

Appendix
12/19/80

MINUTES OF
ARKANSAS RIVER COMPACT ADMINISTRATION
SPECIAL MEETING

Cow Palace Inn
Lamar, Colorado

September 25, 1980

A Special Meeting of the Arkansas River Compact Administration was held at the Cow Palace Inn in Lamar, Colorado, on September 25, 1980. The meeting was called to order at 1:40 p.m. by Chairman Frank G. Cooley.

Members attending were:

- COLORADO: William McDonald - Denver, Colorado
- Leo Idler - Lamar, Colorado
- Kent Reyher - Las Animas, Colorado

- KANSAS: Carl E. Bentrup - Deerfield, Kansas
- W. F. Stoeckly - Garden City, Kansas
- Guy E. Gibson - Topeka, Kansas

Others in attendance were:

- | | |
|------------------------------|-------------------------------------|
| Dennis Montgomery | Assistant Attorney General, Colo. |
| Kenneth M. Wilke | Kansas Board of Agriculture |
| Joseph P. McMahan, Attorney | Purgatoire Water Conservation Dist. |
| Gerald E. Holmes | Kansas Board of Agriculture |
| Wayne Schroeder, Attorney | Fort Lyon Canal Company |
| Jerry Hughes | U. S. Geological Survey |
| John J. Lefferdink, Attorney | Fort Lyon Canal Company |
| Robert Lubbers | Fort Lyon Canal Company |
| Don Taylor | Fort Lyon Canal Company |
| Alvin Spady | Fort Lyon Canal Company |
| Dean Smartt | Fort Lyon Canal Company |
| Ralph Gagliardi | Purgatoire River Water Cons. Dist. |
| C. S. Dawn | Purgatoire River Water Cons. Dist. |
| John Hawton | Purgatoire River Water Cons. Dist. |
| Henry D. Marques | Colorado Water Commissioner |
| John Dumeyer | Hydro Engineer |
| Carmel A. Garlutzo | Purgatoire River Water Cons. Dist. |
| Joe DuGarbo | Purgatoire River Water Cons. Dist. |
| H. A. Winkler | Purgatoire River Water Cons. Dist. |
| Bruce L. McClaskey | Colorado Division of Wildlife |

Henry A. Furu, III
Henry A. Furu, Jr.
Leroy Nickelson
A. L. Fuller
Charles L. Thomson
Frank Milenski
Carl S. Genova
Vern L. Campbell
Bob Jessi, Div. Engineer
John Roth
Don Quakenbush
Roger L. O'Hara
Ralph Adkins
Howard C. Corrigan
Edward DeKetser

Trinidad Abstract & Title Co.
Purgatoire River Water Cons. Dist.
Fort Bent Ditch Co.
Corps of Engineers, John Martin Res.
Southeastern Colorado Water Cons. Dis
Catlin Canal Company
Ark Valley Ditch Association
Ark Valley Ditch Association
Division Engineers Office
X Y Canal
Water & Power Resources Service
Pueblo Board of Water Works
C.F.&I.
Water Res., Garden City, Kansas
Kansas Canals Representative

Chairman Cooley informed the group that this was a Special Meeting called to discuss the storage of water at Trinidad Dam. He then asked Mr. Gibson to introduce the Kansas delegation, followed by Mr. McDonald who introduced the Colorado delegation. Kent Reyher then introduced Ina Groomer of Las Animas who was to record the minutes.

Since this was a special meeting, no action was taken on the minutes of previous meetings. They will be acted upon at the 1980 annual meeting in December.

On behalf of himself and Mr. Gibson, Mr. McDonald read into the record the "Finding of Facts" which the two of them had agreed upon as a result of the investigation they had performed at the request of the Compact Administration concerning the storage of water in Trinidad Reservoir during compact year 1979 (attached and marked Exhibit A). Mr. Gibson of the Kansas delegation moved that the facts be approved by the Compact Administration, seconded by Kent Reyher of the Colorado delegation. Kansas voted "yes", and Colorado voted "yes." Motion carried.

