation he advised me that he was informed that the Department of State was the official keeper of the archives of the United States of America, as our secretaries of state are keepers of the archives in our respective states, and that it had been suggested the words "Department of State" be inserted.

MR. EMERSON: That is in the case of the United States. It just occurred to me if the proper official or proper office should not be the Secretary of State of each individual state.

MR. CARPENTER: In that event you would have to make nine copies and sign them all, or you could designate some one state, but in view of the fact that the United States has a representative on this Compact Commission participating it was thought prudent and proper to deposit the document itself in the archives of the United States.

MR. EMERSON: Well, that is no doubt proper, Mr. Carpenter. My only question was, in sending your certified copies to the states, if, in sending

them to the Governor you were sending them to the proper custodian of the records.

MR. CARPENTER: It is presumed,- I think the custom is to send all documents of the United States given a state to the Governor of that state, who in turn cares for the depositing of the document in the proper place. Am I not right, Governor? (Addressing Mr. Sloan)

MR. SLOAN: That is my understanding.

CHAIRMAN HOOVER: Any other comment?

MR. NORVIEL: I just have this observation. Suppose a Governor who receives this would have serious objection to it and retain it in his own possession and not let it go to the Secretary of State nor to the legislature either?

CHAIRMAN HOOVER: The State Department can furnish certified copies to anybody who applies.

MR. CARPENTER: The legislature of a state could introduce and pass an Act ratifying this pact even though a certified copy were not officially before it.

CHAIRMAN HOOVER: What is more, I understand this compact doesn't need the approval of the Governor.

MR. CARPENTER: It may depend in that respect somewhat upon the constitutional provisions of each state. In most states your observation is correct. It may be that in others the approval of the Governor will be required.

JUDGE SLOAN: It could be approved by resolution instead of an Act.

MR. CARPENTER: Yes, unless there is some provision in the constitution requiring the Governor to approve the resolutions of legislatures.

CHAIRMAN HOOVER: If there is no further comment, all those in favor of that clause please say "Aye."

(Thereupon the certification was unanimously adopted in the following form)

"IN WITNESS WHEREOF, the respective commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory states."

MR. MC CLURE: Mr. Chairman, may I again open a matter which is considered very vital?

CHAIRMAN HOOVER: Certainly.

MR. MC CLURE: After prolonged consultation with representatives of our State, recognizing the need of not only a legal document allocating waters to the different divisions, but the need of sympathetic political interests by the various states in securing aid for the construction of control works which shall relieve the tension of the Imperial Valley particularly, it is their insistent expressed desire that some more emphatic declaration of approval shall be made in the compact to that end first, and second, that some provision shall be inserted whereby a compact shall not be effective until such control works are provided for.

CHAIRMAN HOOVER: What are your drafts?

MR. MC CLURE: The first draft is as follows:

"It would be to the interest of the states interested in this Compact that a dam be built in Boulder Canyon and that the terms of this compact do not become effected until such dam be constructed."

Second,

"This compact shall not be effective until the United States Government shall have constructed control works on the Colorado River for the protection of Imperial Valley in the State of California and other

lands in that state, and in the State of Arizona which are subject to floods of said river, such control works to be established below said point of division and at such location as shall be selected and approved by the Secretary of the Interior. The date of the Completion of said control works shall be fixed by certification by the Secretary of the Interior to the Secretary of State of the United States and to the Secretaries of State of the signatory states."

I will state that I do not agree with the text of either of those, but I think you will all recognize the force and effect of the express desire that some more emphatic declaration be secured in the compact, if possible.

CHAIRMAN HOOVER: May I hear from some of the other commissioners on that principle? The principle is in effect that this compact shall not become effective until a flood control works have been constructed. As a matter of question of pure physical situation, there will be no development of the Colorado River until flood control has been erected. That is, the first construction that will take place on the river is flood control. It doesn't make any difference whether it is erected as a dam at Flaming Gorge if it becomes flood control, or whether Glen Canyon, Boulder Canyon or Black Canyon or where and there can be no expansion of development of the river that does not imply that first step.

MR. CARPENTER: You mean physical conditions dictate that.

CHAIRMAN HOOVER: Dictate that as the first step of any development.

MR. CARPENTER: We realize the pressure and anxiety of the people interested in promoting the early construction of the flood control reservoir in the lower canyon. We also realize that at the present moment there are various investigations proceeding under the Government of the United States which are not yet complete and in that respect it would be unwise and ill advised to select any definite location for any structure in that river. It would seem that the instrumentality that will be in position to build

such a structure will be the United States of America by reason of its opportunity to secure adequate funds at an early date, but to predicate this whole compact upon the building of such a structure does not meet with favor, insofar as I am advised, within the upper states; not with the idea of attempting the construction, which we wish to facilitate, - we wish to hasten, - but in attempting to make it a condition precedent to operation of this compact it may result in the defeating not only of the compact but the early construction of the structure itself and it seems to me unwise and untimely and dangerous to the very adoption of this compact to incorporate any such provision.

