

MINUTES OF
ARKANSAS RIVER COMPACT ADMINISTRATION
REGULAR MEETING
March 28, 1961

Attendance:

For Colorado:

David Jenkins, Las Animas
Hacket Smartt, Lamar

For Kansas:

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

Members Absent:

Felix L. Sparks, Denver, Colorado

Others Attending:

Wallace A. Doe	Southeastern Colo. W. C. Dist.	Pueblo, Colo.
F. C. Snyder	State Engineer's Office	Pueblo, Colo.
R. J. McGrath	Water Comm. #66 & #67	Lamar, Colo.
Robert A. Buckhagen	Corps. of Engineers	John Martin Dam, Colo.
John T. Martin	Corps. of Engineers	Albuquerque, N. M.
Wallace T. Miller	U. S. Geological Survey	Denver, Colo.
W. C. Fagerquist	U. S. Bureau of Reclamation	Pueblo, Colo.
Dick Howeston		Las Animas, Colo.
Guy M. Vincent	Kansas Div. of Water Resources	Garden City, Kans.
Frank Leatherwood	Ft. Lyon Canal Co.	Las Animas, Colo.
Ross W. Moor	U. S. Geological Survey	Lamar, Colo.
Harry C. Nevius		Lamar, Colo.
Wm. Howland	Amity Mutual	Holly, Colo.
Sisto Guidotti	Amity Mutual	Bristol, Colo.
Wm. Pattie	Twin Lakes	Ordway, Colo.
Fred L. Boydston, Jr.	Colo. Water Conservation Board	Denver, Colo.

Mr. Green called the meeting to order at 9:35 A. M. and asked for reading of the minutes of the December 16, 1960 meeting. Mr. Smartt requested time for each member to read the minutes and then moved that the minutes be approved as written. Mr. Smrha seconded the motion and the minutes were approved.

Mr. Green expressed his regret on Mr. Paulsen's passing and said that since no Chairman had been appointed, there is no Chairman's report at this time.

Mr. Smartt was requested to give the Secretary's report and did so as follows:

ARKANSAS RIVER COMPACT ADMINISTRATION

Secretary's Report from
December 16, to March 28, 1961

The Secretary as directed by the Administration at the Dec. 16, 1960 meeting held in Lamar, Colorado, wrote on Dec. 27th to the Attorneys General of the States of Kansas and Colorado requesting their opinion as to the purpose for which the river flow up to 100 c.f.s., which Colorado can demand under the Compact, can be used.

The Secretary received on January 16th an opinion from Attorney General William M. Ferguson which is in the files and is available at this time.

The Secretary has not heard from Duke W. Dunbar of Colorado at this time.

The Secretary received 100 copies of the 15th annual report from the Colorado Water Conservation Board about the first of February, 1961, of which 25 have been distributed to the A. V. D. A., 12 to the Fort Lyon Ditch Co., and like amounts to the other ditch associations below the Dam, besides mailing to those who are on the mailing list including the Governors of the States of Kansas and Colorado and a few other interested people.

Other than paying the bills as they came due, this concludes my report.

Respectfully submitted,

/s/ Hacket Smartt
Hacket Smartt, Secretary

Mr. Smrha's motion to accept the Secretary's report was seconded by Mr. Jenkins and was passed.

The Treasurer's report was given by Mr. Smartt as follows:

ARKANSAS RIVER COMPACT ADMINISTRATION
Lamar, Colorado
March 28, 1961

Treasurer's Report from
Dec. 16, 1960 to Mar. 28, 1961

Balance on Hand, Dec. 9, 1960			\$ 4,961.99
Voucher	Date	Payee and Purpose	Amount
305	12-21-60	U. S. Geological Survey, 1st Qtr. Cooperative Agreement	375.00
306	1- 4-61	Treasurer of the U. S., Deposits by State	18.00
307	1- 4-61	R. W. Rollins auditing 1960 accounts	65.00
308	1- 4-61	Hacket Smartt, Secy.-Treas. Nov., Dec. Salary	195.00
309	1- 4-61	Mountain States Tel. & Tel. Co. Nov. & Dec. Service	30.45
310	2-23-61	U. S. Geological Survey, 2nd Qtr. Cooperative Agreement	375.00
311	2-23-61	Peerless Printing Co., Denver Annual reports-500 copies	605.00
312	3- 7-61	Mountain States Tel. & Tel. Co. Jan. & Feb. Tel. Service	25.20
			<u>1,688.65</u>
Balance on Hand, Mar. 28, 1961			\$ 3,273.34

Mr. Bentrup gave the report of the Operations Committee as follows:

ARKANSAS RIVER COMPACT ADMINISTRATION
Lamar, Colorado

Operations Committee Report
December 16, 1960 to March 28, 1961

Due to a low river all winter and the fact that the gates were not closed until December 1st, 1960, storage in John Martin Reservoir is not very encouraging at this time for the Farmers of Colorado and Kansas for summer irrigation.
Water in storage December 16, 1960, 3478 Ac. ft.

