

MINUTES OF DEFERRED MEETING
OF
ARKANSAS RIVER COMPACT ADMINISTRATION

Lamar, Colorado
Friday, March 24, 1950

* * * * *

Attendance--

Brig. Gen. Hans Kramer, San Francisco, Calif.; Federal Representative and
Chairman of the Administration

For Colorado:

Harry B. Mendenhall, Rocky Ford; Chairman of Colorado Representatives
Harry C. Nevius, Lamar; Administration Secretary
Clifford H. Stone, Denver

For Kansas:

George S. Knapp, Topeka; Chairman of Kansas Representatives
Roland H. Tate, Garden City
William E. Leavitt, Garden City

Others Attending:

Ray E. Peterson, Denver; recorder.
Col. Louis Prentiss, Dallas, Texas; S. W. Division Engineer, Corps of
Engineers.
Col. Charles H. McNutt, District Engineer, Corps of Engineers,
Albuquerque, N. M.
John S. Sharer, Corps of Engineers, Caddo, Colorado
F. M. Bell, Denver; USGS.
Henry C. Vidal, Denver
Ben F. Powell, Pueblo; Bureau of Reclamation
John W. Beaty, Manzanola; Member, Colorado Water Conservation Board
R. J. McGrath, Lamar; Water Commissioner, Colorado Water District No. 67

* * * * *

The meeting was called to order at 10:00 o'clock, in the County Commissioners' room of the Prowers County Courthouse by Chairman Kramer.

The Chairman announced the meeting was one scheduled under the by-laws for Tuesday, March 21, 1950, but changed to Friday, March 24, 1950, by the unanimous written consent of all Administration members.

The minutes of the special meeting of the Administration of January 31, 1950 were reviewed. Minor corrective changes were inserted, and on vote, the minutes of January 31, 1950, as edited and corrected, were approved as official.

In his report as Chairman, General Kramer announced he had received clearance and approval of the proposed Rules and Regulations of the Administration from the Albuquerque office of the Corps of Engineers, with only one minor revision of wording suggested.

The Chairman reported he had received and distributed to Federal agencies copies of the Record of the Compact Commission, and that copies of the Administration's first Annual Report had been sent to Federal Agencies and to the President, with acknowledgements received.

In his report as secretary, Mr. Nevius announced:

- a. That the Secretary's signed original of the Record of the Arkansas River Compact Commission had been received for Administration files, and placed in the Administration office in Lamar.
- b. That copies of the Administration's first annual report had been distributed in Colorado by the Secretary with Ray E. Peterson, Denver, assisting.
- c. That it became necessary to release water from John Martin Dam on March 8, and that such release had been ordered by the Secretary, acting for the Administration.
- d. That distribution agreements had been received from the various ditches in Water District No. 67. The agreements were listed from:

Sisson
Buffalo Canal
XY and Graham ditches
Manvel
Hyde ditch
Amity canal
Fort Bent ditch
Keesee ditch
Lamar canal

- e. That a telephone would be installed in the Administration office as of April 1, 1950.

Chairman Kramer suggested Administration consideration of changing the established date for the spring meeting of the Administration, calling attention to the fact that the current meeting, scheduled for March 21, had to be changed to March 24, to avoid conflict with the spring meeting of the Upper Colorado River Commission in the same week.

It was explained that the Administration meeting date of March 21 almost coincided with the March 20 meeting date of the Upper Colorado River Commission, and that Rep. Stone, member for Colorado in both groups, could not arrange attendance at both meetings on that schedule. Being sole representative for Colorado in the Upper Colorado River Commission, Rep. Stone said he felt obligated to attend complete sessions of that body.

Following a suggestion by Chairman Kramer, Rep. Stone moved that Article IV, Paragraph 2, of the Administration by-laws, under the heading of "Meetings", be changed to read:

"2. The Administration shall hold regular meetings on the fourth Tuesdays in March and July of each year".

The motion was seconded by Rep. Knapp. On rollcall of states, the motion was unanimously carried, and the amendment, changing regular meeting dates from the third Tuesdays in March and July to the fourth Tuesdays in March and July, was declared adopted.

Rep. Nevius, as treasurer, submitted the following financial report:

On hand, First Nat'l. Bank in Lamar, Jan. 31, 1950	\$ 1,897.23
Disbursements:	
Voucher #4 2-4-50 Peerless Printing Co.	\$245.00
Voucher #5 3-22-50 Out West Printing Co.	<u>20.02</u>
	265.02
On hand, March 24, 1950	\$ <u>1,632.21</u>

Rep. Stone called attention to a Colorado regulation which automatically reverted unused funds, in any account, to the General Treasury at the end of each fiscal year. He suggested the Administration analyze its need for funds, and if the Administration treasury might require additional payments from Colorado and Kansas, that such demands should be anticipated now. He explained Colorado had paid \$1,200 into the Administration treasury, and had \$800 of the budget allotment available before the close of the fiscal year, June 30, 1950.

Discussion favored acceptance of all available funds into the Administration treasury, inasmuch as Administration expenses have not been fully defined, and money should be available for any contingency.

It was moved by Rep. Tate, and seconded by Rep. Nevius, that call for funds be issued to the States of Colorado and Kansas, in the amount of \$800.00 (60 percent payment) from Colorado, and \$533.33 (40 percent payment) from Kansas.

On rollcall, the motion was unanimously passed, and declared adopted.

The Treasurer was instructed to prepare preliminary budget figures for the Administration for the 1950-51 fiscal year, and to submit these figures for initial review at the July meeting of the Administration.

The Administrative and Legal Committee announced it had no report to make other than to announce consideration of official Rules and Regulations, to be discussed later in the meeting.

Rep. Knapp requested authority to proceed with the preparation of statistical tables and compilations for the next annual report and authority in so doing to confer with the United States Geological Survey and Colorado State officials and to make a preliminary report to the Administration at the July meeting.