I have previously stated that I see no objection to a general resolution, aside from the compact, (expressing my view at least) that the construction of flood control works somewhere for the protection of that lower country should proceed with all due dispatch, but to incorporate that as a condition precedent within this compact is something that I for my part would not care to consent to.

CHAIRMAN HOOVER: Mr. Carpenter, if you will allow me to become a Californian a minute instead of a Chairman, I would like to present one phase of this which we have never considered and it is, I think, the crux of the anxiety of the people in the lower river. At the present moment they are taking the whole of the low water flow of the Colorado River into their diversion. They feel that this pact will destroy any rights which they have for the maintenance of that minimum flow; that pending the period when storage is erected and there is protection for an even flow of water, there is here an inter-regnum by which they are deprived of any rights they might have as against the Upper Basin to maintain the present flow of water. In other words, if this pact should be ten years delayed, or five years delayed, - if the construction should be also delayed of adequate storage or control works, there would be a period in

which the beneficial use of water might be extended in the Upper Basin or in any other part of the Basin to the prejudice of their present rights and they would be helpless to secure even the maintenance of the amount of water they now receive, which is inadequate for their supply.

I think that is the crux of their entire anxiety and I believe they have there a temporary situation that warrants consideration. I agree with you as to the extreme difficulty of predicating a compact on any kind of engineering construction. The difficulty of stating where and when and at what time a legal enforcement becomes dependent on the progress of construction. It would be difficult, for instance, to date it at a date when appropriations were made by Congress. One cannot assume Congress necessarily must construct it. It might be private construction. You couldn't state at the date construction work began because that might be

When you come to stating it must be at the completion of construction you must define what construction and how much and when you begin to define what flood control may mean by way of engineering construction you are in a thousand difficulties because of disputes as to proportion of flood control, etc., etc., but on the other hand the point as to denuding them of their right of relief to maintain a flow of water pending the relief in other directions seems to me worth serious consideration, whether they could be accomplished by some provision that they should not be deprived of the right of a minimum flow of water which they now receive.

MR. CARPENTER: That right under the very decision upon which they predicate their reasoning carries with it more than an obligation on the states of origin. It carries a heavy obligation on the beneficiary states below to make provision, at least, reasonable provision, for the storage of water that passes so that that phase comports with the idea of leaving that matter entirely within the keeping of the people themselves. But I agree

with you that it is a matter that should be discussed fairly and frankly as any other matter that has come before this committee. It is the thought of all of us that any possible diminution that may take place within the upper territory in the near future will be negligible with respect to the present minimum flow of the river. In my own state the last and lowest great structure that can go in on the Grand River, which is the Colorado now, has already been completed and is in operation, which is the Grand Valley Canal, built by the Reclamation Service. Physical limitations prohibit the building of anything lower. The same is true on the lesser streams. If the time is ripe for the building of large works at all at any time in the future, the conditions in the lower valley will probably dictate that it is most prudent to build those structures below. But if we interweave in this compact the idea of predicating it upon flood control someplace, I am free to say that many earnest advocates of construction first and wholly upon the headwaters will immediately enter the arena and present very persuasive arguments in behalf of their plan of development.

CHAIRMAN HOOVER: My proposition only leads to this extent. That nothing in this compact shall deprive the people in the lower Basin of the present minimum flow.

MR. CARPENTER: We wouldn't care to agree to that. They are letting millions of feet rush by unused.

MR. DAVIS: Wouldn't the 4,000,000 minimum in the compact take care of those?

CHAIRMAN HOOVER: No, because that doesn't take care of the situation of minimum flow in the short season. They are entirely dependent on short season flow. 4,000,000 might be entirely satisfy one months flow of the flood and at the same time denude them of their current supply. I don't see, - and I am not speaking as Chairman now, I don't see that the upper

states or any other of the states would be damaged by a provision that the minimum flow of the river, say over the last five years, should not be decreased because the erection of any form of storage will immediately protect the upper states as to maintaining that flow.

MR. DAVIS: It seems to me if they have the right there to any kind of a flow we are not affecting those rights by this pact anyway.

CHAIRMAN HOOVER: I think seriously you are.

MR. DAVIS: I don't think we would have the right to do it.

CHAIRMAN HOOVER: Well, an equitable division of the river between the two basins would seem to me to inhibit them from bringing an action in the courts against the upper states for such continued development as might affect their minimum flow.

MR. NORVIEL: Mr. Chairman, listening to Mr. Carpenter's observations, recognizing the necessity of some control at the river, and having in mind too the California view as nearly as I understand it, I agree with Mr. Carpenter in part that we should not incorporate in this compact any definite statement of where the control should be, but I do think, and have thought all along, that this compact should contain some recognition of this necessity, as Mr. Carpenter suggested, therefore I offer this statement to follow the preamble, whether in another clause of another article, it makes no difference.

