

MINUTES OF  
ARKANSAS RIVER COMPACT ADMINISTRATION  
REGULAR MEETING

July 28, 1959

Court House  
Lamar, Colorado

Attendance:

For Colorado:

David Jenkins, Las Animas  
Hacket Smartt, Lamar  
Felix L. Sparks, Denver

For Kansas:

Carl E. Bentrup, Deerfield  
Logan N. Green, Garden City, Vice Chairman  
R. V. Smrha, Topeka

For the United States:

Carl G. Paulsen, Washington, D. C., Chairman

Others Attending:

Jas. E. Bone	Corps of Engineers	John Martin Dam
Fred L. Boydston, Jr.	Colo. Water Cons. Board	Denver, Colorado
George Ed. Deahl	John Martin Dam	Hasty, Colorado
G. E. Kimble	John Martin Perm. Pool	Las Animas, Colo.
F. N. Leatherwood	Ft. Lyon Canal Co.	Las Animas, Colo.
John T. Martin	Corps of Engineers	Albuquerque, N.Mex.
R. J. McGrath	Water Commr. Dist. #67	Lamar, Colorado
Wallace T. Miller	U.S.G.S.	Denver, Colorado
Ross W. Moor	U.S.G.S.	Lamar, Colorado
Wm. T. Murray	Kearny Co. Farmers Irr. Ass'n.	Deerfield, Kans.
Harry C. Nevius	Amity Mutual Irr. Co.	Lamar, Colorado
Wm. Pattie	Amity Mutual Irr. Co.	Holly, Colorado
F. C. Snyder	Div. Engr.	Pueblo, Colorado
E. A. Thaxton	S. E. Colo. Rec. Ass'n.	Las Animas, Colo.
Guy M. Vincent	Kans. Div. of Water Res.	Garden City, Kans.
Oakley Wade	John Martin Perm. Pool	Las Animas, Colo.

Chairman Paulsen convened the meeting at 9:50 A. M. noting that a quorum was present. He said that Mr. Sparks would probably be there soon and that some of the non-controversial business could be handled before his arrival.

Mr. Green's motion to dispense with reading the minutes of the March 24, 1959 meeting was seconded and passed. In discussion of the minutes, it was agreed that a word in the Secretary's report should be changed. Mr. Smrha then moved that the minutes be approved as corrected, and the motion was duly seconded and passed.

The chairman said that he had no report to make as such, but that he felt he should mention his concern over the rapid rate that the stored water in John Martin Reservoir was being depleted.

Mr. Smartt gave his report as Secretary as follows:

Secretary's Written Report

March 24 to July 28, 1959

The Secretary attended the April meeting of the Arkansas Valley Ditch Association at La Junta and distributed some copies of our 10th Annual Reports; also mailed one upon request to a Mr. Barnhart of Pueblo. The Secretary also mailed several copies of our Annual Reports and some copies of Rules and Regulations to Mr. Smrha. They were of different dates in order to complete a set which he wanted to file with the Library there in Topeka.

Other than paying the bills as they came due and administering the discharge of water from the reservoir upon request from Colorado and Kansas, I have been reading the gage at the Lamar Station daily on days when Kansas has been requesting water. I have not been reading the gage when Kansas is not calling for water, as I did not think it important enough due to the fact that the amount was being recorded.

Our financial statement of June 30 is current as there are no outstanding vouchers. However, there is one bill of \$250 representing the 4th quarter obligation to the U.S. Geological Survey which is due at this time.

/s/ HACKET SMARTT  
Hacket Smartt, Secy-Treas.

Mr. Bentrup's motion to receive and record the Secretary's report was seconded and passed.

Mr. Smartt distributed copies of the Treasurer's report as follows:

Treasurer's Report from March 24, 1959, to July 28, 1959

Balance in Bank, March 24, 1959			\$3818.73
Disbursements Since March 24, 1959			
Date	Vouchers	Payee and Purpose	Amount
3-25-59	264	Peerless Printing	\$648.00
4-6-59	265	Treasurer of the U.S. O. A. S. I. Fund	15.00
4-5-59	266	Hacket Smartt, Jan. Feb., & March	292.50
5-2-59	267	M.S.T. & T. Co., Telephone Service for Mar. & Apr.	24.85
5-2-59	268	U. S. Geological Survey 3rd Quarter	250.00
6-20-59	269	Hacket Smartt, April, May & June	292.50
6-30-59	270	Treasurer of the U. S. O. A. S. I. Fund	15.00
6-30-59	271	M.S.T. & T. Co., Telephone Service for May & June	34.75
Total Disbursements			\$1572.60
Balance Funds Available, July 28, 1959			\$2246.13

A discussion followed on the period to be covered by the report, and it was agreed that the report should contain only those items handled since the last report - the annual report to cover the transactions of the entire year. A motion to accept the Treasurer's report was duly seconded and passed.

