

MINUTES OF THE
22nd MEETING
COLORADO RIVER COMMISSION

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PAGE

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MISSING

Art. 3 and Art. 10. Art. 3 in regard to apportionment and Art. 10 in regard to Preservation of all Rights. On the other articles I took the liberty of appointing an editing committee of Mr. McKisick, Judge Davis and myself, who have been through and edited the grammar and tried to make these articles more expressive. Of course they are all subject to final review at some later time, and I suggest that we take up Art. 3 on which we have had a great deal of discussion.

I had a draft of Art. 3 which was gotten out yesterday and I am not certain as to what changes may have been made in this draft by the two groups, if any. How will it do if I read it through and we can write in any suggestive changes as we go along.

"ARTICLE III
APPORTIONMENT

"The beneficial consumptive uses of the waters of the Colorado River System are hereby divided and apportioned between the upper basin and the lower basin as follows:"

I would like to say I feel we will need some consideration at a later date of the technical meaning of "consumptive" but I don't we need go into it now.

MR. NORVIEL: I might ask why the word "basin" is used instead of "division", if there is any reason for it.

CHAIRMAN HOOVER: "Between the upper basin and the lower basin"?

MR. NORVIEL: Yes.

CHAIRMAN HOOVER: The division we confine purely to a political division and the basin to a physical division.

(Further reading as follows:)

"(a) There is hereby apportioned in perpetuity to each basin, for its exclusive beneficial consumptive use, 7,500,000 acre feet of water

per annum, which shall include all water necessary for the supply of any rights which may now exist."

Is there any comment on that paragraph? If not, we will pass it temporarily until we come to the whole article at the end.

(Further reading as follows:)

"(b) The lower basin is given the right to increase its beneficial consumptive use by the further quantity of one million acre feet per annum."

MR. NORVIEL: That means one million acre feet of water does it?

CHAIRMAN HOOVER: Yes, I presume so. Put in the words "Of water." Any further comment on that paragraph? If not, we will pass it temporarily until we get through with the whole thing.

MR. NORVIEL: Would it hurt it in any way if we should prefix the words "In addition to the waters apportioned in (a)" to the words "the lower basin is given the right". I don't want to disturb anything now but if that would clarify it in any way I think I would like to have it.

CHAIRMAN HOOVER: My impression is that it does not alter the sense materially.

MR. DAVIS: I see no reason to object to it.

JUDGE SLOAN: That is the way it was originally.

CHAIRMAN HOOVER: Mr. Carpenter have you any views?

MR. CARPENTER: No objection.

CHAIRMAN HOOVER: I think you would want to take out the word "further" in order to make it grammatical. I think if you are going to make it read smoothly you can take out "further quantity".

MR. DAVIS: Yes "of one million acre feet per annum".

CHAIRMAN HOOVER: Any further comment on that article?

MR. NORVIEL: I would like to think about it then with these other eliminations. May we pass it for the present?

CHAIRMAN HOOVER: Alright, I would suggest that in order to keep it in tune with Art. (a) you should say "the lower basin is hereby given the right." If there is no further comment we will go on to (c).

(Further reading as follows:)

"(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of the waters of the Colorado River System, such waters shall first be supplied from the surplus water after the above amounts have been satisfied; and if such surplus shall prove insufficient for this purpose, then the deficiency shall be equally apportioned between and equally borne by the upper basin and the lower basin, and the states of the upper division shall deliver at Lees Ferry one half of the deficiency so recognized in addition to that provided in paragraph (b)."

MR. DAVIS: After the word "deliver" the third line from the bottom, I suggest the insertion of the words "whenever necessary", so that we will not be compelled to furnish Mexico any in addition to its needs.

MR. NORVIEL: I think that is understood, if such surplus shall prove insufficient.

MR. DAVIS: I think it is understood but I think it adds clarity.

MR. NORVIEL: We certainly don't want to give any -

MR. DAVIS: Perhaps it should come after the word "shall".

MR. MC KISICK: I think it should follow after the word "and" the third word in the third line from the bottom.

MR. NORVIEL: Perhaps while this is not the time to bring it up I think we should have some definite way of stating Lee Ferry.

CHAIRMAN HOOVER: That is covered in the definition. On the map it is known as Lee Ferry.

MR. CARPENTER: On the new maps. On all the old maps it is Lee's Ferry.

MR. CALDWELL: You may as well call it Lee's Ferry because everybody will call it Lee's Ferry.

MR. CARPENTER: The geographical society have decided to drop all apostrophes and 's' off all names. For instance, Long's peak will be Long Peak.

CHAIRMAN HOOVER: I think we might stick to Lee Ferry. We have battled that out once.

MR. EMERSON: (c) takes the place of the original Art. 7.

CHAIRMAN HOOVER: Yes, put it in order to get it logical. Also we thought that rather minimized the importance of it perhaps.

MR. EMERSON: It does.

CHAIRMAN HOOVER: (reading) "(d) The states of the upper division agree that they will not cause the flow of the river at Lee Ferry to be depleted below and aggregate of 75 million acre feet for any period of ten consecutive years reckoned in continuing progressive series, beginning with the first of July, next succeeding the ratification of this compact, nor below a flow of 4 million acre feet for anyone of such years."

Any comment on that paragraph?

MR. EMERSON: Hadn't "the" ought to go before "July"?

MR. DAVIS: I have no objection.

