

MINUTES OF THE

24th MEETING

COLORADO RIVER COMMISSION

**Bishop's Lodge
Santa Fe, New Mexico**

**November 23, 1922
9:45 A. M.**

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The twenty-fourth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Thursday morning, November 23rd, 1922 at 9:45 A.M.

There were present:

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

In addition, there were present:

Edward W. Clark
 Mr. Bannister
 Charles P. Squires
 Ottomar Hamele
 Mr. Nickerson
 Richard E. Sloan
 Mr. McKisick
 Thomas Yager
 A. P. Davis

The meeting was called to order by the Chairman.

MR. HOOVER: In Article II, Definition "i" this definition has been drafted: "The term domestic use shall include the use of water for household stock, municipal, mining, industrial and other like purposes, but shall exclude the generation of electrical power." This, as drafted here gets rid of a lot of questions we have discussed. No objections?

MR. EMERSON: Read it again please.

MR. HOOVER: "The term domestic use shall include the use of water for household, stock, municipal, mining, industrial and other like purposes, but shall exclude the generation of electrical power".

MR. CARPENTER: Does the word "exclude" mean to exclude, - for instance, the uses mentioned?

MR. HOOVER: Yes, it does, and that was the agreement.

MR. CARPENTER: I was just thinking out loud, - how some fellow might look at it.

MR. NORVIEL: Have you changed your mind this morning?

MR. CARPENTER: No.

MR. HOOVER: Suppose we let that go until somebody finds trouble with it.

MR. EMERSON: It is a new definition alright, I will say.

MR. CALDWELL: It is hardly a definition as expressed here for the purposes of this paragraph.

MR. EMERSON: I don't like it.

MR. CALDWELL: Lots of things I don't like about this I have discovered.

MR. NORVIEL: Would it help it any to say "The term domestic use, as used in this compact, shall mean the use of water, -

MR. HOOVER: The trouble was there, domestic use does not mean these things; "as used in this compact shall include" would be alright. This is not necessarily expressed, because we -

MR. NORVIEL: In other words, this is not a definition?

MR. HOOVER: No, merely a determination of what we mean.

MR. NORVIEL: It is just for the purposes of this compact, "domestic use shall include", -

MR. EMERSON: Alright.

MR. HOOVER: Article III we are holding up for the first of that paragraph.

MR. DAVIS: I made no change in this paragraph, Mr. Chairman.

MR. HOOVER: I understand it has now been agreed that we take out

of "d" the last clause "nor below a flow of 4,000,000 acre feet for any one of such years."

MR. NORVIEL: I guess I was the only objector, so I will withdraw.

MR. HOOVER: That comes out. In clause "c", in view of the definitions "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. "

MR. CARPENTER: Couldn't the word "be", reasonably be applied?

MR. NORVIEL: "Be" should go next to apply.

MR. HOOVER: "Reasonably be applied." I thought we would clean up matters which we had under discussion.

MR. NORVIEL: Will you read "c"?

MR. HOOVER: 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 the dominant uses specified in paragraph "b" of Article IV."

MR. SCRUGHAM: Wouldn't it be better to put first agricultural, then domestic?

MR. NORVIEL: Domestic, agricultural is the way it reads.

MR. HOOVER: It doesn't matter to me, you can have it that way.

MR. NORVIEL: I think that is better. Is it use or uses?

MR. HOOVER: Uses I guess.

The next that was worrying us yesterday, in reference to paragraph IV, the first paragraph, and in view of the definition we can now cut out the words "municipal and industrial uses."

MR. CARPENTER: And make "domestic, agricultural".

MR. EMERSON: "Domestic, agricultural and power.

MR. HOOVER: Well, the clause "Provided the congress assents" was not

agreed to yesterday.

MR. EMERSON: "Provided the" or "provided that"?

MR. STETTON: "Provided the". Have you "the" in the notes?

MR. SCRUGHAM: Mr. McKisick had another form.

MR. HOOVER: Yes, Mr. McKisick drafted that clause over.

MR. SCRUGHAM: Clause "a"?

MR. HOOVER: "a" "Inasmuch as the Colorado River has ceased to be navigable in fact, it is hereby agreed that (as between the signatory states) the use of its waters for purposes of navigation shall be subservient to the uses and necessary consumption of such water for agricultural and domestic purposes. In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the remaining provisions of this compact."

MR. SCRUGHAM: I think that is alright.

JUDGE SLOAN: He left out "power" in that one.

MR. CARPENTER: That embodies, - the thought is embodied, - the reasons for a specific clause in the compact. Now, if that be true, then the greater reason is the fact that should they attempt to maintain a navigable river, and would attempt to destroy the rest of the river for any other purposes.

MR. NORVIEL: If large dams were made and the river stabilized in flow, it would benefit navigation.

MR. DAVIS: The parenthesis around the words "as between the signatory states", - those parenthesis are mine, on this theory: it seemed to me if we were expressly providing that the clause only becomes effective when approved by Congress, that we would not need to limit the navigation between states, but if we make it dependent upon approval by Congress we should make it as broad as possible.

MR. EMERSON: I agree with you.

MR. CARPENTER: This clause we are now discussing, does it destroy navigation, or simply make it subservient to these other rights? It seems to me the effect is to bring about a larger recognition of navigation than now obtains.

