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SPECIAL MEETING OF THE ARKANSAS
RIVER COMPACT ADMINISTRATION
Garden City, Kansas
March 28, 1985

TRANSCRIPT OF PROCEEDINGS

A special meeting of the Arkansas River Compact Administration, Frank G. Cooley, Chairman and Federal Representative, presiding, was held on March 28, 1985, between the hours of 9:00 a.m. and 10:15 p.m. before Marvin L. Shane, Certified Shorthand Reporter of the State of Kansas.



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1 CHAIRMAN COOLEY: This is a meeting
2 of the Arkansas, or Arkansas, as you will, River
3 Compact Administration, regularly called pursuant
4 to notice, held in Garden City, Kansas. The
5 meeting is at the request of the State of Kansas.
6 We have a tentative agenda which we will get to in
7 a moment. There is a court reporter present. One
8 of the key things at the meeting will be that all
9 persons who speak will identify themselves for the
10 record, for the court reporter. We had an
11 attendance list at the door, and some of us have
12 failed, including myself, have failed to sign that
13 list. I want anyone in the audience who has not
14 signed to join me in making an effort to have your--
15 are there two, and they are divided between the two?
16 Fine. If you would bring one to me, and the next
17 fella that raises his hand, give him one, and we'll
18 go from there. Who else needs to sign the
19 attendance list? I'm the only one. Okay, thank
20 you sir. There's a Xerox machine in the office,
21 and we'll cause copies of this list to be made for
22 anyone who desires them at some reasonable cost, so
23 they'll be available and they'll be available to
24 the reporter. As most of you know, I had a very
25 mild heart attack four weeks ago yesterday, and I



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1 wasn't sure that I would be here, but I didn't want
2 to miss the meeting. The fun is just too much to
3 avoid. From time to time I will leave, and the
4 Vice Chairman Carl Bentrup will take over at the
5 meeting. My wife has requested, or instructed me
6 to announce that this is going to be the most
7 placid meeting that the Arkansas River Compact has
8 ever had--may come as a surprise to some of you.
9 The representatives from Colorado are at my right,
10 Carl Genova, and Bill McDonald, with the
11 distinguished beard. I'm informed that Leo Idler
12 is in the hospital in Denver for some checking up
13 into his condition, which may be serious, and I'm
14 sure that he has our prayers. Immediately to my
15 left is the Vice Chairman and the representative
16 from Kansas, Carl Bentrup, and very distinguished,
17 respected member of the commission, Ronald Olomon,
18 next to him, and David Pope, who is by law, the
19 head of the Kansas delegation. Before we do
20 anything else, I think I want to find out from Mr.
21 McDonald if he's willing to proceed with the
22 meeting with three people from Kansas and only two
23 from Colorado. Is that fair, Bill?

24 MR. MCDONALD: Sure.

25 CHAIRMAN COOLEY: Okay, we've got



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1 that matter taken care of. David, if you would
2 introduce those of the Kansas official delegation
3 here we would appreciate it, and if you would make
4 the introductions long winded enough so that some
5 of us can scribble notes.

6 MR. POPE: Thank you, Mr. Chairman.
7 It's my pleasure to introduce several individuals
8 that are here with us today. On my immediate left
9 is Richard Simms, who is an attorney practicing out
10 of Santa Fe, New Mexico, and has been retained by
11 the State of Kansas through our Office of the
12 Attorney General as special counsel representing
13 the State of Kansas. Immediately to his left is
14 Brent Spronk, who is with Spronk Water Engineers
15 out of Denver, and has also been retained by the
16 State to do some engineering and technical work for
17 us this last year or so. To his left is Leland
18 Rolfs, who is legal counsel for my office, and on
19 down beyond that is our representative from the
20 Attorney General's Office, John Campbell, assigned
21 to work on this particular issue, our water
22 commissioner who is in charge of the administration
23 of water rights in this area of the state for the
24 Division of Water Resources is Howard Corrigan and
25 been very involved over the years in these kinds of



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1 activities; Jerry Hilmes on my staff in Topeka,
2 dealing with Compact affairs. I believe then I'll
3 make a couple more here, then ask Carl to make some
4 additional introductions. Dale Book, who works
5 with Brent Spronk out of the Spronk Water Engineers
6 firm from Denver, and two additional staff members
7 from my office here in Garden City, Ron Squire and
8 Dale Jacobs; and then Carl, if you have--I know Ed
9 DeKeyser. I am sure there are others you would
10 like to introduce, as far as local people.

11 VICE CHAIRMAN BENTRUP: I see quite a
12 few representatives of various ditches--Ed
13 represents the associated ditches, so I will just
14 stop with introducing Ed DeKeyser.

15 CHAIRMAN COOLEY: The meeting is
16 official, Ed is present. I think that Mr. Simms,
17 you don't need an introduction in Colorado, from
18 what I understand, and we're very pleased to have
19 you here. Mr. McDonald, would you do the honors
20 for Colorado, if you please, sir?

21 MR. MCDONALD: Sure, Carl Genova, on
22 my left, who has already been introduced, the
23 Colorado Commissioner representing Districts 14 and
24 17. I am Bill McDonald, the ex-officio member for
25 Colorado in my capacity as Director of the Colorado



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1 Water Conservation Board. On my immediate right is
2 Wendy Weiss, the head of our water unit in the
3 Attorney General's Office in Colorado, and to her
4 right, Will Bassett, who is the lead attorney on
5 Wendy's staff for Arkansas River matters. From my
6 staff, Mr. Gene Jencsok is present. He's my lead
7 interstate compact engineer. There are a number of
8 people in the audience representing Colorado water
9 interests and ditches, more than I will take time
10 to name individually. Let me introduce a few in
11 the audience, though, who have not been frequent
12 attenders of Compact meetings. First of all I
13 would like to introduce the newly appointed member
14 of the Colorado Water Conservation Board, who
15 represents the Arkansas River Drainage, and that is
16 John Covert, from Colorado Springs. John, you
17 might want to raise a hand or stand.

18 CHAIRMAN COOLEY: How do you spell
19 your last name, John?

20 MR. COVERT: C-O-V-E-R-T.

21 MR. MCDONALD: And I apologize in
22 advance if I missed some folks in the front row.
23 John Carlson, an attorney representing Pueblo--Special
24 Counsel for Pueblo and Colorado Springs; Harold
25 Miskel, manager of the Water Department for



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1 Colorado Springs; Joe McMahon, representing the
2 Purgatoire Water Conservancy District. Behind Joe
3 is Bud O'Hara from the City of Pueblo, and there
4 are another couple of officials that I know that
5 are with the cities here. Kevin Pratt was at the
6 last meeting of the Administration, representing
7 the Southeast Water Conservancy District,
8 particularly with respect to the winter storage
9 decrees. With apologies for those who I might have
10 overlooked, I think that introduces the new faces
11 from Colorado.

12 CHAIRMAN COOLEY: We have a new
13 federal person in the audience today. I would like
14 to introduce to you all, Bob Rumph, from the Corps
15 of Engineers. Bob, is there someone else from the
16 Corps with you that you would introduce?

17 MR. ROUMPH: Yes, I have got Bill
18 Huntley here with me.

19 CHAIRMAN COOLEY: Welcome to this
20 meeting, sir. Is there anyone here from the Bureau
21 of Reclamation? Yes.

22 MR. PLOSS: Lowell Ploss from the
23 Denver office.

24 CHAIRMAN COOLEY: Welcome, and we're
25 glad you are aboard. Representatives from the



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United States Geological Survey, either Colorado or Kansas?

MR. STULLKEN: Lloyd Stullken from Garden City.

CHAIRMAN COOLEY: Any other U.S.G.S. people?

MR. STULLKEN: No.

CHAIRMAN COOLEY: I think I must have used up their travel allowance for the meeting. That's the only explanation I can make. The first item of business, welcome to all of you, and there are some distinguished people in this audience that have not been introduced, but whose presence will be made known as we go along. The first item for business is a discussion of the proposed agenda. The official notice of the meeting and the agenda was circulated. Mr. Pope, I understand that you have a comment to make with respect to the proposed agenda.

MR. POPE: Yes, Mr. Chairman, I do. I have a suggested change to the agenda, but prior to that, however, I would like to take up the matter of the record for the meeting that you alluded to earlier, by virtue of the court reporter being here, and if it's permissible, would like to



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1 go ahead and take care of that early on here in the
2 meeting, so we can get that taken care of. Our
3 suggestion was to have a court reporter present for
4 the meeting for the purpose of making a complete,
5 full and accurate record of the proceedings for a
6 couple of reasons. Basically, that we all know
7 that the primary purpose of this meeting is to
8 discuss the concerns that have existed, the
9 allegations of possible violations of the Compact
10 by Colorado, and we think it's important that we
11 all have a good record of the meeting. Secondly,
12 of course, from a logistical standpoint, timingwise,
13 it makes information available to us faster and
14 easier, so with that I'm prepared to offer as a
15 first item of business, basically a motion, which I
16 believe each member of the commission has before
17 them, to adopt a policy and procedure for the
18 official transcription of Compact Administration
19 meetings. I would be happy to read this, Mr.
20 Chairman, for the record, and then move its
21 adoption. "It is hereby moved that the Arkansas
22 River Compact Administration adopt the following
23 policy and procedure with respect of transcription
24 of all regular and special Administration meetings:
25 1) That the member state hosting any meeting



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1 arrange for the services of a duly licensed,
2 official court reporter to take and transcribe the
3 proceedings at said meeting; 2) That the policy of
4 the Administration is that copies of the proposed
5 transcripts of each and every meeting of the
6 Administration be provided to both member states
7 within two weeks of said meeting for corrections,
8 but not editing, prior to completion of the
9 official transcripts; 3) That the policy of the
10 Administration is that the final, corrected copies
11 of the transcripts of all meetings be completed and
12 delivered to the member states within 30 days of
13 the meetings; 4) That the final corrected copies of
14 the transcripts of all meetings will be the
15 official transcripts of Administration proceedings,
16 and 5)--this one, I failed to get corrected, it is
17 intended to say that the costs of the transcript
18 shall be borne by the Administration."

19 CHAIRMAN COOLEY: All right, Mr. Pope,
20 I don't have any problem with the motion at this
21 part of the meeting, since it's a matter of
22 procedure, it affects the Administration. I would
23 comment that the Compact Administration has worked
24 on this very question many times over the past few
25 years, and have swung back and forth between court



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1 reporters and the system that we have been using of
2 taped reports, where we preserve the tapes. I
3 would point out that the resolution you tendered
4 would make the use of the court reporter mandatory
5 in all meetings, no matter how routine or quiet,
6 and we occasionally do have that kind. Mr.
7 McDonald, before we formally call for a second to
8 the motion, do you have any comments to make with
9 respect to the motion, the proposed motion
10 concerning court reporting?

11 MR. MCDONALD: We don't have any
12 problem with it, Frank. I would suggest, David,
13 just two editing changes in the written version we
14 commissioners have in front of us. The third line,
15 I think the first word should be with respect "to"
16 transcription. Then I would suggest in item number
17 four that we say the final, corrected copies of the
18 transcripts of all meetings will be the official,
19 strike "transcripts" and put in "minutes," because
20 the by-laws say. "There shall be an official
21 record, which shall be the minutes," and it uses
22 the word "minutes," and that by-law is Article 4,
23 Item 3.

24 CHAIRMAN COOLEY: Well, obviously, I
25 have some hesitation, Mr. Pope and Mr. McDonald,



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1 and I will put out for your consideration only one
2 time a suggestion that you might want to add a
3 phrase somewhere in number one, "unless the court
4 reporter be waived in advance by both states in
5 favor of some other form of transcription of the
6 proceedings," having in mind that there may well be
7 meetings of a more or less routine nature where the
8 cost of the court reporter would obviously be not
9 necessary.

10 MR. MCDONALD: That would make sense
11 to me. It occurs to me we do have some special
12 telephonic meetings on occasion, and a court
13 reporter would be not even practical under those
14 circumstances.

15 MR. POPE: I think that as long as
16 that's agreed to by both states, I don't think we
17 would have any problems.

18 CHAIRMAN COOLEY: Well, fine. Would
19 you consider an amendment on your resolution to
20 reflect that, so that even the resolution has some
21 language up in number one, "unless waived in
22 advance by both states in favor of some other form
23 of transcript"?

24 MR. POPE: Yes, I think we could
25 amend the proposed motion to take care of that.



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1 Perhaps in item number two, it says "each and every
2 meeting of Administration," if we said "each
3 regular and special meeting of the Administration."
4 If we want to include an additional phrase, I think
5 that-- I am not sure the telephonic meetings--I
6 guess they are considered special meetings, aren't
7 they?

8 MR. MCDONALD: David, what if we put
9 it down in four? We say corrected copies of the
10 transcript will be the official minutes of
11 Administration proceedings--why don't we insert,
12 "unless a transcription of the proceedings has been
13 waived in advance of a meeting upon the mutual
14 agreement of both states"?

15 CHAIRMAN COOLEY: Well, I hate to
16 sound like a lawyer, but all those paragraphs have
17 to do with copies of the transcript, and the number
18 one paragraph has to do with the hiring of the
19 court reporter, and I think the exception belongs
20 up there in the hiring of the fellow, rather than
21 what happens to his copies.

22 MR. MCDONALD: I don't care where you
23 put it as long as you get the idea across, because
24 I want to get home before midnight tonight.

25 CHAIRMAN COOLEY: I assure you, you



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1 are going to get home before midnight.

2 MR. POPE: Why don't we put it in
3 item number--I think it belongs really in item
4 number, either one or two, and perhaps maybe we can
5 agree in concept and put the exact language on it
6 at the break or something.

7 CHAIRMAN COOLEY: Fine. Have you
8 made the motion, Mr. Pope?

9 MR. POPE: Yes, I have.

10 CHAIRMAN COOLEY: Is there a second?

11 MR. OLOMON: This is Ron Olomon, I
12 second the motion.

13 CHAIRMAN COOLEY: Thank you for
14 identifying yourself for the reporter. The motion
15 has been made and seconded. Is Colorado ready to
16 vote?

17 MR. MCDONALD: Colorado votes aye.

18 CHAIRMAN COOLEY: Kansas ready to
19 vote?

20 VICE CHAIRMAN BENTRUP: Kansas votes
21 aye.

22 MR. POPE: Subject to the approval of
23 the edit.

24 CHAIRMAN COOLEY: The motion is
25 carried unanimously by both states. Mr. Pope, what



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1 other matters are there concerning the agenda that
2 require discussion?

3 MR. POPE: Mr. Chairman, we have also
4 distributed a document entitled "agenda," which
5 would be substituted for the tentative agenda that
6 was handed out in advance of the meeting. The
7 purpose of this document is to refine the tentative
8 agenda, which was discussed briefly between Bill
9 McDonald and I over the telephone a few days ago
10 just prior to it being sent out. Two concerns are
11 addressed in our suggested changes. The basic
12 reason for these is to advance the primary purpose
13 of the meeting dealing with the allegations of
14 Compact violations earlier into the meeting, to
15 insure that those items get dealt with, since they
16 are the primary purpose of the meeting, and in the
17 event that some of the more routine business needs
18 to take place it can be later in the day whenever
19 we're not quite so ready to all leave and that sort
20 of thing, so in essence, what we're suggesting is
21 to an item that we've already taken care of, item
22 No. 2, the motion for transcription, we have got
23 there. Secondly, the item that was No. 10 be
24 changed to item number seven, and then generally,
25 based upon the discussions between Bill and I on



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1 the telephone, to further define what was item No.
2 10 that would now be item number seven, to provide
3 an outline of the items to be discussed regarding
4 the Compact violations--the alleged Compact
5 violations, and those are detailed out in the hand
6 out. Those items generally follow along quite
7 closely to the contents of the letter dated
8 February 26, 1985 from General Stephan to General
9 Woodard in Colorado.

10 CHAIRMAN COOLEY: Thank you. Mr.
11 McDonald, have you reviewed the proposed changes of
12 the agenda?

13 MR. MCDONALD: We have. David, I am
14 sorry, I kind of tuned out. Did you recommend the
15 changes to your--my changes to your changes?

16 MR. POPE: No, I did not specifically,
17 but I would be amenable to that.

18 MR. MCDONALD: I will do that. David
19 recommends in item seven, where Kansas' allegations
20 read Compact violations speaking to Trinidad-Pueblo
21 winter storage and alluvial well depletions,
22 Colorado recommends we insert a new item eight at
23 that point pertaining to Colorado's allegations of
24 Compact violations by Kansas, and then for those of
25 us who have the printed agenda in front of us, a



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1 new agenda item nine, with the former 7D becoming
2 9A, B and C respectively, and renumber the balance.

3 CHAIRMAN COOLEY: All right, are Mr.
4 McDonald's changes acceptable, Mr. Pope?

5 MR. POPE: Yes.

6 CHAIRMAN COOLEY: Then I'll entertain
7 your motion that the agenda, as discussed, become
8 the agenda of this meeting.

9 MR. POPE: Does that require a motion
10 for that? I'll so move.

11 CHAIRMAN COOLEY: All right, the
12 motion has been made. Is there a second?

13 MR. MCDONALD: One moment, please.
14 I'll second it.

15 CHAIRMAN COOLEY: Motion has been
16 made and seconded. Is Kansas ready to vote?

17 MR. POPE: Yes.

18 VICE CHAIRMAN BENTRUP: Kansas votes
19 aye.

20 CHAIRMAN COOLEY: Colorado ready to
21 vote?

22 MR. MCDONALD: Colorado votes aye.

23 CHAIRMAN COOLEY: The agenda as
24 amended has become adopted as the agenda of the
25 meeting. The next item of business is approval of



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1 minutes of May 10, 1984 and December 11, 1984.

2 These minutes have been circulated.

3 VICE CHAIRMAN BENTRUP: We do not
4 have the December 11th meeting minutes.

5 CHAIRMAN: Do you have the May 10th?

6 VICE CHAIRMAN BENTRUP: It had some
7 breaks in it, and we're not ready to approve it
8 until we get together on it.

9 MR. POPE: I might add to that, in
10 terms of what Mr. Bentrup has indicated, as a
11 result of some concerns regarding language in those
12 May 10, 1984 minutes, we had asked for a transcript
13 of that portion of the minutes, which Colorado has
14 furnished to us. It's very difficult, even with
15 that, to fill in some of the blanks. The
16 recordings are not apparently all that good. We
17 would like an opportunity to review those tapes and
18 try to come up with substitute minutes and/or
19 partial or complete transcript of that from those,
20 if we could.

