

MINUTES OF THE

26th MEETING

COLORADO RIVER COMMISSION

Bishop's Lodge
Santa Fe, New Mexico

November 24, 1922
10:00 A. M.

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26th Meeting

COLORADO RIVER COMMISSION.

The twenty-sixth meeting of the Colorado River Commission was held at Bishop's Lodge, Santa Fe, New Mexico, on Friday morning, November 24th, 1922, at 10:00 A.M.

There were present:

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| 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:

Richard E. Sloan
 R. I. Meeker
 Ottomar Hamele
 A. P. Davis
 Mr. McKisick
 Thomas Yager
 W. F. R. Mills
 Mr. Nickerson
 Mr. Bannister
 Edward W. Clark
 Charles F. Squires
 M. C. Mechem
 Charles A. May

The meeting was called to order by the Chairman.

The redraft of Article VIII as finally submitted at the previous meeting was read by Chairman 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 the water in the Lower Basin against appropriators of water in the Upper Basin shall be attached to and satisfied from the water so stored from the apportionment to the Lower Basin in Article III of this compact."

I would suggest that the word "appropriators" be changed to "users" because there are some small riparian users of the river who will bob up.

MR. EMERSON: However, there is another consideration there, I believe, Mr. Chairman, and that is since water users are not appropriators, the right is not in there.

CHAIRMAN HOOVER: "Appropriators or users."

MR. EMERSON: That is better.

CHAIRMAN HOOVER: And I would suggest that it would be more clear instead of saying "so stored from the apportionment" to say "out of the apportionment." It makes it very clear.

JUDGE SLOAN: Wouldn't it be "the water apportioned to the Lower Basin in Article III that should be impounded."

MR. EMERSON: Not necessarily.

CHAIRMAN HOOVER: Not necessarily.

JUDGE SLOAN: The other wording is just the same in fact, is it not? There is no difference it seems to me, "be satisfied so far as may be from the water apportioned."

CHAIRMAN HOOVER: It might. I think that we must limit it to that right. Otherwise, it is no relief.

JUDGE DAVIS: I think "be attached to " would be better if it said "shall attach to."

CHAIRMAN HOOVER: "Shall attach to and be satisfied" is that right?

JUDGE DAVIS: Yes. It is a matter of English, that's all.

MR. HAMELE: Wouldn't it be better to cut out the words "water so stored from the."

CHAIRMAN HOOVER: No, that wouldn't carry the meaning. We are doing here what is perfectly possible, not to deny a man's right by giving him another source of supply. His right runs right up against the place where he makes his diversion. If you give him a source of supply above that point, you do not disturb his right.

MR. NORVIEL: I would like to see after the word "basin" in the third to the last line, added the words "affected by such storage." The storage being on the main Colorado, the large acreage in the southern basin would not be affected by such waters.

JUDGE DAVIS: You mean the Gila.

NORVIEL: Yes, that is one.

CHAIRMAN HOOVER: That would allow people outside of that to have claims against the basin. It is perfectly possible that they should but this shouldn't prevent them doing it.

MR. CARPENTER: I understood all along, the only matter we are concerned about is distributing the low flow of the river for the projects below the canyon. And that even as to them when certain storage takes place they and all others in that whole basin shall look to that basin's apportionment for their water supply and the same above.

CHAIRMAN HOOVER: That is true.

MR. CARPENTER: And Article VIII should definitely state that fact not only as to the present vested, but all others.

CHAIRMAN HOOVER: I thought perhaps you would raise that question, Mr. Carpenter, and I had this suggestion to follow after the next paragraph. "Unperfected rights" (we have dealt with perfected rights) "are not affected by this compact except that they should be solely satisfied from the water apportioned to the basin in which they are situate."

MR. CARPENTER: I would just simply say - just not mention unperfected rights at all - just say all rights.

CHAIRMAN HOOVER: Then you get into the area as to whether or not these perfected rights haven't got pending storage. We could add something to the effect that in such event all rights shall be satisfied from the water appropriated to that basin in which they are situate.

MR. CARPENTER: I wouldn't want that to be interpreted.

CHAIRMAN HOOVER: That is why I gave you that original wording.

MR. CARPENTER: I think I am responsible for the words "for the benefit of the Lower Basin" and thereby am entitled to raise a question of a doubt as to just what they really do mean.