Mr. Smrha reporting for the Engineering Committee said that no meeting have been held, although he and Mr. Sparks had met informally on July 15, 1959 to discuss gaging stations and U.S.G.S. operations in the Arkansas River basin. He said that he would like to defer concluding the Engineering Committee report until Mr. Sparks arrived, and see if he had any additional comments to make.

Mr. Green gave the report for the Legal Committee and said that the Kansas Attorney General had replied to a request for an opinion on the legal position of the Compact Commission to allocate a 20,000 acre foot permanent fish pool in John Martin reservoir. Mr. Green read the opinion of the Kansas Attorney General.

A motion was made and seconded that the original of the letter of the Kansas Attorney General be accepted and made a part of the record of the Administration, which is included as Appendix A. A later amendment to the motion was seconded and passed to include in the motion the letter from the Colorado Attorney General on the same subject. After some discussion the motion as amended was passed, and is included as Appendix B. In the discussion, Mr. Sparks said it was the opinion of the Colorado Attorney General that storage could be accomplished for a fish pool, but that the reservoir cannot be invaded to the detriment of the irrigators. Mr. Sparks then referred to the study made by the Colorado Water Conservation Board showing how the pool could be accomplished without invading the rights of the irrigators. Mr. Bentrup said that he thought the proposal for a pool should come from those interested in establishing a permanent pool. Mr. Sparks then explained more fully the study of the 10,000 acre foot fish pool and said that when the top of the conservation pool was reached, the fish pool water would be the first to be dumped. It was a gamble that proponents of a fish pool might want to take. He said he wished to make a formal request on behalf of the Colorado Water Conservation Board that the study by the Board be reviewed by Kansas and the Administration, and requested that the fish pool be formed. Mr. Smrha asked Mr. Sparks if his remarks were the opinion of the Colorado Attorney General, and Mr. Sparks replied that they were, so long as no injury was done to the irrigators. Mr. Jenkins said that the districts he represents wonder if there is any redress if injury occurs. He also said that their public relations with the State Game and Fish Department have been poor. Mr. Green questioned how the fish pool would be administered and how diversions of water for replacement would be handled. Mr. Paulsen questioned when the State Engineer would take over the administration as the reservoir reached the emptying point. Mr. Bentrup asked how sediment encroachment would be handled. Mr. Sparks said he would like to see the problem worked out. To all these remarks, Mr. Sparks said that it is a simple matter to run the necessary water for the pool into the reservoir - by transmountain diversion or acquisition of senior rights. The administration of the water is a matter of engineering possibility and can be accomplished.

Mr. Paulsen inquired if the Colorado Water Conservation Board would furnish the engineering for an administrative plan of operation. Mr. Sparks replied that the technical problems can be worked out, and although the project appears to be an expensive one, it is a worthwhile benefit to the whole valley. He promised that the Colorado Water Conservation Board will not duck its responsibility to the problem. Mr. Green questioned if it was within the power of the administration to decide the problem, and Mr. Bentrup questioned what department the irrigators would have to deal with in case they experienced damage. Mr. Sparks said that the Colorado Water Conservation Board would be charged with administration of interstate compacts, and the board would not endorse any plan not considered to be feasible. The Game and Fish Department would purchase the water rights and maintain the pool. Mr. Paulsen asked if the problem should be studied further, and Mr. Sparks replied that it should not - that this is a plan presented for consideration and the Engineering Committee should take it under its consideration. Mr. Smrha observed that the proposal is probably physically possible, but when the compact was being negotiated, no fish pool was included, and he felt that under the circumstances the Administration is without the legal authority to consider a permanent pool. Mr. Green agreed with Mr. Smrha's statement and said that in his opinion it was useless to spend more money on the problem as Kansas cannot consider a fish pool. Mr. Jenkins gave a brief history of the compact negotiations in which the language used referred to "irrigators" up until the very end of negotiations when the terms "water users" was inserted. His opinion was that the Administration had no authority to change the compact basic principles. Mr. Bentrup remarked that Mr. Wade would be at the meeting a little later, and wondered if the discussion shouldn't be postponed so that he might have the benefit of hearing it. Mr. Paulsen observed that the discussion taking place was on differences of opinion between the two states.