It was moved by Rep. Stone, and seconded by Rep. Tate, that the Engineering Committee be authorized by the Administration to proceed with the compilation of statistical tables and reports, as suggested at the December 13, 1949 meeting of the Administration.

On rollcall, the motion was unanimously passed, and declared adopted.

Rep. Nevius reported that the State Engineer's staff discontinued Holly Drain gaging reports as of December 1, 1949, and that since that time no daily observer's reports had been available. The available readings, he stated, were those of the automatic gages.

F. M. Bell, district engineer, USGS, reported on the status of the request for Federal appropriation for gaging stations. He said the Arkansas River request was tied in with similar requests for the Pecos and Upper Colorado Basins. He said the matter was presently in the Bureau of the Budget office for study, but that favorable attention was anticipated. When the appropriation item comes before Congress, the bill will need the support of all interested Congressional delegations. Mr. Bell said it was hoped to have the money by about July 1, 1950. It was announced that Rep. Stone, who will be in Washington in April, would make additional direct contacts there, to urge the appropriation.

Rep. Knapp of Kansas reported 60 copies of the Official Record of the Arkansas River Compact Commission had been bound by the Kansas state printer, at a cost of \$2.71 per copy. Distribution to Federal agencies and to the States of Colorado and Kansas had been completed.

Rep. Stone reported material for the Legislative Record of the Arkansas River Compact had been completed, but that binding was being held up until it was decided if the Rules and Regulations, when adopted by the Administration, should be included. It was decided to include the Rules and Regulations in the

Legislative Record. Rep. Tate was instructed to have 1,000 pamphlet copies of the Rules and Regulations printed, and to provide copies needed for the Legislative Record.

Rep. Stone moved that the Operations Committee be given power to arrange for gaging reports, wherever needed. The motion was seconded by Kansas, and on vote, declared carried.

Rep. Stone reported that he, as a member of the Administrative and Legal Committee of the Administration, and Allen Moore, Deputy Attorney General of the State of Colorado, had exchanged a series of communications, discussing phases of the proposed Rules and Regulations. It was decided that this series of communications, including a memorandum prepared by Rep. Stone, should be included verbatim in the minutes of the Administration.

This file of material includes:

- Rep. Stone's Explanatory Memorandum of February 21, 1950
- Mr. Moore's letter of February 7, 1950
- Rep. Stone's letter of reply of February 9, 1950
- Chairman Kramer's Comments of February 17, 1950
- Mr. Moore's letter of February 18, 1950

The file of data and correspondence is as follows:

MEMORANDUM

February 21, 1950

FROM: Clifford H . Stone, Member of Arkansas River Compact Administration
for Colorado.

SUBJECT: Rules and Regulations of Arkansas River Compact Administration.

Following the last meeting of the Arkansas River Compact Administration at Denver, I sent copies of the proposed Rules and Regulations to be promulgated by the Administration to Allen Moore, Deputy Attorney General; also at the suggestion of General Kramer, I sent a copy of these Rules and Regulations to State Engineer Hinderlider. Shortly thereafter Allen Moore phoned the office (I was not present) and talked to Mr. Peterson. He stated that so far as he could see, the Rules and Regulations were satisfactory and he had no comments to offer. Under date of February 7, I received a letter from Allen Moore, suggesting certain amendments to the Rules and Regulations. A copy of his letter is attached. You will observe that this letter was apparently written after Hinderlider had reviewed the Rules and Regulations and discussed them with him. It is safe to assume that these recommendations were suggested by Mr. Hinderlider. I replied to Mr. Moore's letter, and a copy of my reply is attached hereto. It is self-explanatory. I advised General Kramer, Chairman of the Administration, of this correspondence and enclosed a copy of both the letter from the Attorney General and my reply. Today I had a letter from General Kramer covering this subject, a copy of which is attached. Also, I had a letter, dated February 18, from Deputy Attorney General Allen Moore which I am enclosing.

Before these Rules and Regulations are submitted for printing, it seems to me that I should advise the Chairman of the Administration and the Colorado members of the questions which are raised by the Colorado State Engineer and submitted through the Deputy Attorney General, with the latter's comments. At this time, I am not advising the Kansas members of the Administration since the questions involved concern largely Colorado, and, for the further reason that I should consult with the Colorado members before these matters are submitted to the full Administration. It seems important, however, that General Kramer and Messrs. Mendenhall and Nevius should write me as soon as possible, expressing their reaction to the more recent Hinderlider objections and comments.

I do not believe that we can accept, under any consideration, the amendment suggested by the State Engineer and Deputy Attorney General Moore for insertion on page 2, line 12 of the Rules and Regulations, nor can we accept the State Engineer's comments in support of this amendment. This would be tantamount to the Administration being at least partially responsible for the administration of water in Water District #67 in Colorado. It would lead to confusion and would be contrary, both to the Compact and Colorado law.

Subject to the approval of the other Colorado members of the Administration and of General Kramer, Chairman of the Administration, I propose to write a letter to the Deputy Attorney General which would substantially convey the following ideas:

1. That we appreciate the position of the Attorney General and do not wish to cause him to become a "buffer" between the Administration and State Engineer. Further, that if there are irreconcilable viewpoints as between our interpretation of the Compact and that of the State Engineer, the Administration has authority to make its own Rules and Regulations pursuant to Article VIII B(1) of the Compact and the approval of the State Engineer or of the Attorney General is not required. However, it had been hoped that these viewpoints could be reconciled and that the Rules and Regulations would have the approval of both the above-mentioned officials.