MR. MC CLURE: May we hear from the other northern states?

CHAIRMAN HOOVER: What do you think, Mr. Caldwell:

MR. CALDWELL: I have been listening to the discussion with a very great deal of interest, Mr. Chairman. If you want my impression at this time, it is this. I noticed in the draft that was read by Mr. McClure they considered it very important, the Imperial Valley people consider it very important that they have the sympathetic co-operation of the signatory

states. I have made the remark a good many times since coming to this meeting that I think it is very necessary that they have the sympathetic co-operations of the states, not only necessary for them, but it is necessary for us, for all of the states are going to progress as we should and as we are entitled to progress. I think that I can say, so far as I know the temper of the people I have met from the northern states, that they are very willing and very anxious to bring about some condition whereby the river may be controlled directly for the advantage of the lower river, and secondarily perhaps for all of the river, and I believe that a compact written so it will specifically declare for any one specific project for the control of the river or any one specific plan that anyone may have for the control of the river, will bring from the upper states the most sympathetic cooperation with the lower states in the construction of such works as are necessary to control the river. I am quite sure that if the compact is limited to a question of control of the river at some point, and until the control is had at some point, that it would be very difficult to get it past the legislatures that I am more familiar with. I also believe that such a clause as that would probably hinder the compact so far as the congress of the United States is concerned. So far as my inclination goes at the present time there are some government agencies that are disagreeing on the proper way to control the river. The people on the outside are divided into ever so many groups as to how the river should be controlled and if we by this compact stir up an argument as to what the plan of development shall be, it will endanger the compact.

It is entirely conceivable in my mind that there may be pending in congress at the same time this compact and a bill providing for some development of the river and on the bill there may be perfectly honest differences of opinion, some for and some against it, some wishing to have

the bill modified, some wishing to have it modified one way and some another. I can conceive that proponents of the bill as it may be presented would even attack the passage of a compact if they could not have their bill passed as they concede it should be passed. To my mind there are a great many dangers surrounding the injection into this compact of any measure which confines the means of getting together and protecting the people on this river. I may add that so far as the state of Utah is concerned - she is very seriously concerned, honestly concerned - with the protection of the lower river I am not authorized in any way by any act of legislature or by any instruction to me from any representative citizens or the governor, to enter into a discussion of the plan whereby the river shall be developed.

CHAIRMAN HOOVER: Mr. Emerson?

MR. EMERSON: Upon the two features that are brought up for consideration by this presentation by Mr. McClure I can pass upon the one rather definitely and finally I believe right now and that is in regard to the endorsement by this commission of any special project. I cannot conceive that Wyoming would agree to anything of that nature. The other factor appears to be as to whether or not this compact should be based as to operation in time upon the provision for certain storage. From my viewpoint there is decided objection to any provision of that kind. In the first place, it will make the matter rather indefinite, as outlined by the chair, in that it would be difficult to set any time for the enforcement of the compact. The question would arise as to whether it should be an appropriation by Congress, the starting of construction, the completion of construction, or what not, but generally in this connection it again comes to my mind that the lower states by their repeated commitments are impressed with the great importance of their own situation. I have attended meetings at Riverside, San Diego, Los Angeles and other points at which there has been more or less of a discussion among

themselves of the lower states of the pressing importance of their own problems. The upper states are well impressed with the need for relief in certain ways upon the lower river, but we certainly are not going to lose sight of the importance of our interests upon the other side. Through this compact we will be able to give our active and strong support to any proper plan of relief in the lower basin, not through the particular commitments as to special projects, but that this compact will remove from our minds the fear that there will be improper interference with the reasonable development of one of our greatest natural resources, a development to which we think we are fully entitled.

Now I would like to refer again in this connection to the Wyoming-Colorado case. This was accepted with great gusto by the lower states as a great point in their favor and the representative of the Imperial Valley shortly after his arrival assured me that they could go right up to Wyoming and stop any further development up there. Anyone that knows the Wyoming-Colorado case I think will come to the conclusion that that is not altogether true. While I am not a lawyer, I have had enough practical experience so far with that case to know that in reality it is more against the interests of the lower states in respect to low water flow than it is for it. Wyoming certainly would not want to make any guarantee as to the maintenance of any lower water flow for any year over any period of years. Great volumes of water rush by the Imperial headgate every year unconcerned and there appears no good reason why the upper states should be restricted in development by reason of suitable storage upon the lower river. The Supreme Court decision surely places the burden of a reasonable storage of water upon the lower division, irrespective of whether it is junior or senior to rights above. It appealed to me that in our discussion last night the present clause as entered into the article on purposes was broad

enough to take care of the situation.