CHAIRMAN HOOVER: Any further comment? If not, clause (c) reads: "all of the states further agree, however, that the states of the upper division shall not withhold, and the states of the lower division shall not require, the delivery of water which cannot reasonably be applied to beneficial, agricultural or domestic uses."

MR. CARPENTER: I think that was originally intended to apply to low streams, low years.

MR. SCRUGHAM: Didn't we agree to make the first classification include

mining, milling and so on. Is there any necessity for putting that in at this point?

CHAIRMAN HOOVER: I think we might get at that by a definition. I think the editing or drafting committee might consider whether we want to define what the first class is.

MR. NORVIEL: I thought it was decided to cut the "however". I can't see any tie that calls for it.

CHAIRMAN HOOVER: I don't see any need of the word "however".

MR. EMERSON: It just adds the force of the usual expression.

CHAIRMAN HOOVER: You can cut out the whole first line and you will get the whole import of the condensation.

MR. NORVIEL: Cut the first line out?

CHAIRMAN HOOVER: Yes.

MR. EMERSON: It seems to me there is a real force in line one and I don't like to see it lost.

MR. SCRUGHAM: What do you mean? It is more vigorous?

MR. EMERSON: Yes, I do. It means the water shall not be withheld or demanded without just cause.

CHAIRMAN HOOVER: If there is any objection to taking it out it really makes no fundamental difference leaving it in.

MR. NORVIEL: I can't see it helps it by leaving it in.

CHAIRMAN HOOVER: I was simply editing it down.

MR. EMERSON: I don't want to edit it down and sacrifice the force you wish to give to certain things.

CHAIRMAN HOOVER: We concede that line to Mr. Emerson.

MR. MC CLURE: Cutting the word "however" or leaving it.

MR. EMERSON: Leave it in.

CHAIRMAN HOOVER: Paragraph (f) reads: "Further equitable apportionment of the beneficial uses of the waters of the Colorado River unapportioned

in paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after July 1st, when either basin shall have reached the total beneficial use set out in paragraphs (a) and (b) above."

Aside from the intrinsic question of the date I would suggest "when" in the second line from the bottom of the paragraph should be "if".

MR. NORVIEL: I suggest "if and when" be both included.

MR. DAVIS: I think after the word "beneficial" in the next line the word "consumptive" should appear.

MR. NORVIEL: Is there any objection to making it read "if and when".

MR. DAVIS: Not on my part.

CHAIRMAN HOOVER: We will have it read "if and when" and put in the word "consumptive". Shall we go on through before we go back to the date?

MR. SCRUGHAM: Yes.

MR. NORVIEL: I suggest we do.

CHAIRMAN HOOVER: (reading) "(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, or any state acting through its governor and the United States acting through the president, may give joint notice to the governors of the other signatory states and to the President of the United States, if he does not join in such notice of such desire, and it shall be the duty of the governors of the signatory states, and of the President of the United States to immediately appoint representatives with like powers to those of the present commission whose duty it shall be to further divide and apportion equitably between the upper basin and lower basin the beneficial use of the unappropriated waters of the basin as described in paragraph (f), subject to the legislative ratification of the several states and the Congress of the United States to the same extent as is this compact."

MR. DAVIS: The second line from the top on the last page the words "of such desire" seem to me out of place. They should probably come after "notice" on the last line on the first page. "May give joint notice of such desire to the Governors." In the fourth line from the bottom I think the word "unappropriated" should be "unapportioned" under paragraph (f).

MR. NORVIEL: I think that is the proper word perhaps. What is the duty of this Commission?

CHAIRMAN HOOVER: We have kept the word "unappropriated" out of this whole paragraph III. It is all based on apportionment, not on appropriation.

MR. NORVIEL: Now what shall this Commission do when it is appointed by the President and Governors? What is the purpose of the Commission?

CHAIRMAN HOOVER: "Whose duties shall be to further divide and apportion between the Upper Basin and Lower Basin the beneficial use of the unappropriated water of the Basin as secured under paragraph (f), subject to legislative ratification. (f) States "further equitable apportionment of the beneficial uses of the water of the Colorado River unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after July 1st."

MR. EMERSON: Does that confine their duties to the particular matter of apportionment? They should have power to consider any other matters relative to the whole question.

CHAIRMAN HOOVER: We cover that in a subsequent paragraph, don't we? Where we state the thing is subject to unanimous amendment.

MR. DAVIS: Also saying it is with like powers to those of the present Commission.

MR. EMERSON: That would cover the point all right, but there is no doubt but what they would want to go beyond. For instance, if it were

found 75,000,000 acre feet at Lee Ferry were in excess of the amount needed there would want to be a reconsideration of that, surely.

CHAIRMAN HOOVER: They can do anything by unanimous agreement.

MR. NORVIEL: I think that would be a very good thing to put that in and also if there is too much water held back, that ought to be also.

MR. MC CLURE: The powers of the Commission seem to cover it.

CHAIRMAN HOOVER: Anything you agree on unanimously will alter this agreement anyhow.

MR. NORVIEL: At that time?

CHAIRMAN HOOVER: Sure.

MR. EMERSON: As far as one paragraph is concerned, the right to function of the Commission is based on apportionment.

CHAIRMAN HOOVER: I don't know that it would do any harm, it might be worth a moments discussion. By unanimous agreement they would have power to amend it in any way they like. I don't know what you would think about that, Mr. Carpenter. You can always do anything by unanimous agreement, legislative action.