At present 21,204 Ac. ft.

Respectfully submitted

Carl Bentrup, Chairman

Mr. Bentrup also summarized a letter from Gordon and Gordon, Attorneys, and read a letter from the Colorado Deputy State Engineer as a part of his report.

The letters follow:

March 6, 1961

Mr. R. J. McGrath
Water Commissioner
Lamar, Colorado

Dear Mr. McGrath:

We have been employed by the new owners of the XY Canal Company who recently purchased the property from the Truitt Cattle Company. One of the owners was in the office today and instructed us to write to you concerning the letter which was written by you to Jameson Brothers on November 26, 1960. At that time Jameson Brothers had only an option to buy the property and did not acquire the property until just a short time ago and had no rights in the property until they had acquired some interest in the property besides an option.

Jameson Brothers are now engaged in getting heavy equipment shipped from California of sufficient size to do the work which will be required in putting in a headgate. They are also extremely busy in preparing the land for crops this year. They wish us to assure you that they are going to put in this headgate as soon as possible, but they cannot do it at the present time until they get this heavy equipment with which to do it. They have no desire whatever to evade their responsibility in this matter and will not do so. However, they wish us to inform you that there is no particular reason why they should be singled out to have these requirements met. We notice that the Hyde Company is not included among the ditches which are required to have a measuring devise at its headgate. As far as we know the Manvel Canal and Irrigation Co. and the Buffalo Mutual Irrigation Company have not as yet complied with the order. We are of the opinion Jameson Brothers will get their headgate in more quickly than any of the others.

Very truly yours,

GORDON AND GORDON

By

ACG:mvs

cc: Mr. J. E. Whitten
Colorado State Engineer
State Office Building
Denver, Colorado

cc: Arkansas River Compact Administration
Operations Committee
Deerfield, Kansas

OFFICE OF THE STATE ENGINEER
232 State Services Building
1525 Sherman Street
Denver 3, Colorado

March 7, 1961

Gordon and Gordon
Attorneys-at-Law
Las Animas, Colorado

Gentlemen:

I wish to thank you for your courtesy in mailing this office a copy of the recent letter you wrote to Mr. R. J. McGrath at Lamar concerning the XY Canal and our request for a measuring flume to be installed in the same.

From your long association in the Arkansas Valley, you of course realize that this was a normal request in the line of better control of our irrigation water supply.

I returned last week from a trip in the lower portion of the valley, at which time I found the Buffalo Canal Company was just completing the installation of its measuring flume. The Manville Canal has an excellent flume, but it has settled unevenly and the owners have agreed to level it up this month.

You mentioned the Hyde Irrigation Company. They have not used water from the Arkansas River for a number of years, and it was not felt necessary to require them to put in an accurate measuring flume at this time.

We are very happy that the old XY Ranch has changed hands and will welcome the opportunity to cooperate with the Jameson Brothers and your office.

Very truly yours,

ARO:L

cc: Mr. F. C. Snyder
Mr. R. J. McGrath
Operations Committee,
Arkansas River Compact Admr.

/s/ A. Ralph Owens
Deputy State Engineer

When questioned about the progress of the X Y Canal installation, Mr. Ross Moor reported that the X Y was waiting for equipment. He said he had not checked the Manvel canal. Mr. Smrha moved that the Operations Committee report be accepted, and after Mr. Smartt's second, the motion was passed.

Mr. Smrha said the Engineering Committee had held no meetings and had no report to make.

Mr. Jenkins said the Administration and Legal Committee had no report to make.

Mr. Jenkins said that installation of good measuring devices was important and recalled that at a recent ditch association meeting it had been reported that one ditch had a headgate that could not be closed. He asked Mr. Leatherwood which canal this was on, and Mr. Leatherwood replied that he thought the headgate referred to was on the Fort Bent ditch. Mr. Bentrup said that the Operations Committee plans to inspect all the canal headgates about the middle of April. A discussion followed on cooperation of ditch companies in installing proper measuring devices.

Mr. John Martin reported that the Corps of Engineers' Reservoir Survey of John Martin reservoir had been approved for publication. He said that this is a fairly voluminous report of sedimentation in the reservoir and aggradation and degradation below the reservoir and other related topics. He wanted to know how many would be wanted by the Administration and if the Colorado Water Conservation Board would handle the distribution if all copies would be sent to them. A request for 60 copies was made, and most of the distribution will be made at the next meeting of the Administration.

