

MINUTES OF THE

25th MEETING

COLORADO RIVER COMMISSION

The twenty-fifth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Thursday evening, November 23rd, 1922, at 7:30 P.M.

There were present:

Herbert Hoover, representing the United States, 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:

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

The meeting was called to order by the Chairman.

Thereupon the draft of the Colorado River Compact submitted to the Commission at its twenty-fifth meeting was taken up for consideration and the Preamble read in open meeting by the Chairman.

~~On motion duly seconded and unanimously carried a comma was inserted~~
after the word "States" in the fifth line and the comma removed after the word "have" and the word "Governors" in the sixth line.

CHAIRMAN HOOVER: Any further comment?

There being no further comment, the preamble was thereupon unanimously adopted in the following form:

"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:"

CHAIRMAN HOOVER: (Reading) "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."

MR. SCRUGHAM: Mr. Squires suggested two minor changes in there that might be advantageous. To "promote" interstate comity. How can you "assure" interstate comity?

MR. DAVIS: ~~You can assure interstate comity better than you can~~
"secure" expeditious agricultural development.

MR. SCRUGHAM: Instead of "promote" the expeditious, make it "secure" the expeditious agricultural and industrial development.

MR. DAVIS: In line five change "assure" to "promote" and in the next line change "promote" to "secure."

CHAIRMAN HOOVER: You can save some "ands" in that sentence and make

it a little more smooth. If you strike out the "and" after "Colorado River Basin" in the line about half way down, "to secure the expeditious agricultural and industrial development of the Colorado River Basin" comma "the storage of its waters and to protect life and property from floods."

MR. DAVIS: I would say "to protect" should be changed then to "the protection."

MR. SCRUGHAM: "and the protection of."

MR. DAVIS: "The storage of its waters and the protection of life and property."

CHAIRMAN HOOVER: (Further reading) "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."

MR. CARPENTER: I don't want to be captious, but up there before the word "secure" that should be "and to secure", leaving the semi colon there.

CHAIRMAN HOOVER: Any further comment?

MR. NORVIEL: I think the semi-colon should be a comma there.

CHAIRMAN HOOVER: If there is no objection that is passed finally.

(There being no objection, Art. 1 was unanimously passed in the following form:)

"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 promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of 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.

Paragraphs (a) and (b) inclusive of Art. 2 were thereupon read by the chairman.

MR. HAMELE: Shouldn't that be "and" instead of "or" Mr. Chairman?

CHAIRMAN HOOVER: Yes, you can have "and" (referring to par. (b).)

MR. CALDWELL: That "apportionment" is an apportionment of something else. I think we should change that a little.

JUDGE SLOAN: We are not dividing the consumptive beneficial use of waters.

CHAIRMAN HOOVER: This is Mr. Squire's proposal, in order to bring this definitely into tune with Art. 3. It would read "the terms "apportionment" and "apportioned" mean the division for consumptive beneficial use of the waters of the Colorado River System."

JUDGE SLOAN: I think he meant the division of the consumptive beneficial use of water.

CHAIRMAN HOOVER: He wants to get it in tune with Art. 3. He wants a division of the beneficial consumptive use of the waters of the Colorado River.

MR. EMERSON: But it isn't that.

MR. CARPENTER: Division of the waters for beneficial consumptive use is what it says.

MR. EMERSON: I think the error is in Art. 3 rather than in the definition.

MR. DAVIS: I raised the point this afternoon and I again raise it. As I have run through the compact I don't find that that word is used anywhere except in Art. 3.

CHAIRMAN HOOVER: Apportionment?

MR. DAVIS: Apportioned, unless it says "hereby."

CHAIRMAN HOOVER: In Art. 8 any way we draft it we are going to use it two or three times.

MR. DAVIS: Without the use of the words "hereby apportioned." Outside of Art. 8 there is no necessity for that definition at all. What Art. 8 may have I don't know.