21 CHAIRMAN COOLEY: There's no doubt in
22 my mind that the approval of the minutes of these
23 two meetings should be deferred until a later
24 meeting of the Compact. Is there any objection?
25 Hearing no objection, this matter on the agenda



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1 will be deferred until the next meeting of the
2 Compact, but I think in the interests of all of us,
3 it would be well if attention were given to these,
4 so that it may be attended to promptly. The
5 treasurer is not here. Can anyone inform me what
6 the status of the treasurer's report is?

7 MR. MCDONALD: I have the treasurer's
8 report, Frank.

9 CHAIRMAN COOLEY: Thank you, sir.
10 The treasurer's report, as presented to the meeting
11 appears to be a list of checks written since
12 December 11, 1984, through March 5th of 1985, a
13 reflection of the bank statement and the total cash
14 on hand as of February 28, 1985. The item is so
15 lucid and clear as not, in my judgment, to require
16 any discussion or further action. I'll accept a
17 motion that this interim report be accepted and
18 approved as fine.

19 MR. MCDONALD: So moved.

20 CHAIRMAN COOLEY: Is there a second?

21 MR. POPE: Second.

22 CHAIRMAN COOLEY: Is Colorado ready
23 to vote?

24 MR. MCDONALD: Colorado votes aye.

25 CHAIRMAN COOLEY: Kansas?



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1 VICE CHAIRMAN BENTRUP: Kansas votes
2 aye.

3 CHAIRMAN COOLEY: It's done.

4 MR. MCDONALD: Could I interrupt for
5 a second?

6 CHAIRMAN COOLEY: Yes, sir.

7 MR. MCDONALD: Now that we're
8 transcribing at least this minute's meetings for
9 minutes, are we going to attach these kinds of
10 things, David, as exhibits to the transcript? The
11 agenda, for example, I think since we didn't read
12 it orally, we have got to get the agenda into the
13 record.

14 CHAIRMAN COOLEY: I certainly--
15 (interrupted)

16 MR. POPE: I think so.

17 CHAIRMAN COOLEY: I certainly agree
18 and will so rule.

19 MR. MCDONALD: Could we at this point
20 have me say that the amended agenda should be
21 placed in the transcript at the end as an exhibit,
22 and that the treasurer's report just approved to be
23 attached to the transcript as an exhibit, also?

24 MR. POPE: I think that would be
25 appropriate.



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CHAIRMAN COOLEY: This becomes Exhibit B, doesn't it, A being the amended agenda?

MR. MCDONALD: Sure.

CHAIRMAN COOLEY: All right, Exhibit B will be attached to the transcript.

MR. POPE: Mr. Chairman, this is David Pope again. I believe we have the motion that we dealt with, which would make--the treasurer's report would become C then, because we have the motion and the agenda. The motion basically was A, the agenda B, and this would be C.

CHAIRMAN COOLEY: Yeah, I know, but you're not a lawyer.

MR. POPE: You can pick the letters.

MR. MCDONALD: Much to David's credit.

CHAIRMAN COOLEY: Nice that someone is thinking clearly this morning. The next item of business is the operations secretary's report.

MR. JESSE: You want me to stand at the podium?

CHAIRMAN COOLEY: Please, Bob, tower over the podium, if you will, Mr. Jesse.

MR. JESSE: I'm Robert Jesse, I'm the operations secretary. I don't have a long complex report.



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CHAIRMAN COOLEY: How fortunate.

MR. JESSE: I was hoping to get out of here by midnight, myself. I do have a few reservoir contents I thought the Compact might be interested in, and have maybe some statistical data on John Martin, and that will be about the extent of my report. In Turquoise Reservoir up near Leadville, we've got ninety-one thousand eight hundred eight acre feet; Twin Lakes, we have a hundred twenty-nine thousand--(interrupted)

CHAIRMAN COOLEY: Go slower.

MR. JESSE: Clear Creek we have four thousand five hundred sixty-seven; Pueblo Reservoir we have two hundred eighty-seven thousand four hundred seventy-five; in John Martin we have--and the latest elevation I will get is three hundred fifty-five thousand three hundred forty-one acre feet. The elevation on John Martin is 3850.69. The inflow at Pueblo Reservoir is nine hundred forty-four feet with an outflow of seven hundred eighty-six feet. The Bureau is moving some water from Turquoise Reservoir to Pueblo Reservoir, the reason for the discrepancy. In Great Plains we have eighty-seven thousand acre feet of usable water; Horse Creek, we have twenty-seven thousand,



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Meridith, forty-one; Henry, four thousand six hundred.

CHAIRMAN COOLEY: Slow down.

MR. JESSE: Henry, four thousand six hundred; Adobe, sixty-seven thousand thirty-nine. Those are the major reservoirs. I already told you the contents of John Martin, but we have in the conservation pool a hundred fifteen thousand five hundred acre feet winter water. Amity I guess is 29,239. The permanent recreation pool is twelve thousand eight hundred thirty-seven, and we have a hundred eighty-three thousand in the agreement account. The State of Kansas carried over forty-three thousand acre feet, and that includes the '84 transit loss water. The Colorado ditches carried over fifty-two thousand. Las Animas golf course has a hundred fourteen acre feet carried over; and the Kansas owned water, on the night of the 26th, there is forty-three thousand carry over, and forty thousand of the conservation pool; they should have about ninety thousand acre foot now. We have not divided, and won't divide, the winter water until the first of April. The gain in contents in the conservation pool, November through March, the thirty-five year average, I have



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1 twenty-one thousand. The highest year of gain was
2 fifty-eight thousand, and like I mentioned, this
3 last year we had a hundred fifteen thousand acre
4 foot, the highest of record. The spill, when the
5 top of the conservation pool, where we go into the
6 flood control pool, is 3851.86, and of course, like
7 I said, we have 3850.69, so there's about a little
8 over a foot to go in vertical elevation. The total
9 evaporation we've had so far on John Martin this
10 year from November is seven thousand eight hundred
11 acre feet, and right now the surface area of John
12 Martin Reservoir is eleven thousand five hundred
13 eight acres. It is a big reservoir. Other than
14 that, I have nothing further to report to the
15 operations committee. If Ron would like my notes I
16 can give him my notes with the numbers on them, or
17 otherwise I can either throw them away or do
18 whatever you want with them, but that concludes my
19 operations report, Mr. Chairman.

20 VICE CHAIRMAN BENTRUP: How much is
21 in Trinidad?

22 MR. JESSE: Trinidad has thirty-two
23 thousand two hundred forty-eight with an elevation
24 of 6,194.88 feet.

25 MR. MILLS: Excuse me, what did you



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1 say the available was at Great Plains?

2 MR. JESSE: Eighty-seven thousand
3 forty-four.

4 MR. POPE: Is that the total in the
5 whole Great Plains system?

6 MR. JESSE: No, that's the total
7 available. I don't have the total amount in
8 storage, but it's quite a bit greater than that.

9 CHAIRMAN COOLEY: Quite a bit. Give
10 us the--give us the, not the elevation, but the
11 content of John Martin at the line between the
12 conservation pool and the flood pool?

13 MR. JESSE: The contents, according
14 to the way we have interpreted the rating table,
15 would be three hundred fifty-seven thousand acre
16 feet. That is a little hard to arrive at, because
17 the demarcation is an elevation as opposed to an
18 acre foot, but it comes out to three hundred
19 fifty-seven thousand, and that will technically
20 leave us about thirteen thousand six hundred
21 twenty-four acre foot to go before we spill, before
22 the reservoir actually spills.

23 CHAIRMAN COOLEY: Now, you are
24 putting water now into Nee Grande, is that right?

25 MR. JESSE: Yes, as I understand it,



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1 we are at this time.

2 CHAIRMAN COOLEY: And is Nee Grande
3 to the line where its water is usable and available,
4 or is it in the dead buffalo wallow pool?

5 MR. JESSE: To the best of my
6 knowledge it is not up to usable contents yet.

7 CHAIRMAN COOLEY: Would you take a
8 few minutes informally and describe the snow pack,
9 and what you foresee with respect to spring runoff
10 on the Arkansas down to the state line?

11 MR. JESSE: The snow surveys that we
12 have seen, the latest ones--and there will be
13 another snow survey come out the first of the month--
14 generally, it is near one hundred percent. There
15 was some new snow over this last storm, although
16 there was a tremendous wind storm and wind is
17 awfully hard on snow pack. I don't know what the
18 wind was up in the high country, but we did get a
19 little snow. Some of it was low snow, we might get
20 a little runoff out of that. The further south we
21 go, I think the snow pack gets worse. The small
22 streams immediately south of Pueblo, the St.
23 Charles and the Huerfano, the snow pack is not as
24 optimistic as the hundred percent mark, according
25 to the people who are knowledgeable in the area and



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1 have been up there. But we were looking right now
2 at a snow pack of somewhere in the neighborhood of
3 a ninety to a hundred percent mark, but it's still
4 early, because we don't know yet what April is
5 going to do. The high winds will do more damage to
6 the snow than pretty near anything else, but we
7 have not had any significant runoff yet. There was
8 very little low snow, so we haven't had-- whatever
9 runoff we are going to get, it hasn't even started
10 yet, but the snow pack looks somewhere in the less
11 than hundred percent range.

12 CHAIRMAN COOLEY: Now, if you would
13 take a moment to discuss spring runoff and where
14 you are going to put it?

15 MR. JESSE: One of the purposes of my
16 mentioning the great number of reservoirs we have,
17 the Bureau, of course, has made provisions for the
18 storage of the production of their western slope
19 systems in Turquoise; and the Bureau, of course,
20 anticipates storing their western slope water in
21 Turquoise. Virtually all of the other reservoirs
22 are close to or near capacity with the exception of
23 the Nee Grande on the Great Plains system. There
24 is no place, substantially, to store a large
25 quantity of water, so it will come down the river



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1 when it gets warmed up subsequent to--(interrupted)

2 CHAIRMAN COOLEY: It will come down
3 the river, apparently as far as the state line?

4 MR. JESSE: It, of course, will be
5 subject to diversion in priority in Colorado, but I
6 don't know what the effect of the snow pack will be.
7 We won't really know until the weather in May and
8 June. If it turns off really hot quick, we'll get
9 a high snow pack. If it stays cold and blustery up
10 there, it will run off slow. There's no way of
11 predicting what it's going to do.

12 CHAIRMAN COOLEY: Now, I could ask
13 this question of a number of people in the audience,
14 but over a period of years, the peak of the bell on
15 the runoff on the Arkansas, is it often seven weeks,
16 is it five weeks, is it ten weeks? Say something,
17 if you would, just from your own experience about
18 the duration of substantial run off?

19 MR. JESSE: You can look for the
20 runoff to begin somewhere in May. You can look for
21 your peak sometime in the first part of June, and
22 trailing off then through the entire rest of the
23 summer. The peak generally, if you statistically
24 do it, is somewhere in the end of May to the first
25 of June. It will vary from one year to the next,



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1 but a good average, a good number to shoot at, is
2 the first part of June would be the peak.

3 CHAIRMAN COOLEY: Okay, gentlemen,
4 with Mr. Jesse before you, it's too good an
5 opportunity not for any of the rest of you to ask
6 any questions you might have of Mr. Jesse. We'll
7 be in the meat of the business quite soon. Are
8 there any questions at this time of the operations
9 secretary? Anyone else? Yes, Howard. Mr.
10 Corrigan?

11 MR. CORRIGAN: According to the dam's
12 design three hundred fifty thousand nine hundred
13 fifty-one at an elevation of 3851, yet the
14 conservation pool, you state, is three hundred
15 fifty-seven thousand. Where does the additional
16 seven thousand or six thousand acre feet of water
17 come in that was in excess of the original design?

18 MR. JESSE: Well--(interrupted)

19 CHAIRMAN COOLEY: Hold it. According
20 to the design of the dam is the phrase. Go ahead.

21 MR. JESSE: The way we arrived at
22 that is, we moved the conservation--the ten
23 thousand acre foot of conservation pool into the
24 flood pool, in using the 1980 capacity tables.
25 That's where we got our 3851.87. That's where that



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1 gauge height came from. When you move ten thousand
2 acre foot of the permanent pool into the flood pool,
3 since there's twelve thousand or so in the
4 permanent pool now, the difference between ten and
5 twelve would be spill, so that's where we got the
6 3851.87. I hope I'm reading my note right.

7 MR. CORRIGAN: In other words, this
8 includes the flood pool and permanent pool into the
9 overall conservation program?

10 MR. JESSE: It includes ten thousand
11 acre feet of it.

12 MR. CORRIGAN: Yes, ten thousand.
13 The balance is spill?

14 MR. JESSE: The number that we got is
15 3851.36 actually, but that, if I can read right, is
16 three hundred and fifty some odd number--three
17 hundred fifty is a rounded number, and I'm using
18 the capacity table of June, 1980, but that's the
19 elevation at which it will spill into the rest of
20 the flood pool, with ten thousand acre foot of the
21 now flood pool being occupied by the permanent pool
22 water.

23 MR. CORRIGAN: Thank you.

24 CHAIRMAN COOLEY: Are there any other
25 questions of Mr. Jesse, and I'll accept questions



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1 from the audience as well at this time?

2 MR. POPE: Mr. Chairman, I would like
3 to ask Bob to repeat, I think he said what the
4 total contents of Pueblo was, and where that falls
5 into the conservation pool and the joint use pool.

6 MR. JESSE: Okay, the contents of
7 Pueblo Reservoir, and this is yesterday morning,
8 two hundred eighty-seven thousand four hundred
9 seventy-five, of which the difference between two
10 hundred and sixty-five thousand and the two hundred
11 eighty-seven thousand is in the joint use pool. I
12 didn't break out that number. Maybe Bill would
13 right quick. How much is in the joint use pool?

14 CHAIRMAN COOLEY: Twenty-two thousand.

15 MR. JESSE: That is in the joint use
16 pool and that will have to be drawn down to the two
17 sixty-five by the 15th of April, but we have not
18 started--the Bureau has not started drawing that
19 down yet. They are still moving water from
20 Turquoise in, but that will have to be drawn out
21 before the first of the--15th of April, so on the
22 15th of April, Pueblo will contain two hundred
23 sixty-five thousand, and there's an odd number, but
24 I don't know what it is. It's two sixty-four
25 something, but we have been calling it two



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1 sixty-five, because it's very close.

2 MR. POPE: What is the status of the
3 '83-'84 and '84-'85 winter water in storage?

4 MR. JESSE: There is about fifty
5 thousand acre foot of '84-'85 winter water in
6 Pueblo. I don't know how much '83-'84 is in there,
7 but the majority of this twenty thousand is '83-'84
8 winter water. If that is unused, it will be run to
9 the conservation pool in John Martin, and then
10 placed into the summer storage accounts of the
11 entities below John Martin. That number is
12 twenty-two thousand four hundred seventy-five.
13 That's joint use water.

14 MR. POPE: Now, you indicated that on
15 April 15th this water above what's now in the joint
16 use pool would be evacuated from storage that will
17 be just released to the river. Will that all get
18 to John Martin?

19 MR. JESSE: The unused portion of the
20 water, that is unused by the entities that own it,
21 this is '83-'84 water, the water that is unused by
22 the entities that own it, will be delivered to the
23 conservation pool, and from there delivered into
24 the accounts, the ditches below John Martin, will
25 go into their summer accounts, and it will just



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1 cycle through the conservation pool to Kansas
2 accounts, so the hundred fifteen thousand acre foot
3 of winter--of conservation pool stored in the
4 winter, that's what it is now; that won't be what
5 it will be then.

6 MR. POPE: You mentioned there was
7 approximately fifty thousand acre feet of '84-'85
8 winter water. Is that the limit on--seems like
9 I've understood there was a thirty-seven thousand
10 five hundred limit at one time earlier in the year,
11 based on the Bureau's estimates of run off.

12 MR. JESSE: Yeah. Initially, based
13 on the Bureau's estimates of the runoff and their
14 space requirements, there was--initially it was
15 only going to be about thirty-seven thousand foot
16 of space. That's been changed to fifty thousand
17 due to change on the snow pack on the western slope,
18 and that fifty thousand is now in Pueblo in the
19 accounts of the upstream district.

20 MR. POPE: Where did the difference
21 between thirty-seven thousand and the fifty
22 thousand come from? Was that new '84-'85 water,
23 or what effect did that have on the '83-'84 winter
24 water that's being carried over?

25 MR. JESSE: The determination to go



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1 from thirty-seven to fifty was made early enough in
2 the winter storage program that the inflow was
3 stored in--the inflow was again stored to make the
4 difference between thirty-seven and fifty, because
5 we had the thirty-seven thousand the first of
6 January, and when the determination was made that
7 there was, instead of thirty-seven thousand acre
8 foot space available, there was fifty, then we
9 commenced storing. The accounting mechanism, we
10 simply raised those accounts to that amount.

11 MR. POPE: But that was additional
12 water, winter water stored; it was not a switch
13 from '83-'84 water to the '84-'85 pool?

14 MR. JESSE: That was the mechanism
15 that we used, but the period of time used was
16 sufficient that the inflow would have more than
17 covered that amount.

18 CHAIRMAN COOLEY: You'll have to keep
19 your voice up, Mr. Jesse. Are there any more
20 questions, Mr. Pope?

21 MR. POPE: I think Bob has explained
22 that, but it's not clear to me that that wouldn't
23 be just a mechanism to switch '83-'84 water and now
24 call it '84-'85 water, thereby, and the
25 significance of that is, that could affect the May



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1 deadline for storage, or carryover of the
2 previous year's winter water.

3 MR. JESSE: Had we done that on the
4 14th of March, that could have been possible, but
5 we didn't do it then, because when the
6 determination was made there was still sufficient
7 inflow that had we went back into storage, storing
8 and dumping simultaneously, it would have worked
9 out the same. The arithmetic would have worked out
10 the same.

11 MR. POPE: Wasn't the winter storage
12 program suspended though at the time, so how could
13 the additional inflow be stored?

14 MR. JESSE: Well, the accumulation of
15 winter water in Pueblo was suspended. The program
16 itself was not suspended.

17 MR. POPE: I guess I don't understand
18 the difference.

19 MR. JESSE: The determination that
20 there was no more room in Pueblo didn't affect the
21 rest of the program, because there was room in
22 other reservoirs.