MR. DAVIS: If the words "as between the states" were stricken.

MR. CARPENTER: Yes.

MR. HOOVER: It would read "Inasmuch as the Colorado River has ceased to be navigable, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses and necessary consumption of such water for domestic, agricultural and power purposes. In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the other provisions of this compact." It doesn't seem to me, - "It has ceased", - the reason is that it should cease in order to allow the waters to be used for these purposes.

MR. DAVIS: That is what I, - not what I had in mind, but what I presume Mr. McKisick had in mind, is the fact that irrigation dams does destroy the navigability of the river above that point. That statement might cause an issue with the War Department, who said that the river is navigable, and in this we state that it is not now navigable.

MR. NORVIEL: I fear that the words "should cease" might be objectionable.

MR. DAVIS: I rather like the idea of using the present condition than to suggest that the condition might be changed by something we do.

MR. EMERSON: All we wish to do is to make it subservient.

MR. CARPENTER: The clause does not make it obligatory to force the approval of congress; Congress may approve it if she wants to, but if she does not approve of the compact as a whole, - if this one clause is not

approved then the rest of the compact may be.

MR. EMERSON: It seems to me that paragraph as it now stands in Article IV is concisely stated. We do not need to state the reasons why, - congress is going to inquire into all of these matters, and it seems to me it says what was intended clearly and to the point.

MR. CALDWELL: It is not clear to me, Mr. Chairman, that we should even add the provision in regard to Congress assenting.

MR. HOOVER: Well, you may have the pact held up for years.

MR. CALDWELL: If I may make a statement which may explain my position a little better: Of course, I believe it is generally admitted and understood that Congress does not want to retain the river strictly for navigation. What they do want to do is to retain some rights for the United States, maybe because it is considered to be a navigable river. We are not asking that the river be considered navigable. The river is still as navigable as it ever will be hereafter. Under this paragraph all we are asking is that it be made subservient, - navigation be made subservient to the end that if we build irrigation works, or works for any other purpose on the river to get the use of the waters of the river, that navigation shall not interfere with it. Now, any real rights that the United States has are in reference to navigation, and they are still retained to the United States. Obviously that is all that the United States wants. I think that the states ought to object very seriously to the United States retaining any right in the river which permits the United States to destroy or interfere with any works which are now constructed for irrigation, or which may be constructed hereafter for irrigation, and as to that I am sure Congress can have no objection, and will have no objection under this paragraph, to any other rights incident to this provision.

MR. EMERSON: I don't believe it is altogether true that Congress will

have no objection, - I think we are going to have many of them.

MR. HOOVER: I have a suggestion to make to meet your side, in other words, we have the declaration "Inasmuch as the Colorado River has ceased to be navigable in fact, and navigation will seriously limit the development of the basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes." Now, we have still stricken out the clause as to approval of Congress.

MR. CALDWELL: I don't know whether I made myself clear or not, I probably have not. If we leave this paragraph out, - the proviso, Congress, under this pact, would retain such incidental rights as they have, regardless of this paragraph, and that is all they want to maintain. Now, what I do want is just what you have read in the first part of that proposition, that Congress shall agree not to interfere with works constructed for any other purpose than navigation. That is all we have got in this pact.

MR. HOOVER: If they do not have that proviso in the pact, then Congress might reject the whole pact and delay the whole matter of the pact.

MR. CARPENTER: Mr. Caldwell, I take it, has this in mind, in the language of the reservation it should not only say that navigation should be subservient, but also, say in express words that maintenance of navigation should not interfere with other purposes.

MR. CALDWELL: What I have said is that the United States will have all rights which it gets from the fact that this is a navigable river. Now, then if we say navigation rights shall be subservient, we do not destroy the navigability in theory or in fact. All we do say is that they shall not interfere with other works built for other purposes on the river.

MR. HOOVER: That is what is stated in the paragraph.

MR. CALDWELL: And this is still a navigable river, at least in theory.

MR. CARPENTER: We do not destroy the navigability in toto.

MR. HOOVER: That is the statement here; the only difference between this and that is that we make a statement here which tends to convince Congress on the fact of it that they cannot do it. They cannot safely make a reservation on this clause.

MR. SCRUGHAM: Read it again.

MR. HOOVER: "Inasmuch as the Colorado River has ceased to be navigable in fact, and inasmuch as the reservation of its water for navigation would seriously limit the development of the Basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes.

MR. CALDWELL: I think we should stop there.

MR. SCRUGHAM: Then you invalidate the whole thing.

MR. DAVIS: The first statement I was very much in favor of, the statement that the river is not navigable, I find in checking up I doubt, - when General Beach appeared before the committee he stated that in his judgment the river is navigable up to the Gila, and therefore, I think, rather than make an issue out of it, which would arise. On the face of it I think that statement should be cut out, the statement that it is not navigable now. In other words, you would have a straight issue with the War Department on it.

MR. HOOVER: "It has ceased to be navigable" perhaps that is not a fact, but it is a matter of practice.

MR. DAVIS: Yes sir.

MR. HOOVER: Can you say it ceased to be commercially navigable?