We are treating a great problem here in a broad and comprehensive way and I do not believe it is our function to go to any material expense in commitment as to special projects or special problems upon any section of this river, but rather confine ourselves to broad interests on the river as a whole. I was inclined to object to the clause concerning flood protection yesterday, but I can see that that might have a very proper part in our purposes so long as it does not confine itself to particular projects.

At the present time I cannot conceive Wyoming committing itself to the endorsement of the special projects and special problems of others, while we have very important problems and interests of our own upon which we might also ask a commitment.

CHAIRMAN HOOVER: Mr. Scrugham?

MR. SCRUGHAM: In view of the very copious comment already made on the subject I think we are wasting time to discuss it any further. The upper states apparently do not wish to endorse any further endorsement of the lower canyon development. A separate resolution I think would be quite appropriate to be presented after the compact is disposed of.

CHAIRMAN HOOVER: Well I think it is apparent the upper states do not care to endorse any kind of an engineering project in the compact, or make the compact conditional upon it. On the other hand, there is another phase of it which I had raised and I have written out here something that covers that phase: "Nothing in this compact shall limit the legal rights of any state in the lower basin to maintain a minimum flow of the Colorado River during the low water season at an average of the past 5 years, measured at Laguna Dam." Now this is not a guarantee, it just simply does not deprive them of such right as they may have to secure that minimum flow. It is not dependent upon construction. It is obvious that the minute there

average of the river that minimum flow will be maintained without any legal action.

MR. CALDWELL: Off hand it seems very reasonable to me Mr. Chairman.

CHAIRMAN HOOVER: It simply does not put them in a position where they are deprived of a right which they today possess.

MR. DAVIS: I wouldn't object to a declaration that we were not effecting whatever legal right the Imperial Valley or any state may have. I don't know that I exactly like that language because that language rather implies there is a legal right to maintain that flow at an average of what it has been in the past 5 years. I would not object to recognizing whatever rights they have.

MR. CARPENTER: Of course there should be no further encroachments below either.

CHAIRMAN HOOVER: Of course I have been thinking along the lines of Judge Davis. This is not a deprivation of any rights which they possess.

MR. EMERSON: Now, Mr. Chairman, if such a clause as that would satisfy the lower states, it might be seriously considered but if we consider such a thing and it is still not satisfactory to them and they want to go further than that I would feel inclined to object to it.

MR. CARPENTER: That clause should terminate some place, it shouldn't be a sort of Damocles over the river from now to eternity. There are many objections that might be raised.

MR. EMERSON: Coming back to the point, you are giving special consideration to the lower river valley.

CHAIRMAN HOOVER: We are giving a great deal of consideration to the problems in each locality.

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MR. EMERSON: Yes, but you are not, as a whole, applying yourselves so especially to special problems. I want to state again it makes considerable difference in my mind whether we go that far, - far enough to satisfy them or not.

MR. HOOVER: Judge Davis, how would you frame such a thing?

MR. DAVIS: Well, I would have to have a few minutes to do it, - a little time to do it, - I don't know that I could do it right off hand.

MR. HOOVER: Someone has suggested such a right as that based on certain storage construction, and it might be possible to make it wide open, - that nothing in this compact should limit any state in the lower basin to maintain its rights in the flow of the Colorado River at low water, - in existing rights, but that such rights shall not be asserted if and when a minimum of six million acre feet of storage has been provided on the main stem of the Colorado River.

MR. DAVIS: My general idea would be to say nothing more than, - I am not trying to dictate, now, whatever legal rights have vested in the flow of the river in the lower division are not excluded by this pact.

MR. CARPENTER: Then the compact is useless because rights have vested in Boulder Canyon.

MR. DAVIS: I said I was not trying to dictate.

MR. HOOVER: One practical result, unless these people are given some protection, that they will suspend confirmation of this compact until such time as they do have such assurance. We will get back action of the whole process. In other words, if they are deprived of their rights that they now have, they will suspend action --

MR. DAVIS: To which I will say we are not depriving them of those rights.

MR. CARPENTER: On the other hand, you have got five or six above.

MR. CALDWELL: I understand your statement referred only to the lower water rights, the Imperial Valley.

MR. HOOVER: Yes, you can limit it to present appropriations to get away from Mr. Carpenter's objection.

MR. EMERSON: Mr. McClure do you think such a clause would remove the objections of the people you represent, on that phase anyway?

MR. MC CLURE: It would on that phase perhaps, but I still very earnestly request a postponement of the subject until we have an assurance,-

MR. CALDWELL: Of course, the fact is we may not be able to satisfy our people, or my people,- we have got to satisfy ourselves here as to what we will do. Personally, I am willing to come to some conclusion for the people that I represent.

MR. MC CLURE: I should like to inquire if we may anticipate such a resolution as Mr. Carpenter mentioned.

MR. CALDWELL: I didn't understand Mr. Carpenter mentioned a resolution, or proposed a resolution.

MR. MC CLURE: I think he used the words "resolution outside of the pact."