CHAIRMAN HOOVER: I think in a broad sense it is pretty clear, that it is a benefit to them if it increases their low water flow or anything of that kind.

MR. EMERSON: May I have that last suggestion of yours, Mr. Chairman, again now,

CHAIRMAN HOOVER: "Unperfected rights shall be solely satisfied from the water apportioned to that basin in which they are situate."

JUDGE SLOAN: That is to be attached to the first sentence.

CHAIRMAN HOOVER: No, put it on the end of the whole thing. We have dealt with perfected rights, then we come to unperfected rights.

JUDGE SLOAN: Put that in the second sentence.

CHAIRMAN HOOVER: That would seem to limit the first. I don't know, it wouldn't do any harm, - just the flat sentence.

JUDGE DAVIS: Is it necessary to use those words "against the appropriators of water in the Upper Basin." Wouldn't it read better if you say "any claim of rights by users or appropriators of water in the Lower Basin shall be attached to and satisfied by the water so stored." Has anybody any fondness for the words "against the users of the Upper Basin"?

CHAIRMAN HOOVER: Except that it makes clear what it is talking about.

JUDGE DAVIS: I am not insisting on it, but I would like it better with that clause out. As far as I am concerned if the Lower Basin wanted it in, I wouldn't object to it, but I think the clause is much better with those words out.

CHAIRMAN HOOVER: You might make it read then, "claims, if any, of rights by users of water in the Lower Basin against users or appropriators of water in the Upper Basin." That is no admission.

JUDGE SLOAN: Would it tone it down a little if you put in "all claims of rights that may be asserted by appropriators in the Lower Basin against the appropriators in the Upper Basin shall be restricted wholly to the Lower Basin," etc., "may be asserted."

JUDGE DAVIS: I will withdraw the suggestion since there seems to be so much opposition to it.

CHAIRMAN HOOVER then dictated the paragraph in discussion. It was typewritten, and read as follows:

"Present perfected rights to the beneficial use of 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 claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin, shall attach to and be satisfied from the water so stored out of the apportionment to the Lower Basin in Article III.

"All other rights to beneficial use of waters shall be satisfied solely from the water apportioned to that Basin in which they are situate."

CHAIRMAN HOOVER: Are there any further suggestions on that paragraph?

MR. CALDWELL: I would like to suggest, Mr. Chairman, that looking at the last two lines in the first paragraph "Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the water so stored out of the apportionment to the Lower Basin in Article III," Cut out the "water so stored out of the apportionment to the Lower Basin."

JUDGE SLOAN: May I ask if the intent by the use of the word "claim" is to cover asserted claims or merely valid claims.

MR. EMERSON: Claims, if any.

JUDGE SLOAN: Of course, there may be asserted claims, then the word "attach" would hardly be proper. If you are dealing with perfected rights:

then before the word "rights" should be the word "such"; "then claims, if any, of such rights" would make it plain if that is the intent.

JUDGE DAVIS: In reference to the second paragraph, you say the "other rights" which is apparently in counterdistinction to the preferred rights mentioned in the first paragraph. That was the thought I had.

CHAIRMAN HOOVER: It might be better in that sense. It might give clarity.

MR. NORVIEL: I think the word "such" ought to go before "claims" and cut out, "if any."

JUDGE SLOAN: "Claims of such rights " would be better. That would involve the idea of valid claims, of course.

MR. NORVIEL: And cut out the "if any."

JUDGE DAVIS: No.

CHAIRMAN HOOVER: Put in the "if any" after "rights."

JUDGE DAVIS: "Claims of such rights, if any" would read better, yes."

MR. EMERSON: In that second paragraph, I think we ought to repeat the words "of the Colorado River System" in order to make it clear.

MR. CARPENTER: That last line is rough for me. I don't understand myself what it means and I fear others won't. This is the thought, I supposed, wished to be expressed, that the waters so stored shall be waters due the Lower Basin on its apportionment; but it seems to me the thought of stored water is more or less confused with the idea of apportionment - that the water so stored is a part of the apportionment to that Basin.

JUDGE DAVIS: It seems to me under the previous articles of the compact that water stored must be within the apportionment anyway.