2. In answer to the Hinderlider comments, with respect to paragraph (e) on page 6 of the Rules and Regulations, I believe that we should state that an effort was made to follow the Compact in inserting this paragraph; that whatever obligation is placed upon the State Engineer is fixed and determined by the Compact and that no effort is made in the Rules and Regulations to increase or vary such obligation. Then, I would propose one or two courses for the Administration to take, depending on the reaction of those to whom I send this memorandum. These two proposals are:

(1) That we eliminate entirely sub-paragraph (e) on page 6. This sub-paragraph, as amended because of the comments contained in the Attorney General's first letter, reads:

"(e) He shall collaborate, on behalf of his State, in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties, in accordance with the provisions of Article VIII F of the Compact."

This elimination would be on the basis that its inclusion in the Rules and Regulations is not necessary since the Compact as interpreted in course of time will be controlling.

(2) The other suggestion which could be made is that there be added to this sub-paragraph (e), page 6, the following:

"*****; provided, that such collaboration shall not obligate him to incur any expense or outlay of funds in addition to, or in excess of, those incurred in the performance of his functions as State Engineer".

If it is decided that this amendment is desirable, rather than striking the whole paragraph, then it would be explained in my letter that we assume that the State Engineer desires to cooperate and collaborate in administering the Compact, but that he seems to be concerned lest the Administration call upon him for assistance, which would incur additional expenditures of money by him. This proviso would be in accordance with the Compact since it is clear that Article VIII F provides for the making available by each State of facilities, etc., but that to supplement such availability of facilities, etc., the Administration may employ engineering, legal, clerical, and other aid as in its judgment may be necessary for the performance of its functions. All that this provision means is that each State, through its officials, shall collaborate and cooperate.

Kindly advise what you think about these two suggestions. Indicate which one we should follow.

3. In explanation of what I should write the Deputy Attorney General with respect to the amendment on page 2, line 12 of the Rules and Regulations, may I call attention to the fact that when his opinion was first reviewed in a meeting here at the office of the Colorado Water Conservation Board, it was my understanding that he stated that he did not intend to say that it was the obligation of the Administration to deliver reservoir releases to the headgates of ditches in Water District #67, Colorado. Those who participated in that conference will remember that this point was specifically raised by me. I stated that it was the obligation of the Administration to release a quantity of water sufficient to take care of the calls for water in Water District #67 and that it was the obligation of the State Engineer to distribute this water, either according to priorities or in accordance with distribution agreements among the water users. I gained the impression that the Deputy Attorney General agreed to that statement. His letter, you will recall, is somewhat confusing on this point. It is my belief that the idea that the Administration has an obligation to deliver the water at headgates in Water District #67 in Colorado is an interpretation entertained by the State Engineer. This is borne out from the State Engineer's comments contained in the Attorney General's letter of February 18. The Administration never can accept such an interpretation. It would impose upon the Administration functions which were never intended by the Compact and which could not be imposed upon the Administration by the Compact without interfering with duties of the State Engineer fixed by law.

You will note that the State Engineer, in his comments, states that when this question was raised at the first meeting, which Mendenhall, Leavitt, and I had with him last summer, he took this position and that it is still his position. He further states that regardless of whether this particular responsibility rests with the Administration or with his office, "an understanding must be reached prior to next April 1 in the interest of proper administration".

With this explanation I would propose to reiterate the position I took in my first reply to the Attorney General dated February 7; also incorporate the further argument made by General Kramer in his letter, a copy of which is attached. It would also seem to me wise to make this situation more realistic by saying that we are surprised to know that the State Engineer would acquiesce in the Administration meddling in functions which are imposed upon him by law. It would then be well, in support of this statement, to call attention to the following situation which would exist under the Hinderlider interpretation, namely:

Suppose the Administration released the "package" or quantity of water which make up the calls for releases. Then suppose Ditch A took more than its share of water or that Ditches A, B, and C exceeded their shares of water; then, under the Hinderlider interpretation it would become the obligation of the Administration to follow the water down the river and attempt to hold each diverter in Water District #67 to the quantity of water to which he was entitled, under either decrees or distribution agreements. Such a theory would presume that the Administration would have the authority, which it does not have, to keep each diverter down to his share of water. If a diverter exceeded it, no one but the State Engineer would have any authority in the matter. Under such a situation it is clear that only the State Engineer can divide and distribute the package of water released for the various ditches. He possesses not only this power, but also his duty under the law,-- a duty which the Administration does not assume and which cannot be lodged, under the law, in the hands of the Administration.

To my mind, this Hinderlider interpretation is absurd.. It seems to support a statement which Hinderlider made in our first conference to the effect that there was nothing for him to do below the reservoir when there was water for release from the reservoir. He seemed to assume, as he states in his recent comments, that all he is required to do, through Water Commissioner for District #67, is to make the actual diversions, measurements, and record and report such diversions. Here his comments are ambiguous and conflicting. He seems to intimate that he is in charge of the actual diversions, but wants the Administration to see to it that the required amount of water is at each headgate. If the Administration releases the water according to calls, and if he properly supervises the distribution, the water will be at each headgate, it being assumed that there will be added to the calls sufficient water to include transportation losses.

I think we should agree to the Hinderlider comment which states as follows:

"Another matter of equal importance is that the right of the ditches in District 67 to divert all the water they have placed calls for through the local Water Commissioner, even though a shortage in required deliveries at the State Line may result."

Also, I think we should agree to the statement in the Hinderlider letter which reads as follows:

"The writer's view is that the ditches in District #67, should be allowed to so divert, and that it is the duty of the Administration to see to it that sufficient water is released from the reservoir to meet the daily demands of Kansas, without waste."

Under the Rules and Regulations, as already drawn, the requirements indicated by these last two paragraphs will be carried out; but for the Administration to assume the function of following the released water down the river and see that the proper amount arrives at each headgate is nothing short of administering the water in Water District #67. Such function would surely be in conflict with the obligations of the State Engineer under the law.