Mr. Smrha's motion to defer any action until Mr. Wade was heard, died for lack of a second.

Mr. Bentrup and Mr. Green concurred in statements that the Administration has no authority to entertain any changes in use of the reservoir, and according to the Kansas Attorney General, the Administration cannot ever make a decision which would change the use. Mr. Sparks said that Colorado will not concede that the reservoir cannot be used for other purposes. This reservoir was built with Federal funds, and the irrigators have a vested right in the reservoir and it is not altering the compact to use space which has not been used historically. Mr. Bentrup asked Mr. Sparks if there are other compacts that are comparable to this one, and Mr. Sparks answered that the Rio Grande Compact is similar. Mr. Bentrup stated that their only job here is to administer the compact. Mr. Sparks said that other means must be explored to create this permanent pool and Kansas is arguing on a legal point. Mr. Green said that the Kansas Attorney General had been asked strictly on the legal basis, and his answer had been "no". Mr. Sparks said that

an attempt will be made to answer the legal point raised by Kansas. In general discussion which followed, it was agreed that the Administration cannot make any decision today.

Mr. Bentrup read the report of the Operations Committee as follows, and it was moved and seconded and passed to accept the report.

Report  
of  
Operation's Committee

April 1 to July 28, 1959

The irrigation season began April 1st with Colorado demanding 300 cfs which demand increased to 550 by the 7th. The gates were closed at 7 P. M. on the 9th of April on account of a big snow in the Arkansas Valley which amounted to 1/3 inch of moisture.

Kansas made its first demand of the season on April 20th at which time their demand was 300 cfs, which remained thus until May 23rd when it was reduced to zero and remained there until June 10th. Kansas' demand has continued since with the exception that the first 3 days of July it was reduced to zero. Again on the 4th 300 cfs, then increased to 400 cfs on the 6th and 500 cfs on the 9th, at which time 1150 cfs was ordered from the reservoir to supply the demands of both Colorado and Kansas; 1150 cfs being the maximum discharge this season.

Due to heavy rain and hail in the Bristol and Harman vicinity Monday evening July 20th which furnished ample water at the State Line, the discharge was reduced to 650 cfs. At present the discharge is 1125 cfs.

Storage April 1---225,977 Ac. ft.; At present Storage 92,557 A.F.

Total depletion to date 163,420 A. F.

s/ CARL E. BENTRUP  
Carl E. Bentrup, Chairman

Mr. Bentrup then read a letter from Col. Reed in response to a letter sent to him last summer. The letter follows:

U. S. ARMY ENGINEER DISTRICT, ALBUQUERQUE  
Corps of Engineers  
P. O. Box 1538  
SWKGW-2 Albuquerque, New Mexico

April 21, 1959

SUBJECT: Revision of Flood Control Storage Requirements, John Martin Reservoir, Colorado

TO: Mr. Carl E. Bentrup  
Chairman  
Operations Committee  
Arkansas River Compact Administration  
Deerfield, Kansas

Dear Mr. Bentrup:

Receipt is acknowledged of your letter dated 1 April 1959, and inclosed letter dated 9 December 1958, relative to the operation of John Martin Dam for flood control. You advised that through a misunderstanding the inclosed letter was never mailed to this District, but was included in the minutes of the December meeting of the Arkansas River Compact Administration.

In a letter of 9 December 1958, you expressed dissatisfaction with the plan of reservoir operation for flood control at John Martin Dam as described in letter from this District dated 23 July 1958. You suggested that flood control releases be graduated in accordance with available flood control storage for benefit of the water users rather than at release rates equal to the inflow if downstream conditions permit, but not to exceed the downstream channel capacity presently estimated at 5,000 c.f.s. This suggested deviation from the adopted plan of regulation has been considered but detailed studies indicate that all storage allocated to flood control is required and any water temporarily stored above elevation 3,851 feet should be evacuated as rapidly as downstream channel capacity will permit for maximum reduction of flood damages.