MR. EMERSON: Wouldn't this language cover it "from the water apportioned in Article III that shall be so stored."

MR. CARPENTER: I am keeping in view the fact that the water stored

CHAIRMAN HOOVER: (Interrupting) Then would you reduce the flow by whatever amount was held up in storage.

MR. CARPENTER: No. That would be a credit to be at Lee's Ferry as it passes over.

JUDGE DAVIS: Whether they use it directly or through storage makes no difference in the amount they get. I would put a period after "stored" and cut out the rest if I was writing it.

CHAIRMAN HOOVER: What I have thought by way of reference to Article III was that to avoid all of the complex discussion of the conditions involved in Article III. You have a great number of different events following in sequence in that Article and they might claim that part of it had to go to Mexico; etc., and if it just refers back to Article III it covers all those contingencies.

MR. NORVIEL: Isn't what is meant by Article III is, our apportionment is not perfected until the water passes Lee's Ferry and no claim could be made that the fulfillment of that apportionment has been had until the water does so pass. Mr. Carpenter seems to think that if the storage is made in the Upper Basin it is already a part of the apportioned water.

MR. CARPENTER: No, that wasn't my thought. I just wanted to say word this that the storage - the making of the storage on the river, Mr. Norviel, shall not be limited to either Basin. Anything in the main stem of the river in the storage there would accomplish this objective. The matter of crediting to us will, of course, be that passes Lee's Ferry. If you can assist in finding language that will express this well and good.

MR. NORVIEL: I can, and it would be definite, certain, without any equivocation, and that is to fix the storage in the Lower Basin then seek for a draft on that to our own heart's content, so long as the storage is there and the water is so stored.

MR. CARPENTER: We shouldn't be bound by the place where the storage is made if it runs to the benefit of the lower territory.

MR. NORVIEL: The water doesn't belong to the Basin until it has passed Lee's Ferry.

MR. EMERSON: You construct a reservoir above Lee's Ferry for your benefit. It seems as though you ought to have the right to do so if the conditions are proper.

MR. NORVIEL: Regulation and control of the storage should be absolutely in the control of the Lower Basin no matter where it may be.

CHAIRMAN HOOVER: I think that is pretty well protected.

MR. NORVIEL: But the condition "solely" - "solely for the benefit of."

CHAIRMAN HOOVER: Well, I wouldn't like that because any storage in the Lower Basin shall be for the help of the Upper Basin.

MR. NORVIEL: After the water passes Lee's Ferry their obligation is finished. I think the whole trouble is in the thought of the storage in the Upper Basin and if they could realize that thought and allow the idea of storage in the Lower Basin, the difficulty would be over.

MR. CARPENTER: I do not believe you want us to do that for your own sake, Mr. Norviel.

CHAIRMAN HOOVER: I don't think we should preclude Lee's Ferry from the satisfaction of this because obviously the engineering sense of the whole situation isn't entirely complete. Didn't our original wording here cover all of the points that we have really had in discussion "stored out of the apportionment to the Lower Basin in Article III." I think it covers -

MR. NORVIEL: I think it does not.

MR. CARPENTER: Should that be from the water or any water.

CHAIRMAN HOOVER: From the water so stored out of the apportionment. I can't but think that covers the whole point.

MR. EMERSON: It isn't quite covered. "And shall be a charge against." If it has to be a charge against that apportionment, it wants to be said so conclusively.

CHAIRMAN HOOVER: You might say "shall be stored as a part of the apportionment to the Lower Basin," - might use the word "part" instead of "apportioned," as Mr. Carpenter suggested. Get away from the reiteration of "apportioned and apportionment." How does that strike you, Carpenter.

MR. EMERSON: There are two thought there, Mr. Chairman. You are trying to put them in the same sentence without a conjunction. Two separate and distinct thoughts. The first idea is that you are going to provide a certain storage here and whatever rights the Lower Basin may have against the Upper Basin are going to be transferred to this storage, and it is so stated here. That is one thought. The second definite thought is that any amount of water for satisfaction of the Lower Division under any condition shall be a charge against the apportionment to the Lower Basin. To my mind, there are those two distinct thoughts and they cannot be expressed without a new sentence or at least a conjunction. "The water so stored" is correct that far, "and the water so stored shall be a charge against the apportionment to the Lower Basin as set forth in Article III."