MR. DAVIS: The only power of this Commission is to divide and apportion the water equitably between the states. Now we provided that also shall be the power and duty of the new Commission. It strikes me that language is broad enough to cover practically anything they may want to do.

MR. CARPENTER: I think so.

JUDGE SLOAN: Isn't it true nothing should be put in there that might be implied as power in the new commission to interfere with rights that may have been approved in the meantime?

CHAIRMAN HOOVER: As it stands here all they can do is to work with unapportioned water. They can't interfere with the apportioned water.

JUDGE SLOAN: No, but the suggestion as to amending the present compact,

MR. NORVIEL: (Interrupting) If the word left was "unappropriated" that would cure the evil.

MR. EMERSON: No, but the word is "unapportioned," Mr. Norviel, by reason of paragraph (a).

MR. NORVIEL: It is your purpose then to make a hard and fast thing that the apportioned waters shall never be changed. Is that the idea?

MR. DAVIS: The Commission can change it if they unanimously agree on it.

CHAIRMAN HOOVER: They can change anything if they unanimously agree.

MR. NORVIEL: I believe you stated, Judge, our business here is to divide water between or among the states?

MR. DAVIS: I think I said that.

MR. NORVIEL: Are we doing that?

MR. DAVIS: I think we are.

MR. EMERSON: As long as this article settles definitely on apportionment, to my mind that would be broad enough and an amendment can be had by unanimous consent, so it is agreeable to me.

CHAIRMAN HOOVER: It is provided the agreement may be terminated by unanimous consent. That Commission could sit down and unanimously terminate the contract and all rights bestowed and start again if they want to.

MR. NORVIEL: I think they ought to be given that freedom.

CHAIRMAN HOOVER: We come back to the discussion of the date. I would like to hear any suggestions from either side.

MR. CALDWELL: I suggest July 1st, 1968, Mr. Chairman.

MR. MC CLURE: I raise the question, Mr. Chairman, whether, in the event a compact be not approved by the various states and the Congress for a few years, it may not be better to insert a period 45 years beyond the first day of July after its final adoption?

MR. NORVIEL: I don't think we ought to hunt trouble. We are assuming we are arriving at something that will be agreeable.

MR. SCRUGHAM: I prefer a definite date.

MR. EMERSON: I believe it ought to be tied down more definitely.

MR. MC CLURE: Suggestion withdrawn.

MR. SCRUGHAM: I second Mr. Caldwell's motion of July 1st, 1968.

CHAIRMAN HOOVER: That is 45 years. (Thereupon, a vote being taken on the motion of Mr. Caldwell, the following voted "aye."

Mr. Emerson, Mr. Caldwell, Mr. McClure, Mr. Carpenter, Mr. Davis and Mr. Scrugham.

MR. NORVIEL: I think, Mr. Chairman, I am a little confused on paragraph (g).

CHAIRMAN HOOVER: This provides that there shall be no further apportionment until after this time.

MR. NORVIEL: Oh. Well, I was misreading (g). I think that was at any time. Well, then, I don't like the date of 1968 under these circumstances that ties it down to a definite date before anything may be done and that is too long a period. I had overlooked that reading into (g) that there was a provision there that it might be taken up at any time upon the notice of two Governors or a Governor and the President.

CHAIRMAN HOOVER: No, it reads as it stands here, it reads very clearly no notice can be given before that date, and after that date whenever you get the maximum.

MR. NORVIEL: Well, then, that time is too far in the future. I don't think we have any right to bind ourselves so long as that and I suggest a period of thirty years then, if that is to be the first date any change is possible, because 45 years is too long for me to wait.

CHAIRMAN HOOVER: You vote "no" on the previous question?

MR. NORVIEL: Yes, I will have to vote "no" on that. I had misunderstood.

CHAIRMAN HOOVER: Do you move thirty years?

MR. NORVIEL: I move a thirty year period.

CHAIRMAN HOOVER: (No second having been received to the above motion.)

They don't second it, but in any event this has to be unanimous, whatever it is.

MR. SCRUGHAM: Would you accept 1960 as a compromise?

MR. NORVIEL: No, I think thirty years is long enough before anything may be done. That is practically a generation.

MR. SCRUGHAM: I don't think it is a very vital point.

CHAIRMAN HOOVER: The intrinsic position is that the northern states wish a sufficient period, I imagine, to enable their development to come up to approximately this figure.

MR. CARPENTER: Our position is briefly this. We have no desire to be arbitrary in this matter at all, but we feel that we should either have an equating at an earlier period, which seems to have been overlooked, or be protected by a longer period, the reason being this; we are in accord with the idea of flood protection below that will stimulate the growth down there because the works will have to be paid for. It will give the incentive to early development down there and our works will in the meantime lie dormant instead of being stimulated and our projects will get under way, not in a year or two or three or four or five, but drag along. Now we do not have the unusual stimulus that will be given to the lower country by the necessary development down there. - the condition might be a little different, - but we feel that we should have sufficient time elapse for our development to proceed to that degree that by the time a new apportionment or further apportionment occurs we will be in position

to get fair play and be in a fair position to present our case and know our conditions at that time.

We have no desire to arbitrarily prolong the date, but still, at the same time, having lent our hand to the stimulus below, we feel we are either entitled to stimulus above or an opportunity to work out our own salvation before we are penalized by being brought to a reckoning before our development has really reached its probable future, -

MR. SCRUGHAM: All that in view of the fact you have a permanent guaranty of 7,500,000 acre feet?