Mr. Boydston told the Administration he had discovered an extra copy of "Record, the Colorado-Kansas Arkansas River Compact Commission", and was donating it to the Administration. Mr. Green reported that he had found a copy of this volume which he will furnish to Mr. Snyder.

Mr. Green read a letter from the Kansas Attorney General and also submitted for the record the letter requesting the Attorney Generals' opinion. These letters follow:

December 27, 1960

Honorable John Anderson, Jr.
Attorney General for the State of Kansas
State Capitol Building
Topeka, Kansas

Dear Sir,

At the Annual Meeting of the Compact Administration here on December 16, 1960, the question was raised by Mr. Jenkins as for what purpose Colorado could use the 100 cfs. of river flow they were allowed to call for under Article V, paragraph A of the Compact.

As the question could not be resolved by the members present, I was directed at this meeting to ask for an opinion of the Attorney Generals of both States of Colorado and Kansas.

According to the records available to me Colorado called for water only once during the winter storage season prior to 1960. This was during the winter of 1951.

Water was demanded and released under Article V, paragraph A to Colorado from November 1st to December 1st, 1960; said water was used for irrigation.

Very truly yours,

Hacket Smartt
Secretary-Treasurer
Arkansas River Compact Administration

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
TOPEKA, KANSAS

Opinion No. : 61-4

Date: January 16, 1961

ATTORNEY GENERAL'S OPINION

RE: Waters-Arkansas River Compact - G. S. 1949 82A-520

Request by: Hacket Smartt, Secretary-Treasurer, Arkansas River Compact Administration, Lamar, Colorado.

Question: Interpretation of Article V. Section A of the Arkansas River Compact.

Answer: Colorado users may use released water for any purpose so long as avoidable waste is not committed.

The question presented is for what purpose Colorado users can use the 100 CFS (cubic feet per second) of river flow during the period from November 1 to March 31 as provided by Article V, Section A of the Arkansas River Compact. Said subsection provides:

"A. Winter storage in John Martin Reservoir shall commence on November 1 of each year and continue to and include the next succeeding March 31. During said period all water entering said reservoir up to the limit of the then available conservation capacity shall be stored: provided, that Colorado may demand releases of water equivalent to the river flow, but such releases shall not exceed 100 CFS (cubic feet per second) and water so released shall be used without avoidable waste."

The term "river flow" is defined by Article III, subsection H as follows:

"The term 'river flow' means the sum of the flows of the Arkansas and Purgatoire Rivers into John Martin Reservoir as determined by gaging stations appropriately located above said reservoir."

The compact itself does not define the term "avoidable waste". In Worden v. Alexander (Montana) 90 P. 2d 160, the court quoted from Kinney on Irrigation and Water, Rights, second edition, as follows:

"In spite of the greatest precautions and the greatest care in the construction of the works to conduct the water, there is bound to be some loss of the water in transit between the point of diversion and the place of use. Water will evaporate; it will seep, and at times will leak. These we call the natural losses of the water in transit, and do not, except in the cause of leakages, constitute what is termed the wasting of water." (page 163)

In Natural Soda Products Co. v. City of Los Angeles (Cal.) 132 P. 2d 553, the court stated a similar rule:

"The waste referred to in the section (of the California Constitution) cannot refer to the waste of those waters into saline lakes or the sea through the channels provided by nature, but the waste through artificial means built by riparian owners or appropriators." (page 562)

In this instance, the drafters of the Compact agreement have apparently contemplated some waste by leakage. Thus the only waste of water prohibited is avoidable waste.

It would therefore be our opinion that during the period from November 1 to March 31 of each year, Colorado users may demand releases from the John Martin Reservoir equivalent to the "river flow" as above defined. Such releases shall not exceed 100 cubic feet per second and the water so released shall not be wasted through leakage or other unnatural cause.

/s/ William M. Ferguson

William M. Ferguson
Attorney General

REP:lrh

A general discussion ensued on the points of measurement of river flow, the diversions of river flow, dates for beginning storage and river jurisdiction after November first. No conclusions or decisions were made.

Mr. Fagerquist reported that water supply studies on the Trinidad project have been revised and that they will be published soon.

Mr. Doe reported that the telemeter gaging station at the Chaffee County line is now in operation although they do not have a rating table for it as yet. He said that the Nyberg station will be installed this fall, but all the other new installations and rehabilitation of old stations was virtually complete.