MR. DAVIS: Practically navigable, something like that.

MR. HOOVER: It is no longer an avenue of commerce. Of course we

can get up and down, but it is not commercially navigable.

MR. NORVIEL: I would prefer some phrase, "almost wholly" or almost, - some word, - some phrase rather than narrowing it down to a single word.

MR. DAVIS: How about practically.

MR. CARPENTER: Practically, yes. What I want was to avoid the necessity of presenting facts before the committee, and having the War Department come in and take the attitude and we take the other.

MR. HOOVER: You limit yourselves in the word "practically" they could come in and ask you to give proof on that. Isn't it a little better to say "navigable commercially".

JUDGE SLOAN: Could you say "Cease to have any —

MR. HOOVER: Cease to be navigable for commerce.

MR. DAVIS: Cease to be valuable for navigation.

MR. MC CLURE: I do not like the words "The river has ceased to be navigable". I believe in many respects that is not good.

MR. EMERSON: I don't believe it is necessary to argue the case in this article, and I can say the representatives from Wyoming will present the case to Congress with the reservation, - you can depend on the men from Wyoming making their argument.

MR. CARPENTER: The most illuminating memoranda that I have been able to find on this subject of navigation, or a lack of the navigability of the Colorado River was that filed by Judge Phil. D. Swing, now a congressman, and read later to the committee, at the 66th Congress, first session, and incorporated in the record of the hearing before that committee when an All-American Canal project was under discussion, in which he demonstrated to a conclusive degree that the navigability of the Colorado River, as we understand the term in its connection with commercial uses, and the uses of the river for the floating of boats, never did exist, and even if it be said

that it did exist what it has long since ceased.

MR. HOOVER: That is only one man pinned to the mast.

MR. EMERSON: All the more reason why we don't need argument in this compact.

MR. CARPENTER: Merely cut out the clause.

MR. EMERSON: We have been cutting out the matter of argument in different places.

MR. HOOVER: That is your suggestion, that the argument be left out?

MR. SCRUGHAM: I am in favor of the statement presented by Mr. McKisick.

MR. EMERSON: Any time you think Congress is not going to get all the arguments there are, you are mistaken.

MR. HOOVER: I think it has this value: A lot of people will be considering this pact outside of Congress, and they will jump right on that, not knowing anything about the river, and they will say "My God, we must preserve the rights of the United States to protect the navigation of this river." Whereas, by that means you have convinced all of those people at the outset.

MR. EMERSON: It seems to me that argument might apply to lots of parts of this compact.

MR. CARPENTER: That is true, of course.

MR. EMERSON: I am willing to let her go.

MR. DAVIS: Will you read that reservation?

MR. HOOVER: "In the event the Congress of the United States of America shall withhold its approval from this paragraph, such action shall not affect any of the other provisions of this compact."

MR. DAVIS: I don't believe I quite like the language "shall not affect any of the other provisions of this compact."

MR. HOOVER: How would you frame it Judge Davis, just to get it

formulated and in front of us?

MR. MC CLURE: Judge Sloan, what is your slant on that?

JUDGE SLOAN: I think it wise, as a matter of prudence, to put something on the end that would permit of the assent of Congress being made, without impairing the compact as a whole.

MR. NORVIEL: I was wondering if a saving clause might be added at the end of the whole compact, in the event any part should be objected to, so that it would not vitiate the compact, - something that would not be too broad.

MR. HOOVER: That would open the door for each state to take its goods out.

MR. DAVIS: I have expressed it this way: "If Congress shall withhold its consent to this paragraph, the other provisions of this compact shall, nevertheless, remain binding upon the signatory states."

MR. NORVIEL: You might take the word "states" out, leaving it "signatory".

MR. HOOVER: You might omit the word "withhold", simply say "If Congress does not consent."

MR. EMERSON: Should that not be "signatories"? "If Congress shall not consent to this paragraph, the other provisions of this compact shall, nevertheless, remain binding upon the signatories"?

MR. CARPENTER: Why not simply say "signatories"?

MR. EMERSON: That is better.

MR. DAVIS: The only thing I had in mind is to use the same term through the compact.

MR. HOOVER: "Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the basin" take out the second "inasmuch" and

simply say "reservation of its waters for navigation would seriously limit the development of the basin, it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes"?

MR. NORVIEL: That would eliminate --

MR. CARPENTER: The second "inasmuch" in the second line.

MR. SCRUGHAM: Just make it frame the determination.

MR. HOOVER: Then how would it do to say "Provided Congress assents to this paragraph."

MR. CARPENTER: It should be so worded that it will not be necessary to introduce any special arguments to secure that assent, but simply shall be interpreted to mean that in the event Congress wishes to consider that particular paragraph out, it can do that on its own motion, then it may do so.

MR. HOOVER: Then go back to Judge Davis's wording.

MR. SCRUGHAM: Congress might well approve the whole pact, without discussion, then there would be no need to raise the issue.

MR. HOOVER: Because the reservation is purely a matter of discussion, and because Mr. Caldwell has still a reservation in his mind about it, we would better clear up the matter.