CHAIRMAN HOOVER: You really mean included in apportionment, don't you, the same thing.

MR. EMERSON: Part of it. It is a charge against it. I don't know any more expressive term than that it is a charge against that apportionment a charge against that account.

CHAIRMAN HOOVER: I am only afraid of the fellow that will get up and say, we had seven and a half million this year, had to put five million in the reservoir and that only leaves us two and a half million.

MR. EMERSON: He is arguing from a fallacious standpoint. He is con-

cerned about the low water flow and it don't require the storage of seven and a half million to take care of the low water flow.

CHAIRMAN HOOVER: I recognize that. I was just trying to get away from fallacious arguments.

JUDGE DAVIS: I can't get away from the thought that this is a tempest in a teapot. We have said clearly in Article III that there is apportioned to the Lower Basin a certain amount of water for all uses. Now here we have a clause which is not apparently intended to cover the apportionment at all, but is simply saying that when a certain amount of water is stored, certain things shall result. It seems to me absolutely unnecessary to say anything in this clause beyond that fact, that when that storage occurs those rights attach to it.

CHAIRMAN HOOVER: You are right, because we have a statement in paragraph 3, saying specifically that all rights are included in this apportionment, haven't we.

JUDGE DAVIS: If you will put a period after "storage" and cut out the rest of your sentence you will do away with this argument.

CHAIRMAN HOOVER: I believe you are entirely right. If you go back to Article III, you will confirm it.

MR. EMERSON: Yes, I agree with that, Mr. Chairman. If it is not necessary there is no use in putting it in at all.

CHAIRMAN HOOVER: At the end of (a), "which shall include all water necessary for the supply of any rights which may now exist." There is a specific statement there.

MR. EMERSON: And the last paragraph would be unnecessary.

CHAIRMAN HOOVER: The last paragraph has rather a different import. Mr. Carpenter needed that as against inchoate rights spreading themselves from one basin to another. May we now return to the new draft.

(The draft was then read as follows:)

"Present perfected rights to the beneficial use of 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 claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the water so stored.

"All other rights to beneficial use of waters shall be satisfied solely from the water apportioned to that Basin in which they are situate."

MR. CALDWELL: Mr. Chairman, I am not satisfied on the point here. It might be better if I could be satisfied on it before we go to the question of voting, rather than to have me vote "no" at that time. I am not interested in the storage in the Lower River. All I am interested in is the capacity which is provided down there. I think this paragraph should read that "when storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for or running to the benefit of the Lower Basin, then claims, if any, of rights by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from the apportionment to the Lower Basin in Article III."

Now they can store it or do anything they want to with it but the capacity is there. But what we want to do is attach it to the apportionment. That may be another tempest in a teapot but that is what I think. The only answer to my suggestion that I made a while ago on that proposition was that some legal opinion had been rendered to the effect that it was more satisfactory with that in.

MR. CARPENTER: We should cut out the words "of a."

CHAIRMAN HOOVER: Well, of course, I was rather impressed with the legal opinion given that we were setting up something here that strengthened the legal defense of the Upper States against claims of the Lower Basin. If that has no validity, I haven't any opinion on it at all; but when you set up another source for water in order to satisfy an appropriator, it ought to be

made clear that such a source is provided to him.

MR. CALDWELL: The source, Mr. Chairman, so far as I can see now, is the apportionment made to the lower Basin stored or unstored.

CHAIRMAN HOOVER: Well, the distinction is that the source, so far as his rights are concerned, isn't water in storage; his rights are unimpaired and to give him another source you wouldn't impair his rights. His rights run regardless of any apportionment which we may make. The re-apportionment of the river doesn't give him a source for his water supply. He has that already. We give him another source for his rights by giving him storage. We are setting up a further defense for the Upper States by sticking to the terms which you want to exclude. It also makes clear to the lower states the source from which they are to receive this transfer to their rights.

MR. CALDWELL: It is limited, however, Mr. Chairman, to the apportionment to the Lower Basin, isn't it?

CHAIRMAN HOOVER: You can't limit an unimpaired right. You have to transfer it to something else.