MR. CARPENTER: Yes, but this is further apportionment. We have already allowed a million here, so we feel now we have allowed sufficient latitude that entitles us to a date reasonably long as to the future.

MR. NORVIEL: I think Mr. Carpenter is unduly excited over the stimulus that would be given to the lower division. It is true, of course, that the necessities are very urgent for flood protection, but I can see no reason why at the present time the complete development should go any faster or be arrived at any sooner in the lower division than that in the upper division.

CHAIRMAN HOOVER: Isn't this the thing that is likely to happen, no matter where the date is; that if the southern states shall have exceeded their maximum developments will not stop. Persons who undertake diversions would undertake them with notice that they have no title as against the Upper Basin to such diversions, but they will undoubtedly proceed anyhow, knowing that there is unallocated water yet to come at the hands of a Commission and knowing that they will have the moral position, and extremely strong moral position, of having actually developed their lands and homes before such a Commission, so that the southern group will be in such a situation that if there is any unappropriated water at all morally it will go to the people who have actually applied it and therefore a deferment of the

date for a considerable period might even be to the advantage of the southern group. The northern group might at the same time have developed its up to its seven and a half million, but the moral pressures are in favor of the southern group at that date.

MR. SCRUGHAM: May I ask for a conference of the southern delegates for a few moments on that particular point?

MR. NORVIEL: I agree with the Chairman on that particular statement, but if I were as cautious as Mr. Carpenter is I would say our earlier development will be the easier development until we probably may reach the amount allocated and the surplus would be necessarily taken upon very expensive or difficult problems to finance and unless there was an absolute right that might be obtained to the water for such projects, I doubt whether we would be able to finance and put the water to the beneficial use the Chair has just suggested. If we could, the argument would be sound.

MR. SCRUGHAM: Would you mind coming in and having a little discussion on that in detail, with the southern states?

MR. NORVIEL: On the question of the period of time?

MR. SCRUGHAM: Yes.

MR. NORVIEL: I am ready if we may be excused.

(Thereupon the representatives of the southern states withdrew for a conference upon the above matter.)

~~After the conference of the southern states as above, the following~~
proceedings were had:

CHAIRMAN HOOVER: What is the result of the caucus.

MR. SCRUGHAM: All right.

MR. NORVIEL: Mr. Chairman, I think Arizona will agree to the period as stated before.

CHAIRMAN HOOVER: I compliment the caucus on a quick decision. Now

are we prepared to accept this paragraph as a whole?

MR. CARPENTER: I move its adoption.

MR. EMERSON: I second the motion.

MR. NORVIEL: I think we better put in the word "amount."

CHAIRMAN HOOVER: I think you should use the words "in addition to the apportionment in paragraph (s)."

MR. CARPENTER: As I understand it, the words in the last line in (e), "to beneficial agricultural or domestic uses" are to be smoothed up in the revision?

CHAIRMAN HOOVER: Yes, I think we all accept that the editing committee may go over these. The editing committee makes it a point to not change the meanings.

(Thereupon, a vote having been taken upon the adoption of Article III, the same was unanimously adopted in the following form)

"ARTICLE III

"The beneficial consumptive uses of the waters of the Colorado River system are hereby divided and apportioned between the Upper Basin and the Lower Basin as follows:

(a) There is hereby apportioned in perpetuity to each basin, for its exclusive beneficial consumptive use, 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the lower basin is hereby given the right to increase its beneficial consumptive use by one million acre feet of water per annum.

(c) ~~If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of the waters of the Colorado River System, such waters shall first be supplied from the surplus water after the above amounts have been satisfied; and if such surplus shall prove insufficient for this purpose, then the deficiency shall be equally apportioned between and equally borne by the Upper Basin and the Lower Basin and when necessary the states of the upper division shall deliver at Lee Ferry one-half of the deficiency so recognized in addition to that provided in paragraph (d).~~

(d) The States of the Upper Division agree that they will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of the July next

succeeding the ratification of this compact, nor below a flow of 4,000,000 acre feet for any one of such years.

(d) The States of the Upper Division shall not withhold, and the States of the Lower Division shall not require the delivery of water which cannot be reasonably applied to beneficial agricultural or domestic uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in Paragraph (g) at any time after July first 1968, if and when either Basin shall have reached the total beneficial consumptive use set out in paragraphs (a) and (b) above.

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, or any state acting through its governor and the United States acting through the President, may give joint notice of such desire to the governors of the other signatory states and to the President of the United States, if he does not join in such notice, and it shall be the duty of the governors of the signatory states and of the President of the United States to immediately appoint representatives with like powers to those of the present Commission whose duty it shall be to further divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Basin as described in paragraph (f), subject to the legislative ratification of the several states and the Congress of the United States to the same extent as is this compact."

CHAIRMAN HOOVER: Article V now becomes Article IV; Article VI on the Collation and publication of data is now Article V. The Article on International relations goes out. The Article on Interstate Adjustment becomes Article VI. Indian Rights becomes Article VII. Article VIII isn't here. Article VIII is still to be drafted and the Article as the Preservation of Rights is yet to be adjusted. That will be Article VIII, so that the termination becomes Article IX. We have before us the question of Article VIII.

MR. DAVIS: Does that have to be redrafted for presentation?