MR. CALDWELL: I think I had better say, Mr. Chairman, that I hesitate to bind the State of Utah by my action in any way to a pact the provisions of which are such that the United States may prevent the construction of necessary works on the river for any and every right other than navigation, or prevent the construction and maintenance of such works in the river for those purposes. I never feel quite safe. I am free to confess, from the whims of bureaus such as we have in connection with our government. Now, I don't want to say that this river shall be henceforth considered, in

fact, to be an unnavigable, or an innavigable river, and I believe that that is the only thing in which Congress will have any grave concern. I believe Congress will readily consent or assent to the proposition that it will not interfere, or seek to interfere with the construction of large irrigation or control works on the river, or the maintenance or perpetuity of those structures in that river for that purpose. Now, I have said that largely because I want to get into the record and be understood as clearly as I can be. It is not in my mind, Mr. Chairman, to say that I shall not subscribe to this pact insofar as I may be considered a signatory, if the provision is made that Congress may withhold its assent to this article, or this paragraph in Article IV. I shall vote against, however, any motion which is put to modify the substance of that paragraph wherein it may give the right to Congress, or to the Government, or to any bureau thereof, to destroy or remove any works that may be placed in the river for the benefit of the so-called dominant uses. I think that is all.

MR. HOOVER: Then do you dissent from having any reservation there?

MR. CALDWELL: Yes sir.

MR. DAVIS: The difficulty Mr. Caldwell finds here, at least in my view, is likely this: I would very much rather have the clause without any reservation at all, but that is one thing if we put in the clause in that way, and then in the improbable event that Congress should not assent to that clause, one of two things would happen: Congress would reject the pact in toto, which would end everything for some time to come, or would approve it, with a disapproval of that particular clause, which means we would all have to go back to our legislatures again for a new approval.

MR. CALDWELL: I think that is very clear, Judge Davis, I don't believe I am laboring under any misapprehension. If I could get the cooperation of my fellow commissioners in this matter, - I shall put up just another pro-

position, that Congress should not at any time, now or hereafter, interfere with such works as you have described, or the maintenance of them, and I should like to record my vote here as "no" on giving to Congress any opportunity to retain to itself the right to do these things. If I can't get the cooperation of the commission, as I have said, it is not my present intention to destroy the pact.

MR. EMERSON: It seems to me whether or not this reservation is made, this will be voted out, and you can depend upon the legislatures of most of those states will finally adopt the idea that navigation shall be subservient, but it does seem desirable to have that first clause whereby it would not be necessary to send this back to every state to be ratified if Congress reserves that right, - it is simply the case of a safety device; but in addition it does not preclude that thing from being absolutely considered on its merits.

MR. HOOVER: It is not a question of destroying, it is a question of insiduously preventing new works, because the bureaus would simply call up and say "we never have desired anything like that."

MR. CALDWELL: Judge Davis, in his remarks just now said it was improbable that Congress would withhold assent, with which I agree. As I say, Mr. Chairman, I don't care to burden the record with many remarks from me on this proposition. I shall be as agreeable as I can after I have voted.

MR. CARPENTER: The elimination of this paragraph puts the compact back for further action by the states.

MR. DAVIS: In order to get the poll, I move the paragraph stand as at present presented.

MR. NORVIEL: Which one is that?

MR. DAVIS: Article 4, paragraph a, as we have it in this draft.

MR. HOOVER: Without the reservation?

MR. DAVIS: No sir. It will read like this: "Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Basin it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding upon the signatories hereto."

MR. CARPENTER: I like "signatory states" better.

MR. EMERSON: Wouldn't that --

MR. CARPENTER: Alright, say "signatories". My point was this, the United States is not a signatory.

MR. SCRUGHAM: I second the motion.

(Whereupon a vote having been taken, the result was as follows:

Ayes: Mr. Norviel, Mr. Davis, Mr. Scrugham, Mr. Emerson, Mr. McClure.

Nays: Mr. Caldwell, Mr. Carpenter)

MR. CARPENTER: This is tentative?

MR. HOOVER: No, final. Final on this paragraph.

MR. CALDWELL: Mr. Chairman, I don't like to be stubborn, - I don't want to be and don't intend to be. I value the opinion of the members of this Commission on that, and value the opinion of the Chairman most highly, but in principle I dissent, and I am quite sure that the fact should not be overlooked that the dissent of one legislature to this pact is just as important as the dissent of congress. I am quite sure the legislature of the State of Utah will not overlook that paragraph, but in order that the progress of this commission may not be hindered, and for reasons that I have heretofore stated, I am willing to change my vote from "no" to "aye".

MR. CARPENTER: For the same reasons I vote "aye".

MR. HOOVER: Then the paragraph is carried.

2nd Part
24th Meeting

CHAIRMAN HOOVER: We now come to paragraph (b), Article IV. As the paragraph stands, in view of our definition we can make certain changes. In the fourth line, we can cut out the words "municipal, agricultural, mining milling, and other industrial purposes."

MR. SCRUGHAM: Before that is done would the terms "mining and milling" in the preceding line -

CHAIRMAN HOOVER: (Interrupting) We don't need to cut out "agricultural Cut out "mining, milling and other industrial purposes." And in the third line at the end of the paragraph we can cut them all out. That paragraph then would read thus: "The use of the water of the Colorado River System for purposes of generating electrical power shall be subservient to the uses and necessary consumption of such waters for domestic and agricultural purposes, and shall not interfere with or prevent the use of said waters for said dominant purposes."