Also in paragraph 3 of your letter dated 9 December 1958, you inquired as to whether this office is currently considering the revision of the flood control pool requirements of John Martin Reservoir in view of the possible construction of the Trinidad Project. Although this project was authorized for construction by the Flood Control Act of 1958, no funds have been appropriated and therefore preconstruction planning has not been initiated.

Based on previous studies made of the Trinidad Reservoir Project, it is anticipated that detailed studies will indicate that the required flood control storage in John Martin Reservoir would not be reduced as a result of construction of Trinidad Reservoir Project. The allocation of storage in John Martin Reservoir for flood control was based on the storage required to control the June 1921 flood to 10,000 c.f.s. past the dam which was considered to be the nondamaging discharge capacity of the Arkansas River downstream from the dam at that time. Subsequent investigations indicated that 5,000 c.f.s. is the maximum nondamaging discharge along certain reaches of the Arkansas River in western Kansas. Under this condition, the present flood control capacity of John Martin Reservoir is not sufficient to control a flood of the magnitude of the April-May 1942 or of the June 1921, assuming that the conservation pool is full at the beginning of these floods. The June 1921 flood was caused by a storm which centered over the Arkansas basin above Pueblo, Colorado, and the watershed above the Trinidad Reservoir did not contribute materially to the flows at John Martin Reservoir.

The total drainage area of the Arkansas River above John Martin Reservoir is 18,915 square miles whereas the portion above Trinidad Reservoir Project is only 698 square miles, or 3.7 percent of the total. Further, over 70 percent of the flood control storage in the authorized Trinidad Reservoir is detention storage only with a maximum uncontrolled release rate of 15,000 c.f.s.

Sincerely yours,

/s/ ALBERT L. REED

Albert L. Reed  
Colonel, CE  
District Engineer

Mr. Smartt in commenting on demands of both states brought out that there are no measuring devices on some of the ditches below Lamar, and also that at times the demands in Colorado seem to be wasteful. There was some discussion on wastes and the Kansas Administrators agreed that there was no waste in Kansas except for rains and that runoff from small storms are useable up to about 2000 c.f.s. Mr. Jenkins asked Mr. Sparks if the Colorado Water Conservation Board has funds available to make the study of use of Arkansas Valley water, to which Mr. Sparks replied that the effects of the Trinidad Reservoir and Fryingpan-Arkansas projects are being studied, and that a salvage project study will be made. The study will be made by Colorado State University. A resident engineer has been proposed for the Arkansas Valley to assist in the study which will take a lot of money. The Southeastern Colorado Water Conservancy District will make some money available. He estimated the total need would be for about \$100,000. He said that the Water Board will make the hydrologic and



waste studies which will start in the next 30 to 60 days and take about two years to complete. Mr. Paulsen inquired if the cropping pattern has changed in the valley and Mr. Smartt replied that not much change had occurred. Mr. Paulsen then said he had asked the question because he was interested in knowing what the use of John Martin water would be the rest of the season. Mr. Jenkins then explained the irrigation practices for the various crops in the valley and the need for late season water. A discussion followed on use of clear and muddy waters, irrigation practices and crops. Use of winter irrigation water for freezing and breaking the ground and deep percolation was explained. It was determined that practices are about the same in Kansas as they are in Colorado. Mr. Smartt said that he wished some agreement could be reached between Colorado and Kansas ditch companies to cut down on the call on John Martin water in order to preserve a pool in the reservoir. The discussion which followed was concerned with how savings of water could be accomplished. There is no authority to force the farmers to change their practices and education seems to be the only answer. The Colorado Water Conservation Board study will probably show where the water goes and where losses occur. Water use practices will need to be improved as the population increases. Measuring devices should be installed on all ditches as required by State law. Mr. Sparks said that the Administration should request the State Engineer to order measuring devices installed on all ditches, and after some discussion, Mr. Sparks moved that:

Resolved by the Administration that the Secretary be authorized to communicate to each state official that all ditches taking water from the Arkansas River and its tributaries be required to place proper measuring devices in compliance with State Laws and, the Operations Committee shall report any violations to the Secretary of the Administration and he will notify the State Engineer.

Mr. Bentrup seconded the motion and the ballot was taken.

Motion passed.