Mr. Bentrup of Kansas presented a list of proposed statements and recommendations concerning the storage of water in Trinidad Reservoir in compact year 1979 (attached and marked Exhibit B). He then moved that these be adopted by the Administration, and that the Secretary be instructed to forward a copy of the findings to the State Engineers of both states by October 3, 1980. Leo Idler of Colorado seconded the motion. Kansas voted "yes", Colorado respectfully voted "no." Mr. Bentrup requested a poll of the Colorado delegation. Mr. McDonald voted "no," Mr. Idler "abstain", Mr. Reyher voted "no." The Colorado delegation then asked for a recess for discussion. This recess was granted.

Mr. Cooley recalled the meeting and Mr. McDonald moved the adoption of a resolution, which is attached and labeled Exhibit C. Mr. Bentrup of Kansas seconded the motion. Kansas voted "yes", Colorado voted "yes". Motion carried.

Mr. Gibson moved that the Secretary of the Administration be instructed to send a copy of the findings of facts approved by the Compact Administration (Exhibit A) to the State Engineers of both Colorado and Kansas. Motion was seconded by Mr. McDonald. Kansas voted "yes", Colorado voted "yes". Motion carried.

Mr. Idler made a motion recommending that since money has been appropriated, that the Compact approve and go ahead with the telephonic gauging station at Granada. Mr. Stoeckly stated that this is not relevant to this meeting since it is not on the agenda. Mr. Cooley asked Jerry Hughes of the U. S. Geological Survey if this matter was critical. Mr. Hughes stated that funds should be committed as soon as possible. Mr. McDonald seconded the motion. Mr. Gibson then questioned Mr. Hughes as to the immediate need to take action at this time. After much discussion, Mr. Reyher moved to amend the motion to read that the matter be referred to the Engineering Committee and that they report back to the next meeting. This amendment was seconded by Mr. Gibson. Kansas voted "yes" and Colorado voted "yes" on the amendatory motion. The original motion as amended was then voted upon with both Colorado and Kansas voting "yes". Motion carried. Mr. Hughes stated that he will try to get his district office to set aside \$4,600 as matching funds for this project.

At this time the meeting was opened to comments by the audience. Mr. McMahan stated that he believed all water users should address their comments to their representatives and Mr. Jesse. Attorney Schroeder stated he concurs with Mr. McMahan and stated that the adopted findings (Exhibit A) appear to be accurate.

Mr. McDonald was instructed to clean type the findings of fact and send a copy to Mr. Gibson and Kent Reyher for checking.

Mr. Gibson moved the meeting adjourn, seconded by Mr. McDonald. The meeting adjourned at 3:05 p.m.

Respectfully submitted,



Ina Groomer

FINDINGS OF FACT
RELATIVE TO TRINIDAD RESERVOIR

WHEREAS, at a special meeting of the Arkansas River Compact Administration (hereinafter referred to as the "Administration") in Lamar, Colorado, on June 30, 1980, the Administration passed a resolution instructing the staff of the Kansas Division of Water Resources and the staff of the Colorado Water Conservation Board to investigate the storage of 18,290 acre-feet of water under the Model Reservoir water right in Trinidad Reservoir during Compact year 1979 and the storage of an additional 20,000 acre-feet of water in Trinidad Reservoir under the Model Reservoir right during Compact year 1980 without physically removing the water stored under the Model right during 1979 from behind Trinidad Dam and to promptly report their determinations to the Administration (said resolution is marked Exhibit A, and a copy is attached hereto and made a part hereof);

NOW, THEREFORE, in accordance with this resolution, the staffs of the Kansas Division of Water Resources and the Colorado Water Conservation Board submit the following recommended findings of fact to the Administration:

1. That on December 14, 1948, commissioners for the State of Kansas and the State of Colorado executed the Arkansas River Compact (hereinafter referred to as the "Compact"), which Compact was subsequently ratified by the legislature of each State and by the United States Congress (said Document is marked Exhibit B, and a copy is attached hereto and made a part hereof).

107

2. That Article VIII H of the Compact provides that:

"Violation of any of the provisions of this Compact or other actions prejudicial thereto which come to the attention of the Administration shall be promptly investigated by it. When deemed advisable as the result of such investigation, the Administration may report its findings and recommendations to the State official who is charged with the administration of water rights for appropriate action, it being the intent of this Compact that enforcement of its terms shall be accomplished in general through the State agencies and officials charged with the administration of water rights."