I believe, in view of the past discussions in meetings of the Administration, you will agree with me as to my conclusions. The question arises whether we should have an administration meeting on this subject, before the Rules and Regulations are printed. Judging from our past experience, the State Engineer probably would not meet with us, and, if he did, there is serious question whether we would reach an agreement. If we are right in these interpretations, it is probably better to adjust the one matter as to sub-paragraph (e) on page 6 of the Rules and Regulations (this is discussed above), and proceed to complete the Rules and Regulations and print them. It is my belief that the matter in practice will work out satisfactorily. However, Hinderlider states there should be an agreement on the subject of delivery of water at the headgates before April 1.

Kindly let me have your reaction to these matters as soon as possible.

Clifford H. Stone, Member
Arkansas River Compact Administration

chs/gnb
Enclosure
Attachments

-11-

COPY

THE STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

February 7, 1950

Mr. Clifford H. Stone
Director
Colorado Water Conservation Board
212 State Office Bldg.
Denver 2, Colorado

Dear Mr. Stone:

You have transmitted as of February 16, 1950, a copy of Rules and Regulations, Arkansas River Compact Administration, and a Memorandum relative thereto. You have asked me to review the Rules and Regulations and to give you my comments.

I have reviewed the Rules and Regulations as transmitted. I make the following suggestions: On page 2 in line 12, strike the word "two" before the word "States" and insert a semi-colon after the word "States", and add the following words:

"In the case of Colorado, at the head-gates of the ditches in Water District Number 67, and in the case of Kansas to that State at the Stateline."

Comment: After a conference with the State Engineer, it is believed that the amendments suggested above will more clearly express the intent and meaning of the Compact, as indicated in the opinion to the State Engineer given last fall.

On page 5, in line 6, after the word "Administration" insert the following words:

"pursuant to Article V.F of the Compact"

Comment: It is thought that the insertion of the suggested words will make this paragraph somewhat more clear.

With respect to paragraph (e) on page 6, which reads as follows:

"He shall collaborate, on behalf of his State in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties." (Article VIII F.)

-12-

It is my understanding and that of the State Engineer, that he will collaborate on behalf of Colorado in providing such available facilities, equipment and other assistance as he deems appropriate, and to the extent of their availability, but not to the extent of providing any additional personnel or by way of imposing additional duties upon his available personnel.

Very truly yours,

JOHN W. METZGER
Attorney General

By Allen Moore
Allen Moore
Deputy Attorney General

* * * * *

COPY

February 9, 1950

Mr. Allen Moore
Deputy Attorney General
State of Colorado
Capitol Building
Denver, Colorado

My dear Mr. Moore:

Receipt is acknowledged this morning of your letter of the 7th inst., containing your comments on the Rules and Regulations, Arkansas River Compact Administration.

Your proposed Amendment on Page 5, in Line 6 has been written into the Rules and Regulations.

You call attention to Paragraph (e) on Page 6, which reads as follows:

"(e) He shall collaborate, on behalf of his State, in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties. (Article VIII F).

You state in your letter with reference to this paragraph:

"It is my understanding and that of the State Engineer, that he will collaborate on behalf of Colorado in providing such available facilities, equipment and other assistance as he deems appropriate, and to the extent of their availability, but not to the extent of providing any additional personnel or by way of imposing additional duties upon his available personnel."

Article VIII. F, the basis of this provision of the Rules and Regulations, reads as follows:

"F. Each state shall provide such available facilities, equipment and other assistance as the Administration may need to carry out its duties. To supplement such available assistance the Administration may employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the Administration, and shall not be considered to be employees of either State."

This article clearly specifies that the State Engineer would be required "to collaborate, on behalf of the State" in providing only those facilities, equipment and other assistance needed by the Administration to carry out its functions which are available to him and which he may supply without imposing additional personnel or duties upon his available personnel. This is borne out by the language of Article VIII F which states that the Administration may supplement such available assistance by employing, at its expense, engineering, legal, clerical and other aid as in its judgment may be necessary. In preparing the paragraph, to which you call attention, the effort was made to comply strictly with the provisions of the Compact in this respect. To make this clear and comply with your comments, may I suggest the striking of "(Article VIII.F)" at the end of paragraph (e) page 6 and adding the words "in accordance with the provisions of Article VIII F of the Compact".

You suggest an amendment on Page 2 Line 12 by striking out the word "two" before the words "States" and inserting a semicolon after the word "States" and adding the following words: "in the State of Colorado, at the headgates of the ditches in Water District No. 67 and in the case of Kansas to that State at the stateline".

It is my view, and I am sure that it is the view of the other members of the Administration because of full discussion of the matter, that this suggested language could not be added without the Administration assuming authority which rests in the State Engineer of Colorado. It is not the function of the Administration to see that the water released from the reservoir arrives at the headgates of each of the ditches in Water District No. 67. Under the provisions of the Compact water must be released under direction of the Administration, in sufficient quantities and in accordance with the provisions of the Compact, to comply with the calls for water for use in Water District No. 67 and for use in Kansas. The quantity of water released by the Administration for use in Water District No. 67 must be distributed by the State Engineer among the ditches in that District in accordance with distribution agreements made from time to time by the water users of such District and filed with the Administration and with the State Engineer of Colorado, or in the absence of such agreement, upon the basis of respective priority rights as against each other in such district.

Relative to making water available for use in the State of Kansas, it is the function of the Administration to ascertain, from time to time as necessary, between the 1st day of April and the 31st day of October each year, the quantity of water available at the Colorado-Kansas stateline for use in Kansas. This is for the purpose of effectuating the apportionment between the two States as provided by the Compact. The deliveries at the stateline are made up, not only of releases from the reservoir, but of water which crosses the stateline arising from return flows through the Holly drain and otherwise. It is stated on Page 7 of the Rules and Regulations that the Administration, through its Operations Committee, shall perform, among other things, the function "to ascertain from time to time as necessary, between the 1st day of April and the 31st day of October each year, the water available at the Colorado stateline for use in Kansas in order to effectuate the apportionment of water to Kansas as provided by the Compact."