MR. CALDWELL: What I am trying to do is some time or other to bring them within their apportionment down there. If that is not what we are trying to do, I am on the wrong track. I think they should be brought within their apportionment some time.

CHAIRMAN HOOVER: That is what we are trying to do, but we are trying to do it by a method. Mr. McKisick, what is your opinion on that?

MR. MCKISICK: Mr. Chairman, and gentlemen. I think that it would be very proper and right to include the words "so stored." The underlying reason for the clause as it now stands is precisely as you have stated it. Assuming that there are rights in the Lower river which must be satisfied this Commission has no power to impair those rights. You have to provide another source from which the necessary waters may be supplied. You have

not impaired the right, but I think it should be clearly stated in the compact that the stored water is a substitute to be drawn upon in lieu of the right to pursue the waters across Lee's Ferry into the Upper Basin, and you have a clear line of demarcation there, and taking the last of the present clause as it now stands, in conjunction with paragraph (a) of Article III, you do have a very clear and distinct line of demarcation. This stored water is a part of the water apportioned to the Lower Basin, although it may be situated in the Upper Basin. The moment it is released and comes down past Lee's Ferry, it is to be counted as a part of the 75,000,000 acre feet annually and the Lower users cannot complain because there is an additional source from which he may satisfy his demand. You have provided in the article there drawn, storage exceeding the present annual consumption of the Lower Basin. He is not hurt if he can go to the stored water and satisfy his needs. We haven't divested any right he now possesses.

MR. EMERSON: Would it be storage or storage capacity? Would it be the actual storage at all times of 5,000,000 acre feet of water or would it be storage capacity to that amount made available.

CHAIRMAN HOOVER: It seems to me that the obligation should end whenever a certain capacity is made available.

MR. CALDWELL: At the present reading whenever storage of a capacity of 5,000,000 is made leaves the inference that forever there would be 5,000,000 acre feet to draw upon. That isn't what we really mean. We mean that this obligation shall cease whenever storage capacity to that amount is available.

MR. MC KISICK: I don't know how you could make it any more definite because you have to rely upon nature to do her part, and you assume that the storage reservoir -

MR. EMERSON: (Interrupting) In the draft I originally prepared, I stated definitely when a reservoir or reservoirs to a capacity of 5,000,000

acre feet are constructed, such and such a thing shall happen, and I believe that is the idea that should be retained. We can't guarantee the total amount of storage of 5,000,000 acre feet at all times. It is the storage capacity that we agree to make available. We agree to await the time until that shall be available. I would make this suggestion, as an amendment: When storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River for the benefit of the Lower Basin, claims of such rights, if any, by appropriators or users in the Lower Basin against appropriators or users in the Upper Basin, shall attach to and be satisfied from the storage so made available.

JUDGE DAVIS: Such storage.

MR. EMERSON: It isn't the storage made available. "From storage so made available," and "from such storage capacity." That is it.

CHAIRMAN HOOVER: I do not think we can take a legal right and transfer it to the walls of a reservoir. You have to transfer it to the water if you are going to get any release in the North from such claims. You will have to attach it to the water.

MR. CALDWELL: This is not only storage capacity provided, but it is such storage capacity as is for the benefit of the Lower Basin. When that capacity is available, if you get the water right down below, we expect it to use that capacity, and that water that goes into that storage is to come out of the apportionment made in Article III.

MR. MC KISICK: I don't think there is any difference in opinion about that because if you read paragraph (a) of Article III in conjunction with this present provision, you will clearly see that the water which may be stored for the benefit of the Lower Basin is a part of the water apportioned to it.

MR. EMERSON: Mr. McKisick, if they had left the reservoirs the way

I had them constructed last night, it would state that the right shall attach to and be satisfied from the water stored in such reservoir or reservoirs.

CHAIRMAN HOOVER: You can add right here, the water so stored.

MR. EMERSON: Yes, it is just as if you were going to keep that much water in the reservoir at all times.

MR. MC CLURE: I don't so read it Mr. Emerson. Everybody realizes the water will fluctuate. If you take a normal season, the assumption is that at the beginning of the low water flow, the reservoir will be full, or measurably full and there will be stored in it a quantity of water for consumptive use of the Lower Basin, and having that quantity of water in normal years, the appropriators and users of the Lower Basin will not be injured by being directed under this compact to look to the stored water instead of attempting to go upstream and interfere with any users that might be in operation in the Upper Basin.