CHAIRMAN HOOVER: Let's suspend it. (Thereupon Par. (i) of Art. 2 was read by the chairman.

MR. SCRUGHAM: I ask for the term "milling." The milling use is far greater than the mining use, and I would like to have that in there.

CHAIRMAN HOOVER: Any further comment?

MR. HAMELE: Wouldn't it be a more logical order if the definitions for the basins came before the definitions for the states of the division, just change the order.

CHAIRMAN HOOVER: Any comment on that suggestion?

MR. NORVIEL: I think not.

MR. SCRUGHAM: What is the advantage of the change?

MR. NORVIEL: The first thing we did was to divide the basin into two divisions and after that settled on the basin.

CHAIRMAN HOOVER: Logically Lee Ferry ought to be down below the division of the states, then it would follow alright.

MR. CARPENTER: Lee Ferry is used in (f) and (g), is the only thing I was thinking of and you should define Lee Ferry before you use it there.

CHAIRMAN HOOVER: Suppose we move Lee Ferry down to below (e).

MR. CARPENTER: That is the point of division and then you divide the basin I was thinking of.

MR. EMERSON: I think (c) should be "The term "Upper Basin" (d) "Lower Basin" then divisions and then Lee Ferry.

MR. DAVIS: You should define Lee Ferry before you use it.

MR. EMERSON: I think Mr. Hamelo's suggestion is well taken, that (b) relates to the Colorado River Basin, then it would be very proper for the upper and lower basin to follow that.

MR. CARPENTER: Why don't we have the Colorado River Basin then the point of demarkation, then the basin and then the division.

CHAIRMAN HOOVER: You would move the division clear down then would you?

MR. CALDWELL: I move that we pass it, Mr. Chairman.

CHAIRMAN HOOVER: We have already changed Lee Ferry to (e) as a compromise on everybody's criticism and put it in immediately above (f).

Thereupon Art. 2 was unanimously adopted in the following form:

"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 "States of the Upper Division" means the states of Colorado, New Mexico, Utah and Wyoming.

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

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

(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" and "apportioned" mean the division of waters of the Colorado River System for beneficial consumptive use.

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

Thereupon Art. 3 was read by the Chairman.

MR. CARPENTER: I should say "The waters of the Colorado River System for beneficial consumptive use are hereby divided and apportioned."

MR. NORVIEL: That is agreeable.

CHAIRMAN HOOVER: We are into trouble right here. You cannot divide the water. You are dividing the use of the water. You are using this water over and again two or three times. That is my argument.

MR. EMERSON: You are blocking out certain amount of water, not the use.

MR. CARPENTER: For beneficial consumptive use.

MR. DAVIS: I move we take a vote and the majority control.

MR. CALDWELL: I second the motion.

(Thereupon, the motion of Mr. Davis having been put to a vote, the same was unanimously passed.)

CHAIRMAN HOOVER: Now we are in a position to vote.

MR. CARPENTER: I move you that be changed to read as follows:

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

Thereupon, the motion of Mr. Carpenter having been duly seconded by Mr. Emerson, the result was as follows:

Ayes: Mr. Norviel, Mr. Emerson, Mr. Caldwell, Mr. Carpenter, Mr. Davis.

Nays: Mr. Scrugham and the Chairman.

CHAIRMAN HOOVER: It means you have got to go on changing your pact now.

MR. DAVIS: You have got to change two more paragraphs.

CHAIRMAN HOOVER: You are changing here from the basis of use of water to actual division of water. It is a very vital change you are making and you will find it will be a very important thing at some date. You keep on perfectly safe ground as long as you divide use. When you begin to divide the water you get into trouble.

MR. MC CLURE: I didn't vote on either of those I guess.

MR. SCRUGHAM: I change my vote and ask for a reconsideration.

MR. DAVIS: I don't think the legal effect is any different between the two expressions.

MR. NORVIEL: That settles it as far as I am concerned.

MR. SCRUGHAM: I move the vote be reconsidered.