23 MR. POPE: So only that portion of
24 the program that related to additional storage in
25 Pueblo was suspended then?



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1 MR. JESSE: Yes. Had the entire
2 program been aborted, then there would have been no
3 further accumulation of accounts in John Martin,
4 because they are based on the operations of an
5 approved Pueblo winter storage program for the Fort
6 Lyons, Consolidated and the Amity.

7 MR. POPE: Approved by who?

8 MR. JESSE: The winter storage
9 committee.

10 MR. POPE: I certainly want to make
11 that clear. I don't believe this body has ever
12 approved any such program for winter storage in
13 Pueblo.

14 MR. JESSE: I can't argue with that.
15 I will refer to my attorney to comment on that.

16 MR. POPE: That's all the questions I
17 have.

18 CHAIRMAN COOLEY: Thank you, Mr. Pope.
19 Are there any other questions? Bob, I always
20 think you being on the hot seat is the most
21 entertaining, enjoyable part of a Compact
22 Administration meeting, and thank you for providing
23 the red meat.

24 MR. JESSE: I might not be done
25 completely yet, Mr. Cooley.



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CHAIRMAN COOLEY: Medium rare?

MR. JESSE: Well, I might be well done by the time we're done, because I think the next agenda item, unless it's been changed, would concern me also.

CHAIRMAN COOLEY: Okay.

MR. JESSE: Would you like me to remain here, or should we go on?

CHAIRMAN COOLEY: Let's see, I think the next agenda item is Kansas' allegations about the Compact violations.

MR. JESSE: Okay.

CHAIRMAN COOLEY: I don't think you are going to carry the ball on this item.

MR. JESSE: Did you take away the funding for satellite monitoring stations, Item six?

CHAIRMAN COOLEY: We've deferred that to later this afternoon.

MR. JESSE: I must have missed that. That's also my item on the agenda.

CHAIRMAN COOLEY: Okay, thank you. Mr. Pope and Mr. Simms, what format or treatment of item--new item seven do you wish to take? As you know, this has been a pretty free wheeling body, but because of the importance of the subject matter



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1 I think that you should suggest what ground rules
2 you desire in order to present these items before
3 the Compact.

4 MR. POPE: Frank, we had intended
5 that as we go through the new agenda item seven
6 that in most cases I would lead off some discussion
7 of the Kansas position, with assistance from my
8 colleagues on the Commission and Mr. Simms and
9 others that are here to assist us, and I would at
10 given points, request that they elaborate in more
11 detail regarding the details of those positions as
12 we go through, if that would be acceptable.

13 CHAIRMAN COOLEY: I would think that
14 it would be appropriate only that your presentation
15 be interrupted, and that as sparingly as possible,
16 for purposes of clarity of any patent ambiguities,
17 and we not have discussion that is in the nature of
18 controversy or cross-examination during the
19 presentation under the guise of making things clear.
20 If there is a question as to the clarity, or the
21 points made, I think I would entertain that, and as
22 seldom as is possible; otherwise, I think it's
23 appropriate for you to proceed.

24 MR. MCDONALD: Frank?

25 CHAIRMAN COOLEY: Yes, Mr. McDonald.



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1 MR. MCDONALD: Two items. I object,
2 I've never had a chance to cross examine Richard,
3 and I don't want to miss the opportunity.

4 CHAIRMAN COOLEY: You'll have the
5 opportunity, but I don't think during the case in
6 chief. Go ahead.

7 MR. MCDONALD: More seriously, I
8 would respectfully request a fifteen minute break,
9 so I can consult with representatives of the
10 Purgatoire District before we proceed.

11 CHAIRMAN COOLEY: It's an appropriate
12 time for there to be a fifteen minute break. It's
13 now, according to Carl Bentrup's watch, eight
14 minutes past ten. We will--five after, he says.
15 We'll reconvene at twenty minutes after by correct
16 time, and go from there.

17 (At this time the meeting was recessed, after which
18 time the following proceedings were had.)

19 CHAIRMAN COOLEY: The meeting will be
20 in order. David?

21 MR. POPE: Thank you, Mr. Chairman.
22 As has been previously indicated, the primary
23 purpose of the meeting is to discuss what is now
24 labeled as agenda item seven, and with the
25 substantive changes to the agenda--(interrupted)



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1 CHAIRMAN COOLEY: Pardon me. The
2 acoustics in this room are bad. Someone said there
3 wasn't an acoustic in the place. We have some
4 chairs in the second row. We have a large number
5 of people, and I'm afraid that in order that all
6 may hear, we'll just each of us have to speak up.

7 MR. POPE: I'll attempt to keep that
8 in mind as I make my comments, Frank. With regard
9 to this agenda item, I would first like to make a
10 few brief comments regarding the overall purpose of
11 the item, which is to discuss the allegations--
12 Kansas' allegations regarding Compact violations,
13 and in that regard, as was noted in the letter
14 dated February 26, 1985 from the office of the
15 Attorney General Stephan of Kansas to the Attorney
16 General of Colorado, Duane Woodard, these items
17 have been discussed for some time. There have been
18 some meetings between the various officials, but
19 thus far no actual resolution has taken place. I
20 would like to first indicate that this agenda item
21 is largely an outline of the concerns and the
22 issues that are laid out in the letter dated
23 February 26, 1985, along with the letter attached
24 to it, which is dated February 22, 1985 to the
25 Colorado delegation of the Compact from the Kansas



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delegation of the Compact, and I would like, I guess before making these comments, to ask that those two letters be made a part of the record of this meeting, Mr. Chairman.

CHAIRMAN COOLEY: It's so ordered, and let's see, would they be--(interrupted)

MR. POPE: Item D, I believe.

CHAIRMAN COOLEY: D & E. All right, and you'll tender those to the reporter?

MR. POPE: Yes.

CHAIRMAN COOLEY: Okay, go ahead.

MR. POPE: Specifically, with regard to the concerns expressed in the letter, I'll not go into great detail in the interests of brevity, however, would indicate that we have conducted initial engineering studies on behalf of the State of Kansas, and those studies indicate that depletions have occurred in the quantity of at least forty to fifty thousand acre feet annually, and we think there's a good cause for those numbers. We would like to further note here initially before we get into the individual items that are listed on the agenda, to indicate that there has been a substantial change in the state line flows and the usable flows to Kansas, and as indicated in the



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1 letter, the flows have dropped from the pre-
2 Compact period figures of around a hundred thirteen
3 thousand seven hundred acre feet on an average down
4 to as little as fifty-one thousand five hundred
5 acre feet during the period of 1974 through 1981,
6 so there's a very significant change there in state
7 line flows. Those are usable state line flows. We
8 would also further indicate that some work has been
9 done to analyze those flows in terms of indexing,
10 and that's covered in the letter and that will
11 allow, or take into account the changes and
12 conditions in the system, so that it's not just a
13 matter of those were dry years. That certainly
14 does not account for all of the drop in the flows.
15 We've gone on to indicate some of the causes of
16 what would be the causes of these reductions in
17 flow, and I believe that will come out then in our
18 more detailed discussion as we get into that. I
19 would at this point then turn to item 7A on the
20 agenda, which is entitled "Trinidad Reservoir," and
21 item 7A, Sub 1, entitled, "rollover from
22 conservation pool to joint use pool," and again I
23 believe the Kansas position is set forth in the
24 letter dated February 26, 1985. In summary, it's
25 our position that the operation studies conducted



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1 by the Bureau of Reclamation prior to authorization
2 of the project, along with the transcripts of the
3 meetings, the correspondence between the various
4 officials and states, the House and Senate
5 documents that were relied upon by Congress when
6 they were considering the authorization of the
7 project, clearly indicate that the rollover of
8 storage in the model reservoir account was not
9 contemplated, and it was to be limited to the
10 twenty thousand acre feet that we have indicated in
11 our materials, and have discussed so much in the
12 past. We think there is a violation of the
13 operation principles and the intent of the project.
14 With that, I think I would ask at this time if
15 Richard Simms has any additional comments on that
16 particular item, and go from there.

17 CHAIRMAN COOLEY: Mr. Simms?

18 MR. SIMMS: I might explain generally
19 for the benefit of some of those of you here that
20 are not that familiar with this item on the agenda,
21 Trinidad Reservoir was authorized in anticipation
22 of the transfer of the model reservoir right--
23 twenty thousand acre feet, a right to store twenty
24 thousand acre feet. That right was transferred
25 into the new storage vessel that we call Trinidad



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1 Reservoir. During the authorization period, or the
2 time just prior to the funding and construction of
3 that project there was considerable discussion of
4 just what that transfer meant, and there is also
5 considerable explanation of the meaning of that
6 transfer in various Bureau documents. Since the
7 operation of the project, instead of limiting the
8 amount of water stored in the conservation pool to
9 twenty thousand acre feet, what the district has
10 done, without objection from the Colorado State
11 Engineer is to roll over, and that is a new term,
12 but is the term applied to this practice, is to
13 store twenty thousand acre feet in the conservation
14 pool pursuant to the transferred Model right, and
15 then to quote, roll it over into the joint use pool
16 in Trinidad Reservoir; thus making it possible to
17 effectively double, or even triple the amount of
18 water stored in that reservoir. In the first year
19 that this was done, I believe the amount rolled
20 over was eighteen thousand seven hundred, or
21 eighteen thousand nine hundred acre feet, and then
22 the full twenty thousand acre feet was rolled over
23 in the following year. The effect of that is to
24 create considerably more storage, in Kansas'
25 opinion, than was ever contemplated when the



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1 project was authorized. One of the principal
2 reasons for this understanding of the contemplated
3 transfer derives from Volume 2 of the Trinidad
4 Irrigation Report done by the Bureau of Reclamation
5 prior to the construction of the project, and in
6 that report I can show you a series of columns and
7 numbers appearing on Table 23. There appears a
8 Column No. 35 which indicates bypasses or spills
9 from Trinidad Reservoir. If you go through the
10 arithmetic that the Bureau used in preparing this
11 study, you'll find out that every one of these
12 spills indicated in Column 35, the first one in
13 this study is in July of the year 1925, and I might
14 add that this study was designed to show
15 arithmetically how it was contemplated that the
16 operation of the reservoir would work, but if you
17 go through this arithmetic you have to add a couple
18 of columns that don't appear in the project in
19 order to thoroughly understand the arithmetic, but
20 if you add a column for accumulated inflow to
21 storage and you add another column for annual total
22 Model storage, you'll find that every time there
23 was a release in column five, or a bypass or a
24 spill, it was because the annual storage in that
25 year had reached twenty thousand acre feet, or the



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1 accumulated inflow to storage had reached twenty
2 thousand acre feet. From that, we derived the
3 understanding that the Bureau must have had, that
4 is reflected in this arithmetic, that they were
5 never to store more than twenty thousand acre feet
6 in Trinidad Reservoir. That, in our opinion,
7 precludes the rollover from the conservation pool
8 without actually physically releasing that water,
9 rolling it over into the joint use pool, and thus
10 making it possible to store up to an additional
11 twenty thousand acre feet the next year. We
12 believe that that obviously has materially depleted
13 the water in the two years in which this has been
14 done, that would have otherwise reached John Martin
15 Reservoir. We believe that Kansas is not in the
16 position of having to prove that material depletion
17 under Article IV(D) of the Compact, but rather that
18 the violation lies simply in the fact that the
19 Trinidad Reservoir is being operated in a way that
20 is patently contrary to the way in which it was
21 contemplated that it be operated. David?

22 MR. POPE: Thank you, Richard. I
23 believe at this point that would conclude our
24 remarks regarding the Kansas position on the rollover
25 from conservation pool to joint use pool.



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CHAIRMAN COOLEY: I think it's appropriate that you proceed with your next item.

MR. POPE: I believe the next item is Colorado in response.

CHAIRMAN COOLEY: Pardon me, you straighten me out first. It's your position that to each of the items of the agenda as they are brought forth, that Colorado, if it desires, make a response to that item?

MR. POPE: Yes. That's what the agenda says, and that would be our understanding of what we intended.

CHAIRMAN COOLEY: Mr. McDonald, the ball is in your court.

MR. MCDONALD: Frank, I think Colorado's position, in fact, is going to be one response addressing all three items, and rather than me saying it three times, I would suggest David go ahead and finish their points, because our response to all three points is going to be the same.

CHAIRMAN COOLEY: Okay. Mr. Pope?

MR. POPE: In that case, Mr. Chairman, and Bill, I would appreciate hearing the response to this particular item, and if it happens to be



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1 the same for the next two items, then you won't
2 have to repeat it again, Bill.

3 MR. MCDONALD: We'll go ahead and
4 respond, it doesn't make any difference, Frank. I
5 think from both David's comments and Richard's
6 comments, as well as the letters to which David has
7 previously referred, Kansas is not alleging that
8 these activities which they have spoken to are in
9 violation of any provision of the Compact. It's
10 Colorado's view that unless it is a violation of
11 some standard in the Compact, some requirement of
12 the Compact, that Kansas is alleging has been
13 violated, then it is not a matter to which this
14 Administration has any jurisdiction to discuss or
15 to act on. The Compact is quite specific, we
16 believe, in those things that are the ministerial
17 duties of the Administration. Those do not include
18 how Colorado administers water, so long as the
19 substantive provisions of the Compact are complied
20 with. And I think, as Richard was quite specific
21 in his concluding remark, Kansas does not even feel,
22 apparently, that it has to allege a violation of
23 the Compact. Specifically, he mentioned Article
24 IV(D). We do not, therefore, understand that this
25 is a matter that the Administration can speak to.



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1 That is not to say that the states, in some other
2 format or forum might not discuss it, but we do not
3 regard it as proper business for the Administration
4 unless Kansas is going to allege a violation of the
5 Compact. I would ask Wendy Weiss, from our
6 Attorney General's Office, if she needs to expand
7 or supplement that?

8 MS. WEISS: I think you've covered it
9 very well, Bill. I would simply add that in
10 Colorado's view, and I believe in your own view, as
11 expressed in letters from the State of Kansas to
12 Colorado, the controlling question that you've
13 raised appears to be one of federal law, and it
14 appears to relate to a contract between the Bureau
15 and the Purgatoire District, which as Bill McDonald
16 stated, is not a matter within the purview of the
17 Compact Administration.

18 CHAIRMAN COOLEY: Mr. Pope?

19 MR. POPE: Excuse us just a second.

20 CHAIRMAN COOLEY: Surely.

21 MR. MILLS: I wonder if it is
22 possible for the press to obtain copies of this
23 correspondence?

24 CHAIRMAN COOLEY: I will give you the
25 answer to that in due course. It will be a part of



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1 the minutes of this meeting.

2 MR. POPE: Mr. Chairman, we do have a
3 few additional comments in response to the Colorado
4 position that Mr. Simms will make at this time.

5 CHAIRMAN COOLEY: Mr. Simms?

6 MR. SIMMS: The reason that in the
7 letter of February 26th, as well as in my
8 explanation a moment ago that my discussion was
9 limited to the operations studies prepared by the
10 Bureau, was simply to illustrate that the Trinidad
11 Reservoir is being operated in a way that was
12 obviously and patently not contemplated by the
13 Bureau or the parties to the Compact when the
14 project was approved. In the course of that
15 project approval there were also approved operating
16 principles that were submitted to both states for
17 their approval. Kansas insisted on certain forms
18 of operation and certain operational procedures
19 that would have essentially coincided with Kansas'
20 contemporaneous understanding of what the Bureau
21 reports indicated the operations should have been.
22 That most definitely falls within the ambit of
23 Arkansas River Compact Administration matters. It
24 most definitely comes within the Compact. Quite
25 aside from that, if you look at the exchange of



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1 correspondence in the '80's between the Attorneys
2 General of the State of Colorado and the State of
3 Kansas on this matter, you will find out that the
4 allegations made by the states aren't limited to
5 the simple fact that as a matter of federal law the
6 reservoir is being operated unlawfully. The
7 allegations also included Compact violations.

8 MR. MCDONALD: What are those Compact
9 violations?

10 MR. SIMMS: Those Compact violations
11 are laid out in the letter of February 26th.

12 MR. MCDONALD: Richard, as I recall,
13 with respect to that February 26th letter, and the
14 discussion of Trinidad, there is a statement that
15 quote, "Kansas has taken the position that the rollover
16 procedure violates both the operating principles of
17 Trinidad Dam and Reservoir, Compact Article IV(D)
18 of the Arkansas River Compact" and two other items.
19 Is that the items that is the matter to which you
20 refer that it is a violation of Article IV(D)?

21 MR. SIMMS: Yes, it is.

22 MR. MCDONALD: To the extent that
23 Kansas alleges a violation of Article IV(D), we do
24 think that is a matter that this Administration can
25 take up, but I won't take time to go through how,



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1 other than to say we think it can be done and
2 should be done through Article VIII(H) in the
3 investigation procedure, and that of course, is on
4 the agenda for discussion later.

5 MR. SIMMS: Well, we of course, would
6 respond to that. I think this is the exchange
7 Commissioner Chairman Cooley has suggested should
8 not occur at the beginning of it, but we would
9 respond to that by saying the depletion that has,
10 in fact, occurred pursuant to, or under item IV(D),
11 Provision IV(D) in the Compact is a patent
12 depletion. It's the amount of rollover that has,
13 in fact, taken place, and we don't think there's
14 any factual inquiry necessary to comprehend that
15 depletion.

16 MR. MCDONALD: I'm ready for the next
17 agenda item.

18 CHAIRMAN COOLEY: I think that
19 Colorado's position, at least seems clear, and it
20 would be appropriate that Kansas proceed with the
21 accounting of winter direct flows.

22 MR. POPE: Thank you, Mr. Chairman.
23 We will proceed at this time then on Item 7-2, or
24 7A-2, dealing with the accounting of winter direct
25 flows. I suspect that the arguments are going to



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1 be somewhat similar in this particular case in an
2 analogous way to the previous discussions. Again,
3 if one goes back and reviews the operations studies
4 that were conducted and all of the other pertinent
5 documents that have been referred to and various
6 correspondence, and in our previous comments today
7 even, one also can clearly see that the winter
8 storage of direct diversions under the decreed
9 rights were contemplated to be a part of the twenty
10 thousand acre foot Model right, rather than being
11 accounted for separately and not inclusive, in
12 terms of the twenty thousand acre feet of storage.
13 Again, one gets there the same way in terms of
14 considering all of those pertinent documents,
15 correspondence and other items related to the
16 operation of the project, and with that I think I
17 can make the comments very brief by stopping there
18 for a moment, unless again specifically Richard can
19 amplify on that.