We have another problem that has come up here and has been discussed in connection with this wording. It doesn't necessarily follow that it has to - that this has to be rewritten. In other words, we can leave it stand as we have already agreed to it and the other problem that has arisen in which the other drafting was attacked, is that no where in this compact do we make any reference to the use of the water for power purposes. We get no ~~specific control of the water for power and where we have limited this pact,~~ as we have all through it, for the necessary consumptive uses, etc., we have probably by draft eliminated the control of power from the pact. It will bear that construction, and therefore it is necessary for us to put into the pact a control of power specifically, so that there can be no question raised as to what the interpower rights are between the two Basins. We have all gone on the assumption that power was limited by the expressions that we

have used; but I think the serious consideration of this by Judge Davis, Mr. Carpenter and others to whom I have mentioned it, has created in their minds the doubt that the pact as it stands does give this proper control of power and that we must make some specific mention in order to bring power under control of the pact.

We have given a great deal of thought to that and we concluded that this paragraph here would very materially limit the power rights, but not wholly, because a power right in the Upper or Lower Basin might be construed in control of either basin within this limitation. In other words, it might give it a further expansive right, and we need something in here that limits specifically, power in its rights to each of the basins. Judge Davis drafted a paragraph last night, redrafting this particular section to include that idea. Have you got it there, Judge?

(Judge Davis' draft was thereupon read by Chairman Hoover, as follows:)

"Subject to the provisions of this compact" (Hoover: to be substituted for Article (b), "the water of the Colorado River System may be impounded and used for the generation of electrical power."

(By those expressions we thought we would put "power" into the pact as being a rightful and proper use, and also we would make it subject to the control of Article III.) "But such use shall be subservient to the use and necessary consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes. And such impounding and use in one Basin shall not create any right effective beyond that Basin nor affect the flow of waters in the other Basin."

The essential difference here is simply the last sentence.

JUDGE DAVIS: I think the affirmative statement that water may be used for power purposes is valuable.

CHAIRMAN HOOVER: I think it is valuable; otherwise, it might look as if we were trying to avoid the power use.

JUDGE DAVIS: It is something like Mohammed's coffin, left floating somewhere between heaven and earth, and no one knows where. And I should like to have something specific. I am not at all certain that the last sentence is necessary. I am not at all sure but what the paragraph is sufficient with the elimination of that last sentence.

MR. EMERSON: As I understand, that has a dual purpose of really referring to power.

CHAIRMAN HOOVER: Of affirmatively referring to it.

MR. EMERSON: Yes. At the same time putting a further limitation probably upon the use of the water for power as affecting the two divisions. It is very desirable - the first is, and probably the second.

CHAIRMAN HOOVER: I think it is desirable. As the Judge says, we have left it practically hanging between heaven and earth.

MR. CARPENTER: The use of power should not only be confined to the divisions, Mr. Emerson, but should be subservient above.

MR. EMERSON: As far as the flow, or states, is concerned?

MR. CARPENTER: As far as present development is concerned. For example, as far as the Glen Canyon development is concerned. The compact should never interfere with agricultural or domestic development above. To put it broadly it should only be entitled to what is left after the higher and more dominant uses have been satisfied. That matter was discussed more or less in the committee and it was thought the words "dominant" and "subservient" would cover that phase. The right of power; on the other hand, should not attach to the surplus of the river which is unapportioned in such a way that it might embarrass the future commission in its further apportionment between the two basins into which the basin is divided. And it is the

hope that this clause would cover that phase as well, by making - by confining the water to the water of the particular basin. The future commission should not be embarrassed by finding itself confronted with enormous plans for the use of the surplus water for power within the Lower Basin which it cannot rid itself of and which it might be claimed had vested to such a degree that they could not be disturbed. And that feature should be carefully considered in the wording of this paragraph. In other words, there should be nothing in there that would prevent the utilization of the electrical energy obtained from the flowing of the water that passes by the wheels. But no permanent right should attach that would embarrass the future apportionment of water because at that time the electrical power phase may have developed to such a degree that it would be of prime importance.

JUDGE DAVIS: Mr. Carpenter made a very clear statement of the situation and I am very glad to be able to agree with him.

CHAIRMAN HOOVER: This splits itself into two parts - this paragraph - and we might take it in two parts. We can cut this into two parts, and we might consider the first sentence first.

"Subject to the provisions of this compact, the water of the Colorado River System may be impounded and used for the generation of electrical power," (that is an affirmative statement of the power position in the basin;) "but such use shall be subservient to the use and necessary consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purpose."

JUDGE DAVIS: The word "necessary" shouldn't be in there.

MR. CARPENTER: "Use and consumption."

CHAIRMAN HOOVER: "Consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes." There is, except for the declaration, that is the wording of paragraph (b) as we have already agreed to it. Well, now, I think we might take the sense of the commission on that part of the para-

graph, which narrows the discussion down to the second part. The fact is we have already agreed to it except for this affirmative declaration about power. Is there any comment on that first sentence.

MR. CALDWELL: On the first part, Mr. Chairman?