MR. NORVIEL: I second the motion.

(Thereupon, the motion of Mr. Scrugham having been put to a vote, the same was unanimously passed.)

MR. EMERSON: It seems to me you are setting out a certain definite block of water for use under each division. You are not setting out any block of use, you are setting out a block of 7,500,000 acre feet in paragraph (a) for use.

CHAIRMAN HOOVER: What becomes of it after you use it?

MR. NORVIEL: They give it to us then.

CHAIRMAN HOOVER: They give it to you and somebody else uses it so you don't set out the use of it.

MR. CARPENTER: It is set apart for consumptive use.

MR. MC CLURE: Judge Sloan, does it make any difference in the language?

JUDGE SLOAN: I favor the retention of the words there. Principally because it means a redrafting of two paragraphs.

MR. DAVIS: (a) is inconsistent with the way we have the introduction now so if you change the introduction, (a) becomes inconsistent. Your introductory clause as written now apportions use, while (a) apportions 7,500,000 acre feet of water, so the language is inconsistent as the language is written at present. (f) would have to be changed if the introductory clause is changed.

MR. NORVIEL: How would it do to change the first word "the" to "for"? "For beneficial consumptive use", cut out the "of", "the waters of the Colorado River System are hereby divided", and so on.

MR. DAVIS: That is changing the order of the phrase. Then in paragraph (g) at the end you would again have to change to conform.

MR. EMERSON: I would like to know, Mr. Chairman, where you see difficulty in the future with the changing of that expression?

CHAIRMAN HOOVER: I have doubts as to the ability of the Commission

to divide the water. You can divide the use of the water, but I don't believe you can divide the water itself. That is the assumption of an ownership in the body of the water, not the use of water and I think there are essentially different legal principles if I understand anything about it. I will ask Mr. Hamble what he thinks about that.

MR. HAMELE: That is true, Mr. Chairman. There is no property right in running water and there couldn't be any division in a compact of this kind of the actual water, because it is only the use that is in question. It passes on, goes down and the very water that is used in the upper division is used again in the lower division.

MR. EMERSON: Isn't this 7,500,000 acre feet consumptively used by the upper division?

MR. HAMELE: As a matter of fact it isn't used, for part of it goes down.

MR. DAVIS: If we were saying there is hereby vested in each division the ownership of so much water I would say the criticism is well founded, but where we are making a physical division of so much water for a certain purpose I think there is a distinction.

MR. CARPENTER: You are apportioning the water for use, for a purpose, and that purpose is beneficial use.

CHAIRMAN HOOVER: When you get over to these other places you are going to have discussions on water rights in the sense of use.

MR. EMERSON: Based upon the use of certain amounts of water.

MR. DAVIS: The federal act uses a still different expression; provides for an equitable division and apportionment among the states of the water supply of the Colorado River. "Equitably divide and distribute the water supply of the Colorado River." You can follow that language if you choose.

The Arizona Act says, "The further utilization of the waters."

California says "use and disposition."

Colorado says "utilization and disposition of the waters."

Nevada says "to equitably settle and define the rights of the states in the waters of the Colorado River and its tributaries."

New Mexico says "the rights of the States in and to the use, benefit and disposition of the waters."

Utah says "fixing and determining the rights of the states in and to the use, benefit and disposition of the waters."

Wyoming, "determining the rights of the states in and to the use, benefit and disposition of the waters."

I am going to change my opinion, Mr. Chairman, and stick to "use" in order to conform to the acts.

MR. CALDWELL: I don't think it conforms to the acts.

MR. SCRUGHAM: We have a motion before us, seconded by Mr. Norviel, that we retain the word "use".

(Thereupon a vote having been taken upon the motion of Mr. Scrugham, the result was as follows:)

Four ayes and three nays.

MR. CALDWELL: I move that we make it unanimous.

(The motion of Mr. Caldwell having been duly seconded, the same was unanimously passed.)