MR. EMERSON: I agree with you absolutely on the principle, but I do not believe it is properly expressed in the present wording.

JUDGE DAVIS: Emerson would this cover your idea "that may be," "from the water that may be stored."

MR. EMERSON: Yes, that would do it.

CHAIRMAN HOOVER: Has anybody any objection to introducing the words, "water that may be so stored."

MR. CARPENTER: Say, for the benefit of what you want in there, "Is available to or for the benefit of the Lower Basin."

JUDGE DAVIS: I said "from the water that may be stored."

JUDGE SLOAN: "That may be stored," or "so stored."

JUDGE DAVIS: "So" is all right.

MR. EMERSON: "From the water made available by such storage."

CHAIRMAN HOOVER: That is all right. You want "water that may be made

available from such storage."

MR. EMERSON: Capacity.

CHAIRMAN HOOVER: Well, supposing it isn't available. You haven't done anything to stop his right. . .

MR. EMERSON: That is just what I am trying to get away from.

CHAIRMAN HOOVER: What I am trying to do is to stop the proceeding.

MR. EMERSON: That is what I wish done, but I don't want to condition it upon the fact that we have to store 3,000,000 acre feet there.

MR. CALDWELL: Mr. McKisick, I think you might be able to get me clear on this provision. The intent of everybody is that this water - that is, the water right, which the Imperial Valley people are seeking to protect here, shall in the event of this storage attach to the apportionment made in paragraph (a) of Article III. Is that right?

MR. MC KISICK: I think so.

MR. CALDWELL: Now, why cannot that right attach to that apportionment just as well as it can attach to a part of that apportionment stored. That is what I don't see.

MR. MC KISICK: Well, the practical answer to that question is this, Mr. Caldwell. That if a difficulty ever arises between the lower users and the upper users, it will arise at a time of deficiency when there is not water in the lower river sufficient to meet the diversions of the lower users. Unless they are relegated to the storage, that 75,000,000 acre feet provided to be supplied by the provisions of paragraph (b) of Article III will have passed down and they will have nothing - nobody will have storage. That is the present condition. Article VIII is made contingent upon the creation of storage until the storage is created the right continues as at present.

MR. CALDWELL: Would "storage capacity" do as well as "storage."

MR. MC KISICK: I don't see that there is any real distinction between the two.

MR. CALDWELL: Yes, there is a very real distinction.

MR. EMERSON: To my mind there is a very definite distinction.

MR. MC KISICK: I can see that looking at it in one way, there might be a distinction. You might have an empty reservoir.

CHAIRMAN HOOVER: In which case, if you have an empty reservoir, his unimpaired right comes into action against you, whereas if you put his right in the reservoir he has ended his right against you.

MR. CALDWELL: We will suppose an empty reservoir is there. What I want in this article is something which will say that it is incumbent upon the Lower Basin to use that storage, to store the water out of its apportionment, and if it doesn't have any reason to use that capacity, it is no fault of the Upper Basin.

MR. EMERSON: I can see now that if the reservoir with a capacity of 5,000,000 acre feet is provided and that is once filled, that then this changing condition will immediately take place and that it would not be, as I was arguing before, a necessity upon our part of continuing a maintenance of 5,000,000.

CHAIRMAN HOOVER: No, you only have to keep up $7\frac{1}{2}$ million a year.

MR. CALDWELL: If you attach this to the minimum flow and mean that there shall only be a call against the Upper Basin sufficient to fill that reservoir once and let that remain as a guaranty against their low water, while we keep the water from the Upper Basin running past Lee's Ferry to the extent of 75,000,000 in ten years, I say the language does not show that that is what is meant.

CHAIRMAN HOOVER: I think you would cut out all of your trouble if you would cut out the word "so".

MR. EMERSON: That would remove my objections.

CHAIRMAN HOOVER: Their apportionment comes under Article III.

MR. CALDWELL: Well, if that is confined to "within" that is where I want to corral it.

CHAIRMAN HOOVER: Then are you satisfied with the statement "from the water that may be stored."

MR. CALDWELL: I don't know that I am.

CHAIRMAN HOOVER: Mr. Emerson, Judge Sloan suggests that it might also help you if we cut out the words, "and be satisfied."