20 MR. SIMMS: Perhaps the only point of
21 clarification, again for those of you in the
22 audience that are not that familiar with it, the
23 problem is simply this, part of the contemplation
24 of the operation of Trinidad Reservoir included the
25 relinquishment of rights by project users to divert



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1 winter water, the relinquishment of those rights,
2 and instead, the diversion of water stored under
3 the twenty thousand acre foot transfer Model decree.
4 The question is whether or not those direct flow
5 rights, which were never transferred by the
6 Colorado water Court were ever meant to be
7 transferred or whether they were thought to have
8 been relinquished, and then the amounts that could
9 have been diverted under those direct flow rights,
10 diverted out of the twenty thousand acre foot
11 conservation storage. Mr. Chairman.

12 CHAIRMAN COOLEY: I think it's
13 appropriate, and apparent to all, that Colorado's
14 position, as stated by Mr. McDonald and by Wendy,
15 will be the same for each of these points, and I
16 suggest you proceed with item 7A-3. Would you like
17 a record made on this point?

18 MR. SIMMS: I guess it would be our
19 understanding that given the lack of clarifying
20 statement or objection from Colorado that your
21 statement is correct, Mr. Chairman.

22 MR. MCDONALD: We're prepared to
23 respond please, Frank.

24 CHAIRMAN COOLEY: All right, fine.

25 MR. MCDONALD: I would ask Wendy.



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1 MS. WEISS: Let me ask you first,
2 regarding your allegation of 7A-2, what specific
3 provision of the Compact do you feel is being
4 violated?

5 MR. SIMMS: It is our view that the
6 operation of the reservoir is different than was
7 contemplated, and consequently, the approval by the
8 Compact Administration, this body, of the operating
9 principles of that reservoir is subject to scrutiny,
10 and in that regard we want to scrutinize that
11 operation. On top of that, there is a violation of
12 Article IV(D), in that there is a depletion of
13 waters that otherwise would have flowed to John
14 Martin.

15 MS. WEISS: Again, we would agree
16 that insofar as you allege a violation of Article
17 IV(D) of the Compact, fact finding procedures are
18 appropriate; however, it's the State of Colorado's
19 position that Kansas may not complain about the
20 violation of Colorado water Court decrees except
21 insofar as Kansas can show that those have resulted
22 in a violation of Article IV(D) of the Compact.

23 MR. SIMMS: Ms. Weiss, might I ask
24 whether or not your second point bears some
25 relation to Article VI(A) of the Compact, under



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1 which--either VI(A)1 or 2, under which the
2 individual states are expressly given the autonomy
3 to administer water rights pursuant to their own
4 respective laws without interference under the
5 Compact?

6 MS. WEISS: Yes, Mr. Simms, I believe
7 it does relate specifically to Article VI(A)2 of
8 the Compact. And also to the fact that elsewhere
9 in the Compact, those areas where the Compact
10 Administration does have authority to review uses
11 of water within a state before those uses are
12 effected, such as Article V(H) of the Compact, and
13 also Article V(E)2 of the Compact, there is an
14 express statement in the Compact that requires
15 prior Administration approval. And that except for
16 those places where such prior approval is
17 explicitly called for by the Compact, we believe
18 that the Administration does not have authority to
19 review Colorado water rights procedures and
20 administration, that would be correct.

21 MR. SIMMS: Can I further understand
22 then that it's Colorado's position with respect to
23 this issue, it is a matter of intrastate internal
24 administrative practice, and not a matter that
25 falls within the authority of the Compact



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Administration?

MS. WEISS: I would agree with that.

I believe that Kansas is not a party to Colorado water Court decrees. Certainly, we don't assert jurisdiction over Kansas by those decrees. I believe that Kansas--I believe that the Administration does have authority to investigate alleged violations of Compact provisions, such as IV(D); however, those investigations, that fact finding, is to be based on the effects of uses in Colorado and whether the uses in Colorado have materially depleted the waters of the Arkansas River in violation of IV(D). Let me add that the violation of the decree in Colorado is not necessarily, per se, a violation of the Compact. Colorado may administer its own waters in numerous ways, as long as there is no injury to Kansas under a specific Compact provision. We think that that ultimately is the standard, and the basis for any complaint that Kansas might have.

MR. POPE: I might make the comment and observation that it's interesting to note that your interpretation and the position you are taking apparently is inconsistent with the fact that several times in the past Colorado has not objected,



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and has apparently agreed with the position that the Administration could even review and approve the operation principles, for example, for Trinidad Reservoir. That, in itself, involves an example of the kind of thing that would appear now to be not the proper purview, according to what you are just indicating.

MR. MCDONALD: Could we have a couple of minutes, please, Frank?

CHAIRMAN COOLEY: Surely. We'll stand at ease for a moment or two.

(At this time a short recess was taken, after which the following proceedings were had.)

CHAIRMAN COOLEY: We'll be at order. Mr. McDonald?

MR. MCDONALD: Wendy will respond to David's question.

MS. WEISS: Thank you. Our response would be twofold. I believe that first, an examination of the minutes of meetings preceding the Administration's resolution, as well as review of the history that led to the resolution of June 6, 1967 reveals that all along Colorado has taken the position that the prior approval of the Trinidad operating procedures was not a matter



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1 within the jurisdiction of this Administration, but
2 was being done as a matter of courtesy, and on an
3 informal basis. I believe that the representatives
4 from Colorado recognized the limitations on the
5 jurisdiction of this Administration. As a second
6 point, I would say that assuming that the
7 representatives from Colorado did not recognize
8 such a limitation, and believed that the approval
9 of the Trinidad operating procedures and the Kansas
10 conditions were within the purview of the
11 Administration, then they were exceeding their
12 authority under the Compact and that their action
13 was ultra vires. Certainly, the representatives of
14 Colorado and Kansas are not free and are not
15 empowered to amend the terms of the Compact. As I
16 said, I do not believe that they did so. I do not
17 believe that they intended to do so. I believe
18 they proceeded as a matter of courtesy and on an
19 informal basis, but I believe that now the
20 representatives of Colorado certainly cannot assent
21 to the Administration's exceeding its authority
22 under the Compact, and cannot ourselves, act in an
23 ultra vires manner, or attempt a de facto amendment
24 or modification of the Arkansas River Compact.

25 MR. POPE: That raises some



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1 interesting arguments to say the least. A couple
2 brief comments I might make, and then maybe others--
3 you are indicating that this presumably was a
4 courtesy review in some informal way. I'm not
5 aware of any distinction in terms of official
6 actions of the Administration where that has been
7 designated, at least from my standpoint. That's
8 kind of an interesting concept, because it would
9 lead one to believe that, when do we know when you
10 were really serious, and when do we know that
11 actions really have some meaning. That, in itself,
12 I think is somewhat frightening. Secondly, I guess
13 I would indicate that it's always been our
14 understanding that actions of the Administration,
15 notwithstanding your comment regarding things--
16 certainly, I would agree that we would not be
17 empowered to amend the Compact, but that's not the
18 issue we're arguing, that actions of the
19 Administration are bilateral and are binding and
20 are not so-called unilateral type actions, so I
21 think there is certainly a distinct difference
22 there, that we assume when actions are taken by the
23 Administration that Colorado is aware of their
24 authorities and limitations at the time of those
25 actions, and needs to live up to them at subsequent



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1 times in the future; otherwise, there would be no
 2 purpose in considering things if there's no
 3 significance to them. Kansas, in reviewing those
 4 operating principles, ultimately approved them with
 5 certain stipulations and conditions, and let the
 6 project go forward with the understanding that
 7 their concerns were being satisfied and those
 8 concerns were related to try to protect Kansas'
 9 interests from depletions and other problems. I
 10 believe Richard would like to add a couple of
 11 comments to that, also.

12 MR. SIMMS: Mr. Chairman, my comments
 13 are brief. As I understand that explanation,
 14 Colorado's generosity and courtesy, in retrospect,
 15 appears to have been designed to relieve it of all
 16 accountability today, and it would seem that that's
 17 not the kind of courtesy that Kansas would welcome.
 18 Secondly, Colorado's agreement to the entire
 19 accounting procedure would also appear to me to
 20 seriously undermine the position that's presently
 21 being taken.

22 MS. WEISS: If I may respond, first I
 23 would say that the representatives of Kansas, like
 24 the representatives of Colorado, are charged with
 25 knowledge of the Administration's authority under



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1 the Compact. Secondly, I believe that statements
2 made by Colorado, if one looks at the record and
3 history, indicate that the State of Kansas was not
4 misled, that Colorado was very clear, that its
5 representatives were very clear that they were
6 making policy recommendations, and I believe that
7 is what was done, policy recommendations; and I
8 believe Kansas was informed of that by the Colorado
9 representatives, and finally I fear that
10 notwithstanding disclaimers from the Kansas
11 representatives, they are, in fact, attempting to
12 rewrite or amend the terms of the Compact to expand
13 the Administration's authority to areas that the
14 framers of the Compact very specifically, pointedly,
15 and deliberately excluded from the Administration's
16 authority.

17 MR. SIMMS: In response, we would say
18 only that there's no attempt to amend or rewrite
19 the Compact, which obviously is something that
20 cannot be done by a state unilaterally, but rather
21 to put more than form to the historic behavior of
22 the Compact Administration and indeed, put
23 substance to it. This morning we adopted a motion
24 which contained a matter of policy to transcribe
25 this proceeding. I think as a matter of fact, we



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1 will do that, and in this real world we will do
2 that. Calling what we did policy does not detract
3 from the fact, in my view, that the Compact
4 Administration indeed, had authority to do what it
5 did, and we're going to live with it over the next
6 few years. I think the characterization of past
7 actions of the Administration as policy is
8 tantamount to characterizing the action of the
9 Administration as purely academic with regard to
10 its approval of any number of matters that have
11 routinely come before it.

12 CHAIRMAN COOLEY: I suggest to both
13 States that we have mined this vein pretty
14 thoroughly, and that it might be appropriate to
15 proceed with the enumeration of the items put
16 before us by the State of Kansas, and without
17 objection, Mr. Pope, I would request you proceed to
18 those items on the agenda that constitute the
19 allegations of the State of Kansas.

20 MR. POPE: Okay, thank you, Mr.
21 Chairman. The third item under 7A is Project
22 Accounting-Diversion Requirements. With regard to
23 this particular item, if one goes specifically to
24 the operation principles for the Trinidad project
25 he or she will note a considerable amount of detail



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1 regarding the proposed operation of the project;
 2 specifically, the acreage that was to be irrigated
 3 once the project went into operations, quantified
 4 both, in total and by individual ditches. The
 5 deliveries were to be limited to irrigation
 6 requirements, and there are other detail items
 7 related to how that amount of water was to be
 8 determined by the district. I would ask at this
 9 time, generally relating to these and other related
 10 matters, as far as accounting for those various
 11 storage and delivery of water, that Mr. Brent
 12 Spronk, who has looked into this and has some more
 13 detail, make those comments at this time.

14 CHAIRMAN COOLEY: Mr. Spronk?

15 MR. SPRONK: Thank you. For the
 16 record, I'm an engineering consultant from Denver,
 17 retained by the State of Kansas to make
 18 investigations regarding the Compact on behalf of
 19 the State of Kansas. We have completed an
 20 engineering investigation and analysis of the
 21 irrigation requirements associated with the
 22 Trinidad projects for the years 1979 through 1984.
 23 The analysis was based on diversion records
 24 collected by the Colorado Division of Water
 25 Resources, and also used--some of the basic data



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1 was climatological data taken out at the Trinidad
2 Airport. As mentioned by Mr. Pope, the operating
3 principles of the Trinidad project specify that
4 quote, "deliveries to the district irrigable area
5 will be limited during the irrigation season to the
6 irrigation requirements at the farm headgate," end
7 quote. That's taken from Article IV(B)2 of the
8 operating principles for the Trinidad project. The
9 operating principles also specify limitations for
10 irrigated acreage for each individual ditch
11 included in the project. These limitations are
12 given in Article IV(B)1. Based on records kept by
13 the Colorado Division of Water Resources during
14 1983 and '84, these records indicate that the
15 amount of acreage under the individual ditches
16 exceeded that allowed by the last principle which I
17 referred to, that is IV(B)1. In addition, we
18 computed the monthly irrigation requirements for
19 the project for each ditch and compared these
20 requirements to the recorded diversions for the
21 individual ditches. The results of the analysis
22 show that diversions to individual ditches
23 frequently exceed the irrigation requirement; in
24 other words, the operation of the project has been
25 contrary to the limitations on diversions given in



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1 the project's operating principles. These excess
2 diversions range from approximately twenty-eight
3 hundred acre feet in 1984 to over ten thousand acre
4 feet in 1983. The 1979 through 1984 annual average
5 excess diversion was six thousand nine hundred acre
6 feet. These excess diversions have resulted in a
7 diminished water supply to downstream users, both
8 in the State of Kansas and in Colorado Water
9 District 67. As far as the acreage limitations for
10 individual ditches, the records of the Colorado
11 Division of Water Resources indicate that in excess
12 of nine hundred acres to twenty-two hundred acres
13 have been irrigated beyond that allowed by the
14 project operating criteria. That concludes my
15 remarks, Mr. Chairman.

16 CHAIRMAN COOLEY: Does Colorado wish
17 to make a specific response not heretofore made to
18 Mr. Spronk's comments?

19 MR. MCDONALD: Frank, two things. I
20 would observe again that I did not hear a statement
21 by either of the two folks who just spoke for
22 Kansas that there's been a violation of the Compact.
23 Secondly, I would inquire of Brent if the
24 information that he was just summarizing for us, is
25 from his preliminary engineering report or if there



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1 has been additional engineering done that Kansas
2 wishes to make available to Colorado in the context
3 of the alleged violation of the Compact?

4 CHAIRMAN COOLEY: Point of
5 clarification, Colorado acknowledges the possession
6 of the basic--(interrupted)

7 MR. MCDONALD: We have the February,
8 1984 report that Brent prepared under contract to
9 the State of Kansas.

10 CHAIRMAN COOLEY: I would be happy
11 for a brief reply if you desire to make one to both
12 of those points.

13 MR. POPE: Mr. Chairman, the
14 information can be made available to the State of
15 Colorado from the additional work that has been
16 done beyond the preliminary assessment from 1984.

17 CHAIRMAN COOLEY: Will you make it
18 available to Colorado?

19 MR. POPE: I think we can do that.
20 It may take us--we may have to reformat that into
21 something that would be suitable to write at the
22 appropriate time.

23 MR. MCDONALD: Thank you, David.

24 MR. POPE: I think it's probably
25 implicit in our concerns that with the quantities



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1 of water that Mr. Spronk has mentioned, that not
2 only are there violations of the operation
3 principles, which in turn, we've already talked
4 about in other capacities, but that there's some
5 real difference in the amount of water; therefore,
6 the matter of depletion certainly is at issue, one
7 way or the other.

8 CHAIRMAN COOLEY: That would be IV(D)
9 again. I think that's a suitable response. Unless
10 you wish to make more, I would suggest that we make
11 Mr. Thomson's trip down here worthwhile, and
12 proceed to Item 7B and Pueblo Reservoir.

13 MR. MCMAHON: Mr. Chairman?

14 CHAIRMAN COOLEY: Just a minute.

15 MR. MCMAHON: May Trinidad make a
16 quick statement?

17 CHAIRMAN COOLEY: Without objection,
18 I would have a brief statement from Mr. McMahon on
19 behalf of his clients with regard to Trinidad. Is
20 there any objection to that being a part of the
21 record this morning?

22 MR. POPE: I guess not.

23 CHAIRMAN COOLEY: Please proceed.

24 MR. MCMAHON: Thank you, Mr. Chairman.
25 I'm Joe McMahon on behalf of the Trinidad District.



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Mr. Chairman, I assure you I wish to be brief, we don't intend to argue the facts presented. We, the Trinidad District, do not accept that there have been violations of the Compact or the operating principles, nor do we wish to get involved in disputes as to the authority of this Administration, that certainly is not our position, nor do we wish to argue which parties have authority to participate in review of the operating principles. We believe that the operating principles are part of the district's contract with the United States, and further, were incorporated into the district's water right decree, and without disputing the rights that Kansas may or may not have, we would bring to the attention of the Administration that the Bureau has initiated a review of the operating principles in cooperation with the district, and without conceding any rights to Kansas to participate, we do not--we, the district--do not intend to limit input to that process, and would welcome Kansas to put these facts in a form that would be suitable for the district's and Bureau's use, so they may be incorporated and used as part of that process, particularly these, the latter facts described by Mr. Spronk.



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1 CHAIRMAN COOLEY: I think your
2 remarks were typically helpful. Unless you wish to
3 make a comment, Mr. Pope, we'll proceed to Pueblo
4 Reservoir.

5 MR. POPE: No, I think we certainly
6 intend to participate in the review of the project
7 by the Bureau, and I'm sure that iter will even be
8 discussed yet today.

9 CHAIRMAN COOLEY: Okay.

10 MR. POPE: Turning to the 7B iter on
11 the agenda entitled "Pueblo Reservoir Approval of
12 Proposed Winter Storage Program," again I think the
13 record of correspondence from our office--excuse me,
14 from the State of Kansas, through the Office of the
15 Attorney General, again under the date of February
16 26, '85, along with a rather detailed letter
17 previously referred to, and a part of the record
18 dated February 22, 1985 really detail the Kansas
19 concerns and the Kansas position quite well in
20 regard to Pueblo Reservoir. Certainly, one of the
21 iters that we've discussed previously and it
22 certainly has not been resolved, is the status of
23 the Administration's 1951 resolution, which I'm
24 sure we're all familiar with by now, regarding the
25 reregulation of native Ark River waters as a part



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of the project, and specifying that the Administration would be allowed to review and approve an operation plan for Pueblo Reservoir prior to the reregulation of those flows, and we certainly reiterate that issue at this time. There's again some concern about the effect of that resolution along with the ultimate amount of water that might be involved based upon our preliminary engineering studies. In that regard, I believe it would also now be appropriate to ask Mr. Spronk again to make some comments regarding the hydrology that they have done in this particular regard.

CHAIRMAN COOLEY: And I suggest, even though the letter is a part of the record, that it might be appropriate, especially with the numbers of persons in the audience, if Mr. Simms were to restate briefly some of those matters set forth in the letter. I'll call on Mr. Spronk.