Mr. Smartt remarked that Colorado ditches would probably prefer to wait a couple of weeks after April first before calling for reservoir water if Kansas was agreeable to waiting and asked Mr. Vincent when he thought Kansas ditches would be calling for reservoir water. Mr. Vincent said that Kansas ditches will start calling for water as soon as possible after April first since they have had only .83 inch of precipitation this year.

Mr. Leatherwood referred back to the Kansas Attorney General's opinion and said that he thought that the question had not been answered. It was his opinion the question was not what use was being made of the water, but where the river flow would be measured for the demand of the river flow up to 100 c.f.s. A discussion followed as to other times that the river flow had been released, and Mr. Nevius remarked that this situation was different in that last fall no water was available for storage and since the reservoir was empty, the State Engineer had jurisdiction over the river. Mr. Leatherwood said that the Fort Lyon had never had to pass water before to make up the river flow, and if the State Engineer still had control of the river, was there anything to prevent downstream rights from calling for 280 c.f.s. instead of 100 c.f.s. Mr. Nevius replied that the Compact was clear on this point that 100 c.f.s. was the maximum which could be called. More discussion followed on when the jurisdiction of the State Engineer ceases and Compact Administration begins.

Mr. Green read the following letter from Mr. Sparks:

M E M O R A N D U M

February 2, 1961

TO: Members of Arkansas River Compact Administration

Word has been received from the U. S. Geological Survey offices in Denver that our Chairman, Carl G. Paulsen, has passed away in Caldwell, Idaho.

Funeral services are indefinite, but are expected to be in Washington, D. C. early in the week of February 6th.

Surviving Mr. Paulsen is a son Colonel J. W. Wark; 322-2 Doniphan; Fort Leavenworth, Kansas.

/s/ Felix L. Sparks
FELIX L. SPARKS
Director

FIS/ah

Mr. Boydston then told the Administration that Mr. Ivan C. Crawford, former Director of the Colorado Water Conservation Board and member of the Arkansas River Compact Administration had also passed away only a few days after Mr. Paulsen. Mr. Green also read the following letter:

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

November 18, 1960

Mr. Hacket Smartt, Secretary-Treasurer
Arkansas River Compact Administration
Prowers County Court House
Lamar, Colorado

Dear Mr. Smartt:

Being unable to do so himself, Mr. Paulsen has asked me to express his thanks and appreciation to you and other members of the Administration for the sympathetic letters and cards sent him during his illness. He has also asked that I let you know that he will be unable to attend the annual meeting of the Administration in December.

I am sure you will regret to learn that Mr. Paulsen's sister has written that he is now failing very rapidly and has returned to the hospital for what will amount to a wait for the end. Surely a merciful God will not permit that wait to be too long.

Sincerely yours,

/s/ Francis M. Bell
Francis M. Bell
Branch Area Chief
Surface Water Branch

Copies to: Mr. Felix L. Sparks
Mr. R. V. Smrha

Mr. Smartt's motion, seconded by Mr. Jenkins, to have Mr. Green draw up resolutions expressing the sentiments of the Administration for Mr. Paulsen and Mr. Crawford was passed.

Mr. Miller said that in the future Mr. Ross Moor will have an Autostat machine in his office and will make it available to the Administration for making copies of letters, etc.

Mr. Smartt asked Mr. McGrath the status of daily reading of the gage at Lamar and Mr. McGrath stated that they had a man who read the gage for a short time, but that he began to wonder why he had not been paid and so stopped reading the gage. Mr. Smartt said that he would be willing to read the gage when there was water in the reservoir on the same basis as last year, which was one dollar per day plus mileage. Mr. Smrha moved that the arrangements be renewed with Mr. Smartt to read the Lamar gage during periods when water is being released from the reservoir. Mr. Jenkins seconded the motion and it was duly passed. Mr. Snyder questioned why a telemeter could not be installed on the Lamar gage. Discussion followed.

Mr. Green said that if a successor to him is appointed, this will be his last meeting with the Administration. He expressed his pleasure to have worked with the group and with all the persons attending these meetings. He said that he appreciated the cooperation displayed by the Colorado members. Mr. Smartt said that Colorado also appreciates the cooperation of the Kansas members and will miss having Mr. Green on the Administration. Mr. Bentrup said that he may also be replaced and wished to echo the sentiments expressed by Mr. Green. He said he is desirous of finishing the inspection of ditches before he is replaced. Mr. Smartt expressed the regrets of Colorado of losing the able services of Mr. Bentrup and Mr. Green.

Mr. Smrha's motion to adjourn was seconded by Mr. Jenkins and passed.

The meeting adjourned at 11:15 A. M.