MR. DAVIS: In paragraph (a) "There is hereby apportioned in perpetuity to each Basin" the "exclusive beneficial consumptive use" of. Strike out "~~for its~~" and say "the." After "use" strike out the comma and use "of."

MR. CALDWELL: I can't vote for that. I tell you I would like a block of water up there. I don't want a block of uses.

MR. DAVIS: We have to adopt either one plan or the other and follow it through.

CHAIRMAN HOOVER: Mr. Bannister has handed me a note of several court

decisions that what is divided is not the water, but the use of it and he quotes several authorities:

Wyatt v Lerimer & Weld Irr. Co. 13 Colo. 298;
 Palmer v Railroad Commission, 167 Calif. 163;
 Bear Lake & River Water Works Co. v Ogden, 8 Utah 494.

He goes on to say, "for the water itself while in the river belongs to no person, no state and not to the Federal Government. It is like air, - ownerless. After the water is taken out into ditches it then becomes owned. Until then the thing that is owned is a right to use.

MR. EMERSON: The constitution of several states declare that the water of the natural streams is the property of the state.

MR. CARPENTER: There is no difference in the expression anyhow, the blocking out of waters for consumptive use and consumptive use of water, it is just another way of stating the same thing.

MR. DAVIS: I agree with Mr. Carpenter about that. All I want to do is to make this section in harmony with the other. I make the motion it be changed.

(Thereupon a vote having been taken on the motion of Mr. Davis, the result was 6 ayes, 1 nay by Mr. Caldwell.)

Paragraph (b) of Article III was thereupon read by the chairman and there being no comments, the same was unanimously adopted as read.

Paragraph (c) of Article III read by the Chairman.

MR. DAVIS: Mr. Chairman, I would like to suggest a change.

"The burden of such deficiency shall be equally apportioned." There we use the word "apportioned" and not in the sense of the definition which we now have so that as to that word "apportioned" the definition is certainly unnecessary. I suggest that we strike out the words "equally apportioned between and" so that it reads, "the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin."

CHAIRMAN HOOVER: Any objection to that change?

MR. NORVIEL: None at all.

(Thereupon a vote having been taken upon the adoption of paragraph (c), Article III as amended, the same was unanimously adopted.)

Paragraph (d) article III read by the Chairman.

MR. HAMELE: Strike out the last three words in the first line, "agree that they."

(A vote having been taken on the amendment to paragraph (d) offered by Mr. Hamelc, the same was unanimously adopted as amended.)

Paragraph (c), Article III read by the Chairman.

JUDGE SLOAN: I think the word "delivery" ought to be eliminated.

CHAIRMAN HOOVER: This refers to 75,000,000 feet. It is in the sense of a delivery.

MR. DAVIS: I don't like the word "delivery" very much.

CHAIRMAN HOOVER: You could change it to flow.

MR. CARPENTER: I don't know how the upper states could withhold the use of water on its way.

MR. DAVIS: I think "flow" is better than "delivery."

MR. CALDWELL: Just cut out the word "delivery."

JUDGE SLOAN: That changes the whole meaning.

MR. DAVIS: The word "delivery" is not the right word. I think either one of two things: either strike out those words or put in "a flow of water." I think it is better to strike out the words.

CHAIRMAN HOOVER: All those in favor of strike out the words "the delivery of" please say aye.

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

Nays: Mr. Carpenter, Mr. Norviel

MR. DAVIS: My thought on it, Mr. Chairman, is this. The words

"withhold," if you withhold something you withhold something physical. The only thing you can withhold is the water. To withhold something it must be an entity.

MR. CARPENTER: "The States of the upper division shall not withhold and the states of the lower division shall not deliver" comma, "water which cannot be."

CHAIRMAN HOOVER: You agree, then, to putting the comma after "deliver"?

MR. NORVIEL: After "of."

MR. DAVIS: Cut out the comma after "require."