MR. SPRONK: On behalf of the State of Kansas we have reviewed and made an assessment of the winter water storage program with respect to Kansas' interests. A brief background perhaps for the record, the winter water storage program involves an agreement amongst water users along the Arkansas River in Colorado whereby water is stored



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1 at Pueblo Reservoir without the benefit of a
2 storage decree during the wintertime. The program
3 provides increased supplies during the latter parts
4 of the irrigation season, in exchange for foregoing
5 winter irrigation. Water is distributed to the
6 participating entities by an agreement by agreed
7 upon allocations. Prior to the program water was
8 diverted in accordance with the priority system,
9 whereby ditches and senior decrees received their
10 entitlements before junior ditches received water.
11 There are eleven entities participating in the
12 program between Pueblo and John Martin Reservoir.
13 The program was formulated as a part of the
14 Gunnison-Arkansas project to use Pueblo Reservoir
15 for the storage of native winter flows. The
16 project was constructed as the Fryingpan-Arkansas
17 project, which provided for the importation of
18 water from the Colorado River Basin into the
19 Arkansas River Basin. The winter water storage
20 program was first implemented during the 1975 to
21 1976 winter, and has been operational each year
22 since, except during the winter of '77 to '78.
23 Between 1949, when the Arkansas River Compact went
24 into effect, and 1976, when the program started,
25 diversions by the participating water users



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1 averaged a hundred forty-nine thousand acre feet
2 per year during the four month program season of
3 mid-November through mid-March. Of this amount,
4 thirty-five thousand acre feet went to storage and
5 a hundred fourteen thousand acre feet went to
6 direct flow irrigation. Since the initiation of
7 the program in 1976, storage at Pueblo Reservoir
8 has averaged approximately fifty thousand acre feet,
9 while off channel storage and storage in John
10 Martin Reservoir has averaged a hundred
11 thirty-seven thousand acre feet per year. An
12 analysis of the program's impact centered on the
13 program's effect on winter inflows, and I want to
14 emphasize winter, not annual inflows, from the
15 Arkansas River to John Martin Reservoir,
16 particularly to the conservation pool of John
17 Martin Reservoir. During the storage season of mid-
18 November--excuse me, the program season of mid-
19 November through mid-March, these inflows averaged
20 seventeen thousand four hundred acre--excuse me,
21 seventeen thousand four hundred acre feet per year
22 prior to 1976, and have averaged only ten thousand
23 nine hundred acre feet per year for the period of '76
24 through '83, exclusive of '78, when the program was
25 not operational. Prior to 1976, the winter inflows



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1 to the conservation pool storage from the Arkansas
2 River averaged twenty-three percent of the Portland
3 gauge, which is located above Pueblo Reservoir.
4 Since 1976, however, this inflow from the Arkansas
5 River to John Martin reservoir has declined to only
6 seventeen percent of the Portland gauge. These
7 winter inflows can also be expressed as a fraction--
8 excuse me, as a percentage of, quote, "the total
9 system," a term which includes the total amount of
10 water stored under the program, and in this
11 instance we have also added the inflows to John
12 Martin Reservoir. The percentage before the
13 program was 10.5 percent of the total system, whereas,
14 after the implementation of the program it has
15 averaged only seven and a half percent. These
16 figures indicate that during the seven years of the
17 program operation considered in this evaluation,
18 winter inflows from the Arkansas River to the
19 conservation pool storage have not maintained their
20 pre-1976 average, neither in absolute terms nor in
21 relation to the overall hydrology, in terms of
22 water supply being available in the Basin, nor have
23 they kept their relation in terms of diversions,
24 either, above John Martin reservoir. Kansas
25 receives forty percent of the conservation pool



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1 storage, so that any declines of inflows to this
2 storage directly impact Kansas' yield from the
3 reservoir, and I might add also, impacts the yield
4 of the conservation pool storage to Colorado
5 ditches in Water District 67. Overall declines in
6 the winter conservation storage can be attributed
7 to declines from two sources, direct inflows from
8 the Arkansas River at the--excuse me, at the Las
9 Aniras gauge, and also declines in unmeasured
10 inflows resulting or accruing to the storage below
11 the gauge, and yet still accruing to John Martin
12 Reservoir. These declines of both the Las Aniras
13 gauge and the unmeasured inflows, we feel are in
14 part due to the winter water storage program. A
15 concern that we have not yet investigated fully is
16 that the true effects of the program may, indeed,
17 be masked since 1975 as a result, primarily of
18 trans-mountain diversions into the Arkansas River
19 Basin. These trans-mountain diversions have
20 resulted in return flows which have accrued to the
21 flows of the Arkansas River. These flows have
22 potentially offset or masked the total depletive
23 effect of the winter water storage program. The
24 total storage in the conservation pool at John
25 Martin has declined since 1976, including the 1984



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1 storage. The post-1976 winter storage in the
2 conservation pool has--excuse me, there has been
3 only a small amount of decline since 1976. The
4 large quantity stored in 1983 and '84 have
5 increased the post-'76 average, significantly
6 affecting the pre-'83 storage in the conservation
7 pool. The amounts of inflows, in summary, from the
8 Arkansas River to the conservation pool, have
9 declined on the order of forty-six hundred acre
10 feet to sixty-five hundred acre feet per year
11 compared to the pre-program levels for the four
12 month period when the program has been in effect.
13 This would indicate a loss to Kansas on the order
14 of eighteen hundred to twenty-six hundred acre feet
15 per year. It should note that these values do not
16 include the masking effect of the trans-mountain
17 return flow diversions. In conclusion, our
18 analysis indicates that the winter inflows to the
19 conservation pool from the Arkansas River at the
20 Las Animas guage and the unmeasured inflows to John
21 Martin Reservoir have declined for the four month
22 season since the implementation of the program.
23 However, total annual flows for Los Animas guage
24 for the time period have not declined. Any decline
25 in the reservoir inflows obviously impacts the



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1 State of Kansas due to their allocation of the
2 conservation pool, to the extent that the decline
3 in the winter inflows can be attributed to the
4 winter storage programs, Kansas and Colorado
5 District 67 udrted have been impacted by the program.
6 That concludes my remarks.

7 CHAIRMAN COOLEY: Thank you. Mr.
8 Simms?

9 MR. SIMMS: Mr. Chairman, my remarks
10 will be brief. The problem in regard to the
11 reregulation of water in Pueblo is in part, a
12 problem of depletion of waters that otherwise would
13 have gotten to John Martin, and is in part a
14 problem as a matter of principle in relation to the
15 significance of the actions of the Compact
16 Administration. When the Gunnison-Arkansas project
17 was being considered during a period preceding its
18 authorization, construction and development,
19 whether you call it the Gunnison-Arkansas project
20 or the Fryingpan-Arkansas project, when that was
21 being done the Compact Administration was concerned
22 that various structures that formed a part of that
23 proposed project could have an effect on the
24 apportionments made by the Arkansas River Compact
25 to the States of Kansas and Colorado. They weren't



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1 concerned so much by the importation of waters from
2 the other side of the mountains, but rather, that
3 the reregulation of native waters might create some
4 problems in the nature of depletions that had not
5 occurred before. In that regard, the Compact
6 Administration resolved formally, and as a matter
7 of policy, if you will, in July of 1951 that they
8 would approve the project. The project would have
9 its sanction and approval only if it was left with
10 the authority to take a look at and finally approve
11 any later reregulation of native waters. The
12 subject program in Pueblo is such a reregulation of
13 native waters, the resolution of the Compact
14 Administration being a unanimous action of the
15 State of Colorado and the State of Kansas, has not
16 to our knowledge, ever been amended or rescinded.
17 We have not, as a Compact Administration, ever
18 approved any program of reregulation, despite the
19 fact that Congress and others have acted on the
20 basis of the resolution that we made in 1951. As a
21 result, it's our view that it is still the
22 responsibility of anybody who seeks to reregulate
23 native waters, that any plan of reregulation first
24 be submitted to the Compact Administration, and
25 pursuant to its '51 resolution, approved prior to



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1 the adjudication or adoption of that program.

2 CHAIRMAN COOLEY: Mr. McDonald?

3 MR. MCDONALD: Frank, I would ask
4 leave of the chairman and Kansas, we, as with
5 Trinidad, would like a few minutes to consult with
6 our colleagues in the Southeast Water Conservancy
7 District, and those in the winter storage program.
8 Fifteen minutes would be fine, but observing the
9 hour, I wonder if we should just break for lunch,
10 beat the lunch rush anyhow, and we would respond
11 immediately after the lunch hour and proceed
12 through the agenda.

13 CHAIRMAN COOLEY: I far prefer your
14 last suggestion. Is this on Kansas time?

15 MR. MCDONALD: Quarter to twelve.
16 Are we with you, Carl?

17 CHAIRMAN COOLEY: It depends on--I'm
18 surrounded by men whose watches aren't accurate. I
19 refuse to--let me ask a question. It's about
20 quarter to twelve now. Is an hour and fifteen
21 minutes more appropriate than one hour, in
22 consideration of the number of people? Carl
23 Bentrup will bring this meeting back to order at
24 one o'clock local time, accurate time, not his
25 watch, and we'll have the Colorado response. The



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1 meeting will stand at ease.

2 (At this time a recess was had for the lunch hour,
3 after which the following proceedings were had.)

4 VICE CHAIRMAN BENTRUP: We'll now
5 resume the recessed meeting. We were ready for
6 Colorado's response to Kansas' position on Pueblo
7 Reservoir, B on the agenda, No. 2.

8 MR. MCDONALD: Thank you, Carl.
9 First of all, let me say again, I don't think I
10 heard--if I did, could I please have clarification,
11 that the conversation about Pueblo between Brent
12 and David and Richard was all addressed to comments
13 about the 1951 resolution. I did not hear Kansas
14 allege a violation of the Compact. Are you or are
15 you not alleging a violation of the Compact? If so,
16 in the context of Pueblo, which specific provision?

17 MR. SIMMS: Mr. Chairman, if we
18 failed to allude earlier to what we feel are the
19 violations, there is, as Mr. Spronk explained, a
20 violation of Article IV(D), in that a material
21 depletion would be created under the proposed
22 operation. Secondly, there's violation of actions
23 taken by the Compact Administration in the past,
24 actions upon which the Congress and others have relied.

25 MR. MCDONALD: Thank you, Richard.



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In the context of the allegation that there has been a violation of Article IV(D), again of course, we have Brent's February, 1984 report. Is additional information available to us?

MR. SIMMS: The report from which Mr. Spronk was taking notes when he made his presentation earlier has not been completed, but when that report is in its final form and complete it would be, in due course, made available to Colorado.

MR. MCDONALD: Thank you. I would like to conclude by asking Carl if Wendy could finish our comments?

VICE CHAIRMAN BENTRUP: That will be fine.

MS. WEISS: Thank you. I think that Kansas has repeatedly, in letters and here today, mischaracterized the 1951 resolution. It's Colorado's position that that resolution was a policy statement and a recommendation of the Administration, and that the representatives of Colorado did not intend, and the resolution was not so framed, to require Administration approval before the reregulation of native flows by Pueblo Reservoir, and I would specifically refer to the



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meeting--to the minutes of the meeting of July 23,
1951, at which Representative Stone of Colorado
commented that regardless of the interests of the
Administration in Arkansas River matters, the
Administration does not have a veto power over the
responsibilities and obligations of the signatory
states. I believe that the language of the
resolution indicates what the resolution was and
was not. The language was that the Arkansas River
Compact Administration submits, and I quote, "these
comments and recommendations to the Governors of
Colorado and Kansas." And the resolution further
goes on to state, and I think I would like to read
the relevant provision in its entirety, because I
think the language is important; "the reregulation
of native waters of the Arkansas River, native
waters being as above mentioned, concerns the
Arkansas River Compact Administration and both
Colorado and Kansas in complying with the
provisions of the Arkansas River Compact and
maintaining the benefits and obligations of the two
states under that Compact. To that end it is
recommended to the Governors of Colorado and Kansas
and expressed as a policy of the Arkansas River
Compact Administration that the initial development



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1 of the Gunnison-Arkansas Project, Roaring Fork
2 Diversion, Colorado, as set forth in Project
3 Planning Report No. 7-8A,49-1 of the Bureau of
4 Reclamation be approved; provided however, that
5 there shall be no reregulation of native waters of
6 the Arkansas River as proposed in such report until
7 a plan of operation, rules, regulations, procedures
8 and agreements in furtherance thereof, including
9 any pertinent agreements between the Corps of
10 Engineers and the Bureau of Reclamation shall have
11 been submitted to and approved by the Arkansas
12 River Compact Administration and the affected water
13 users. It is the purpose and intent of these
14 recommendations that the proposed project
15 development shall not interfere with or defeat the
16 rights, interests and obligations of Colorado and
17 Kansas under the Arkansas River Compact." I
18 believe that the language of that 1951 resolution
19 clearly recognized the limitations of the
20 Administration when it came to requiring prior
21 approval for Colorado development except in the
22 specific instances set out in the Compact, and I'm
23 referring to Articles V(E)2 and V(H) of the Compact,
24 where prior approval is called for. I think it
25 would have been very simple if the representatives



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of Colorado and Kansas had intended to, or thought they could require prior administrative approval before the operation of Pueblo storage, to have said not "it is recommended and expressed as a policy," but "there shall be," "there shall be no native--no reregulation of native flows until and unless the Administration approves," and the resolution doesn't say that; and I believe that there was a reason for that. I believe Representative Stone's remarks indicate what that reason was, and I believe that this resolution, and specifically its last sentence recognizes and protects Colorado's rights under the Compact. As I previously discussed in relation to Trinidad, it's also Colorado's position that had the representatives of Colorado and Kansas wanted to subject additional development in Colorado to prior administrative approval, that is development in Colorado not covered by Articles V(E)2--that's V(E)2 and V(H) of the Compact, that would have been an amendment of the Compact which does not provide for prior approval except under specific circumstances, and I do not believe that even acting bilaterally, the states of Colorado and Kansas could have so amended the Compact. However,



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1 I don't believe that they sought to do so; I
2 believe that the language of the 1951 resolution
3 was carefully worded, in light of the limitations
4 on the Administration's authority imposed by the
5 Compact. Therefore, I believe that the only
6 subject regarding the Pueblo storage program that
7 is subject to review by the Administration is the
8 question of whether there have been material
9 depletions in violation of Article IV(D) of the
10 Compact; and that, Colorado would agree, is an
11 appropriate subject for investigation by this
12 Administration under Article VIII(H).

13 MR. SIMMS: Could we ask, Mr.
14 Chairman, whether or not House Document 187 in the
15 83rd Congress in 1953, which contains Colorado's
16 comments with respect to the development of the
17 project, did it also include, at Colorado's behest,
18 a reprint of the 1951 resolution?

19 MR. MCDONALD: Richard, I assure, am
20 I correct that you are referring to the letter
21 dated August 7, 1951 to the Secretary of the
22 Interior over the signature of the then Governor of
23 Colorado and Clifford Stone, in his capacity as
24 Director of the Water Conservation Board?

25 MR. SIMMS: I can't answer that



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1 specifically, Bill. I'm just interested in whether
2 or not in the House document there was a reprint,
3 at Colorado's behest, of the '51 resolution.

4 MR. MCDONALD: Not having the House
5 report in front of me, I can't respond yes or no, I
6 am sorry. All I happen to have in front of me at
7 this point in time is this August 7, 1951 letter to
8 which I referred, in which the resolution of the
9 Administration is set forth in its entirety. It is
10 part of Colorado's comment numbered six, at the
11 conclusion of which Colorado notes that, and I
12 quote, "Colorado interprets and understands that
13 paragraph three of the resolution of the Arkansas
14 River Compact Administration is controlled by
15 paragraph four thereof," which I think adds to the
16 comments Ms. Weiss has already made about the
17 understanding, both of Kansas and Colorado
18 Commissioners about what they were doing when they
19 acted in the July, 1951 meeting.

20 MR. SIMMS: I believe in response,
21 Mr. McDonald, that it does clearly appear in House
22 Document 187 that, at Colorado's behest there was a
23 reprint of the resolution, and also comments
24 indicating, as well as material in other parts of
25 that House document, comments indicating that no



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1 reregulation could take place without
2 Administration approval. We agree that in the
3 language of the resolution the word "policy" is
4 used. It was adopted as a policy of the states,
5 but as a policy, as evident from Congressional
6 documents, that was designed to influence decisions
7 of Congress and, in fact, did influence those
8 decisions, and it's upon those decisions that we
9 rest our position in this regard.

10 MS. WEISS: I would only add to that,
11 to the extent that Congress may have relied upon
12 the 1951 resolution, it relied upon the 1951
13 resolution as written with its qualifications and
14 limitations that appeared on its face.

15 MR. SIMMS: I think in response,
16 perhaps it's rhetorical to ask the question, but
17 let me pose it in any event. Can Colorado suggest
18 a reason for the adoption of the resolution in the
19 first place if it was not to influence these
20 Congressional decisions?

21 MS. WEISS: I would simply say that
22 the documents--the resolution was submitted to
23 Congress, it spoke for itself--and it spoke for
24 itself, and Congress relied or didn't rely on what
25 it said.



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1 MR. POPE: Wendy, let me follow up
2 just a little bit on that, also. The resolution,
3 whether it could be argued that it's a policy
4 recommendation or whatever, does clearly refer to
5 the approval, in some context or another, depending
6 on your point of view, of an operating plan. What
7 use would that have--let me ask you this, what does
8 Colorado envision as satisfying, in terms of this
9 resolution? Maybe that's a similar question as to
10 what Richard had raised, if it is not for what
11 we're suggesting?

12 MR. SIMMS: Mr. Chairman, might I add
13 one more remark?

14 VICE CHAIRMAN BENTRUP: Yes.

15 MR. SIMMS: We've indicated the word
16 "policy" is expressly used in the '51 resolution,
17 and also indicated the position of Kansas, that it
18 makes no difference that it was articulated as a
19 policy; but I would like to point out that in the
20 language of the resolution itself, it says that "the
21 reregulation of native waters of the Arkansas River
22 concerns the Arkansas River Compact Administration
23 and both Colorado and Kansas in complying with the
24 provisions of the Arkansas River Compact and
25 maintaining the benefits and obligations of the two



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1 states under that Compact. To that end, it is
2 recommended . . . as a policy," and I'm going to
3 skip a little bit, "that the Gunnison-Arkansas
4 project, Fryingpan-Arkansas project, be approved;"
5 then it says, "provided however"--and here's the
6 exception to that general policy, "that there shall
7 be no reregulation of native waters of the Arkansas
8 River as proposed . . . until such plan of
9 operation, rules, regulations, procedures and
10 agreements in furtherance thereof," and I'm leaving
11 a little out again, has been "approved by the
12 Arkansas River Compact Administration." So even if
13 you try to distinguish the resolution as simply an
14 expression of policy of the Compact Administration,
15 and thus reduce it to something that has nothing
16 more than academic effect, or no effect at all in
17 the real world, that's not what we're talking about
18 in the resolution. What we're talking about in the
19 resolution is the exception to that policy; namely,
20 that the Compact Administration resolved before
21 Congress that there would be no reregulation of
22 native waters until the plan had been approved by
23 the Compact Administration. We've seen nothing to
24 change that.