MR. CARPENTER: Resolution outside of the pact.

MR. MC CLURE: That is what I referred to.

MR. CARPENTER: It would be, of course, much the type mentioned by the Chairman in his remarks, but could deal with matters even more specifically than the compact would, because it would not require ratification of the legislatures. For my own part, so far as the river control is concerned, - so far as my own state is concerned, it is a matter of indifference to us where the structures are put, or by whom built, so long as we get results; that is true in respect to all the lower river structures. If, however, we are to enter upon a program of suspension of the contract

until storage works are built, we must have in the compact that the storage works be built either in the upper or lower division. There will probably be a demand to spread the construction over all of the area, - something we have had to contend with in our own country. It is said by eminent engineers that they can build flood control structures for the Colorado River more economically and with more effectiveness by building all reservoirs in the upper territory, and they argue with great force and with great persuasiveness. It has been my thought that we should proceed to stem the tide, and I am willing to forego the arguments of those men and resolve that the structures be put on the lower river, some place, where I care not and by whom I care not, so long as they are done speedily and effectively.

MR. NORVIEL: Do I gather from your statements you are willing to recognize the necessity of a control in the lower river to protect the valleys along the lower river from flood menace, and also to protect them in their further development?

MR. CARPENTER: I am willing to recognize broadly the necessity for flood control on the whole river. I am willing to yield, in a resolution, but not by compact, immediate construction of reservoirs above in order to facilitate the construction of reservoirs below, but if it has to come as a matter in the compact, then I must insist that the matter of reservoir construction be distributed over the entire basin, because when it becomes a matter of compact it must go back to the legislatures of these several states for ratification. I am personally willing to make a resolution taking more responsibility than it would be wise to incorporate in the compact.

MR. NORVIEL: But you go further than my question. My question was are you willing to recognize the necessity of flood control of the lower river, - just merely that. I understood you to say it mattered not to you where the control was.

MR. CARPENTER: Why yes, as a part of the whole problem, yes.

MR. NORVIEL: Are you willing to express that in the compact?

MR. CARPENTER: It is already expressed.

MR. NORVIEL: Where?

MR. CARPENTER: In the purposes.

MR. EMERSON: Mr. Chairman, it seems to me the lower states keep coming back for a consideration of some further concessions, you might say, from the upper states. We have had an agreement on one point, very definitely stipulated in plain English, and when we come to write the compact finally, we have to have a reconsideration of it and a further concession from us to the lower states, and we now have more this morning. I believe they ought to come in and finish their requests. If we grant this and that it looks as though we might continue to make concessions on additional matters before we reach the final agreement.

MR. CARPENTER: Mr. Chairman, I don't feel that any matter of this kind is improper before this commission. It should be taken up and discussed, but I do feel most earnestly that it should not have this effect, - because we take up and discuss those matters, there should be a penalty then placed upon us by which, at the last, we are forced to jam things through hurriedly. I am willing, so far as I am concerned, to stay as long as we are required to do a rounded out and completed task, but I have a feeling that some of the members are getting restive, and if we take these matters up and discuss them it brings us nearer the day when that spirit of impatience may maintain. I am willing to say that I am willing to stay and be as patient as occasion requires for an indefinite period, but I don't want the rest of us to have that visited as a penalty upon us. I don't say that in any other spirit than the utmost good will.

MR. EMERSON: I wish to maintain my point, - it seems to me the

time has about approached when new matter should be presented, or not at all, because every time these matters come up there is not the greatest amount of harmony, and if we allow that course to continue, - it seems to me that they should get their new matter before us.

MR. HOOVER: I sympathize with that, but on the other hand, one must take account of the human factors which flow around any matters coming up as the pact develops, - it brings up these new matters which we will have to take up and dispose of.

I would like to suggest, on this point, Mr. McClure, that Judge Davis should draft something on the legal side; that perhaps it might be possible to meet the intrinsic points and not deprive them of their legal rights below, which could not develop, of course, until the pact was more or less formulated, and therefore were not possible of discussion. I have drafted a little clause here which might be worth consideration and satisfy that difficulty. That is the only way we can get it before the Commission, is to get it down on paper, and perhaps if Judge Davis might draft something, we might take Judge Davis' draft and something of this kind, - in discussion, and see if we have not a possible basis, and if you like we might limit our discussions to those propositions, and not consider any further new matters at present.

MR. EMERSON: I think that would be wise. There is danger, as I see it, of creating quite a little feeling in these new matters, and it is not in the interest of harmony to have them arise.

MR. NORVIEL: Mr. Chairman, there comes to me this thought, and I am wondering if we have been thinking in two different ways, the upper and lower basins, and the result of that thought is whether or not there is objection, - there will be objection, by the upper basin states, to a control of the river in the lower part of the river. I didn't so understand

from the explanations that were given by the representatives of the upper states, and yet it seems to me the thought comes that they want the control of the lower river, - controlled some place in the upper basin.