At Mr. Smrha's suggestion, Mr. Sparks agreed that his remarks constituted an addition to the report of the Engineering Committee.

The meeting recessed at 12:15 P. M.

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### Afternoon Session

The Chairman reconvened the meeting at 1:45 P.M. and asked Mr. Oakley Wade if he had any presentation he wished to make at this time. Mr. Wade said that interest in a permanent pool is continuing, and explained that the proposed plan is to ask the Game and Fish Department to provide the money for purchase of water and land. He admitted that operating problems are not simple, but said that they can be solved. He requested that engineers study to see if the flood control pool could be invaded to prevent loss by spilling. He hoped the Attorneys General of Kansas and Colorado could reconsider their opinions on the basis of a definite proposal. He said it is his opinion that the irrigators have been given some additional benefits from the fact that the Corps of Engineers now considers that the maximum release rate from the flood control pool should be about 5000 c.f.s. instead of 10,000 c.f.s. as originally estimated. He hopes that operation of the reservoir and irrigation rights will be worked out through cooperation with the Administration, and he welcomed the advice and help of the Administration.

The Chairman thanked Mr. Wade for his statement and told him that the authority of the Administration would have to be satisfied and that the Administration will cooperate especially after plans have been finalized.

Consideration was given to the budget for the next fiscal year, and Mr. Smartt read a letter from Mr. Miller as follows:

### Surface Water Branch

July 14, 1959

Mr. C. C. Paulsen  
Chairman  
Arkansas River Compact Administration  
4000 Cathedral Avenue, N. W.  
Washington, D. C.

Dear Mr. Paulsen:

At the July 1958 meeting of the Arkansas River Compact Administration this office submitted a written statement of recommended rehabilitation which should be undertaken at the stations on the Arkansas River near Coolidge, Kansas and the Purgatoire River near Las Animas, Colorado.

At that time I recommended that this work not be started until fiscal year 1960 in order to give the Administration time to include the costs in their 1960 budget.

The cost of the proposed work would be \$2,800 total, \$1,400 to be borne by the Administration and an equal amount by the Geological Survey, for the construction of a measuring cableway at each of the two stations mentioned above. The cost of installing the "bubbler" gage on the Arkansas River at Las Animas need not be considered as it has been taken care of.

Another matter which should be considered is the annual operating costs of the new station on the Arkansas River at Lamar. The Colorado Water Conservation Board paid for half of the installation costs and operation of this station through June 30 and the Geological Survey the other half.

Proposed 1960 Program

	ARCA	USGS	Total
Partial support of Compact gaging stations	\$1,000	\$1,000	\$2,000
Rehabilitation	1,400	1,400	2,800
Operation, Arkansas River at Lamar	400	400	800
	<hr/> \$2,800	<hr/> \$2,800	<hr/> \$5,600

It would be desirable if approval for the cableway installation would be given at the July meeting so the work could be completed this fall.

Very truly yours,

W. T. Miller  
District Engineer

cc: R. V. Smrha  
L. N. Green  
C. E. Bentrup  
David Jenkins  
Hacket Smartt  
F. L. Sparks

Mr. Miller was then called upon and gave a history of the agreement reached last year, and the Lamar station installation. He explained the \$1400 for cableways and \$400 for operation of the Lamar station during the irrigation season. Mr. Sparks said that he wanted the Lamar station read all year for the winter flow studies. A discussion of operating costs followed and a suggestion

was made that \$1000 be budgeted for operation of the station all year - \$500 from the Administration and a matching amount from the U. S. Geological Survey. Mr. Miller explained the operation costs and said that the cableways can be installed this fall. Mr. McGrath said that Mr. Burgess, Chief Hydrographer in the State Engineer's office wanted him to get a man to read the Lamar gage daily at a salary of \$15 per month, but that he can't get anyone to do it for less than \$1.00 per day. He said that a daily report is desirable. Mr. Miller said that the information is recorded and will be published on a daily basis, but it is not expected to be read each day, however the information is available daily by reading the staff gage or the chart.

Mr. Sparks said that some daily spot readings will undoubtedly be made this winter in connection with the study to be made.