MR. EMERSON: I don't want to see that taken out. I think I am satisfied so far as I am concerned, with the words "storage capacity" written out and "from the water that may be stored."

CHAIRMAN HOOVER: Does that satisfy you, Mr. Caldwell, "attach to and be satisfied from the water that may be stored."

MR. CALDWELL: "From the apportionment to the Lower Basin," would satisfy me.

CHAIRMAN HOOVER: Well, you are just repeating the fact and you are making it more difficult.

MR. CALDWELL: Why not concede that to me, Mr. Chairman.

CHAIRMAN HOOVER: There is an intrinsic objection to that and that is that the storage may be made from the surplusage that none of us possess. Why add that difficulty to the people in the south in swallowing what is going to be a difficult thing to swallow anyhow.

MR. NORVILL: And I don't understand that that 7½ million acre feet is going to be branded and labelled so that we are going to know whether it is that particular water or not.

MR. CALDWELL: I think I will make another concession, Mr. Chairman, and cut out those last words,

CHAIRMAN HOOVER: Well then the thing stands in this wording:

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided in the main Colorado River for the benefit of the Lower Basin -

MR. CALDWELL: (Interrupting) May I ask to have inserted there "on the main Colorado River for or running to the benefit of the Lower Basin."

CHAIRMAN HOOVER: I do not see any objection.

MR. NORVIEL: No, I will object to that.

MR. EMERSON: What is the objection.

CHAIRMAN HOOVER: It is one of those things that looks like it had more to it than it really has. It excites suspicion on Mr. Norviel's part.

MR. CALDWELL: Well, we have a lot in there that excites suspicion on our part.

MR. NORVIEL: I think it would remove all suspicion if we cut out everything after the first period. Then there wouldn't be anything suspicious left

CHAIRMAN HOOVER: Mr. Caldwell, I don't think "for or running to" accomplishes anything. It is for the "benefit" in any event. It is a more inclusive term than "running to."

MR. CALDWELL: I admit that my thought was more or less technical. The reservoir may be built anywhere for any purpose, but if the benefit runs to the Lower Basin it would only be what we are trying to say, that is all. If the benefit runs to the Lower Basin, although the reservoir may be built for power purposes or other purposes, I think it would avoid misunderstandings in the future.

CHAIRMAN HOOVER: It immediately excites suspicion that you intend to erect reservoirs in the Upper Basin. Then also all that sort of discussion comes in.

MR. CALDWELL: Well, another concession.

CHAIRMAN HOOVER: (reading) "for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin, shall attach to and be satisfied from water that may be stored."

"All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate."

. Is there any further comment?

MR. CARPENTER: The word "Basin" there; you think that is enough.

MR. EMERSON: We have used it in the same way in different places.

MR. CARPENTER: I think myself it is.

CHAIRMAN HOOVER: I think it is. We have it pretty accurately defined. Any further comment? If not, I will entertain a motion for the adoption of the clause.

MR. EMERSON: I move the adoption of the clause.

MR. NORVIEL: I second the motion.

CHAIRMAN HOOVER: It has been moved and seconded that we adopt the clause as it now stands. Those in favor say "aye."

(Upon vote, the motion was carried.)

JUDGE DAVIS: I will register my vote as "yes" on that Article. I do it only because to my mind it is the least objectionable of the attempts that have been made to frame the idea expressed in it, and not because I approve of it.

MR. EMERSON: I concur in the statement of Judge Davis, having the same feeling in the motion.

MR. NORVIEL: I think I would be willing to second that.

MR. MC CLURE: I think that idea is unanimous.

CHAIRMAN HOOVER: In other words, this is a compromise to which neither

side is content. But we have compromised the matter and the clause is adopted.

MR. EMERSON: Can we refer briefly now, to the matter of the time of year. We have it in Article III, paragraph (f) in one place. It is first in (a) of Article III in the next to the last line of the paragraph, the first day of October, Article III, paragraph (d).

CHAIRMAN HOOVER: It is moved and seconded, I assume, that we change the dates in Article III.

MR. EMERSON: October instead of July.

CHAIRMAN HOOVER: All those in favor say "aye."

(The motion carried unanimously.)