MR. CALDWELL: Mr. Chairman, as for me I would like to dissent for myself of that view.

MR. CARPENTER: It is not desired that the control be placed in the upper basin in this compact. Our upper development will have to take the hazards you do. But if it is stated in the compact where the control is to be placed you merely open the question for the onslaught of arguments.

MR. NORVIEL: Then we arrive at this point, - it is the basins, - it is the lower basin that is in dire necessity of control of the river, both from protection from floods and further development, and with that idea it seems to me that, - suppose the lower river control should be assumed by the upper states, and they refuse to build such control works in the upper states, or allow us to, the compact is of no value.

MR. MC CLURE: I don't get any such attitude in the minds of the upper states.

MR. NORVIEL: I thought they had reached the conclusion that they were willing to recognize the necessity of flood control.

MR. CARPENTER: I told you that, speaking for myself, I was willing to concur in a resolution to be based on the urgent early necessity of flood control for the lower river, I don't care where it is, or by whom built so long as the object is accomplished, but that I didn't see the necessity for injecting anything in the compact as to where it is to be placed, I think it unwise and imprudent to do it.

MR. NORVIEL: Would you be willing to put it in plain words that we recognize the necessity of early control of the lower river?

MR. CARPENTER: I thought it was in there now, - in the purposes.

MR. NORVIEL: I don't think so —

MR. CARPENTER: In article I, Purposes:

"The major purpose of this compact is to provide for the equitable division and apportionment of the use of the waters of the Colorado River System to establish the relative importance of different beneficial uses of water and make provision for settlement of future controversies among the seven states signatory to this compact in order to promote interstate comity by removing causes of present and future controversies between them, and thus to assure the expeditious agricultural and industrial development of the Colorado River Basin through the storage of its waters and the early protection of lives and property in the lower part of the Basin from floods.**"

MR. CALDWELL: Mr. Chairman, I would like to submit a draft of Article I, Purposes, which covers, in a way that I think we could agree to, the matter of protection from floods, that may be satisfactory to all demands:

"Article I.

Purposes.

The major purposes of this compact are (a) to provide for the equitable division and apportionment of the use of the waters of the Colorado River System among the seven states signatory to this compact; (b) to promote interstate comity by removing causes of, and for present and future controversies among and between them; (c) to assure the expeditious agricultural and industrial development of the Colorado River Basin through storage of its waters and early protection within the Basin against menacing and damaging floods. To these ends the Basin is divided into two divisions and an apportionment of the use of the waters made to each of them with provision that at a subsequent time a further equitable apportionment of the use of the remaining unappropriated waters may be made to correct the inequity that cannot now be foreseen; and the relative importance of different beneficial uses may be established and provision made for settlement

of future controversies."

MR. HOOVER: This includes very much the statement that we had last night. The whole point before the Commission, however, is whether some provision can be put in the compact that maintains the present rights in the minimum flow of the lower basin, or as an alternative makes the obligations of the compact dependent upon some sort of river control. I would like to have Judge Davis draft something in regard to the legal phase, and Mr. McClure may then, I think, with the consent of all of us, raise the question again properly, but for the moment I propose that it be passed over, with the discussion we have had, and wait for something more definite, Mr. McClure, until after he has had an opportunity to formulate something.

MR. DAVIS: I would be glad to try to frame something along that line, but I would like a little time to do it in.

MR. HOOVER: Is that satisfactory Mr. McClure?

MR. MC CLURE: It is satisfactory.

MR. HOOVER: I think we can dismiss that for the present then. And I would suggest that we take up the question of Article III and Article IV, and I should like to make this plain statement with regard thereto. I think we can look at the matter in this way: We agreed to the basis or principles of these two articles. Mr. Norviel found he had misunderstood the basis or foundation for that agreement, and has felt that it is necessary for him to ask for the entire revision of certain portions of those two articles; that we have to start practically afresh on that subject. It is obvious that no compact here is possible without unanimity of agreement, and that without going into the reasons for the development of that agreement, or the figures lying behind, or basis of compromise by which we arrived at it, we may as well get to the main issues, and I

understand Mr. McClure and his colleagues have suggested some alterations, and I think we might make better progress if we got to an immediate consideration of those matters. I would like to suggest, if I may, that one of the first things we turn our attention to is a consideration of the method of handling these particular questions, and a discussion as to the relative prospects of the upper and lower basin, - the relative requirements in figures. At one time we revolved around the problem of a fifty-fifty division. We finally reached, in effect, this general conclusion as to the form of the compact, and that was that none of the figures and data in our possession, or within the possibility of possession at this time were sufficient upon which we could make an equitable division of the waters of the Colorado River, - -

MR. MC CLURE: In perpetuity.