Mr. Smrha, in discussing the budget, said that it appeared that all other expenditures exclusive of gaging was about \$3300, and he thought that adjustments could be made in other budget items and pick up the additional \$200 needed. When the possibility of a deficit occurring was mentioned, Mr. Sparks said that a deficiency appropriation was possible, while Mr. Smrha said that there was no chance for a deficiency appropriation in Kansas. Mr. Sparks said that if it appeared likely for a deficit to occur, the Colorado Water Conservation Board would make up the difference before the deficit occurred.

Mr. Sparks' motion was seconded by Mr. Smrha that the Administration appropriate \$2900 for gaging stations and additional gage readings. The motion passed.

Mr. Smrha moved that the Secretary be authorized to enter into a cooperative agreement with the U. S. Geological Survey in the amount of \$2900. Mr. Sparks seconded the motion and it passed by vote of the states.

The 1961 fiscal budget was then discussed, and since no new gaging stations are anticipated for that year, it was suggested that \$4400 would be needed. Mr. Smart asked if last years budget less \$1400 should be the basis for the 1960-61 budget. At the end of discussion Mr. Smrha's motion was seconded by Mr. Sparks that the Administration adopt a budget for the year ending June 30, 1961 in the amount of \$4800; the items to be the same as in the budget for 1960 except that the item for gage report would be \$1500. The amount to be appropriated by Colorado would be \$2880, and the amount to be appropriated by Kansas would be \$1920. The motion passed, and the budget is as follows:

Budget July 1, 1960 to June 30, 1961

Personal Services		\$2825.00
Secretary Salary	\$1200.00	
Social Security	50.00	
Gage Reports	1500.00	
Professional Services (Audit of Accounts)	75.00	
Capital Outlay		300.00
Maintenance and Operation		1675.00
Bond, Treasurer	25.00	
Printing	600.00	
Official Publications	100.00	
Travel Expense - Secretary & Employees	150.00	
Typing and Mailing	200.00	
Investigation & Inspection	150.00	
Telephone & Telegraph	300.00	
Office Supplies	150.00	
Total Proposed Budget, 1960-1961		<u>\$4800.00</u>
Estimated Carry-over as of June 30, 1960		0
Total to be appropriated by Colorado & Kansas		4800.00
To be appropriated by Colorado (60%)		2880.00
To be appropriated by Kansas (40%)		1920.00

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Mr. Sparks made reference to the letter of the Corps of Engineers and said that not only does the Purgatoire river contribute to the flood flows into John Martin Reservoir, but that the proposed Pueblo Reservoir will help to control floods sufficiently that part of the flood control space in John Martin could be used safely for recreation storage.

A discussion was held on the present rate of drawdown of John Martin Reservoir and whether a meeting of the irrigators would bring forth any worthwhile results. Mr. Sparks thought that each Compact Administrator should disseminate information when the critical stage arises, and see if by voluntary agreement of the ditches some 3000 to 5000 acre feet could be left in the reservoir. Mr. McGrath remarked that the ditches upstream will not pass water down to the reservoir until it is declared dry. Procedure to be followed when the reservoir is empty was discussed, as well as the method of storing water in an empty reservoir when an excess of inflow occurs.

Mr. Jenkins questioned what the status was of the Alkali Creek fish reservoir, and a discussion ensued on the appropriation and purchase of rights for fishing or other beneficial uses of water.

Mr. Sparks motion was seconded and passed to have a special meeting of the Administration in Lamar, October 6, 1959, after a discussion of when would be the best time, so that the meeting date would not conflict with other meetings scheduled in October.

The meeting then adjourned at 3:25 P. M.

STATE OF KANSAS  
Office of the Attorney General  
Topeka, Kansas

May 21, 1959

Mr. Logan Green  
Attorney at Law  
118 Pine Street  
Garden City, Kansas

Re: States - Interstate Compact - Colorado-Kansas  
Arkansas River Compact

Dear Mr. Green:

This office has carefully considered the questions raised by you in your letter of March 23, 1959. In that letter you indicate that the Kansas-Colorado Arkansas River Compact Commission is being urged to allocate a pool of 20,000 acre feet in the John Martin Reservoir on the Arkansas River in Colorado, to be dedicated as a minimum fish reservoir.

This office has before it the Arkansas River Compact formally entered into December 14, 1948, between Kansas and Colorado, which compact has been approved by Act of Congress, as well as the Record of the Meetings of the Colorado-Kansas Arkansas River Compact Commission.