MR. CALDWELL: I don't want to appear stubborn,-

CHAIRMAN HOOVER: What do you suggest, Mr. Caldwell?

MR. CALDWELL: If you want the right thing you better say "the states of the Upper Division shall not withhold water and the states of the lower Division shall not require the delivery of water which cannot reasonably be applied." It simply means the removal of the commas.

MR. NORVIEL: I think that means the same thing and would be correct.

CHAIRMAN HOOVER: You would now agree on the removal of the commas?

JUDGE SLOAN: And insert the word "water" after "withhold."

CHAIRMAN HOOVER: A comma after the first "water" and a comma after the second "water."

MR. EMERSON: I move its adoption in that form.

(The motion of Mr. Emerson having been duly seconded, the same was unanimously carried.)

Paragraph (f) of Article III read by the Chairman.

MR. CALDWELL: I think the words "and when" should come out.

MR. EMERSON: Wouldn't that word better be "by" than "in" in the third line?

MR. HAMBLE: Wouldn't "under" be preferable?

MR. DAVIS: I would rather see "by."

(There being no objection to the strike out of the word "in" and the insertion of the word "by," paragraph (f) of Article III was unanimously adopted as amended.)

Paragraph (g) of Article III read by the Chairman.

MR. HAMELE: Is the clause "with like powers to those of this Commission" necessary?

MR. DAVIS: It is the only clause which says what their powers shall be.

CHAIRMAN HOOVER: I don't think it makes the slightest difference whether it is in or out.

MR. HAMELE: The powers of this Commission are more or less uncertain under this act, they are very inconsistent.

MR. DAVIS: I move to strike that out.

(The motion of Mr. Davis having been duly seconded the same was unanimously carried.)

MR. CALDWELL: I would like to suggest that we might say "with similar powers to those of this commission", then if they don't know what they are, I really think the intent of this pact is to make some sort of apportionment in some such way as we are trying to do now. I don't want to bind any further Commission.

MR. DAVIS: My thought is the wording is really a limitation and we might as well leave them to see what the powers should be.

MR. CALDWELL: Suggestion withdrawn.

MR. NORVIEL: In the second line on the last page the word "Basin" ought to be "The Colorado River System."

MR. CALDWELL: We are attempting to bind the Commission to apportion waters between the upper and lower basin. They may find some better way

of doing it and it might be better to leave out the words "between the upper basin and lower basin," and just let them apportion the waters.

MR. NORVIEL: I am agreeable to that, very.

MR. CALDWELL: "whose duty it shall be to divide and apportion equitably the beneficial use of the unapportioned water of the Colorado River System."

MR. DAVIS: I am agreeable to that.

CHAIRMAN HOOVER: Unapportioned water would be water unapportioned between the two basins. I don't know what sort of a division they could make on it. They probably would find themselves in that position, that is all.

MR. SCRUGHAM: It might be desirable to apportion it between the states at some future period.

CHAIRMAN HOOVER: I don't see any reason for binding them at all.

MR. DAVIS: The wording is a limitation. I think their powers ought to be just as broad as possible when they meet.

MR. NORVIEL: To be thoroughly consistent I think it should be thoroughly consistent as it is.

MR. MC CLURE: I move its passage without the change.

(Thereupon a vote having been taken the Chair announced the paragraph to have been passed with the amendments striking out the words "with like powers to those of this Commission" on the first page, striking out the words "basin as described" on the second page and inserting in place thereof the words "Colorado River System as mentioned.")

Thereupon, Article III was adopted in the following form:

The beneficial consumptive use 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 the exclusive beneficial consumptive use of 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 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 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 water, 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 by 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, 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 Colorado River System as described in paragraph (f). Subject to the legislative ratification of the signatory states and the Congress of the United States of America."

2nd Part

25th Meeting.

MR. HOOVER: Article IV. (a) (reading) 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. DAVIS: I suggest that "upon the signatories hereto" be cut out for this reason. We want the compact binding to the extent that it may be upon the states and the U. S. The U. S. is not a signatory.