MR. HOOVER: In perpetuity, - that we, therefore, came to this basis, not perhaps expressed by a general concensus of opinion, that there should be made by us a preliminary division to be followed by a revision at some subsequent date, - not a revision as to the preliminary quantity, just a renewed or further equitable division. That we make now, for lack of a better word I may call a temporary equitable division, reserving a certain portion of the flow of the river to the hands of those men who may come after us, possessed of a far greater fund of information; that they can make a further division of the river at such a time, and in the meantime we shall take such means at this moment to protect the rights of either basin as will assure the continued development of the river. I think that is the area within which we are endeavoring to find a solution.

MR. NORVIEL: Mr. Chairman, that is practically what I have had in mind in this method of a draft of the compact, and reference has been made to my misunderstanding, and it must have been my misunderstanding of the arguments carried on here, because I went immediately to my room after the

meeting and made a draft of a compact as I understood the agreements here, and when I submitted that draft it did not agree at all with that which was brought in, and the basis, I may say, upon which we are laying the foundation for this division was a tabulation made by Mr. Davis, which left out of consideration the Gila and the Little Colorado rivers in our state, but only included the proposed irrigation from the stem of the Colorado itself, and the best data that we could use, I take it, is that furnished by the Reclamation Service. A revision of this table has been made to include the omission of the Little Colorado and the Gila in the State of Arizona, and taking the revised table, and basing the needs of the lower basin and the needs of the upper basin upon the best known information that we have makes a division of the reconstructed river in the upper division 44.5 less per cent, and in the lower division 55.5 plus per cent. Now if the division can be constructed upon that basis, or with that in view, we will be very glad to give it due consideration.

MR. DAVIS: I understood, Mr. Chairman, that Mr. Norviel would have something definite in writing to submit today. May I ask if it has been prepared?

MR. NORVIEL: No.

MR. DAVIS: Is it not possible for you to prepare something definite for our consideration?

MR. NORVIEL: Judge, I fear not. I could prepare it, but I feel it would not be given consideration. I suggest that the upper states submit something.

MR. DAVIS: So far as I am concerned I would rather have something come from the other side.

MR. NORVIEL: I suggest the statements of the chairman be reduced to a definite form, if it is alright.

MR. CARPENTER: Do I understand that table is reconstructed to include the Little Colorado and the Gila?

DIRECTOR DAVIS: This table was constructed by me last night.

MR. HOOVER: Your conclusion is that including the Gila and the Little Colorado, that the southern basin, for its present and prospective projects, as you view them, require seven million six hundred and eighty thousand feet?

DIRECTOR DAVIS: In the aggregate.

MR. HOOVER: And of course we do get into the realm of figures again, and I was suggesting to Mr. Norviel that our best method of finding a solution is to figure out equities that satisfy the majority, and that we arrive at what is, as I have stated, a temporary method that will satisfy the needs of both sides, and that we throw the greater emphasis on the future than we have on the past. It does appear to me that Mr. Norviel's figures have raised the percentage somewhat.

MR. NORVIEL: Pardon me, they are not my figures. I simply worked out the percentage from these figures.

MR. HOOVER: Governor Scrugham has been giving a great deal of thought to this, and he has suggested two or three methods of approach.

"1. Permanently appropriate to each division 7,500,000 acre feet beneficial consumptive use, by the present compact, same to cover present acreage as well as future development.

"2. That both divisions proceed with their development until one of the divisions reaches a total consumptive beneficial use of 8,500,000 acre feet (including the present and future development), with the understanding that rights vest to all additional development in excess of 7,500,000 acre feet in each division up to the time of the call, but in no event to exceed a total of 8,500,000 acre feet in either division.

"3. No provision to be made in this compact for equalizing between the

two divisions when the maximum of 8,500,000 acre feet has been reached in one division, the one having the lesser development to be left to present its claims for any difference in amount of development (in excess of 7,500,000 acre feet) to the new commission in its allocation of the remaining waters of the river."

Again that is a variation on the matters of maximums. And still another:

"1. Block of 7,500,000 acre feet to be allocated in perpetuity to both upper and lower. In addition title may vest in lower basin to one million acre feet additional consumptive use, at which time another conference may be called by either party to allocate any unappropriated waters up to the limit required. No waters shall be withheld or diverted except for beneficial use."

Now, one of the fundamental things in safeguarding the proper normal development of the basin is the principle of what we have designated, for lack of a better term, equation. I think that principle is proper because, if we did not have it, we simply would have a race between the upper basin and lower basin for accumulation of appropriation rights. And if we can decide on the principles first, that we thrust the equitable division of the river on some future period, second, that we temporarily establish some basis of maximum and, third, that we establish the principle of equation, we reduce the entire problem to one, i. e., the solution of the maximum. That brings within those three problems, - that these three problems are variations of the maximum. There is still another device that might be worth consideration, that we maintain, first, the principle of throwing the fundamental equity of the division upon the future; second, that we maintain the principle of equation, and, third, that we make the time when equation takes place such a time as may be demanded by either basin and thus avoid the notation of any figures of the maximum. In other words -

MR. CARPENTER: Which involves the contest of speed.