CHAIRMAN HOOVER: It has to be redrafted. I would suggest we might make progress if we had Mr. McClure, who is considerably interested, and Judge Davis and Mr. Carpenter, if the Commission doesn't mind, to try and draft something for consideration.

MR. EMERSON: I would like to see Mr. Caldwell on that as an engineer. I would like to relieve one of our attorneys and put in Mr. Caldwell.

CHARLEEN HOOVER: I think it would be a fine idea. Mr. Caldwell will be put on that committee.

There is a question we were discussing last night which is at my raising, over the preferential use of water and the treatment of the navigation question. I raised this point because I feel that as we have it drafted we are likely to create a stumbling block with congressional ratifications and I was wondering whether or not there was something to be done about it. I had suggested two processes, one deletion and the other that it might be possible to get some device in the wording by which Congress could act on that paragraph without upsetting the whole pact. There were one or two questions in it that became pretty involved and that is that this navigation question may have an international phase and we may have all of those people who have little understanding of the practicalities of the situation insisting that the United States should never give up its navigation right on anything, etc., etc., and obviously a certain group will feel that by holding a preferential right the government has some advantage to the whole of the states, etc., etc.

I only mention those ideas as indicating there may be opposition; the question as to whether it is desirable to raise that question, also the question whether or not if Congress gave consent to this pact that clause in any way diminishes federal interest anyhow. In other words, whether the states amongst themselves can make an agreement to take away a federal act.

MR. DAVIS: Have you drafted something, Mr. Chairman, along your lines, something concrete?

CHARLEEN HOOVER: No, I haven't had an opportunity to discuss it with Mr. Hamble. I was wondering if we introduced the words into that paragraph, Mr. Hamble, "if upon specific approval of Congress," whether that would cure it?

MR. HAMBLE: Mr. Chairman, I am strongly of the opinion it ought to be

left out. I don't see just how it could be very well cured by a proviso.

CHAIRMAN HOOVER: It is perfectly possible to go on with a sentence there to the effect that disapproval of this paragraph by Congress should not effect the other portions of the pact, or something of that kind if you want to.

MR. HAMELE: Yes, that could be inserted. I think probably there ought to be a provision in the compact somewhere, a general provision, regarding the effect of consent by Congress with reservations; a provision that even though the consent by Congress is made with reservations, that that will not prevent the carrying out of the compact by the states.

MR. DAVIS: These are pretty broad. We don't know what the reservations might be.

MR. CARPENTER: It is going to encourage legislatures of the states to think they have the same powers as Congress.

CHAIRMAN HOOVER: One thing that I think, one has to bear in mind that the United States as distinct from the states has no particular interest except the interest of all the states. There are great tendencies on the part of the states to rely on the federal government from time to time for protection from the other states. It brings up a question as to whether or not a general reservation of federal rights wouldn't cover the whole question at one time, once and for all, and how far that would damage the compact in the interest of the different states, and I should like to suggest to you that that is well worthy of consideration.

MR. SCRUGHAM: How would it do to suggest a committee be appointed to work on this particular paragraph relating to navigation, in addition to the one you just appointed, and have it report back to this convention, then we will have something definite and concrete in the way of language. Personally I would prefer to have the thing remain as it is.

MR. EMERSON: I think we had better have the sentiment of the Commission expressed.

MR. DAVIS: I think Colonel Scrugham's idea is a very proper one, except I suggest the Chairman himself work this out himself with such assistance as he desires so that we may have something definite before us and that can be done while the other committee is working out the other clause.

MR. NORVIEL: Mr. Chairman, I confess I didn't like this before, but voted for it for the sake of harmony, as it didn't appear to particularly affect Arizona. There is no doubt in my mind but that if the river is a navigable stream at all the navigation right in it belonging to the government is absolutely paramount to every other right in the river insofar as navigation is concerned, and that Congress may absolutely control the diversion of any water from the river if it affects navigation and it is the desire of Congress to maintain the navigation right in the river. Then I think this suggestion is unfortunate in that the states undertake to make a paramount right of the government servient to all other rights on the stream and probably would provoke discord among the Congressmen when it comes before them.

MR. EMERSON: Mr. Chairman, I am diametrically opposed to the position of Mr. Norviel in this, —

MR. NORVIEL: (Interrupting) And in all things else.

MR. EMERSON: To all practical intents and purposes the river is not navigable so why try to hold this club over this river. The idea that we might build up great properties upon the water supply and then at some time in the future the government come along and depreciate the value of our properties upon the right of navigation is something that I don't look upon with any pleasure and I for one think we should take the bull by the horns and give Congress at least a chance to pass upon this question. It seems to me in fairness as it has no practical purposes for navigation they might be well willing to say so and remove this everlasting cloud as you might call it,

to title to water for other purposes.

I am not averse to a reservation in there such as you have suggested whereby Congress might approve, or at least an article might be so drafted that the failure of Congress to approve in regard to the paragraph on navigation would not vitiate the entire compact, but I certainly believe that Congress ought to have a chance to pass upon the question.

MR. NORVIEL: I think if it is omitted altogether, if the navigation portion of it is omitted altogether and Congress passed it why we should be satisfied.

MR. CARPENTER: I fear not. I fear it would defeat the very thing all of us want. I feel it would still leave the matter hanging in the air and defeat the very purposes that we all of us want to accomplish and that is the utilization of the river for agriculture.

MR. NORVIEL: If they ratify this compact that is what they do, isn't it?

MR. CARPENTER: I doubt it unless there is some reference to navigation in the compact.