CHAIRMAN HOOVER: Yes.

MR. CALDWELL: If it won't overtax the patience of the Commission, I would like a little time to think about that before I give my consent. I am willing to consider the second sentence.

CHAIRMAN HOOVER: You wouldn't review a paragraph as already agreed upon.

MR. CALDWELL: If we have agreed on that and that is binding on us, there is no use discussing it.

CHAIRMAN HOOVER: I was just wondering -

MR. CALDWELL: (Interrupting) I only have this thought in mind, that possibly I might want to offer a suggestion for its improvement, that is all, and in harmony with the general idea of it.

CHAIRMAN HOOVER: All right then, on the second sentence.

JUDGE DAVIS: I assume that is satisfactory to everybody else, then.

CHAIRMAN HOOVER: Is it satisfactory to everybody else?

(All the remaining members of the commission answered in the affirmative.)

CHAIRMAN HOOVER: The second sentence:

"And such impounding and use in one basin shall not create any right effective beyond that basin nor affect the flow of waters in the other basin."

MR. NORVILL: I think we shall have to object to that. This just came to our notice a moment ago. We had no prior information as some of the others had, but it seems to me that there is something in there that would make it very objectionable to the Lower Division.

MR. SCRUGHAM: I object to the second sentence on the ground that it would be only provocative of controversy and for no purpose.

CHAIRMAN HOOVER: In other words, your feeling is that in making power subservient, that it is subservient all the way through.

MR. SCRUGHAM: Yes.

MR. NORVIEL: We all hope some time to build a large dam at Glen Canyon within the State of Arizona, but as the divisions are created, not only the dam, but the reservoir would be within the Upper Basin. And it appears from this that it would be under the control of the Upper Basin to the use of the waters - the flow of the water - and all of that, when it has gone beyond the control of the use of the Upper Basin for any other purpose than of power. And I think there is something in that that would be objectionable.

CHAIRMAN HOOVER: I have a feeling that the situation is covered by the first sentence. That is my instinct about it, because it is the most drastic expression that we have been able to think of as to subserviency, and as it follows right through the compact, I think it cures itself automatically.

JUDGE DAVIS: I wrote the clause, Mr. Chairman, last night, and at that time thought that it really was advisable. Since that time I have thought the matter over and my own judgment is that the paragraph is better with the elimination of that last sentence.

CHAIRMAN HOOVER: That any reservation that -

MR. CARPENTER: (Interrupting) Does that clearly extend to the whole flow of the river? My answer off hand is "yes."

MR. EMERSON: Isn't the Upper Basin protected by the guarantee of delivery at Lee's Ferry. It has no further demand about it.

MR. CARPENTER: The second sentence was put in with the idea that we should not be compelled by virtue of some power, to increase the flow at Lee's Ferry to the detriment of agricultural development above.

MR. EMERSON: That is taken care of in the first sentence.

CHAIRMAN HOOVER: I think so. It takes care of the limited flow at Lee's Ferry. That is my impression.

JUDGE DAVIS: I move the last sentence be eliminated, Mr. Chairman.

MR. NORVIEL: I second the motion.

CHAIRMAN HOOVER: It has been moved and seconded that the last sentence be eliminated; those in favor say "aye."

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

MR. NORVIEL: Is this a substitution of the other (b).

CHAIRMAN HOOVER: Yes.

MR. CARPENTER: Mr. Caldwell and I want to talk over this whole article a little further before assenting.

CHAIRMAN HOOVER: Then we will temporarily have to suspend that.

MR. EMERSON: The present effect of that paragraph, as I understand, is to bring the matter of power out of thin air and give it some standing, and does not in any way vitiate the true intent and meaning of the old paragraph (b).

CHAIRMAN HOOVER: It specifically brings power under the provisions of paragraph 3.

MR. CARPENTER: Recognizes power and brings it under the provisions of the entire compact.

CHAIRMAN HOOVER: We have now a re-draft of (a) which we might read and see if we can settle on that:

"Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Basin it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent

to this paragraph, the other provisions of this compact shall nevertheless remain binding upon the signatories hereto."

If there is no further comment on that, we will let it stand. Is there any change in paragraph (c) of Article IV.

MR. CARPENTER: I think the words "within its limits" at the close of the sentence should be inserted after the word "state" in the second line from the bottom, making it then read "control by any state within its limits of the appropriation, use and distribution of water." As it stands, it might be ambiguous.

CHAIRMAN HOOVER: All right, if there is no objection, we will do that. Any further comment on that paragraph.

MR. CALDWELL: I would like to hear reasons why we shouldn't add to this something to the effect that this regulation and control reserved to the state should not be for its benefit as provided by its local laws.

MR. CARPENTER: The control of any subject matter by a state derives its source from its people, expressed in its constitution, the laws enacted by its legislature and the decisions of its courts interpreting both the constitution and the laws. That is the only way a state may regulate and control. It is the thought evidently of those who drew this paragraph that that being the fact, the state's constitution, laws and decisions of its courts might be eliminated as coming within the general term "regulation and control by a state." It is customary to speak of regulation and control in terms of the constitution, laws and decisions of courts. But it was evidently thought by those who had this, the final draft of this paragraph in hand, that such words were surplusage and a repetition of the words "regulation and control". There is some advantage by putting in the words "constitution, laws and decisions of its courts" in that it is more understandable probably, and comports more to the general

views of the local citizens of any state. It is my opinion that the words "regulation and control" by a state mean what they say - what they imply rather - that is that the instrumentalities by which that regulation and control takes place are all included in the general terms.