MR. HOOVER: No. If I might state it in another form, - that appropriations may continue unrestricted in either basin until such a time as one basin or the other may claim a further equitable division of the waters of the river, but at the moment when that notice is given there is automatically an equation between the two basins and that equation absorbs appropriated waters and the unappropriated waters are to be considered as a surplus over and above that equation. Now, the weakness of that idea is that the southern basin might claim an equation within a few months, and, therefore, fix the northern basin at that figure, and an equitable division on that foundation, and such a formula as that will require a time period. In other words, suppose you say that at any time after the end of thirty years, - that we have thirty years of unrestricted development and appropriation in each basin, and that at any time after that date either basin may claim an equation of acre feet and a further equitable division. That avoids the notation of any figures of maximum to either basin.

MR. CARPENTER: Then we have three suggestions before us?

MR. HOOVER: You have about four.

MR. CARPENTER: Yes, four.

MR. SCRUGHAM: Would it be proper to have these referred to the drafting committee to work something out?

MR. DAVIS: I would like to know, as a preliminary matter, if say of the four are acceptable in principle to the southern division?

MR. MC CLURE: We do not maintain that they are of sufficient definiteness to be accepted at this time.

MR. EMERSON: If we could have this note written up of the last address of the Chairman, -

MR. HOOVER: Probably it could be gotten up in a much more reduced form

than that. I do think if I might suggest that the southern basin having asked for the alterations of the basis in which there was an agreement does owe a slight obligation to the upper basin to make the proposed change in that proposition. I do not think I am too insistent or too hard on the southern basin in view of the fact that we thought we have come to an agreement that they should make the proposed change.

MR. MC CLURE: I think, Mr. Chairman, that all of the commissioners present feel that rather than have nothing come from our meetings, such consideration had better be given - not necessarily for me to particularize why I feel compelled to present matters as I have this morning for the record.

MR. CARPENTER: We all understand, Mr. McClure.

MR. SCRUGHAM: Mr. Chairman, I believe that it would be proper to refer the drafting of the third article to the drafting committee, and have a representative of both divisions on the drafting committee.

MR. CARPENTER: May I anticipate, - unless the southern states have given these matters due consideration they might want to confer together. I know that we want to.

MR. DAVIS: I suggest that Judge Sloan be appointed by the drafting committee to represent the southern division.

MR. MC CLURE: I accept that for myself.

JUDGE SLOAN: You mean to consult with the representatives of the upper division as to a determination of such proposed alterations.

MR. DAVIS: Yes, or to write an entirely new article - anything that we can agree upon when it comes before us. I make that as a motion, Mr. Chairman.

MR. MC CLURE: I second the motion.

MR. EMERSON: Mr. Chairman, I believe there is still hopes of.

staying with at least the original hypothesis upon which we started that matter of apportionment, and if it resolves itself into a matter of quantities we now have injected in it an entire new plan of procedure.

MR. HOOVER: Not very vitally different in principle.

MR. CARPENTER: Do I understand all four plans are in writing.

MR. DAVIS: No; none are in writing.

MR. HOOVER: There are three of them, or four - four here, and I can add one more to it, but I don't understand - these were furnished by Mr. Scrugham. I don't understand they came from the southern division, therefore I thought it proper they formulate something themselves as they have asked for a variation of the agreement. It was moved and seconded that Judge Sloan should be asked to confer with the drafting committee and prepare a variation of the proposal, or any other proposal from the southern division for presentation to the commission.

MR. EMERSON: Before that motion is put I would like to consult with the representatives of the upper division for a minute.

(Thereupon the Commission recessed to allow such consultation.)

MR. CALDWELL: I do not know that this should be considered as an amendment. It is now suggested - the thought is that we should agree to appoint one member from the northern states to meet with one member from the southern states to draft some sort of a proposition, or propositions, that look feasible or possible, and that after the southern group has agreed to one or more of these drafts then present it to the commission for consideration.

MR. MC CLURE: If I might suggest that the chairman sit with them.

MR. CALDWELL: With the chairman of course.

MR. SCRUGHAM: I second Mr. Caldwell's motion.

MR. HOOVER: Do you accept that amendment Judge Davis?

MR. DAVIS: Yes sir.

MR. NORVIEL: I would like to know - what I understand is that when one or two or three of these have been agreed upon by the southern states and not agreed upon by the northern, is that the idea?

MR. SCRUGHAM: That they be presented subsequently to the northern group for their consideration; that is what it amounts to. We get the first crack at them under this motion of Mr. Caldwell, and I think it is alright.

(Thereupon the motion having been put it was unanimously adopted.)

MR. HOOVER: I think the committee might meet here at two o'clock.

Whereupon the meeting adjourned to the call of the chairman.