We had considered discussion in the last meeting of the Administration relative to the provision 2(a) on Page 2 of the Rules and Regulations which you suggested should be amended. It was decided that, in writing its Rules and Regulations, the Administration should not attempt to paraphrase the provisions of Article V. A, B, C, D, E but should in general language merely refer to its responsibilities thereunder. For this reason it was stated that the Administration should effectuate interstate apportionment under the Compact including Article V. A, B, C, D, E relating to the release, and reduction in releases of water from storage in the conservation pool of John Martin Reservoir *** also relating to making such water available to each of the two States.

-15-

The manner in which the Administration shall function in this respect is more specifically set forth on Pages 6, 7 and 8 of the Rules and Regulations beginning at the bottom of Page 6. For this further reason I believe that the amendment which you suggest for insertion on Page 2, Line 12 should not be adopted. If it were adopted and we become more specific in this respect in Paragraph 2(a), it would become necessary to incorporate other amendments ultimately resulting in a complete paraphrasing of the entire Article V of the Compact. The necessary interpretation of Article V of the Compact is accomplished in the part of the Rules and Regulations on Pages 6, 7 and 8.

I trust that you will give consideration to the suggestions I make in this letter and let me have your reaction.

Yours very truly,

Clifford H. Stone, Director
Colorado Water Conservation Board

chs/w

- - - - -
C-O-P-Y

HANS KRAMER
Brig. Gen., USA- Ret.
Consulting Engineer

February 17, 1950

Judge Clifford H. Stone,
212 State Office Building,
Denver 2, Colorado

Dear Judge:

I have just received your letter of February 16, 1950, regarding the status of the Rules and Regulations of the Arkansas River Compact Administration.
* * * * *

Regarding the comments in the Attorney General's letter of February 7, 1950, I also concur in the conclusions given in your reply of February 9. If further strengthening of your argument rejecting the amendment on page 2, line 12 is necessary you might point out that, under the provisions of Article VE(3) of the Compact, water made available to Colorado is measured (only once!) at or near John Martin Dam - (the gage is actually just downstream from the dam) - so that Colorado receives from the Administration at that point "a package of

water" calculated to fill the aggregate need of Water District 67 as transmitted to the Administration by the authorized representative of the water users. Once that package is measured and delivered at the official gaging station its subsequent allotment and delivery to the several ditches (i.e. diversion at the headgates) is clearly a matter of internal, intra-state administration which is wholly the function of the State Engineer as you have pointed out and as recognized in the Compact.

I trust that you will be able now to get the Attorney General's concurrence - (I understand from your letter that the State Engineer's views are covered implicitly by the Attorney General). If serious difficulty does develop I believe that the Administration ought to have a special meeting, on short notice, in Denver, in order to resolve the problem and dispose of this matter without delay. I will leave it to you to call such a meeting in my name if circumstances and further developments indicate its advisability.

Sincerely yours,

HANS KRAMER
Chairman and Representative of the
United States, Arkansas River Compact
Administration

COPY
THE STATE OF COLORADO
DEPARTMENT OF LAW
Office of the Attorney General
February 18, 1950

Mr. Clifford H. Stone
Director
Colorado Water Conservation Board
212 State Office Bldg.
Denver 2, Colorado

Dear Mr. Stone:

Reference is made to your letter of February 9, 1950, in reply to my letter of the 7th inst., containing my comments on the proposed rules and regulations, Arkansas River Compact Administration. I am happy to note that my proposed amendment on page 5 in line 6 has been accepted.

It is further noted that you do not agree with the paragraph included in my letter giving my understanding and that of the State Engineer with respect to paragraph (e) on page 6, which reads as follows:

"(e) He shall collaborate, on behalf of his State, in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties. (Article VIII F)".

This point has been discussed again with the State Engineer. I give his comments which read as follows:

"I am unable to interpret the above language of the Compact as justification for the language of Paragraph (e), Page 6 of the proposed Rules and Regulations, or Judge Stone's interpretation of the same as stated in the second paragraph on Page 2 of his letter.

The Administration of the Compact is strictly an Inter-State matter. The legislatures of the two States acting for and on behalf of the States, made available to the Administration, certain appropriations of public funds with which to perform its required functions and meet its responsibilities, and gave it power to employ such assistance as may be necessary for the performance of its functions, which assistance may not be the employees of either State."

Since there appear to be irreconcilable viewpoints with respect to the interpretation of the provisions of Article VIII F of the Compact, your suggestion that the provisions of paragraph (e) on page 6 be amended by the striking of "(Article VIII F) at the end of paragraph (e) page 6, and adding the words "in accordance with the provisions of Article VIII F of the Compact", cannot be agreed to.

The next point commented upon in your letter is my suggested amendment on page 2, line 12 of striking out the word "two" before the word "States" and inserting the semi-colon after that word, and adding the following words: "in the State of Colorado at the headgates of the ditches in Water District No. 67, and in the case of Kansas to that State at the Stateline." You are of the opinion that it is not the function of the Administration to see that the water released from the reservoir arrives at the headgates of each of the ditches of Water District No. 67. I am somewhat surprised at that viewpoint as my opinion which has been before your Administration for several months, clearly expressed that viewpoint and I had assumed that it had been accepted and had been inadvertently omitted from the rules and regulations. As to this point the State Engineer comments as follows:

"At the first meeting of the members of the Administration in this office last summer, Judge Stone took the position that delivery of such reservoir releases to the headgates of ditches in District 67 was an Intra-State and not Inter-State function, or responsibility.