MR. SCRUGHAM: Mr. Chairman, will you permit the reporter to read the first part of Mr. Carpenter's statement?

(Assent was given and the statement was read as follows:)

"The control of any subject matter by a state derives its source from its people, expressed in its constitution, the laws enacted by its legislature and the decision of its courts interpreting both the constitution and the laws."

MR. EMERSON: It has been amended so it looks all right to me and I think does include all that Mr. Caldwell suggests might be added.

CHAIRMAN HOOVER: It was considered that if we began to put in a dissemination of state powers - constitution, laws, court regulations, etc., - we got into deep water for fear we wouldn't include them all, and we made it all inclusive for fear we might leave something out.

There is a little question in my mind as to whether we should use the word "boundaries" instead of "limits."

MR. CARPENTER: I like it much better.

MR. SCRUGHAM: That is a much better word.

CHAIRMAN HOOVER: If there is no objection to that paragraph, it stands with the change of the word "boundaries" and the transposition of a phrase there.

(The paragraph as finally adopted is as follows:)

(c) (ARTICLE IV.) The provisions of this article shall not apply to, or interfere with the regulation and control by any State within its boundaries of the appropriation, use and distribution of water."

CHAIRMAN HOOVER: Has the Imperial Valley got its notions clear as to

what - as to Article VIII.

ARTHUR P. DAVIS: We have agreed upon the text of that paragraph but it isn't yet typewritten, unless that is it.

CHAIRMAN HOOVER: This draft reads as follows:

"Rights heretofore vested shall remain unimpaired by any provision of this compact. Until storage is created as hereinafter mentioned, no new diversions of water shall be made during the months of August, September, October and November of each year for use without the drainage area of the Colorado River System, except for the uses of the City of Denver. Whenever works of capacity sufficient to store at least 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, the present users of water in the Lower Basin who can be served therefrom shall be satisfied thereafter from the waters apportioned to the Lower Basin and shall have no further claim upon the waters apportioned to the Upper Basin. Inchoate rights heretofore initiated but not vested prior to the effective date of this compact, and all rights initiated subsequent to such effective date, shall be limited by the provisions of this compact and shall be satisfied from the waters apportioned to the Basin in which they may be situate and shall have no claim upon any part of the waters apportioned to the other Basin."

MR. CARPENTER: To which we cannot assent.

MR. CALDWELL: I don't see much resemblance between that and

~~Article VIII, although are both marked the same at the head.~~

MR. CARPENTER: No new diversions shall be made during the months of August, September, October and November no matter what the state of the river, no matter how much water is going to waste to the sea, no new diversions could take place in the Upper territory.

MR. ARTHUR P. DAVIS: That is for use outside of the basin. It doesn't

limit anything inside the basin, nor the construction of any works for a diversion in any other months, outside the basin.

CHAIRMAN HOOVER: My objection to it is that when you begin to specify diversion of water you have supplied the necessity for an interstate police.

MR. EMERSON: It seems to me that the second sentence makes a mountain out of a molehill, and the protection afforded by that sentence is quite insignificant. It just raises a point for attack of the legislatures in the upper states. It gives them nothing and it opens up a great field for adverse discussion in the upper basin.

CHAIRMAN HOOVER: If rights heretofore vested shall remain unimpaired by any provision of this compact, you don't require one word more than that.

MR. CARPENTER: You leave the gate wide open for everlastingly injecting controversy along the whole river unless that is specifically toned down by the provisions which follow. The whole theory of this compact is this: That the water apportioned to each basin is adequate not only for all of its present uses, but for the increase of development within each basin.

CHAIRMAN HOOVER: The only question at stake here is that the present uses of the southern basin are not over three and a half million acre feet all put together. Here is a provision for eight and a half million feet in perpetuity. They are covered three times over today by this compact, and the one substantial ground for complaint on the part of the users of the lower water is that until they have storage, the low water flow might be jeopardized by any influence that they were limited to by this compact. They have one ground for complaint which is just, and that is that this compact might limit the low water flow. When that low water flow is taken care of they have no other complaint. That is cured by storage.

MR. CARPENTER: And when that storage occurs any possible claim from the upper territory should at once cease.

CHAIRMAN HOOVER: They haven't a claim on the upper territory; they have a claim on the water. That is, a claim on the flow of the Colorado River immediately above their headgates, and after that claim is satisfied, they have no claim on the upper river at all.

MR. CARPENTER: The first statement is a little too broad: "shall remain unimpaired by any provision of this compact."

CHAIRMAN HOOVER: Get the court to satisfy the people in the lower basin by deciding the validity of the 14th Amendment to the Constitution, and giving the further comfort that storage was in contemplation in this compact, etc. I don't see how this commission can go outside of that ground.

MR. CARPENTER: Well, what is a vested right.

CHAIRMAN HOOVER: Whatever it is, it is protected under the constitution.