MR. NORVIEL: It seems to me if Congress gives us the right to divert and use the water in the river then they have almost done the very thing that you are aiming at.

MR. CARPENTER: By inference, yes, that might be true, but they are prone to hold that such rights are not surrendered except by express language.

MR. NORVIEL: Wouldn't it be express if they permitted us to use all the water in the stream?

CHAIRMAN HOOVER: Supposing I endeavor to present something concrete to the conference after lunch on the subject.

While we are here I would like to have Mr. Hamble illuminate the

question of the reservation of federal rights generally in this compact. I don't think we ought to drop the subject without consideration.

MR. HAMELE: Mr. Chairman, I would propose to the full Commission an article for this compact which as a member of the drafting committee I presented to that committee, which was rejected by the drafting committee. It will be entitled, "Rights of the United States," and would read as follows:

"This compact is made subject to all existing rights of the United States, which rights shall not be affected by the consent or approval of this compact by the United States, anything herein to the contrary notwithstanding."

Members of the Commission have often suggested the advisability of following with fidelity the act of Congress of August 19, 1921, and I would call attention to the fact that this statute expresses with certainty the following: that the United States has valuable interests in the Colorado River Basin which must be protected in the proposed compact. The Act authorizes a substantial appropriation and the naming of a representative to provide for the protection of those interests.

If the United States has in fact no interests in the Basin which should be protected in the proposed compact, then the federal appropriation and the federal representative are but idle gestures from a national standpoint. It seems to me to follow that if we are to carry out the plain intent of Congress this compact must contain an article protecting those interests which the statute directs shall be protected. The compact as now proposed contains no such article.

The United States is the largest land owner within the Colorado River Basin, also it is the largest owner of irrigable land therein, for the reclamation of which this compact is proposed. It has already constructed in the Basin irrigation works of the value of many millions of dollars and proposes the expenditure for irrigation purposes of many millions more. These operations are carried on, not to the derogation of the states involved,

but to their direct advantage and lasting benefit, and upon urgent appeals therefor made by the representatives and citizens. In fact, the greater part of the future irrigation development which the proposed compact seeks to secure must come through monies advanced for twenty years without interest by the United States for the benefit of the states. Incidentally these federal operations are of no direct benefit to the National Government.

The United States stands in the peculiar relation of having no interest adverse to the states, or any of them. This is not true of any other party represented here. The exercise by the federal government of its rights within the Basin can give rise to no valid objection. The United States stands in the position not only of a donator to the states, but also of an impartial judge without selfish interests of any kind to further.

The proposed article imposes no burden, nor does it take away any right from any state. It merely preserves that which the statute directs shall be preserved.

There may be dispute as to some of the rights claimed by the United States, but if in any such dispute the states are right, what harm can result to them from this article. It merely preserves the present statutes. On the other hand, what is the consideration running to the government for the abandonment of any such right.

I assume all members of the Commission desire to secure the final consent of Congress to the work which has been carried on at such large effort and expense. What ground is there for believing such consent may be secured if the present direction of Congress be ignored? So far as I know the objections made to this article are merely naked negative. I have heard no reasons given and for the purpose of illuminating the record upon this important subject I respectfully ask that such reasons as members of this Commission may have against the inclusion of this article in the

proposed compact be expressed.

CHAIRMAN HOOVER: Would you state, Mr. Hamelc, what you consider the federal rights are specifically? Enumerate them?

MR. HAMELE: Why the federal rights are first, the paramount right of navigation, which affects flood control. The United States also has the ownership, I believe, of all of the unappropriated water of the Basin. It has an interest in the building of irrigation works under the national irrigation act. It has rights under the Federal Water Power Act that possibly don't conflict with anything in this compact, but there are possibilities we could conceive of by which that Act could be amended so that those rights might become in conflict with this compact unless they were reserved. It also has rights in connection with its treaties with the Indian tribes. I believe that in a general way covers all of the rights that might be claimed by the federal government.

MR. CARPENTER: In other words, doesn't amount to this; that you claim everything except the water that is now passed to private citizens?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: I would like to have it clear first as to navigation. I assume that the consent of Congress to this compact is a recognition of that. That is a matter which would come squarely up for consideration. As to unappropriated water, just to get it clear for the record, it is my understanding the rights of the federal government have never been established. Is that true?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: Either by legislation or by court decision?

MR. HAMELE: Not directly so. That claim was presented by the United States in the Wyoming-Colorado case, but it was not passed upon by the Supreme Court.

MR. CARPENTER: It has been frequently argued in other courts to the same effect, has it not?

MR. HAMELE: Not with any great frequency.

MR. CARPENTER: The federal court of Nevada had a case in which that same argument was presented and which turned it down, did it not? The Carney Case? Or just waved it aside saying it served as useful purpose?

MR. HAMELE: I don't think it was decided in that case.

CHAIRMAN HOOVER: As to irrigation works, in what way could this compact interfere with the progress of irrigation works construction?

MR. HAMELE: It might be argued from the compact that the United States was required in the construction of federal irrigation works to follow implicitly the direction of each state. It will be subject to the whims of each state. For instance, if it desired to make an appropriation of water, to take a case that has already been passed upon, showing the attitude of the states, an appropriation of water in Southern Colorado that couldn't be used in the State of Colorado but it could be beneficially applied in the State of New Mexico. Under this compact the government would be at the mercy of the State of Colorado as to that diversion.