25 MS. WEISS: I think that the State of



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1 Colorado has stated its position, and that further
2 exchange would be fruitless.

3 VICE CHAIRMAN BENTRUP: Any further
4 comments from Kansas?

5 MR. SIMMS: No, sir.

6 VICE CHAIRMAN BENTRUP: We'll pass on
7 to the next item of the agenda.

8 MR. PRATT: Mr. Chairman, I wonder if--
9 (interrupted)

10 VICE CHAIRMAN BENTRUP: Mr. Pratt?

11 MR. PRATT: If I might speak briefly
12 to this. Mr. Chairman, I'm Kevin Pratt,
13 representing the Southeastern Colorado Water
14 Conservancy District. I am the lead attorney for
15 the winter storage application which has been
16 previously provided to the Compact Administration.
17 I would like to indicate very briefly a couple of
18 points. The first is, we were interested in Mr.
19 Spronk's discussion of engineering today. We had
20 never before heard that information. It was
21 contrary to Mr. Spronk's earlier report, and
22 contrary to the engineering produced earlier with
23 respect to a winter storage program, and we
24 certainly are interested in seeing that report
25 completed and distributed so that we can review and



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1 evaluate it, and we would like to discuss this with
2 those members of Kansas who are concerned with the
3 winter storage arrangement. I would point out one
4 item which I think was left out in Mr. Spronk's
5 engineering, which is of crucial importance. That
6 is, that the winter program has developed over the
7 years, it started out as a test program, one which
8 the entities were seeing if it would work and how
9 it would work, and has been adjusted over time. We
10 have now reached a point where there are accounts
11 in connection with winter storage in John Martin
12 Reservoir, the Arity storage department of
13 approximately twenty thousand--excuse me, the Fort
14 Lyons storage, I believe of an account of
15 approximately twenty thousand acre feet, Las Animas
16 Consolidated, five thousand acre feet, and there is
17 a fifty thousand acre foot claim by the Arity for
18 the Great Plains water into John Martin. That
19 totals roughly seventy-five thousand acre feet of
20 new water put in John Martin, of which thirty-five
21 percent is paid to the State of Kansas under the
22 operating conditions. That provides approximately
23 twenty-five thousand additional acre feet to Kansas
24 in its account in John Martin, and that is one of
25 the facts that we would like to bring to the



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1 attention of Kansas, and that clearly refutes any
2 suggestion of a five thousand acre foot or
3 twenty-five hundred acre foot, or whatever it is,
4 depletion caused by the winter program. Now, we
5 would like, once the engineering has been completed
6 and distributed, to meet and talk over and learn
7 and educate each other about the winter storage
8 program. Thank you.

9 VICE CHAIRMAN BENTRUP: Does anyone
10 have any questions?

11 MR. POPE: Not so much a question at
12 this point as just a comment. I am not sure that
13 it's appropriate to enter into a total dialogue at
14 this point on this particular matter. I appreciate
15 Mr. Pratt's comments, but the thirty-five percent
16 that he mentioned which is the storage charge on
17 the other water stored in the accounts in John
18 Martin Reservoir, I think he referred to that went
19 to Kansas. It really goes to the Kansas transit
20 loss account, which is water that basically is lost
21 between John Martin and the state line. It's
22 really not received by Kansas. The Compact
23 specifies that our waters from John Martin are to
24 be delivered to the state line, so it's not really
25 additional water we are getting beyond what we're



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1 entitled to already from the Compact.

2 MR. MCDONALD: I think there's an
3 exception to that. I don't disagree with as far as
4 you got, including equivalent state line flows, but
5 to the extent water is left over and not used for
6 the transit loss deliveries, it is divided between
7 Colorado and Kansas and that has occurred each of
8 the last five years, if my memory serves me
9 correctly, so in addition to the transit loss the
10 accounting mechanism we now go through, water left
11 over out of that thirty-five percent storage charge,
12 eleven of those thirty-five percentage points go to
13 Kansas, the remaining twenty-four of the
14 thirty-five percent storage--the remaining
15 twenty-four percent of the thirty-five percentage
16 points go to Kansas 67 ditches.

17 MR. POPE: You mean Colorado 67?

18 MR. MCDONALD: Colorado 67 ditches.

19 MR. POPE: Again, I think we all
20 understand how the account system works, and
21 whether or not that system fully accounts for where
22 all the waters ultimately should go and do go is a
23 matter beyond, I think the scope of our discussion
24 right at the moment, but I appreciate your comment.

25 VICE CHAIRMAN BENTRUP: Any other



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1 questions of Mr. Pratt?

2 MR. PRATT: Thank you, Mr. Chairman.

3 VICE CHAIRMAN BENTRUP: We're through
4 then with the discussion of Pueblo Reservoir, I
5 take it. Then the next item is Kansas' position on
6 alluvial well depletions.

7 MR. POPE: Thank you, Mr. Chairman.
8 With regard to the agenda item entitled "Alluvial
9 Well Depletions," Kansas' position consists of
10 three sub-items there. One, Pueblo to John Martin
11 along the main stem, one, John Martin reservoir to
12 the state line, and then thirdly, the tributaries--
13 various tributaries above or below John Martin that
14 are a tributary to the river, itself. In terms of
15 our comments on his particular item, I would
16 indicate that of course, again our correspondence
17 does refer to a number of specific items regarding
18 the administration of ground water in the State of
19 Colorado historically, some of the matters that
20 have been either dealt with or not dealt with, as
21 the case may be, regarding the administration of
22 ground water in Colorado, and how that has impacted
23 the depletion effect of wells and ground water use
24 on flows of the river. In our investigations a
25 number of published studies and reports, of course,



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1 have been reviewed for content, in addition to some
2 of our own analysis. I might specifically refer to
3 those at this time; the first one of which is the
4 1968 so-called Wheeler report, was conducted by W.
5 W. Wheeler and Associates, and Woodward, Clyde and
6 Associates in 1968 for the Colorado Department of
7 Natural Resources. We presume that you are
8 familiar with that particular report, Bill. The
9 essence of my comments here would be that our
10 understanding of the facts determined and the
11 conclusions from that was that there were
12 approximately at that time, fourteen hundred some
13 odd wells in the area along the Ark River, that
14 pumping estimates for the period of 1940 through
15 1965 were obtained from the Colorado Water
16 Conservation Board, and they averaged something for
17 a period of '53 through '65 around a hundred
18 twenty-eight thousand some odd acre feet per year,
19 and that in '64 this was up to about two hundred
20 twenty-seven thousand acre feet. The report went
21 on further to estimate depletions based upon the
22 fact of about eighty percent, basing that figure
23 somewhat on the estimates from the U.S. Geological
24 Survey, and concluding then that the depletions, as
25 a result of the associated well pumpage, was



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1 something in the order of one hundred thousand and
2 three acre feet during the 1953 through 1965 period,
3 and about a hundred eighty-two thousand acre feet
4 in 1964. The report, of course, did not go further
5 in time subsequent to that, as of the date it was
6 published. A second study conducted for the State
7 Engineer in 1975 again indicated between fourteen
8 and fifteen hundred registered wells tapping the
9 alluvium of the Arkansas River Valley between Canon
10 City and the state line, as of about 1972. The
11 report further goes on to quantify the pumpage and
12 the effect of depletions from those wells. Again,
13 the numbers are fairly consistent with the previous
14 study, something in the order of a hundred fifty
15 thousand acre feet in 1972 and upwards of two
16 hundred thousand acre feet, or excuse me, '65
17 through '71, and upwards of two hundred thousand
18 acre feet in 1972. These figures also estimated,
19 or these studies also estimated, something in the
20 order of seventy-five percent depletion effect as a
21 result of that pumpage from the alluvial wells. So
22 again we're talking in terms of something like a
23 hundred twelve thousand acre feet of depletion as a
24 result of the 1965-1972 pumpage average per year,
25 and about a hundred fifty-six thousand acre feet in



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1 1972 of actual depletion. This was based upon
2 various techniques, including double mass analysis
3 and other matters. There was additional work
4 conducted, all of which generally concluded about
5 the same thing in terms of the order of magnitude
6 of the percent depletion as a result of the purpage,
7 even though there were some minor differences, or
8 some differences between the various studies and
9 the various figures. Let me go on to say that
10 based upon the analyses of those and other
11 information, it is pretty clear to us that there's
12 some significant effects of depletion. Our
13 preliminary engineering work that Mr. Spronk
14 provided, I believe indicated something in the
15 order of about forty or fifty thousand acre feet of
16 actual depletion to Kansas, not including--I think
17 I should indicate that those figures did not
18 include, and did not address the effect that would
19 be masked as a result of the unaccounted for return
20 flows or unused return flows from trans-mountain
21 water, of which would be over and above those
22 figures. Let me further comment with regard to
23 this particular agenda item, that it's our position
24 that the current rules and regulations and
25 administration of water rights in Colorado do not



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1 adequately protect the flows of the Ark River, and
2 do not prevent the material depletion of the flows
3 of the Ark River to Kansas. We further feel that
4 the temporary plans for augmentation that have been
5 put in place during the time period following these
6 studies and various litigation and other items in
7 that period of time are not effective. The two
8 specifically that we're aware of that have been
9 mentioned have been the Colorado Water Protective
10 and Development Association augmentation plan above
11 John Martin and the Lower Arkansas Water Management
12 Association augmentation plans that are below John
13 Martin Reservoir. There are additional comments
14 that could be made regarding the way those plans
15 work, I'm sure in terms of the details, but for
16 example, the depletive effect of the augmentation
17 wells themselves in the Lower Ark Water Management
18 Association System are not accounted for,
19 themselves, so we would have some serious problems
20 about the effectiveness of those plans in terms of
21 accounting for the depletive effect of the wells.
22 With that, I believe, Mr. Chairman, that I would
23 ask Mr. Sirms if he has any additional comments as
24 we conclude this particular item on the agenda, as
25 far as our position goes.



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1 MR. SIMMS: I have no additional
2 comments, except to say that our initial
3 engineering studies indicate that the vast majority
4 of the forty to fifty thousand acre feet annually
5 depleted in Colorado as a result of post-Compact
6 development is attributable to alluvial well
7 development. Mr. Pope indicated that that was
8 masked to a certain extent by the unaccounted
9 appearance in the river of return flows,
10 trans-mountain return flows. They amount to
11 something in the neighborhood of thirty thousand
12 acre feet, so that the forty to fifty thousand acre
13 foot figure could be further magnified by that
14 thirty thousand figure.

15 MR. POPE: Our concern there, just to
16 again amplify a little bit more on that, is that we
17 understand there are efforts under way to allow
18 utilization of some of those return flows from the
19 trans-mountain water that again would take those
20 waters out of the system at sometime in the future
21 if those proposals are approved in Colorado.

22 VICE CHAIRMAN BENTRUP: Any other
23 comments, Bill?

24 MR. MCDONALD: I think three things.
25 First of all, again we've had the courtesy of



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1 Brent's February, 1984 preliminary assessment. As
2 additional engineering can be done, that will be
3 available to us with respect to the wells? This,
4 in terms of acre feet, seems to be the most
5 substantial of your concerns, and the engineering,
6 of course, will be important.

7 MR. SIMMS: Mr. McDonald, I right
8 respond by saying that as additional reports are
9 completed in their final form they will, in due
10 course, be made available to the State of Colorado,
11 as they have been in the past.

12 MR. MCDONALD: Has more engineering
13 been done by Brent than is presented in the
14 February, 1984, report?

15 MR. SIMMS: If what you are asking is
16 whether or not there has been any attempt beyond a
17 double mass analysis to determine the cause of
18 depletions that we attribute to well diversions,
19 the answer is no.

20 MR. MCDONALD: One more question, if
21 I might. Is there any other engineering that you
22 have done that you have relied on in making your
23 allegations that is not shown and displayed in that
24 February, 1984 report?

25 MR. SIMMS: I think the answer to



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1 that is also negative, with the qualification that
2 we have relied on the scholarly writings of
3 attorneys from the State of Colorado who have
4 complained of the lack of well regulation in the
5 State, as we have relied upon similar statements
6 made by the Colorado Legislature and the Colorado
7 Courts.

8 MR. MCDONALD: I can almost not
9 resist the temptation to observe that I wouldn't
10 rely on a Colorado attorney to do your engineering
11 for you, Richard, but I won't say that. I think
12 the second thing that Colorado would like to say is
13 this. Clearly, I think from David's comments and
14 from your Attorney General's letter, that is, of
15 course, an allegation by Kansas that there has been
16 a violation of the Compact and there has been
17 material depletions by which I presume David meant
18 a violation of Article IV(D), and we're quite
19 prepared to submit to the investigation called for
20 under Article VIII(H) of that alleged violation of
21 the Compact. We think that allegation is quite
22 amenable to that process.

23 MR. SIMMS: In that regard, Mr.
24 Chairman, it would appear to me that the recent
25 history of the Compact Administration reveals that



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investigation has already, in large part, been undertaken. Mr. Pope?

MR. MCDONALD: Sorry, I don't follow your question, Richard.

MR. POPE: No, I think as we get later on in the agenda we'll have an opportunity to, probably.

MR. MCDONALD: I wonder if we would reserve it then?

MR. POPE: To get into those items probably in more detail.

MR. MCDONALD: The only other comment I would make--and I'm sorry, I don't remember if it was Richard or you, David--but an observation about the alleged masking of the effects that you think you have observed by the trans-mountain return flows. Then there was a further comment that you are concerned, I think was the word, that there are proposals to make use of those return flows. I trust that the record will be clear that Kansas does not think it has, under the Compact, any rights whatsoever to speak to the importation of water from the Colorado River Basin to the Arkansas. Is that what you are saying was, you have now identified, using your figures, forty to fifty



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1 thousand acre feet of material depletion by
2 Colorado wells, you think it might be greater, but
3 you haven't put your finger on it, because those
4 trans-mountain return flows?

5 MR. POPE: I think Richard will
6 comment on that.

7 MR. SIMMS: I think the response to
8 that is, given the forum in which the problem is
9 addressed, one of those forums could end up being
10 the original jurisdiction of the U.S. Supreme Court
11 if there is no definite answer one way or the other
12 in the question. In weighing equities, that Court,
13 in my view, most certainly could consider the
14 utilization of those return flows in order to offset
15 some of the prior depletions caused by the lack of
16 ground water administration in Colorado.

17 MR. MCDONALD: No further comment
18 from us on the wells.

19 VICE CHAIRMAN BENTRUP: Any further
20 comment from Kansas?

21 MR. POPE: There will be no further
22 comment.

23 VICE CHAIRMAN BENTRUP: We're
24 finished with Item C. The next item on the agenda
25 is D, issues amenable to arbitration pursuant to



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1 Article VIII(D) of the Compact.

2 MR. MCDONALD: Carl, I think we
3 inserted a new number eight, so that I can
4 distribute and briefly discuss this letter from the
5 Colorado Compact members.

6 MR. POPE: Yeah, that was hand
7 written.

8 VICE CHAIRMAN BENTRUP: What is the
9 issue? We don't have to look it up.

10 MR. POPE: Well, Bill, if you want to
11 go ahead and explain it, it was basically the
12 concerns raised by Colorado last night or early
13 this morning, but they would also like--
14 (interrupted)

15 VICE CHAIRMAN BENTRUP: That we have?

16 MR. MCDONALD: Yeah. As we have been
17 discussing Kansas' allegations of violations of the
18 Compact, the Colorado members of the Compact
19 Administration in a letter dated March 26th, which
20 was handed to Dave Pope last evening relatively
21 late, have reason and belief to be concerned that
22 there have also been violations of the Arkansas
23 River Compact and specific provisions thereof by
24 the State of Kansas. Many people in the audience
25 already have a copy of this letter. There are more



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1 which I will hand to my staff and put on the end of
2 the table if you would like copies. What you have
3 is without a signature page. All that is missing
4 on that last page are the signature blocks. I
5 simply didn't have three people at the same place
6 at the same time when the letter was signed, and I
7 did not reproduce that page. The Kansas
8 Commissioners do have the complete letter with the
9 signature blocks. I would briefly summarize the
10 letter, and if Kansas would like to respond, that's
11 certainly appropriate as far as we're concerned.
12 There is a provision in the Compact, we've talked
13 about it several times today already, that is
14 Article VIII(H), which--let me pause for a moment
15 please--provides that violations of any of the
16 provisions of the Compact which come to the
17 attention of the Administration shall be promptly
18 investigated by it. We in Colorado have had made
19 available to us the February, 1984 report by Brent
20 Spronk when he was then with the engineering firm
21 of Sirons, Li and Associates. We have, of course,
22 had that report under consideration and we have
23 found it both necessary and appropriate as we have
24 examined that report to look not only at the use
25 and development of the waters of the Arkansas River



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1 by Colorado users, but also to inquire as well into
2 the use and development of the waters of the
3 Arkansas River by Kansas water users. It has come
4 to be our belief that Kansas may have violated at
5 least three provisions of the Compact. We cite
6 those specifically in our letter. They are Roman
7 Numeral IV(D), Article Roman Numeral V(E)2 and
8 Article Roman Numeral V(H). With respect to IV(D),
9 we believe that there have been adverse effects on
10 the flows of the Arkansas River below John Martin
11 dam, on ground water levels in the alluvial aquifer
12 along the Arkansas River in Colorado below John
13 Martin, and on state line deliveries by well
14 development in Kansas, those being material
15 depletions of the waters of the Arkansas River in
16 usable quantity or availability. With respect to
17 Article V(H), we believe that the ditch diversion
18 rights of the Kansas ditches between the state line
19 and Garden City have been increased by well
20 development in the alluvial aquifer and by other
21 practices beyond the total rights of those ditches
22 at the time the Compact was executed. The Compact
23 requires in Article V(H) that such increases are
24 permissible only if the Administration first makes
25 findings of fact with respect to material depletion.