We find that at the time of the meetings of the Commission, pursuant to which the Compact was developed and formulated, the subject of a federal fish and wild life refuge was discussed and ultimately was abandoned by the United States Department of the Interior (pp. 8-43 to 9-24, Record, Colorado-Kansas Arkansas River Compact Comm.). Proceeding on that basis, the Compact Commission divided the waters of the John Martin Reservoir into two parts, that portion over 3,851 feet above mean sea level to be operated for flood control purposes and that portion below said level to be known as the water conservation pool (Compact, Art. IV, Sec. C). Article 5 of the Compact contemplates that upon demand under the terms of the Compact, the two states may draw down the conservation pool in accordance with the formulations there set out until the reservoir is entirely empty. It would seem clear the beneficial users of the water in the two states operating under the Compact have a vested interest under the terms of the Compact, in the dispensing of the reservoir water in strict accordance with formulas and uses set forth therein.

Another aspect of the water conservation pool is the matter of silting in the John Martin Reservoir. The conservation pool being the bottom layer of the John Martin Reservoir, will ultimately be consumed by silt filling of the reservoir. Apparently between 1942 and the time of the Compact, the John Martin Reservoir lost approximately 25,000 acre feet by siltation (p. 16-13, Record, Kansas-Colorado Arkansas River Compact Comm.). Thus it may be seen that in time the water conservation pool will be completely consumed by virtue of filling of the reservoir with silt. The taking of another 20,000 acre feet of this lower pool for a fish refuge would only serve to hasten the loss of the water conservation pool to the beneficial users in the two states.

Certainly neither state could by law ultimately alter the terms of this Compact in the manner being urged (Henderson v. Delaware River Joint Toll Bridge Commission, 362 Pa. 475, 66 Atl. 2d 843. The Compact Commission in Sec. B of Art. 9 of the Compact should remain in effect "until modified or terminated by unanimous action of the States", which would seem to indicate the Commission thought it might have need in the future to further negotiate the use of the waters in the John Martin Reservoir. It is the feeling of this office, however, that the terms of Public Law 34, Seventy-ninth Congress, Chapter 79 - Fish Session (H. R. 914), set out in full at page 1-4 of the Record of the Compact Commission, would require further action by Congress for such renegotiation.

The foregoing discussion of the Compact and the minutes relating thereto, together with the authorizing legislation and such law as is applicable to the use of the waters of the reservoir, lead us to the conclusion that the use of the last 20,000 acre feet of the conservation pool requested for a fish reservoir, is not presently possible without further action by Congress, by the legislatures of the two states and by the reconvening of a commission and the renegotiation of the Compact.

Very truly yours,

s/ John Anderson, Jr.

JOHN ANDERSON, JR.  
Attorney General

REH:mh

cc: Mr. Warden Noe, Attorney  
State Board of Agriculture  
State Office Bldg., Topeka, Ks.



THE STATE OF COLORADO  
Department of Law

Duke W. Dunbar Atty. General	Office of the Attorney General Denver 2	Frank E. Hickey Deputy Atty. Gen.
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July 20, 1959

Mr. Felix L. Sparks, Director  
Colorado Water Conservation Board  
212 State Office Building  
Denver 2, Colorado

Dear Sir:

I have your letter of May 11, 1959 requesting my opinion as to the legality of the creation of a permanent pool at John Martin Reservoir. Your request is answered herein.

FACTS: For sometime past, there has been a concentrated effort by various interests in the Arkansas Valley to obtain approval by the Corps of Engineers of the U. S. Army of an increase of 10,000 acre feet in the present conservation capacity of John Martin Reservoir for the purpose of providing a permanent recreational pool. The proponents of this recreational pool have in mind the purchase of a sufficient quantity of water to establish the 10,000 acre feet permanent pool in the first instance and then the purchase of sufficient water thereafter to take care of evaporation. The Colorado Water Conservation Board has conducted a study of the feasibility of this plan and finds that from an engineering viewpoint, a permanent 10,000 acre foot pool could be established in the Reservoir without injury to irrigators, providing that the present conservation capacity is increased by 10,000 acre feet. When this proposal was submitted to the Arkansas River Compact Administration, the representatives of the State of Kansas took the position that it would not consider such a proposal unless it could be assured that the permanent pool could be legally created under the terms of the Arkansas River Compact.