It was then the belief of the writer and still is, that it is as much the responsibility of the Administration to see that releases of water from the reservoir for uses in District 67, are delivered at the points of diversion on the river, as it is to see that the water to which Kansas is entitled, is delivered at the State Line. Both duties, it appears, are interstate in character and of equal importance.

When such releases have been delivered in the river at the headgates of the ditches in District 67, in accordance with notices of daily requirements, the actual diversion, measurement, recording and reporting of such diversions is the duty of the Water Commissioner for District 67, pursuant to the laws of Colorado.

The above views also apply to inflows to John Martin Reservoir in excess of 750 second feet, any part of which is being called for by ditches in District 67 .

Regardless of whether this particular responsibility rests with the Administration or with this office, an understanding must be reached prior to next April 1st in the interest of proper administration.

Another matter of equal importance is that the right of the ditches in District 67 to divert all the water they have placed calls for through the local Water Commissioner, even though a shortage in required deliveries at the State Line may result.

The writer's view is that the ditches in District 67, should be allowed to so divert, and that it is the duty of the Administration to see to it that sufficient water is released from the reservoir to meet the daily demands of Kansas, without waste."

Here again, there seems to be an irreconcilable viewpoint as between your interpretation of the Compact and that of the State Engineer. I do not know how your conflicting viewpoints may be reconciled. The State Engineer and I do not care to be put in a position of agreeing to the proposed rules and regulations of the Administration in which we do not wholly agree, and I do not care to be the buffer between the Administration and the State Engineer.

My opinion as to the meaning of the Compact has been expressed to the best of my ability in the opinion to which reference is made above. May I point out to you however, that the Arkansas River Compact Administration has the authority to make its own rules and regulations pursuant to Article VIII B(1) and since

the Administration is an Inter-State agency, neither the approval of the State Engineer nor of the Attorney General is required. It would be a happier situation if such approval were obtained. Since that seems to be an impossibility, I assume that the Administration will adopt such rules and regulations as it deems advisable, leaving the matter of cooperative administration to be worked out point by point.

Very truly yours,

JOHN W. METZGER
Attorney General

By /s/ Allen Moore
Allen Moore
Deputy Attorney General

- - - - -

The Administration recessed at 12:30 o'clock

AFTERNOON SESSION

The Administration reconvened at 2 o'clock.

The Administration took up discussion of the Rules and Regulations. Explanation of various suggested amendments and minor revisions was made by Rep. Stone.

Following general discussion, it was moved by Rep. Stone and seconded by Rep. Tate that Sub-paragraph (e) appearing on Page 6 of the mimeographed draft of the Rules and Regulations, stand as written, plus the addition of the words "in accordance with the provisions of Article VIII F of the Compact", making the complete Sub-paragraph (e) as follows:

"(e) He shall collaborate, on behalf of his State, in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties, in accordance with the provisions of Article VIII F of the Compact."

Rep. Stone suggested that the Minutes of the meeting should show the Administration had reviewed and considered all suggested amendments submitted for the Rules and Regulations. Chairman Kramer commented that the Administration did not have the duty of administering intrastate distribution of water of the Arkansas River, and that the Administration was not empowered to usurp or take over the duties of the State Engineer of Colorado

Motion was made by Rep. Tate, and seconded by Rep. Stone that the Administration reaffirm the language contained in the mimeographed draft of the Rules and Regulations, and that suggested policy amendments be rejected.

The motion was amended to incorporate a paragraph from Page 2 of Rep. Stone's letter of February 9, 1950, to the Attorney General's office, which commented on proposed amendments to the Rules and Regulations, and to have such paragraph represent the official view of the entire Administration. The referred-to paragraph is as follows:

"It is my view, and I am sure that it is the view of the other members of the Administration because of full discussion of the matter, that this suggested language could not be added without the Administration assuming authority which rests in the State Engineer of Colorado. It is not the function of the Administration to see that the water released from the reservoir arrives at the headgates of each of the ditches in Water District No. 67. Under the provisions of the Compact water must be released under direction of the Administration, in sufficient quantities and in accordance with the provisions of the Compact, to comply with the calls for water for use in Water District No. 67 and for use in Kansas. The quantity of water released by the Administration for use in Water District No. 67 must be distributed by the State Engineer among the ditches in that District in accordance with distribution agreements made from time to time by the water users of such District and filed with the Administration and with the State Engineer of Colorado, or in the absence of such agreement, upon the basis of respective priority rights as against each other in such district."

On rollcall vote, the motion, as amended, was unanimously approved, and declared adopted.

The Administration approved minor revisions in wording, including improved language for **paragraph** No. 3, on page 8 of the mimeographed draft, recommended by the District Engineer, Corps of Engineers, U. S. Army.

Each revision was approved by unanimous vote of the Colorado and Kansas representatives, and at the conclusion of these votes, Chairman Kramer announced the Rules and Regulations officially adopted, and approved for publication.

It was decided to proceed with a publication schedule in Colorado and Kansas, calling for first publication Tuesday, March 28, and second publication on Tuesday, April 4, 1950, and the effective date of the new Rules and Regulations Saturday, April 15, 1950.

The text of the officially approved Rules and Regulations, adopted by the Arkansas River Compact Administration at its meeting in Lamar, Colorado, on Friday, March 24, 1950, to be effective April 15, 1950, following official publication, is as follows:

RULES AND REGULATIONS

ARKANSAS RIVER COMPACT ADMINISTRATION

Effective April 15, 1950

Explanatory Statement

The Arkansas River Compact is herein referred to as the "Compact", and the Arkansas River Compact Administration is herein referred to as the "Administration."

Under the Compact, authority and responsibilities for the operation and maintenance of John Martin Dam and Reservoir, for the release of water therefrom, for the interstate operation of the Arkansas River between Colorado and Kansas and for the intrastate distribution of water of that river, are divided among these Federal and State agencies, viz: the Corps of Engineers, United States Army, the Administration and the Chief Official in each of the States of Colorado and Kansas charged with the administration of water rights.