MR. HAMELE: In the 4th line, you might cut out "it is hereby agreed that."

MR. HOOVER: We will cut out "it is hereby agreed that."

MR. EMERSON: Let's put a comma after "basin."

MR. DAVIS: I say yes to that.

MR. HOOVER: Shall we put in "Colorado River Basin"?

MR. CARPENTER: You say "Colorado River Basin" above, why not say "it's basin."

MR. HOOVER: Alright, any further comment?

MR. SCRUGHAM: I move it be adopted. (Seconded and passed.)

MR. HOOVER: (reading) (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."

MR. SCRUGHALI: I suggest you insert "impounding and" before use in the third line.

MR. MC CLURE: I move its adoption.

MR. HOOVER: All those in favor of this paragraph with the insertion "impounding and", please say Aye. (Passed.) (reading) (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." Any comment? All those in favor please say Aye. (Passed.) (reading) Art. 5. 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 co-ordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the inter-change 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."

MR. EMERSON: Before state, I suggest we insert "signatory."

MR. HOOVER: Put in "signatory," then we will be sure who it is. Any

other comment?

MR. EMERSON: I move its adoption.

MR. MC CLURE: Second it. (passed)

MR. HOOVER: (reading) Art. 6. 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."

MR. CARPENTER: I think there should be the letter (c) inserted before "for the diversion" with (;) after state.

MR. EMERSON: In the 10th line there should be a 'comma' after states, and in the second line we should insert "of the signatory" before "states."

MR. DAVIS: In order to make (c) consistent with the other sub-paragraph I would change 'for' to 'as to.'

MR. HOOVER: (re-reads with changes.)

MR. NORVIEL: Moves its adoption. (seconded and passed.)

MR. HOOVER: (reading) Art. 7. Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

MR. NORVIEL: I move its adoption. (seconded and passed.)

MR. HOOVER: (reading) Art. 8 is skipped for the present. Then we come to Art. 9. 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.

MR. EMERSON: I move its adoption. (seconded and passed)

MR. HOOVER: (reading) Art. 10. 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.

MR. CALDWELL: I would like to raise the question if we shouldn't say "all rights established" and leave out "under this compact."

MR. HOOVER: Suppose we change "this compact" to "it."

MR. EMERSON: Wouldn't that paragraph be better in 2 sentences, with a period after 'states,' and say "In the event of such termination."

MR. DAVIS: "all rights then established" - "then" fixes the time.

MR. HOOVER: Well, how do you want it? (re-reads)

MR. NORVIEL: It seems to me "then" fixes the time of the establishment at the end of the period.

MR. CARPENTER: Why not take out "then"?

MR. HAMELE: Is that an accurate statement? The rights established under it - part of them are taken away by termination.

MR. DAVIS: Not if they are rights established.

MR. MC CLURE: I move its adoption. (seconded and passed)

MR. HOOVER: (reading) Art. 11. This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of 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.

MR. EMERSON: I move its adoption.

MR. SCRUGHAM: Seconded (passed).

MR. HOOVER: (reading) IN WITNESS WHEREOF, the respective Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

MR. DAVIS: I suggest we strike out "respective" in the first line.

MR. HOOVER: Any further comment?

MR. MC CLURE: I move it be adopted. (seconded and passed.)

MR. HOOVER: That completes the matter except Art. 8.

MR. MC KISICK: In Paragraph (g) of Art. 3 the context is not quite right. It reads "as described in paragraph (f)" and there is no description in that paragraph and it evidently is an error.

MR. HOOVER: There is the statement of what the unappropriated water is. It needs that for grammatical purposes. If there is no objection we will adopt it. (passed) As we left it last, it read (re-reads.) Since there are so many objections to that Art. 8, we may as well begin it all over again and re-draft it. It is desirable at some point in this compact to get in some declaration with regard to the rights now existing. The great difficulty is to make such a statement that will not lead to difficulties. Judge Davis solved a paragraph to which there is also some objection. That must be carefully safeguarded no doubt, but if we could get that declaration we will have accomplished a very material point. Mr. Carpenter has been working on the question of terms. I wonder if you (addressing Mr. Carpenter) have not drafted something.

