

MINUTES OF THE

19th MEETING

COLORADO RIVER COMMISSION

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Bishop's Lodge  
Santa Fe, New Mexico

November 19, 1922  
10:00 A. M.

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

There were present:

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

In addition there were present:

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

The meeting was called to order by Chairman Hoover.

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

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

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

CHAIRMAN HOOVER: Yes, that is right.

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

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

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

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

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

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

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

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

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

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

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

that situation, which is pretty difficult.

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

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

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

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

MR. NORVIEL: Which is your parts, Judge?

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

MR. NORVIEL: Just read it - your part.

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: An agreement could be made.

MR. CARPENTER: An international treaty would be --

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

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

JUDGE SLOAN: You used it.

MR. CARPENTER: So I did.

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

to Mexico to get the water as it can.

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

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

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

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

CHAIRMAN HOOVER: Yes.

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

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

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

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

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

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

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

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

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

ARTHUR P. DAVIS: Yes.

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

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

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

MR. CARPENTER: You mean for their own benefits.



CHAIRMAN HOOVER: Yes, for their own benefits.

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

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

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

CHAIRMAN HOOVER: But that we can't solve.

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

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

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

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

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

ARTHUR P. DAVIS: Just as it is now.

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

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

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

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

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

in Arizona. Isn't that so, judge?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN HOOVER: Our original language would cover that.

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

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

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

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

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

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

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