3. That Article IV D of the Compact also provides that:

"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." (Emphasis supplied)

4. That Article II of the Compact provides in part that the provisions of this Compact are based on:

" (2) the opinion of the United States Supreme Court entered December 6, 1943, in the case of Colorado v. Kansas (320 U.S. 383) concerning the relative rights of the respective States in and to the use of waters of the Arkansas River;"

5. That the U.S. Supreme Court in Kansas v. Colorado, 206 U.S. 46, 117 (1907) (said Decision is marked Exhibit C, and a copy is attached hereto and made a part hereof), cited in Colorado v. Kansas, 320 U.S. at 386 (said decision is marked Exhibit D, and a copy is attached hereto and made a part hereof), stated that:



". . . it is obvious that if the depletion of the waters of the river by Colorado continues to increase there will come a time when Kansas may justly say that there is no longer an equitable division of benefits, and may rightfully call for relief against the action of Colorado, its corporations and citizens, in appropriating the waters of the Arkansas for irrigation purposes."

That the U.S. Supreme Court in 1943 ruled that "Kansas has not sustained her allegations that Colorado's use has materially increased, and that the increase has worked a serious detriment to the substantial interests of Kansas." (320 U.S. at 400)

6. That Trinidad Dam and Reservoir in Colorado became operational in January, 1977. That Trinidad Reservoir is located on the Purgatoire River, a tributary of the Arkansas River, entering the main stem of the Arkansas River above John Martin Reservoir.
7. That the District Court of Colorado, Las Animas County, decree in Civil Action No. 19793, dated April 15, 1965 (said decree is marked Exhibit E, and a copy is attached hereto and made a part hereof), states:

"5. That the Petitioners' storage of water in the Trinidad Reservoir under the Model Reservoir Right shall be regulated in such a manner that the quantity of water occurring in the Las Animas or Purgatoire River at a gauging station on said River below Von Bremner Arroya shall remain and be the same, as determined by the State Engineer, during any period of ten consecutive years reckoned in continuing progressive series beginning with January 1, 1954 as it would have been had the Model Reservoir Right not been transferred to the Trinidad Reservoir

6. That the storage of water in Trinidad Reservoir under the transferred Model Reservoir Right shall at all times be conducted in accordance with, subject to, and governed by:

- (a) The Constitution, laws and policies of the United States of America;

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- (c) The Arkansas River Compact;
- (d) This Decree;
- (e) The conditions of operation of the Trinidad Dam and Reservoir Project prescribed by House Document 325, 84th Congress, Second Session, January 30, 1956, as implemented by Article IV of the 'Operating Principles - Trinidad Dam and Reservoir Project' which is appended to Volume 1 of the United States Bureau of Reclamation Irrigation Report on said project (Revised September, 1964), subject to such future modifications, deletions or additions consistent with said House Document as may be authorized by this Court. . . ." (Emphasis supplied)

8. That the minutes of the special meeting of the Administration held on June 6, 1967, in Lamar Colorado, state that Mr. Felix Sparks:

"Moved that the document of March 20, 1967, submitted to Governor Docking and signed by H.P. Dugan and countersigned by Dr. Donnelly be approved by the Arkansas River Compact Administration. Mr. Green seconded the motion and after some discussion the motion was carried by vote of the states." . . . (Said document is marked Exhibit F, and a copy is attached hereto and made a part hereof.)

9. That the document attached hereto as Exhibit F contained "Five Conditions--State of Kansas" which read in part as follows:

"3. Assurances that there will be no significant increase in water use which would result in a depletion of water yield to other Colorado and Kansas water users.