MR. CARPENTER: Not worthy of presentation. I think it should be

limited to all perfected rights, and one thing I want to ask is whether or not the reservoir in the canyon is still desired.

MR. HOOVER: We have some expression that that might be helpful. I have a telegram from the Imperial Valley Association that just came in which shows what is going on. (reads telegram) Such rights as the lower states have in the matter only apply to maintenance of the low water flow, it does not apply to the creation of storage of 9 million acre feet. The way to approach it is for us to make as flat a statement as we can to the present rights. The difficulty lies in inchoate rights and the fact that these rights are likely to be dated as vesting at the time they are filed. We must at least make a declaration about perfected rights.

DIR. DAVIS: Is there any difference in the term "perfected rights" and "beneficial use"?

MR. DAVIS: My thought was this. I am merely talking, you understand, present rights to the beneficial use of water shall not be impaired.

MR. HOOVER: I think you have a useful basis there. The rights to the beneficial use of water of the Colorado River System now enjoyed shall remain unimpaired by this compact.

MR. CARPENTER: Isn't a right enjoyed, even though it isn't perfected?

Third Part

25th Meeting.

MR. EMERSON: Mr. Chairman, that last paragraph in the draft we now have under consideration is to make these rights effective when seven and a half million acre feet have been stored.

MR. HOOVER: I should think they could probably be satisfied with five million. They don't want the pact down there at all to go into force, but I don't see that you can limit this pact until seven and a half million are stored. Otherwise the quarrel will go on and on —

My suggestion of this pact would be "(a) Rights to the use of waters for beneficial — Rights now enjoyed to the waters of the Colorado River shall be unimpaired by this compact.

(b) When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims for rights by holders in the Lower Basin against users of water in the Upper Basin, shall be transferred to water so stored and to the apportionment as set out in Article III hereof."

MR. DAVIS: The very words that have been causing the trouble is "rights." We have been having difficulty with vested rights. We thought by using the words "beneficial use" we would get away from the word "rights". I think you could start the sentence with "The beneficial use" and you would perhaps obviate any discussion along that line. You might say "all beneficial use" or something like that.

MR. HOOVER: Well, just to get something on paper: "All beneficial use of waters now enjoyed in the Colorado River System shall be unimpaired by this compact. When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims for rights by holders in the

Lower Basin against users of water in the Upper Basin shall be transferred to the waters so stored and to the apportionment as set out in Article III hereof."

How does that strike you?

MR. DAVIS: If we are going to say anything about rights I would rather use "vested rights." I don't object to the first clause -- "beneficial use." I don't like to say "the rights now enjoyed" because the words "now enjoyed" may go back to rights in and to the water. I still don't like the second clause at all, but I don't like to strike it out.

MR. SCRUGHAM: Why not say "rights of the present users of water"?

MR. DAVIS: I wouldn't object to that.

JUDGE SLOAN: Doesn't that cover it "The rights of present users of water."

MR. DAVIS: You don't want the word "beneficial" in there?

MR. HOOVER: There would be this trouble you would run into down there, you have got this situation, you have got a right to a larger amount than they now get.

MR. SQUIRES: I think you should have "all water rights now perfected and in use."

MR. HOOVER: How about the Imperial Valley? Have you perfected rights there for ten thousand feet?

MR. NICKERSON: No sir, they have not applied that much, about seven thousand diverted in the summer, and in the fall about five thousand, now they are taking about three thousand five hundred.

MR. DAVIS: Judge Sloan, what do you say to the words "Present beneficial use" instead of "Rights now enjoyed"?

JUDGE SLOAN: Well that possibly describes it. I don't know why the effort has been made so strongly to keep away from the use of the term

"Owners and holders."