CHAIRMAN HOOVER: Would it be any more so than it was before?

MR. HAMELE: Well, I think so, yes, because assuming that this compact gives up the claim of the United States to the unappropriated waters of the basin it would be.

CHAIRMAN HOOVER: But it would rest on that claim, would it not? It would rest upon the question of the ownership of unappropriated water.

MR. HAMELE: That would be always an important factor.

CHAIRMAN HOOVER: And have you any idea where the federal Water Power Act would be infringed by this?

MR. HAMELE: As the federal water power act now stands I don't think

there would be any infringement. I don't see any at this moment.

CHAIRMAN HOOVER: The Indian question we have clearly set out, I think, settled that.

MR. HAMELE: That has been specifically referred to in the proposed compact.

MR. SCRUGHLIN: Mr. Chairman, I think any paragraph in any way sanctioning the claim of the federal government to all the unappropriated waters would cause the compact to be defeated in all the intermountain states.

MR. HAMELE: This proposal doesn't sanction that claim.

MR. CARPENTER: It would include it.

MR. HAMELE: It only preserves existing rights.

CHAIRMAN HOOVER: Existing or established.

MR. HAMELE: Well, existing as I have written it.

MR. CARPENTER: You claim that is a right. You claim that by your present right, don't you?

MR. HAMELE: Yes.

MR. CARPENTER: Therefore, if it were later decided on presentation of that that you are right, then this clause would include all unappropriated waters of the river, wouldn't it?

MR. HAMELE: That is true.

CHAIRMAN HOOVER: It would seem to be a very doubtful necessity to make this compact, wouldn't you think Mr. Hamelo, for these states to attempt to divide the water at 45 years hence, the unappropriated water, if the federal government had powers to do it?

MR. HAMELE: That is true; if that right were unquestioned and undisputed. If the federal government so desired it could apportion these waters without reference to the states that would be a most desirable end, if that were feasible. It would be a happy solution of all these difficulties. It would be a perfect solution of it in fact. Mr. Hoodenpyle's proposition is the

scientific proper way of solving all these difficulties. It would be a perfect solution of it.

MR. EMERSON: I think that is according to who is passing as the question.

CHAIRMAN HOOVER: I find myself a little confused. I come here under a specific act of Congress which provides a compact shall be made, or may be made, by the states for the division and apportionment of the water, - I forget the exact language, - and if that authority rests in the federal government it would seem an anomaly for Congress to have passed an act directing such a conference as this and any federal delegate to it.

MR. HAMELE: As I view it, Mr. Chairman, it is an attempt in a practical way to work out this solution without a fight and that that is all it is as far as the federal government is concerned. The federal government doesn't desire to take a drop of water from any of these states. It has no use for it as a government. The uses will be taken care of within the states.

CHAIRMAN HOOVER: Haven't we amply secured that question by providing that this division and apportionment of the water shall be subject to the approval of the Congress of the United States, and equally that any further apportionment shall be subject to the approval of the United States? It seems to me we have amply protected that particular right.

MR. HAMELE: I understand from expressions of members of this Commission that it is their thought that the compact as proposed amounts in substance to a quit claim deed of all the rights of the United States which have been referred to, except those that are reserved.

CHAIRMAN HOOVER: I don't believe, Mr. Hamelc--

MR. HAMELE: (Interrupting) And that they will so argue.

CHAIRMAN HOOVER: I don't believe that there is any such statement

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MR. HAMELE: The Federal Government should have the power to do that if that were true, but there would be no reason for its asserting that power; the only reason for asserting any powers would be for the benefit of these states, - it is going to be the biggest single investor. This development is to a large extent going to be made by the United States, and it is only right, it seems to me, that the United States should have such rights in connection with the use of these waters that it may efficiently handle the matter as to the seven states in an impartial way.

MR. HOOVER: There is another argument that might be brought forward. Suppose the Federal Government claimed all of the unappropriated water, - a claim against each state. This is not a division between states, - it is a division between two groups, and if that could hold it could still apply without any of the negotiations of this pact.

MR. HAMELE: It might also be urged, - but there is uncertainty in all of these propositions. I only want to get it very clear for the record.

MR. MC CLURE: I cannot refrain from raising this question as a practical question mentioned by Mr. Hamcle, viz: that if at any time the Federal Government had injected its interest in the Sacramento River a very great development would have been hindered. As a matter of fact we have been permitted unstintedly to remove water from that river, which is actually a navigable stream, and never yet have we been interfered with.

MR. HOOVER: Mr. Hamcle has raised five phases of the Federal interests on navigation. I think we should give the matter more consideration. I understand there is no conflict on the Indian lands, - we have made provision for that. Have you anything to say on this whole question.

MR. CARPENTER: I think it has been very well expressed by the Chair. We are acting under special, direct authority by Congress, which, in my

judgment, is adequate to dispose of the main object, and this objection, - this specifically protects the federal rights.

MR. HOOVER: Yes. The act is wide enough to cover government appropriations of water for use for navigation, subject, of course, to congress's concurrence in such division.

I should like to present this to Congress in such form as does not vitiate the compact. However, we will see if we can formulate something in that direction.