Are there any other questions on the pact as settled?

MR. CALDWELL: Mr. Chairman, it seems to me that in the article which was supposed to cover definitions, I believe it is Article II, that there was a matter left in suspension there with respect to whether or not we needed to use the definition of "apportionment" or "apportioned."

CHAIRMAN HOOVER: I agree with you, we have no longer any use for the definition. All in favor of striking out definition (h) say "aye."

(The vote was unanimously in favor of striking out the said definition.)

Any other questions? Are you ready for a vote on the entire compact?

MR. MC CLURE: I move its approval.

JUDGE DAVIS: I think the motion should be for engrossing.

MR. MC CLURE: I accept that amendment.

CHAIRMAN HOOVER: The motion is that the compact shall be adopted for engrossment.

JUDGE DAVIS: I second the motion.

CHAIRMAN HOOVER: Any discussion?

MR. CALDWELL: Mr. Chairman, I am not at all satisfied with Article III; but perhaps it has gone too far, and if so I am entirely out of order. That

is the matter of the manner of dividing, or apportioning, either uses or water, and I don't know whether there is any use of discussing it or hope of changing it or improving it; but if so I would suggest that we do. If not, I will pass it up.

MR. EMERSON: I believe we should have a motion to re-consider and see how the different members feel about it. This is a matter where more than one are not satisfied with the compact the way it now stands. The nearer we can come to unanimous satisfaction, as well as unanimous consent, the better for us all.

CHAIRMAN HOOVER: Will you make such a motion.

MR. EMERSON: I move we reopen Article III for the purpose of discussion.

CHAIRMAN HOOVER: Do you want to make it the whole article, or link it to the discussion of the beneficial use?

MR. EMERSON: It is more as to whether we are dividing uses or whether we are dividing water.

MR. CALDWELL: I second it.

CHAIRMAN HOOVER: It has been moved and seconded that we reconsider Article III in the light of whether we are dividing uses or water. Those in favor say "aye."

(The motion carried by unanimous vote.)

MR. CALDWELL: Well, I am not going to make much of an argument about this proposition except as a matter of common sense. I may say that so far as I have been able to canvass the states, the lawyers do not agree, so for that reason I may be in disagreement myself.

MR. CARPENTER: I think the trouble comes more in the manner of expression than any other feature.

MR. CALDWELL: Mr. Carpenter, I will defer to you in this matter, and if you conclude that this is only a matter of a different way of expressing

the same thing I don't care to go any further with the question. If there is a difference between one and the other, I should like to have the matter clear if you can make it clear.

MR. CARPENTER: I think the - if I may so state - that the motion I made last night covers the opposition offered; that was that the preamble read, "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:"

MR. CALDWELL: If that is all, I am not quibbling on language.

MR. CARPENTER: We are apportioning the water for consumptive, beneficial use.

MR. EMERSON: That is what we are trying to do.

CHAIRMAN HOOVER: Are you apportioning the use of the water, or are you apportioning the water?

MR. EMERSON: We are apportioning the water for use.

MR. CARPENTER: This is not a matter between irrigators. It is a matter between states of apportioning the water of this river for a certain purpose.

CHAIRMAN HOOVER: In other words, you divide the water itself. Is that your idea?

MR. CARPENTER: Yes, for a certain purpose.

MR. CALDWELL: I think for a practical matter we are almost making two rivers out of one in the Colorado River, to meet a practical situation. We are dividing it at Lee's Ferry, keeping part of it above and part of it below and I believe that would be the popular conception of it at least, and I believe it is the accurate conception.

MR. CARPENTER: I believe the manner in which it is expressed will meet with very serious opposition, by many students of the question and the manner of my expression will meet those objections.

MR. EMERSON: I know by the way the preamble and Article II reads it will meet opposition in Wyoming.

CHAIRMAN HOOVER: Well, I suppose we will have to have some legal argument on this thing. I will call on all the lawyers present.

MR. NORVIEL: In Article I we have used the word "apportionment" as one of the several things we are undertaking to do - the commission proposed to do, and we have a definition of "apportionment" and then we concluded that we hadn't used the word at all, we hadn't done as we intended to, and we struck it out.

(First part of meeting held Friday, November 24, 1922, at 10 A.M.
Concluded.)