MR. DAVIS: I have tried to keep away from it --

MR. HOOVER: Wouldn't this get what you have got, and get it even more simply, -- I don't know whether you have seen this or not (referring to Draft 9 of Article IIX).

"The rights now enjoyed of beneficial use of waters in the Colorado River System shall be unimpaired by this compact. When works of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims by users in the Lower Basin against users of water in the Upper Basin shall be satisfied from the waters so stored and from the apportionment as set out in paragraphs (a) and (b) in Article III."

This brings you right back into the pact just as soon as storage is provided.

MR. CARPENTER: How are you going to have them unimpaired and have them satisfied? I don't wish to be impertinent, but I don't think you can have them unimpaired and then turn right around to something else --

MR. HOOVER: You can use the word "but" in there then.

MR. CARPENTER: Or instead of "be" "shall remain unimpaired by this compact until --" I submit this: (Referring to Draft 10)

"The waters necessary to supply any present perfected beneficial uses within either basin shall not be diminished by this compact but shall be satisfied from the water apportioned to the basin in which such beneficial use is now enjoyed, and no claims shall be made on behalf of any such uses in one basin against the water supply by this compact apportioned to the other basin, provided, however, that any such perfected beneficial uses within the Lower Division shall not be required to rely exclusively upon the water apportioned to said Lower Basin until such time as works of a capacity

sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the lower Division."

MR. EMERSON: I have prepared a draft here:

"Present perfected rights to the beneficial use of the waters of the Colorado River System shall be unimpaired by this compact. Whenever the storage of water by the construction of a reservoir or reservoirs to a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall cease. The waters stored as provided in this paragraph shall be a charge against the apportionment of water to the Lower Basin as set forth in Article III of this compact."

Draft No. 12 was then presented by Mr. Hoover:

"The rights at present enjoyed in the beneficial use of the waters from the Colorado River System shall not be affected by this compact, but when reservoirs of a capacity sufficient to store 5,000,000 acre feet of water have been constructed on the main Colorado River within or for the benefit of the Lower Basin, then any claims by users in the Lower Basin against users of water in the Upper Basin shall be satisfied from the water so stored and from the apportionment set out in paragraphs (a) and (b) in Article III."

Mr. Hamele submitted Draft No. 14, which is as follows:

"(a) Present perfected rights to the beneficial use of the waters of the Colorado River System shall not be affected by this compact except as provided by paragraph (b).

(b) Whenever the storage of water by the construction of a reservoir or reservoirs to a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin,

then any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall cease. The water stored as provided in this paragraph shall be a charge against the apportionment of water to the Lower Basin as set out in Article III of the compact. .

Whereupon Mr. Emerson submitted Draft No. 15.

MR. HOOVER: This last draft, 15, comes nearer the point. (reading)

"Present perfected rights to the beneficial use of the waters of the Colorado River System shall be unimpaired by this compact. Whenever the storage of water by the construction of a reservoir or reservoirs to a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall attach to and be satisfied from the waters so stored and from this apportioned to the Lower Basin in Article III of this compact."

JUDGE SLOAN: That is alright but wouldn't it be better if we used "are" instead of "shall be" in the second line.

MR. HOOVER: That would be better, and it would read: "waters of the Colorado River System are unimpaired by this compact."

Whereupon Draft No. 16 was submitted and read by Mr. Hoover, as follows:

"Present perfected rights to the beneficial use of the waters of the Colorado River System are unimpaired by this compact. Whenever storage of a capacity of 5,000,000 acre feet shall have been provided on the main Colorado River, for the benefit of the Lower Basin, then any claim of rights by appropriators of water in the Lower Basin against appropriators of water in the Upper Basin shall be attached to and satisfied from the waters so stored from the apportionment to the Lower Basin in Article III of this compact."

ADJOURNMENT TAKEN UNTIL 9:30 A.M. TOMORROW.