Before we adjourn I want to raise one broad question on this pact, - in Article III, the whole paragraph relates to the minimum flow of water, seventy five million acre feet, and the four million minimum, seems to me to be worth more or less discussion in the interest of both the upper and lower basin. You will recall, in our discussions we originally started in an endeavor to work out a division of the water on the basis of a percentage, and as one corollary of that percentage, we would say from a minimum which was not an appropriation. A percentage of delivery at Lee Ferry. Now, we have changed the entire basis of the pact to allocations of quantities. I might say that in general we have come back to Mr. Norviel's original proposition, except that we have made the division between groups instead of individual states. I think that is considerably of a compliment to Mr. Norviel's perspicacity. And in so doing we now have a situation where a different allocation of water has been made to the upper states, and a different allocation, for a period of years, to the lower states. As a matter of actual realism, that minimum supply will come to the lower states, because it is less than the surplus allocation made to the upper states, and it has this concrete disadvantage, as I see it, to both sides, - it establishes an obligation to control a great river on the part of the northern states, which will be difficult to drill into the heads of laymen

as an obligation capable of performance, and as to the lower states its complexion is of giving a less amount of water to those states than they will actually receive; but if it were entirely omitted, - the entire paragraph, all discussion in the lower states would revolve around the flow of the Colorado River, not on the minimums here set down, as these minimums have been made less than the normal and expectant flow of the river in order to give security to the upper states in their ability to deliver, and we are directly clouding the mind of the public as to the volume of water with which we are dealing. In other words, it would seem to me, if I were to go before the legislatures of the different states I would rather have the whole paragraph out. By discussion would then be hinged upon the seven and a half million consumptive use confined to the upper states, and the normal flow of the reconstructed river, the twenty-two million feet of water, and I think it would make it much less difficult, and intrinsically lose no water to the lower states. Now, I present both sides of that, as I believe, as being of equal importance to the north and to the south, and ask you to give it a little further consideration. I don't ask any alterations. I haven't the power to do that, but just ask your consideration.

MR. DAVIS: I think as to those facts we discussed them among ourselves and felt that to be very valuable to us. Nevertheless we will be very glad, between now and noon, to consider the matter of the elimination of that clause

MR. HOOVER: Otherwise than that, the one other point which I would like to bring up is the definition of consumptive beneficial use; the words which we apply to the definition of appropriation need to be made very clear that this includes power.

MR. DAVIS: I think, Mr. Chairman, that definition has got to be entirely revised, - the definition of appropriation.

MR. HOOVER: "Apportionment" we may never use at all in the completed pact, but the definition of the word "apportionment" is one which needs some

consideration. It might be contended in the present definition of consumptive beneficial use that we have included power, and that, therefore, power rights might run wild on the river, and again it may be said there is no consumptive use in power, and it would be a disadvantage to both basins.

MR. DAVIS: Yes, it would be better that both of those be worked over between now and the afternoon session.

MR. HOOVER: As I pointed out, in the northern basin it may be perfectly possible for power companies to be organized who would, not having consumptive use, insist on controlling the water as not to give the maximum flow to the lower basin, and vice versa.

MR. NORVIEL: I am very glad to hear that comment as to the beneficial use because it approaches what I wanted.

MR. HOOVER: I was complimenting you on getting on to your own ground.

MR. NORVIEL: No, this is not my ground at all, but I agreed to the proposition because it approaches, - not reaches, but approaches an equitable division.

MR. HOOVER: With those comments I would like to ask Judge Davis to consider the question of the definition of appropriation of waters, - or rather the apportionment, and Mr. Hamble and I will think about the question of navigation. Mr. Carpenter and Mr. Caldwell and Mr. McClure will endeavor to work out paragraph IX, - paragraph IX I think it is, and in that paragraph I think that that portion of the draft of Judge Davis, which opens to the states the right to go to court for the enforcement of this compact, should be preserved. Last night, as drafted we had left it out, and I think if possible it should be stated, as it is a right the states have anyway.

MR. NORVIEL: In the event any of us should discover an omission of some point which should be included I suppose we have the right to suggest it at least.

MR. CARPENTER: I want to make one suggestion, that is, your titles are dangerous. Unless those titles are clear they are likely to be misinterpreted on the question of intent. I am not certain that it is necessary to have those titles.

MR. HOOVER: I think, - suppose we hear from Judge Davis as to whether it is necessary to have titles or not.

MR. DAVIS: I don't know that there is any necessity.

MR. CALDWELL: With those same arguments may we not cut out the article on Purposes?

MR. HOOVER: I feel the article on "Purposes" has a clear psychological value.

MR. CARPENTER: They have a psychological value, and those articles, as drawn, may be later revised and improved, and if there is any question as to what the intent of the drafters of the compact was, they will turn to the article on "purposes" to try to find a guide to that intent, - I think there is great danger in leaving that out. It is not alone a preamble, - it is, if I may so term it, a declaration of principles. It is a guide to the intent of the framers, and as such it must be very, very carefully drafted in the final compact if it is to remain.

MR. HOOVER: On Mr. Norviel's remark, I would like to state that if we are to make any progress we should forego any discussions except for the matters which we have under observation and discussion, Article 8, Navigation, a re-drafting of our definitions, a consideration as to whether or not "Purposes" should again be made a part of the preamble, or some other consideration of that kind; that new point which is not based on this draft of the compact should not be raised.

We have not, as yet, edited, as a commission, the compact itself. We have got to go over it word for word and get it in the best possible form.

Was there something you had in mind?

MR. NORVIEL: There was nothing I had in mind to change in the compact.

MR. HOOVER: With these remarks, suppose we adjourn until two o'clock.

(Whereupon the Commission adjourned.)