JUDGE DAVIS: There is one substantial objection to that as framed that there is an implication that rights heretofore vested do not come within the amount of water apportioned to the two divisions, the entire idea being of that of rights to come within that amount.

CHAIRMAN HOOVER: There is an implication here that after eight and a half million feet have been provided, they still have a claim for more.

ARTHUR P. DAVIS: I do not suppose anybody -

MR. CARPENTER: (Interrupting) It is open to that interpretation.

CHAIRMAN HOOVER: I would suggest, perhaps, in order to make progress that we leave this and let me sit down with the California people and ~~see if we cannot evolve something that will be more nearly practicable.~~

MR. SCRUGHAM: May I suggest that those in the northern group that want to consult, meet and formulate their ideas.

CHAIRMAN HOOVER: We will dismiss that article for the moment. I don't know whether overnight anybody has thought of any changes in the remaining articles. Have we any changes with regard to the preamble.

MR. CALDWELL: I would like to get right on this proposition. I sat for several hours reading this and marking it up to suit myself. I believe that the commission is pretty clear as to what it wants to accomplish. I do not believe that the pact is nearly so clear as to the views of the commission. I am just arising to inquire whether or not it is the intention to put this pact into the hands of some person or persons competent to edit it and make it say what it means or are we passing it now up to the engrossing clerk.

CHAIRMAN HOOVER: No, we are not passing it up. We are simply trying to get everybody's ideas before us at all times and I thought by taking it in detail we might get it, - until we get them all.

MR. EMERSON: I thought we had an editing committee in the drafting committee.

CHAIRMAN HOOVER: The drafting committee has passed it up to the commission unless you want to refer it back.

MR. EMERSON: It seems impractical to put it in the hands outside of those who have been studying this problem for the last two weeks.

MR. CARPENTER: Mr. Caldwell, I would like to talk over with you what suggestions you have in mind. Last night I was not able to read this compact as prepared, and I would like to discuss with you any suggestions. Could you do so during noon hour.

MR. CALDWELL: I feel this way about this thing. We are trying to settle everything here in the meeting, and editing in a meeting is a very difficult thing it seems to me and there is a lot of wasted words because everybody wants to express his views and you can't object to that either. But I think that such things as I would want to say could be easily sat down on by an editing committee, and get me out of the way pretty quickly if I am not right; and I would be very glad if we could have a little more time than we have outside of the meetings to do some of these things.

CHAIRMAN HOOVER: Supposing we have a meeting of the editing committee after lunch with Mr. Caldwell, and go over it.

JUDGE DAVIS: And receive any suggestions from anybody else.

CHAIRMAN HOOVER: Yes.

(The meeting thereupon adjourned, the editing committee to meet at 2:00 P.M., and the commission to reconvene at the call of the chair.)

Preamble	O.K.
Article I	O.K.
Article II	New Definition (domestic use)
Article III	Page 2 rewritten (new paragraph (a))
Article IV	New paragraph (a)
Article V	O.K.
Article VI	O.K.
Article VII	O.K.
Article VIII	To be considered.
Article IX	O.K.
Article X	O.K.
Article XI	O.K.
WITNESS CLAUSE	O.K.

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, Page 171) and the Acts of the Legislatures of the said States have, through their Governors, appointed as their Commissioners:

W. S. Norviel	for the State of Arizona
W. F. McClure	for the State of California
Delph E. Carpenter	for the State of Colorado
J. G. Scrugham	for the State of Nevada
Stephen B. Davis, Jr.	for the State of New Mexico
R. E. Caldwell	for the State of Utah
Frank C. Emerson	for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to assure interstate comity; to remove causes of present and future controversies; to promote the expeditious agricultural and industrial development of the Colorado River Basin and the storage of its waters and to protect life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this compact:-

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(d) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(e) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The terms "apportionment" or "apportioned" mean the division of waters of the Colorado River System for consumptive beneficial use.

(i) The term "domestic use" shall include the use of water for household stock, municipal, mining, industrial and other like purposes, but shall exclude the generation of electrical power.

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 of such waters by one million acre feet 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 any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally apportioned between and equally borne by the ~~Upper Basin and the Lower Basin, and whenever necessary the States of the~~ Upper Division shall deliver at Lee Ferry water to supply 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 July next succeeding

the ratification of this compact.

(e) 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 domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned in paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after July first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives with like powers to those of this Commission whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Basin as described in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

(New Article IV, adopted at 24th Meeting held November 23, 1922 A.M. Mr. Carpenter and Mr. Caldwell reserve right to adopt (a). Substitute for old page,)

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Basin it is hereby agreed that the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress

shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding upon the signatories hereto.

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

(c) The provisions of this article shall not apply to, or interfere with the regulation and control by any State within its boundaries of the appropriation, use and distribution of water.

ARTICLE V.

The chief official of each State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more States:

(a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as

herein provided; or (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States or to be constructed in one State for the benefit of another State, or for the diversion of water in one State for the benefit of another State, the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII.

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

ARTICLE IX.

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X.

This compact may be terminated at any time by the unanimous agreement of the signatory States, but at such termination all rights then established under this compact shall continue unimpaired.

ARTICLE XI.

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of such of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the

other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.