4. That 5 years after beginning operation of the Trinidad Reservoir for irrigation purposes, the operating principles be reviewed to determine the effect, if any, the operation has had on other Colorado and Kansas water users and the principles amended as necessary. Each 10 years thereafter, reviews should be provided with amendments as needed." (Emphasis supplied)

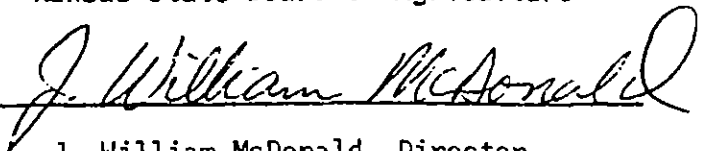
10. That based on the records of Mr. Robert Jesse, Division Engineer for Water Division No. 2 of the State of Colorado, it has been determined:

- A. That 18,290 acre-feet of water was stored by the Purgatoire River Water Conservancy District under the Model Storage Right in Trinidad Reservoir in priority between April 15, 1979, and September 28, 1979; that the Purgatoire River Water Conservancy District Board transferred this amount of water into the joint use pool of Trinidad Reservoir by resolution on September 28, 1979, thereby leaving the Model storage account empty; and that this water was still physically located behind Trinidad Dam on June 30, 1980.
- B. That 20,000 acre-feet of water was stored by the District under the Model Storage Right in Trinidad Reservoir in priority during the period April 16, 1980, through May 17, 1980. This water was physically stored behind Trinidad Dam and in the Model Storage account as of June 30, 1980.

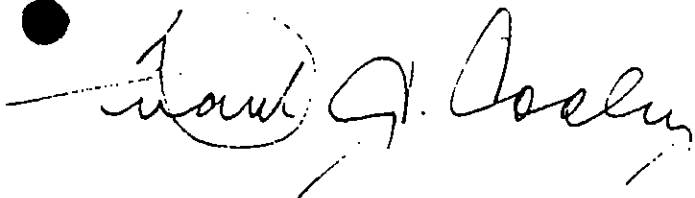
Respectfully submitted this 25th day of September, 1980.



Guy E. Gibson, P.E.
Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture



J. William McDonald, Director
Colorado Water Conservation Board



The members of the Administration who are water users have agreed on the following statements and recommendations.

After reviewing the reports of the findings of facts and recommendations made by the Division of Water Resources of Kansas and the staff of the Colorado Water Conservation Board, it is the opinion of the Compact Administration that:

1. Article IV D of the Compact was violated when the State Engineer allowed the District (Trinidad) to store 18,290 acre-feet in Trinidad Reservoir during water year 1979 under authority of the Model Storage Right and to store 20,000 acre-feet during water year 1980 under the Model Storage Right behind Trinidad Dam without physically moving 18,290 acre-feet stored in 1979 under the Model Right from behind Trinidad Dam,

2. This action materially depletes the waters of the Arkansas River, as defined in Article III of the Arkansas River Compact, in usable quantity or availability for use to the water users in Colorado or Kansas under the Compact because such a diversion would not have been physically possible in Model Reservoir prior to construction of Trinidad Dam because of Model Reservoir's limited storage capacity, which was initially 20,000. *conf*

3. It is our opinion also that, physically impounding more than 20,000 acre-feet behind Trinidad Reservoir, violates

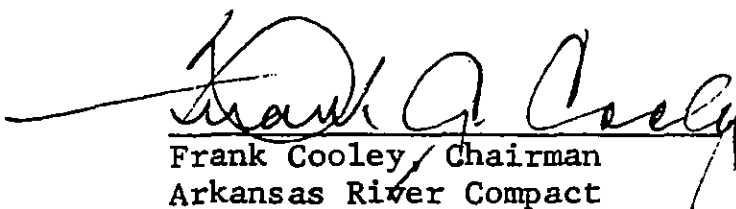
RESOLUTION CONCERNING TRINIDAD RESERVOIR

WHEREAS, the Arkansas River Compact Administration has made findings of fact relative to Trinidad Reservoir in Colorado, which findings were made at the special meeting of the Administration held in Lamar, Colorado, on September 25, 1980, (copy attached);


NOW THEREFORE, BE IT RESOLVED that the Administration goes on record as recognizing that the findings of fact made by the Administration have raised a question as to whether the waters of the Arkansas River have been materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas; and

BE IT FURTHER RESOLVED that the Administration recommends that the Kansas State Engineer confer with the Colorado State Engineer to make further inquiries into this question as expeditiously as possible.

Entered this 25th day of September, 1980, at a special meeting of the Administration held in Lamar, Colorado.



Frank Cooley, Chairman
Arkansas River Compact
Administration



Leo Idler, Secretary
Arkansas River Compact
Administration