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1 No such findings have been made. The third item
2 relates to Article V(E)2, which is a provision of
3 the Compact that water released from John Martin be
4 put promptly to beneficial use, that storage cannot
5 occur without first obtaining the authorization of
6 the Administration. It is our belief that there
7 have, on certain occasions, been storage of water
8 so released in Lake McKinney, Kansas without the
9 prior authorization of the Administration. In
10 conclusion, we observe that we believe these are
11 alleged violations which are amenable to the
12 investigation process of Article VIII(H), and
13 perhaps that's enough said. That really takes us--
14 unless David, you folks have comments on the letter,
15 that really takes us into the next agenda item.

16 MR. POPE: Richard, I think has some
17 comments, perhaps questions that relate to that.

18 MR. McDONALD: Fine.

19 MR. SIMMS: Mr. Chairman, as
20 indicated by Mr. McDonald, we have not had a great
21 deal of time to review these allegations that were
22 given to us late last night, but we do have some
23 comments as a result of at least our first review
24 of the allegations. There are three allegations.
25 The allegation under Article V(E)2, we think falls



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1 apart, because V(E)2 applies only to water released
2 on concurrent or separate demand, namely
3 conservation water in John Martin and other water
4 that crosses the state line in the river in the
5 winter is Kansas water. The only conceivable issue
6 that we could see arising under Article V(E)2 is
7 that during the summer when conservation water is
8 released from John Martin and the Great Eastern
9 Ditch is in rotation, they have to pass that water
10 through Lake McKinney, and the only question then,
11 in our view, is whether or not there is any
12 appreciable increase in the amount of water stored
13 at that time in Lake McKinney as a result of that
14 pass through. We believe from records available to
15 us that the answer to that question is there has
16 been no appreciable increase. With regard to the
17 Article V(H) allegation, the Compact, in our
18 opinion, prohibition embodied in the Compact in
19 Article V(H) goes to increases in ditch diversion
20 rights. That's the language in the Compact. As a
21 matter of simple fact, there has been none. There
22 has been no increase in ditch diversion rights in
23 the State of Kansas. On the contrary, they have
24 been reduced. Consequently, we think that
25 allegation also falls flat. With regard to the



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1 allegation under Article IV(D), that allegation as
2 we understand it, is that well pumping in the State
3 of Kansas has caused a depletion in usable quantity
4 to users in Colorado. There is only one limited
5 hydrologic circumstance under which that could
6 happen, and that is the circumstance in which,
7 between the state line and the Bear Creek Fault,
8 and narrowed east and west by the breadth of the
9 alluvium, there would have been post-Compact well
10 depletions that would have lowered the water table,
11 and thus increased the gradient to the east of the
12 river, causing the water to come a little quicker,
13 as it were, into the State of Kansas. That has not
14 occurred. As a matter of fact, the water table has
15 fluctuated a little bit--it's about a foot within
16 where it was when the Compact was signed. The
17 gradient has not increased. Consequently, we cannot
18 see as a hydrologic proposition how any well
19 diversions in the State of Kansas could conceivably
20 affect the usable quantity available to the State
21 of Colorado. I would also like to ask Colorado
22 what engineering has been done and what data have
23 been compiled to support the allegations that are
24 made in your letter, and I would also like to ask
25 when will that information be made available to the



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1 State of Kansas?

2 MR. MCDONALD: Richard, there is--well,
3 let me speak first of all to the allegation we make
4 with respect to Article IV(D) and Article V(E)2, to
5 some very large extent revolve around the question
6 of well development in Kansas. We do not have--
7 pardon me, I stand corrected. Let me speak with
8 respect to Article IV(D) and Article V(H), which to
9 some large extent revolve around issues of well
10 development in Kansas. We do not have specific
11 engineering studies for those. These allegations
12 are based on our best belief, observations that can
13 be made visually, common knowledge of ground water
14 experts, but we do not have, and I do not purport
15 that we have in hand, engineering. We are seeking
16 funding at this time from the Colorado General
17 Assembly, as I've indicated to David Pope on
18 several occasions, that would provide us the
19 capacity to do the engineering, both for the things
20 I hope we can get to with respect to Kansas'
21 allegations, as well as with respect to fleshing
22 out the engineering that you rightfully ask of us
23 with respect to our allegations. With respect to
24 our allegation with respect to Article V(E)2, again
25 no specific engineering studies. We have made site



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1 visits and have actually observed storage of water
2 in Lake McKinney. Your explanation in fact may be
3 a satisfactory one. That's the sort of thing I
4 would hope we could explore.

5 MR. POPE: I think just one point of
6 additional clarification to what Richard indicated
7 on that particular item; he did refer specifically
8 to the winter flows, and correctly so. There are
9 occasions even in the summer months when we are not
10 taking deliveries of water from storage from John
11 Martin, or simultaneously with the taking of
12 deliveries, there are native waters from runoff
13 that appear in Kansas, or even above the deliveries
14 taken from there, that there wouldn't be a
15 violation of that condition in our opinion, just a
16 point of clarification.

17 MR. MCDONALD: That answer your
18 question, Richard?

19 VICE CHAIRMAN BENTRUP: On Lake
20 McKinney, I've lived just next to it almost all my
21 life and they've always, since 1908, had the right
22 to store native flows. The only restriction is
23 John Martin water, and I think they've been very
24 careful in observing that provision, and there is
25 never a flow of water that is completely native or



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1 that is completely John Martin. There's always
2 some native water, so there's going to be some
3 mixture of both. I feel they've been very careful
4 in observing that.

5 MR. MCDONALD: I'm glad to have it
6 explained to us, Carl, so we understand. Kind of
7 like rollover, I see it there, and it seems
8 intuitively obvious to me, just as it is
9 intuitively obvious to you with respect to Trinidad.

10 CHAIRMAN COOLEY: Okay, the issues
11 are able to arbitration has become nine, is that
12 right, Mr. Pope?

13 MR. POPE: I think that's correct.

14 MR. MCDONALD: Uh-huh.

15 CHAIRMAN COOLEY: Is that where we
16 are?

17 MR. MCDONALD: Yes.

18 MR. POPE: I believe that's correct

19 CHAIRMAN COOLEY: Okay, who leads off,
20 Mr. Pope?

21 MR. POPE: I think on behalf of the
22 State of Kansas that this particular case
23 especially will be referred to Mr. SIMMS to lead
24 off for us.

25 CHAIRMAN COOLEY: Mr. SIMMS?



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MR. SIMMS: Mr. Chairman, as indicated in the letter of February 26th that went to the Colorado delegation from the Kansas delegation of the Compact Administration, one of the things that we were specifically interested in at this meeting was to determine, as best we could, whether or not certain issues that have been debated over the last few years, and issues that have been more recently raised, are amenable to arbitration pursuant to Article VIII(D) of the Compact. Article VIII(D) of the Compact, in pertinent part reads, "each State shall have but one vote in the Administration and every decision, authorization or other action shall require unanimous vote. In case of a divided vote on any matter within the purview of the Administration, the Administration may, by subsequent unanimous vote, refer the matter for arbitration to the representative of the United States or other arbitrator or arbitrators, in which event the decision made by such arbitrator or arbitrators shall be binding upon the Administration." In comments this morning made in relation to the items that appear on the agenda under Item 7(A) 1, 2 and 3, it was indicated the response of Kansas was the



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1 same with respect to--essentially the same with
 2 respect to each of those iters--pardon me, the
 3 response of Colorado was essentially the same with
 4 respect to each of those iters, and it seems to me
 5 it was twofold; one, that Kansas was ostensibly not
 6 asserting the violation of the Compact, and
 7 consequently it doesn't fall within the embrace of
 8 the Compact, I guess, or it's not a matter that
 9 ought to be addressed now. In the language of the
 10 arbitration language in Article VIII(D) that
 11 provision is limited to matters which come, quote,
 12 "within the purview of the Administration," end
 13 quote, and that is a provision upon which Colorado
 14 has relied in the past to indicate that certain
 15 issues should not be arbitrated. Is it Colorado's
 16 position that the limitation in Article VIII(D)
 17 eliminates from the consideration of this
 18 Administration some of the issues that we have
 19 discussed today?

20 MR. MCDONALD: I'll ask Wendy to
 21 respond.

22 MS. WEISS: Yes, that is our position,
 23 and I'm sure you would like me to be more specific
 24 and address which issues we believe are not
 25 amenable to arbitration. Am I correct?



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1 MR. SIMMS: Yes, we will be more
2 specific.

3 MS. WEISS: As to Trinidad, it's our
4 position that the operating principles of Trinidad
5 and their meaning, and whether they have been
6 complied with, is not a subject--is not a subject
7 within the purview of this Administration and is
8 not subject to arbitration. On the other hand, it
9 is our position that to the extent that Kansas
10 alleges a violation of Article IV(D) of the Compact
11 caused by the operation of Trinidad, that that
12 would be a matter that is amenable to arbitration;
13 however, we believe that first there should be
14 findings of fact, there should be an investigation
15 conducted pursuant to Article VIII(H) of the
16 Compact, and Article VIII(H) provides that when
17 deemed advisable as the result of such
18 investigation the Administration may report its
19 findings and recommendations to the state official
20 who is charged with the administration of water
21 rights for appropriate action. It would be our
22 position that if, at the conclusion of an
23 investigation, Colorado and Kansas were unable to
24 agree on findings and recommendations and there was
25 a divided vote, at that time it would be



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1 appropriate to consider arbitration, but that
 2 arbitration on that issue is premature at this time.
 3 To go on to the second item raised by Kansas, the
 4 Pueblo storage program, it is our position that the
 5 1951 resolution is not a matter on which we would--
 6 on whose meaning we would agree to arbitrate,
 7 although the scope of this Administration's
 8 authority is certainly a matter which the authority
 9 must consider enacting, certainly something that is
 10 within its authority. It's not the ultimate
 11 arbiter of its authority. It is a pure question of
 12 law which Colorado would not be willing to submit
 13 to arbitration concerning. On the other hand,
 14 again to the extent that violations of IV(D) of the
 15 Compact are alleged, that is that the operation of
 16 Pueblo has resulted in material depletions to the
 17 injury of Kansas, Colorado's response would be the
 18 same as to Trinidad, that is that it is appropriate
 19 at this time, and in fact it's required by the
 20 Compact, that the Administration make an
 21 investigation of this alleged violation, and then
 22 the Administration may make findings and
 23 recommendations, and again should the
 24 Administration be divided, that that would be an
 25 appropriate subject on which to consider



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1 arbitration. Finally, regarding well depletions,
2 again there I believe we have a clear factual
3 question. Certainly, it's Colorado's position, I
4 would add by way of footnote, that how Colorado
5 water rights are administered is not within the
6 purview of the Administration, but to the extent
7 that material depletions have been alleged; again,
8 that is something that the Administration is
9 obligated to investigate, and should the
10 Administration be unable to agree, should the
11 representatives of Colorado and Kansas be unable to
12 agree on findings and recommendations, that that
13 would be a fit subject to consider submitting to
14 arbitration. Similarly, I believe that the three
15 allegations that Colorado has made concerning
16 Compact violations are proper subjects for
17 investigation, and indeed, mandatory subjects for
18 investigation under the Compact, and again should
19 there be a divided vote, would be proper subjects
20 to consider submitting to arbitration. Have I
21 answered your question, Mr. SIMMS?

22 MR. SIMMS: I believe so, and let me
23 respond in reverse order. You made reference to
24 article--well, not to the article specifically, but
25 implicitly you made reference to Article VI(A) 1



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1 and 2, which relates to how Colorado water rights
2 are managed internally, and those articles express
3 the integrity of the intrastate management of its--
4 of Colorado's own affairs, in terms of water rights
5 administration. My question in that regard is, do
6 you see any jurisdictional overlap between matters
7 that fall under Article (A) 1 or 2 and arbitration
8 under Article VIII(D)? In other words, does the
9 Compact Administration, through this jurisdictional
10 overlap, share any authority over any of the
11 matters of internal control that would be left to
12 your discretion and judgment as a state under
13 Article VI(A) 1 and 2?

14 MS. WEISS: Mr. Sirms, it appears to
15 me that Article VIII(H) provides that the
16 Administration may report its findings and
17 recommendations to the state official who is
18 charged with the administration of water rights for
19 appropriate action; it being the intent of this
20 Compact that enforcement of its terms shall be
21 accomplished, in general, through the state
22 agencies and officials charged with the
23 administration of water rights. As I read Article
24 VIII(D) it provides that the decision made by the
25 arbitrator, if a matter goes to binding arbitration,



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1 shall be binding upon the Administration. To my
 2 mind, at that point the Administration would be in
 3 the same position it were in had it agreed--had
 4 Colorado and Kansas agreed on findings and
 5 recommendations. That is, the Administration would
 6 then report the findings of the arbitrator to the
 7 state official charged with the administration of
 8 water rights for appropriate action.

9 MR. SIMMS: I may not have--I
 10 probably overburdened my question with rhetoric.
 11 Let me try to shorten it a little bit. Article
 12 VIII(D) is restricted in its own terms to matters
 13 that are within the purview of the Administration.
 14 You have maintained that a number of matters that
 15 we have discussed are within the province and
 16 propriety of the internal administration of the
 17 State of Colorado, pursuant to Article VI(A) 1 or 2.
 18 I'm curious whether there's any overlap between
 19 those two provisions, any overlap between the
 20 purview of the Administration and the internal
 21 management of Colorado's affairs?

22 MS. WEISS: I believe I did
 23 misunderstand your question, Mr. Simms. It is
 24 Colorado's position that as to matters which would
 25 be subject to under Article VI(A) 2, to



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1 administration by Colorado, no, those matters are
2 not within the purview of the Compact
3 Administration. They would not be subjects for
4 investigation under Article VIII(H) for arbitration.
5 I believe that the Compact Administration does not
6 offer an appropriate vehicle for discussing
7 differences that are not within the
8 Administration's authority, that these differences
9 may be discussed and would hopefully be resolvable,
10 but that would be through direct negotiation
11 between the States of Colorado and Kansas, rather
12 than through the Administration.

13 MR. SIMMS: Would it be fair to
14 restate what you have just said, or the first part
15 of it as Article VI(A) 1 and 2 and Article VIII(D)
16 are mutually exclusive articles or provisions in
17 the Compact?

18 MS. WEISS: I would say that that is
19 true. I hesitate, because Article VI(A) 1 and 2
20 are essentially residual clauses that say that
21 those powers--I think I would paraphrase it to say
22 that those powers not expressly conferred on the
23 Administration are reserved to the states, where
24 they have traditionally been reposed, so I would
25 say that those powers not expressly conferred on



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1 the Compact Administration by specific Compact
2 provisions would not be subject to arbitration, and
3 I think by implication, that is the subject--those
4 are the subjects that are reserved to the
5 individual states.

6 MR. SIMMS: The restriction that you
7 have now noted two or three times that appears in
8 Article VIII(D), the restriction of the Compact
9 Administration's authority in that provision to
10 matters that come solely within the purview of the
11 Administration, is that restriction found in
12 Article VIII(H)?

13 MS. WEISS: Article VIII(H) refers to
14 violation of any provision of this Compact or other
15 actions prejudicial thereto which come to the
16 attention of the Administration.

17 MR. SIMMS: As I understand what
18 you've just related, there is no restriction in
19 Article VIII(H) to matters coming within the
20 purview of the Compact so that the two articles
21 don't, in terms of their scope, parallel one
22 another?

23 MS. WEISS: The two articles use
24 different language. I'm not sure that they are, in
25 fact, different in scope or don't parallel each



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other.

MR. SIMMS: Is one of the articles narrowly limited, as you explained a moment ago, and the other not so expressly limited?

MS. WEISS: I think the provisions are consistent, and I don't want to get involved in a semantic wrangle as to which is broader or which is narrower. VIII(H) is limited by its terms to violations of Compact provisions and other actions prejudicial thereto. Clearly, when Compact violations are alleged and investigated, those would be matters, assuming that the matters investigated were properly before the Administration under VIII(H), they would certainly be matters within the purview of the Administration, and in the event of a divided vote, would be proper matters to consider for arbitration.

MR. SIMMS: I think the difference in the language between VIII(D) and VIII(H), as you say, speaks for itself. Let me back up now to the individual items that you discussed, and Colorado's position with respect to each of those items under Article VIII(H). As I understand your position, it is that before anything can be done under Article VIII(D) there must first be an investigation under



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1 VIII(H), which would provide the facts necessary to
2 lead the Administration to a divided vote, and thus
3 trigger the mechanism in Article VIII(D); is that a
4 correct statement of Colorado's position?

5 MS. WEISS: Yes.

6 MR. SIMMS: In speaking of Trinidad
7 Reservoir and Dam, and in particular with regard to
8 the rollover, I believe you indicated that what
9 ought be done first is findings ought to be made--
10 first of all an investigation ought to be
11 undertaken, findings ought to be made, and then
12 conceivably we might move on to arbitration under
13 Article VIII(D). In that regard, did not the
14 Administration make findings and conclusions on
15 September 25, 1980 with respect to the rollover and
16 also make its recommendations pursuant to Article
17 VIII(H), and did not it all end up in a divided
18 vote on a resolution dated January 4, 1982, in
19 which there is specific reference to item IV(D)--
20 Paragraph IV(D) in the Compact?

21 MS. WEISS: Mr. Simms, I'm trying to
22 determine whether we agree with that statement.
23 Could you give us the dates and the actions again?

24 MR. SIMMS: The findings and
25 conclusions of the Administration were made on



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1 September 25, 1980, specifically with regard to the
 2 rollover that occurred then, and the resolution
 3 resulting in a divided vote was offered on January
 4 4, 1982. If you will, I'll read the 1982
 5 resolution upon which there was a divided vote
 6 after this VIII(H) investigation that we're talking
 7 about. It reads--(interrupted)

8 MR. MCDONALD: Could you give us one
 9 minute, Richard? I think I've got the minutes
 10 with me and we'll just get a copy in front of us.
 11 (At this time a short break was taken, after which
 12 the following proceedings were had.)

13 CHAIRMAN COOLEY: Mr. McDonald?

14 MR. MCDONALD: Let me see if I've got
 15 the sequence of events right in terms of what
 16 Richard refers to, and Wendy will respond. There
 17 were the activities of the Administration in 1980,
 18 Richard, but what you are referring to is that
 19 resolution offered at the January 4, 1982 meeting
 20 of the Administration, am I correct?