QUESTION: Assuming that the Corps of Engineers of the U. S. Army finds that the present conservation capacity of John Martin Reservoir can be increased by 10,000 acre feet without impairing the operation of the Reservoir for flood control purposes, and permits such increase, can a permanent pool for recreational purposes be established legally at John Martin Reservoir, the water with which to create and maintain the pool to be purchased and transferred to John Martin Reservoir?

July 20, 1959

CONCLUSION: Yes.

ANALYSIS: The Arkansas River Compact provides certain restrictions on transferring rights to the use of water (Article V, Paragraph H, 148-9-1, '53 CRS). This paragraph reads as follows:

"If the usable quantity and availability for use of the waters of the Arkansas river to water users in Colorado water district 67 and Kansas will be thereby materially depleted or adversely affected, (1) priority rights now decreed to the ditches of Colorado water district 67 shall not hereafter be transferred to other water districts in Colorado or to points of diversion or places of use upstream from John Martin dam; and (2) the ditch diversion rights from the Arkansas river in Colorado water district 67 and of Kansas ditches between the state line and Garden City shall not hereafter be increased beyond the total present rights of said ditches, without the administration, in either case (1) or (2), making findings of fact that no such depletion or adverse effect will result from such proposed transfer or increase. Notice of legal proceedings for any such proposed transfer or increase shall be given to the administration in the manner and within the time provided by the laws of Colorado or Kansas in such cases."

However, these restrictions go no farther than the restrictions existing in Colorado law on the change of point of diversion of a right adjudicated under Colorado law. See Sections 147-9-22 to 26, '53 CRS, and cases cited thereunder. The only difference is that if the rights to be transferred are of the type of right referred to in Paragraph H, notice of the transfer proceeding must be given to the Compact Administration, in addition to those to whom notice must be given under the adjudication act.

Another provision of the Compact which should be considered is Article IV, Paragraph D, 148-9-1, '53 CRS, which reads as follows:

"This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas river, as defined in article III, shall not be materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas under this compact by such future development or construction."

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Again, however, the restriction contained in this section is identical with the restriction required by Colorado statutes to be imposed on a decree permitting a change of point of diversion of a water right.

Article VI, Paragraph A (2), 148-9-1, '53 CRS, supports the conclusion that the Compact did not intend to restrict the right to change the point of diversion of water rights under Colorado law. This section is as follows:

"Except as otherwise provided, nothing in this compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas river in said state as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said 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."

The applicability here results from the fact that the water rights in Colorado as decreed to appropriators by the courts are property rights, and the Colorado Supreme Court has consistently held that the right to change the point of diversion and manner of use of such water rights are necessary incidents of this property right, subject to the restriction that no such change may be permitted unless conditions are attached which protect the vested rights of junior appropriators. City of Colorado Springs vs. Yust, 126 Colo. 286, 249 P(2d) 151.

Hence, it is concluded that if water rights are purchased and a change of point of diversion proceeding had, upon the finding by the court that the proposed change will not be injurious to other appropriators, or the establishment of conditions to avoid such injury, the Compact itself is satisfied and the water legally stored.

The second question that naturally arises is whether or not the rights of Kansas, under the Compact, to part of the water in the conservation pool would also attach to the increased capacity. The compact recognizes the division between flood control storage capacity and the "conservation pool" capacity of John Martin Reservoir. See Article III, Paragraphs E and F, 148-9-1, '53 CRS. The operation of the flood control storage is within the exclusive jurisdiction of the Corps of Engineers, Article IV, Paragraph C (2). Only the water in the conservation pool must be made available to the water users of the two states, Article IV, Paragraph C (3). Hence, the only right Kansas has in stored water is to water stored in the conservation pool as it existed at the time of signing the Compact, subject to invasion of this pool for maintenance purposes

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when necessary; for required flood control operation and, obviously, siltation, Article IV, Paragraph C (3). If the Corps of Engineers is authorized to permit storage in capacity which has heretofore been established as flood control capacity, and does so, the rights of Kansas users are not affected. Nothing in the Compact gives Kansas any right to demand delivery of water retained in flood control storage by the Corps of Engineers for recreational purposes. Hence, Kansas would have no standing, under the Compact, to object to such being done.

Very truly yours,

s/ DUKE W. DUNBAR

Duke W. Dunbar  
Attorney General

DWD:JBB,Jr.,:T