The authority and responsibilities of each of these agencies and officials are recognized to be as follows:

Corps of Engineers, United States Army.

1. The Corps of Engineers is authorized to operate and maintain the John Martin Dam and Reservoir for flood control and conservation purposes: Provided, that the conservation pool in such project shall be operated in a manner conforming with the Arkansas River Compact.

2. Under the provisions of the Compact, the maintenance of John Martin Dam and appurtenant works may at times require the Corps of Engineers to release water then impounded in the conservation pool, or to prohibit the storage of water therein, until such maintenance work is completed and that flood control operations may also involve temporary utilization of conservation storage.

The Arkansas River Compact Administration.

1. The conservation pool in John Martin Reservoir will be operated for the benefit of water users in Colorado and Kansas, both upstream and downstream from John Martin Dam, as provided in the Compact.

2. The Administration has the authority and responsibility to effectuate the apportionment of water between the States of Colorado and Kansas in the manner provided by, and in accordance with, the Arkansas River Compact, including these provisions:

- (a) Article V A, B, C, D and E of the Compact relating to the releases, and reduction in releases, of water from storage in the conservation pool of John Martin Reservoir and of river flow through such reservoir, and also to making such water available for use in each of the two States.
- (b) Article V F requiring the Administration to make findings and give notice with respect to the exhaustion of water in the conservation pool of John Martin Reservoir.
- (c) Article V H requiring the Administration to make findings of fact with respect to proposed transfer of priority rights to ditches in Colorado Water District Number 67 to points of diversion upstream from John Martin Reservoir and with respect to a proposed increase in diversion rights from the Arkansas River in Water District Number 67 and in Kansas between the Stateline and Garden City, Kansas.

3. The Administration is charged among other duties, with carrying out these additional provisions of the Compact:

- (a) Article VIII G (1), (2) and (3) requiring the Administration (1) to determine from time to time, in collaboration with appropriate Federal and State agencies, the location of gaging stations required for the proper administration of the Compact; (2) to require, if necessary for the administration of the Compact, the installation and maintenance of measuring devices in any ditch or group of ditches diverting water from the Arkansas River in Colorado or Kansas; (3) to cooperate with the Chief Official of each of the States of Colorado and Kansas charged with the administration of water rights and with Federal agencies in the procurement, interchange, compilation, and publication of all factual data bearing upon the administration of the Compact; and (4) to call upon interested Federal agencies and officials to collaborate with the Administration and with appropriate State officials to facilitate the administration of the Compact.
- (b) Article VIII H requiring the Administration to investigate violations of any of the provisions of the Compact or other action prejudicial thereto, which comes to the attention of the Administration, and, when deemed advisable, to report its findings and recommendations to the Chief Official of each of the States of Colorado and Kansas charged with the administration of water rights.

- (c) Article VIII B (1) and (2) requiring the Administration to adopt and revoke By-Laws, Rules and Regulations, prescribe procedures for the administration of the Compact, and to adopt and transmit to the Governors of each of the States of Colorado and Kansas in each even-numbered year its budget covering anticipated expenses for the forth-coming biennium.

Chief Official of Each of the States of Colorado and Kansas Charged With the Administration of Water Rights.

1. Nothing contained in the Compact, or in the By-Laws and Rules and Regulations of the Administration thereunder, supplants, or is intended to supersede, the authority of the Chief Official of each of the States of Colorado and Kansas charged with the administration of water rights, with respect to the administration and distribution of water which is available to each of such States under the provisions of the Compact.
2. The Chief Official charged with the administration of water rights in Kansas will exercise full jurisdiction and control over the waters of the Arkansas River that originates in Kansas and over the waters that flow from Colorado across the Stateline into Kansas. (Article VI A(1)).
3. The Chief Official of Kansas charged with the administration of water rights is given and assumes exclusive administrative control, under the Compact, over the operations of the Frontier Canal and its headworks for irrigation uses in Kansas to the same extent as though such works were located entirely within the State of Kansas. (Article VI B).
4. Except as otherwise provided, nothing in the Compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of water of the Arkansas River in that State as decreed to such appropriators by the courts of Colorado, nor as interfering with the distribution among such appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas River. (Article VI A (2)). Accordingly, the State Engineer of Colorado, by virtue of the authority given him under the Colorado statutes, and in conformity with the Arkansas River Compact, has authority and responsibility as follows:
 - (a) During such periods of time when no water remains in storage in the conservation pool of John Martin Reservoir and after the Administration, pursuant to Article V F of the Compact, has made a finding that such storage will be or is liable to be exhausted and gives notice thereof as prescribed by

Article V F of the Compact, he shall administer the decreed water rights of water users in Colorado Water District Number 67, as against each other, and as against all rights, now or hereafter decreed to water users diverting upstream from John Martin Dam on the basis of relative priorities in the same manner in which their respective priority rights were administered by Colorado before John Martin Dam began to operate. (Article V F).

- (b) During such times as there is water in storage in the conservation pool of John Martin Reservoir and water is available for release from such storage or from river flows which may be passed through such reservoir under the provisions of the Compact, he shall administer diversions of water in Colorado Water District Number 67 in accordance with distribution agreements made from time to time by the water users in such District and filed with the Administration and with the State Engineer of Colorado, or in the absence of such agreements, upon the basis of respective priority decrees, as against each other, in said District. (Article V F).
- (c) During such times as there is water in storage in the conservation pool of John Martin Reservoir and water is available for release from such storage, or from river flows which may be passed through such reservoir under the provisions of the Compact, he shall administer all rights now or hereafter decreed to water users diverting upstream from John Martin Dam on the basis of relative priorities in the same manner in which their respective priority rights were administered before John Martin Dam began to operate, as against each other and without regard to any priority rights in Colorado Water District Number 67. (Article V F).
- (d) He shall furnish pertinent factual data to the Administration upon its request; and he is required to supervise the installation of measuring devices required by the Administration under Article VIII G (3) of the Compact.
- (e) He shall collaborate, on behalf of his State, in providing such available facilities, equipment and other assistance as the Administration may need to carry out its duties, in accordance with the provisions of Article VIII F of the Compact.

RULES AND REGULATIONS

Based on the foregoing delineation of authority and responsibilities, and with the approval of the Corps of Engineers, these Rules and Regulations for the administration of the Compact are adopted by the Administration, pursuant to Articles V E (6) and VIII B (1) of the Compact and in accordance with Article VI of the By-Laws of the Administration.

1. Under the general direction of the Administration, the Operations Committee, set up under Article V of the By-Laws of the Administration, shall have supervision over these Rules and Regulations governing the storage and release of water from the conservation pool of the John Martin Reservoir and over such other Arkansas River interstate administration and operation between the States of Colorado and Kansas as come within the purview of the Compact.

2. The Administration hereby delegates to the Secretary of the Administration, acting under the direct supervision of the Operations Committee, the following duties and functions:

- (a) (1) To receive calls from an authorized representative of the water users in Colorado and in Kansas for releases and reduction in releases of water in storage in the conservation pool of John Martin Reservoir and of river flow through such reservoir, under the provisions of the Compact; (2) to ascertain from day to day and from time to time the total quantities of water available and required to fulfill such calls; (3) to request the Reservoir Manager of John Martin Dam and Reservoir of the Corps of Engineers to make releases and reduction in releases of quantities of water required to meet such calls; and (4) to ascertain from time to time, as necessary, between the first day of April and the 31st day of October of each year, the water available at the Colorado-Kansas Stateline for use in Kansas as provided by the Compact. For the purpose of carrying out the functions and duties set forth in this Paragraph 2 (a), and in compliance therewith, the Secretary of the Administration is hereby authorized, on behalf of the Administration, to make appropriate and cooperative use of the services of all interested Federal and State agencies and officials.
- (b) To be responsible for the day-by-day relations with the Chief Official of each of the States of Colorado and Kansas charged with the administration of water rights, and with the Corps of Engineers.
- (c) To maintain such records and prepare such reports covering the functions and duties delegated by these Rules and Regulations as may be required of him from time to time by the Administration.

- (d) To report to the Operations Committee, set up under Article V of the Administration's By-Laws, any violations of the provisions of the Compact or other action prejudicial thereto which comes to his attention.

3. The District Engineer, Albuquerque District, Corps of Engineers, or his authorized representative, the Water Commissioner of Colorado Water District Number 67, and the local representative of the U. S. Geological Survey are hereby requested to communicate from time to time to the Secretary of the Administration any information and recommendations which relate to, and will aid in, the conservation of water and in the performance of the functions and duties delegated to such Secretary. In the interest of the improvement of operation practices and cooperation, Federal and State officials and agencies are requested to advise the Administration of any complaints or suggestions with respect to the carrying out of these Rules and Regulations.

EFFECTIVE DATE

These Rules and Regulations shall become effective April 15, 1950, and after publication as required by Article VI 3 of the By-Laws of the Administration.

- - - - -

Chairman Kramer announced that the Operations Committee would meet Tuesday, April 18, in Lamar, in connection with the start of season operations, at 10 a.m. The Secretary was instructed to publicize the meeting by press and radio, to urge interested citizens of the valley to appear, with questions or suggestions for facilitating administrative routine.

Rep. Mendenhall reported 158,478 acre feet of water impounded in John Martin Reservoir as of midnight March 23. He said the volume of water was ahead of the same period the year previous, when the impoundment was 142,924 acre feet. He said snow reports indicated 80 percent of normal. Ground moisture was reported low in the valley area.

It was moved by Rep. Stone that the Administration authorize Secretary Nevius to act for the Administration, in accordance with the Rules and Regulations approved at the current meeting, to become effective April 15, 1950, and that the Administration approve all previous actions taken by the Secretary in behalf of the Administration. The motion was seconded by Rep. Mendenhall.

On rollcall of states, the motion was unanimously passed, and declared adopted.

The Administration conducted general discussion of the duties and responsibilities assigned to the Secretary, and it was agreed that the Secretary was entitled to receive remuneration for much special services.

It was moved by Rep. Tate, and seconded by Rep. Mendenhall, that the Secretary be paid at the rate of \$100 a month on a year-round basis, with the suggested payment to be adjusted later if necessary. On rollcall, the motion was unanimously passed, and declared adopted. The payment was made effective as of April 1, 1950.

Col. C. H. McNutt, new District Engineer in the Albuquerque office, was introduced. He addressed the Administration briefly, expressing pleasure at the opportunity of getting acquainted with the Administration members, and suggesting that his office receive a specific letter of authority, covering the assignment of responsibility made to Secretary Nevius regarding the release of water. Chairman Kramer promised to prepare and send such a letter to the Albuquerque office.

Chairman Kramer announced the next regular meeting of the Administration would be in Lamar, on the fourth Tuesday in July, the date of July 25, 1950.

Rep. Stone of the Legal Committee announced that the Committee had inspected copies of distribution agreements on file, and approved them as complying with the Compact and Administration by-laws. Secretary Nevius was instructed to issue a letter reporting approval of the agreements to the ditch groups and to forward a copy of the letter to the State Engineer's office.

The Administration adjourned at 3:45 o'clock.

Harry C. Nevius, Secretary

Ray E. Peterson, Recorder

(These minutes were approved by action of the Arkansas River Compact Administration on Friday, August 4, 1950)