21 MR. SIMMS: I'm referring to two
 22 different things in sequence to the resolution
 23 concerning Trinidad Reservoir entered the 25th day
 24 of September, 1980, and the attached findings of
 25 fact relative to Trinidad Reservoir, which



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1 specifically are predicated upon Article VIII(H) of
2 the Compact.

3 CHAIRMAN COOLEY: Dated September 25,
4 1980?

5 MR. SIMMS: That's correct.

6 MR. MCDONALD: Right.

7 MR. SIMMS: The second document is
8 the resolution dated January--is it January 4th,
9 1982? That is the resolution which effectively
10 ended the inquiry resulting in the divided vote
11 that we've been discussing under Article VIII(H).

12 MS. WEISS: Mr. Simms, as I
13 understand the sequence of events, the resolution
14 of September 25, 1980 resolved that the Kansas
15 State Engineer confer with the Colorado State
16 Engineer to make further inquiries into the
17 question of whether the waters of the Arkansas
18 River had been materially depleted in usable
19 quantity or availability by operation of the
20 Trinidad project; and in fact, I believe that there
21 were some discussions between the Chief Engineer
22 for Kansas and the State Engineer for Colorado, and
23 in fact, I believe that I have before me a letter
24 of July 29, 1981 to Mr. Gibson from Doctor
25 Danielson in which he addressed the questions of



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1 Mr. Gibson concerning the historic storage
2 practices in Trinidad, responded to them, and
3 concluded that, "based upon the information and
4 their previous discussion it seems to me"--and I'm
5 quoting, "that the issue of injury to water users
6 in Colorado below John Martin Dam and in Kansas as
7 a result of the Trinidad project's operation in
8 1979 and 1980 can be laid to rest." Nonetheless,
9 apparently Kansas was not satisfied, despite
10 whatever representations had been made to Doctor
11 Danielson that certain information would satisfy
12 Kansas, and so the subsequent resolution was
13 proposed and voted down in January of 1982. As I
14 view the resolution, it appears to me that it was
15 not based on any additional investigations by the
16 Administration, and although it does certainly
17 contain reference to Article IV(D) of the Compact
18 it was essentially a resolution based on Kansas'
19 contention that the operating procedures were a,
20 per se, injury to the State of Kansas. In that
21 sense it does not appear to me that there was ever
22 any fact finding process engaged in other than Mr.
23 Gibson's letter to Doctor Danielson and his
24 response on the question of material depletions, so
25 that it does not appear to me from the record, and



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1 I of course, was not counsel for the Colorado
2 representatives at this time, that there was a
3 factual investigation as to the issue of material
4 depletion. I would also note that if there was, it
5 would have occurred before January of '82, and its
6 results would be at least-- at least three years
7 out of date at this time. Based on that, I have
8 serious doubts as to whether the matter is ripe for
9 arbitration at this point, based on that record.
10 However, I will say that because we don't--we have
11 not examined exactly the extent of any other fact
12 finding that might have gone on, I'm only familiar
13 at this point with this letter and this response
14 and the previous 1980 investigation, we would not
15 absolutely close the door on arbitration at this
16 point. It seems to me, based on the record and
17 based on the passage of time, that we would have
18 real doubts as to whether arbitration is
19 appropriate, but I would say we would take it back
20 to Colorado with us and give it further
21 consideration.

22 MR. SIMMS: I think in response, it
23 is clear by the terms of both of the instruments to
24 which we have referred just what was intended to
25 have been accomplished, and what was accomplished



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1 in the findings made mutually by the State of
2 Colorado and the State of Kansas. In the findings
3 dated September 25, 1980 under Paragraph 10 the
4 following appears. Let me read it, if you will,
5 "that eighteen thousand two hundred ninety acre
6 feet of water was stored by the Purgatoire Water
7 Conservancy District under the Model storage right
8 in Trinidad Reservoir in priority between April 15,
9 1979 and September 28, 1979, that the Purgatoire
10 Water Conservancy District Board transferred this
11 amount of water into the joint use pool of Trinidad
12 Reservoir by resolution on September 28, 1979,
13 thereby leaving the model reservoir or model
14 storage account empty, and that this water was
15 still physically located behind Trinidad Dam on
16 June 30, 1980." 10(B) relates to the following
17 year and reads, "that twenty thousand acre feet of
18 water stored by the district under the Model
19 storage right in Trinidad Reservoir was stored"--
20 pardon me--"by the district under the Model storage
21 reservoir right in Trinidad Reservoir in priority
22 during the period April 16, 1980 through May 17,
23 1980. This water was physically stored behind
24 Trinidad Dam and in the Model storage account as of
25 June 30, 1980." Then the resolution which



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1 expresses the divided vote of the Compact
2 Administration, the resolution of January 4, 1982
3 reads as follows. "Whereas the Arkansas River
4 Compact Administration has reviewed reports and the
5 findings of fact relative to Trinidad Reservoir
6 adopted by the Administration September 25, 1980,
7 now therefore be it resolved, that the
8 Administration finds that Article IV(D) of the
9 Compact," material depletion article, "and
10 condition three of the Kansas amendments to the
11 operation principles, Trinidad Dam and Reservoir
12 project, were violated when the State Engineer
13 allowed the district," in parentheses (Trinidad),
14 "to store eighteen thousand two hundred ninety acre
15 feet of water in Trinidad Reservoir during the
16 water year 1979 under authority of the Model
17 storage right, and to store twenty thousand acre
18 feet during the water year 1980 under the Model
19 storage right behind Trinidad Dam without
20 physically moving eighteen thousand two hundred
21 ninety acre feet stored in '79 under the Model
22 right from behind Trinidad Dam. Be it further
23 resolved, that the Administration requests that the
24 State Engineer of Colorado immediately order the
25 release of all waters in excess of the six thousand



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1 two hundred acre feet which is stored in the Model
2 account and prohibit the district from emptying the
3 account by any method other than physically moving
4 the water from behind Trinidad Dam; further, that
5 the State Engineer protect such releases from
6 diversion until the water is impounded in John
7 Martin Reservoir." That motion failed, with Kansas
8 voting yes and Colorado voting no. Between the two
9 instruments, there is express reference and
10 reliance upon the mechanism that you have described
11 in Article VIII(H). There were also the findings
12 of fact that the Administration's authority
13 consists of in Article VIII(H), that is its
14 authority is limited to matters of fact by the
15 express terms of Article VIII(H). There was also
16 embodied in the resolution the recommendation which
17 is the only coercive force coming out of Provision
18 VIII(H). There is nothing other than that
19 recommendation that can be accomplished through
20 that procedure. The express reliance, in other
21 words, all of the findings and the divided vote, as
22 well as the subsequent recommendation, have all
23 been accomplished, at least in relation to what was
24 done up to the date of this resolution. In that
25 regard, is Colorado now in a position to arbitrate



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questions relating to the rollover of water in
Trinidad Reservoir?

MS. WEISS: Mr. Simms, as I read the
resolution of 1980 it resolved or recommended that
the Kansas and Colorado State Engineer confer to
make further inquiries, and I then have before me
Doctor Danielson's July 29th letter, July 29, 1981
letter to Mr. Gibson, and I would like to quote
several passages that I believe are relevant. "Dear
Mr. Gibson, this letter is to confirm the
discussion that you and I had in Topeka on July 1st,
1981 with respect to the operation of Trinidad
Reservoir during 1979 and 1980. The meeting was
held as a result of a resolution passed by the
Arkansas River Compact Administration on September
25, 1980, which so recommended. During the
discussion you stated to me that if Colorado could
demonstrate that the model reservoir and ditch
right had historically diverted more than
thirty-eight thousand acre feet in any two year
period, that the concern by Kansas over the 1979
and 1980 operations would be satisfactorily
addressed and that the issue would be dropped. I
agreed to review the historic record as you
requested and to provide you with such," and then



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1 I'm skipping on to the next paragraph. "As you can
2 see from Attachment A there were six years when the
3 total two year diversion by the model right
4 exceeded thirty-eight thousand acre feet. The
5 range was from thirty-nine thousand acre feet to
6 forty-three thousand four hundred acre feet.
7 Further examination indicates that total two year
8 diversions exceeded thirty thousand acre feet in
9 each of ten years, and exceeded twenty thousand
10 acre feet in each of twenty years. Based upon the
11 historic record it is clear that the combined
12 diversion or storage of thirty-eight thousand two
13 hundred ninety acre feet in 1979 and 1980 was not
14 enormous or questionable in any way, but occurred
15 in fact, in six previous two year periods. I would
16 point out also that the record indicates six years
17 when one year diversions exceeded twenty thousand
18 acre feet and in fact, ranged from twenty thousand
19 two hundred acre feet to thirty thousand one
20 hundred acre feet per year. This event could not
21 occur now, of course, since the model decree has
22 been limited to a maximum of twenty thousand acre
23 feet per year unless John Martin reservoir should
24 spill. Based upon this information and our
25 discussion it seems that the issue of injury to



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1 water users in Kansas below John Martin Dam--to
2 water users in Colorado below John Martin Dam--and
3 in Kansas, as a result of the Trinidad project
4 operation in 1979 and 1980 can be laid to rest."
5 The demonstrated facts here, combined with the
6 provisions of the transfer decree for the model
7 water right clearly provide adequate protection to
8 downstream users. I know of no further
9 investigations or no further facts presented by
10 Kansas between the time of Doctor Danielson's
11 letter and the time that this January, 1982
12 resolution was voted down. Based on that, I think
13 that the State of Colorado has serious questions as
14 to whether Kansas contributed to any type of
15 meaningful fact finding investigation. Certainly,
16 Colorado, as per the September 25, 1980 resolution,
17 cooperated with Kansas and sought to lay the facts
18 on the table so there could be investigation of
19 facts, but I'm not aware that Kansas presented any
20 additional information to demonstrate that material
21 depletions had occurred. Based on that I have
22 serious questions as to whether this issue is ripe
23 for arbitration. However, as I said, I have not
24 reviewed the full record and all the minutes and
25 communications during that period of several years,



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1 so I think that further review may be in order.

2 MR. SIMMS: There was additional
3 discussion of the subject on August 6, 1981. That
4 discussion was concluded by tabling the matter
5 until January 4, 1982, when it was again discussed
6 and when this resolution was brought up by Mr.
7 Gibson. In reference to the letter from Doctor
8 Danielson, Mr. Gibson realized on December 14, 1982
9 that what he had asked for from Doctor Danielson
10 would not be an adequate or fair or reasonable way
11 of assessing the problem, and as a consequence, he
12 retracted or retreated from the position that he
13 had stated to Doctor Danielson, and that appears in
14 the minutes of December 14, 1982. Doctor
15 Danielson's figures, in short, are not telling at
16 all, because they include direct flows, as well as
17 water stored, and there is no way to reach any kind
18 of conclusion, especially those conclusions that
19 Doctor Danielson sought to posit from what was
20 contained in the letter that you read into the
21 record. By contrast, as a matter of fact, the
22 amount of water diverted for storage in model
23 reservoir in any one year never exceeded ten
24 thousand nine hundred acre feet, and in addition,
25 the maximum recorded contents of model reservoir



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1 during that time period never exceeded sixteen
2 thousand three hundred forty-eight acre feet.
3 That's the period between 1925 and 1957. So I
4 think what we're trying to suggest is that insofar
5 as the documents, themselves, reveal that these
6 matters were indeed investigated under VIII(H),
7 that they resulted in a divided vote, the very
8 mechanism that you, I believe are now suggesting be
9 followed in relation to this rollover problem.
10 That mechanism was followed, it ended, as you point
11 out, with a recommendation pursuant to VIII(H),
12 that the State Engineers from Colorado and Kansas
13 make further inquiries into the matter. Well, they
14 discussed it through 1932 and didn't get very far,
15 which I think tells you something about the
16 efficacy or the effectiveness of the provision for
17 recommendation under Article VIII(H); that is, it
18 can often lead nowhere and do nothing more than
19 consume time. In any event, it is Kansas' position
20 that with respect to the rollover, insofar as
21 findings were, in fact made, the procedure that you
22 mentioned has been complied with and that
23 arbitration, from your perspective, ought be ripe.

24 MS. WEISS: May I inquire into a few
25 matters? You quoted some numbers to me that you



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1 say supported Kansas' Chief Engineer's decision to
2 recant on his earlier position. Where did those
3 numbers come from?

4 MR. SIMMS: The numbers I used a
5 moment ago come from Mr. Spronk's report that you
6 have entitled, preliminary assessment of--
7 (interrupted)

8 MS. WEISS: Those numbers then are
9 from a 1984 report, is that correct?

10 MR. SIMMS: That's correct.

11 MS. WEISS: Were those numbers--I
12 assure then those numbers could not have been
13 presented to the Commission between the time of
14 Doctor Danielson's letter and the time that Mr.
15 Gibson decided to retreat from his earlier position,
16 is that correct?

17 MR. SIMMS: The numbers were taken
18 directly out of the Bureau studies from 1925 to
19 1957, and were available at the time.

20 MS. WEISS: At the time between
21 Doctor Danielson's letter and Kansas' decision to
22 retreat from or recant its earlier position, and
23 its proposal of the January, 1932 resolution, did
24 Kansas come forward with facts such as those, for
25 the Administration to put before it in a fact



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1 finding process?

2 MR. SIMMS: There was a continuing
3 exchange. Kansas, at one point requested more
4 facts from the State of Colorado. Those facts were
5 not delivered. What you ended up with, as I
6 indicated earlier, is the recommendation, after
7 having gone through the VIII(H) procedure, a
8 recommendation that works rather like NEPA does, it
9 has procedural ramifications and no substantive
10 ones. It led to nowhere in this case.

11 MS. WEISS: Mr. Simms, we have not
12 previously considered these resolutions, and
13 rejected resolutions over a period of the past five
14 years and whether they would pave the way for
15 arbitration at this point, and we will take that
16 suggestion into consideration and determine whether
17 we think the issue is ripe for arbitration, but I
18 think it's Colorado's position that evidentiary
19 investigations--excuse me, that investigations made
20 pursuant to Article VIII(H) need to be good faith,
21 in-depth investigations, not simply a series of
22 cross allegations; that there needs to be a real,
23 in fact investigation, before it's appropriate to
24 say "no, Kansas and Colorado cannot agree," and the
25 issue is then appropriate to consider arbitration.



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1 Without reviewing the record more fully, I wouldn't
2 want to commit or comment as to whether that kind
3 of good faith factual investigation occurred, but I
4 think we would have to look at it more closely.

5 CHAIRMAN COOLEY: I have a question
6 for Mr. Simms. Assuming a water dispute on the
7 Arkansas River were outside of the purview of the
8 Compact completely, what methods or procedures are
9 open for resolution of such a dispute between
10 Colorado and Kansas other than arbitration, and
11 failing arbitration, the original jurisdiction of
12 the Supreme Court, if any?

13 MR. SIMMS: None, as far as I can
14 tell.

15 CHAIRMAN COOLEY: Do you have any
16 comment on my question?

17 MS. WEISS: I don't think there are
18 formal mechanisms. I think that the states of
19 Kansas and Colorado certainly can negotiate, and
20 Colorado has expressed its willingness to negotiate
21 concerning all matters, including those not within
22 the purview of the Administration. We certainly
23 are open and ready, willing and able to do that.

24 MR. MCDONALD: Frank, I would like to
25 emphasize that I think in the exchange of



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correspondence between the Attorney Generals of the two states, the Colorado Attorney Generals, previously Mr. McFarland, now Mr. Woodard, have said over and over again that Colorado was prepared, as sovereign state to sovereign state for those matters that are beyond the purview of the Administration, to negotiate and discuss. We have awaited the assertion of facts by Kansas that would make such discussions fruitful. We asked when Brent's February, '84 report was made available to us if Kansas was then ready to have those discussions and the answer was "no, we wish to do more engineering," and we have always had the understanding that pending completion of that engineering by Kansas--when it was comfortable with, when it wanted to proceed and where it wanted to proceed--that the Attorney General of Colorado was available, but awaiting Kansas' signal that it wished to discuss. And it seems to me that what we're about today is finding those things that might be within the purview of the Administration to discuss through the process of the investigative procedure of Article VIII(H), and for those things that are not found to be so within the scope of Article VIII(H) I want the record to be very clear



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1 that Colorado, through its Attorney General, as a
2 sovereign state, is quite prepared in a different
3 forum, to sit down directly with Kansas and talk
4 about any concerns Kansas may have.

5 CHAIRMAN COOLEY: Well, it appears to
6 me that two different doors have been left ajar, to
7 say the least, by your remarks; and the problem, as
8 I perceive it, over a period of several years is
9 that the process has many actors, some of whom are
10 not here, and is subject to delays that can only
11 exacerbate the problems further; that it would be
12 desirable that at sometime in this proceeding both
13 of the doors which are ajar be explored, but
14 particularly that concern be given by both states
15 to questions not only of procedure and negotiation,
16 but especially to questions of time for these
17 explorations. I think it would be appropriate if I
18 would afford both states a short period of time to
19 comment on my remarks, and then we try to go back
20 more into the formal agenda. Mr. SIMMS.

21 MR. SIMMS: Well, I would comment
22 generally, Mr. Chairman, by indicating that I think
23 your remarks are most appropriate. Colorado finds
24 itself in the envious position of being the
25 upstream state, and time works to its benefit,



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1 obviously, as it has for example, during the
2 developrent of ground water depletion, that has
3 ended up with perhaps fifty to sixty thousand acre
4 foot of depletion of usable waters at the state
5 line, water that we feel ought be in Kansas and
6 made available to users there. We have just been
7 discussing in relation to one particular issue, the
8 rollover issue in Trinidad Reservoir, this newly
9 suggested VIII(D) or VIII(H) procedure on the part
10 of Colorado; Kansas has tried to indicate that we
11 have effectively gone through that procedure, at
12 least as to the issues expressly addressed in the
13 findings made by the Compact Administration, and
14 further, that recommendations have been made and
15 that they have led essentially to where we are
16 today, still discussing the problem. Article
17 VIII(H) says that violations of the Compact shall
18 be promptly investigated by the Compact
19 Administration. Do I understand Colorado's
20 position in relation to this particular issue, they
21 are not certain whether there has been any
22 investigation so far, notwithstanding the findings
23 and notwithstanding the divided vote and the
24 recommendation, and further, that we now need to
25 investigate for perhaps another five years? Kansas



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does not want to keep on investigating while we are being forced to accept the proposition that less is more in terms of water.

MR. MCDONALD: Richard, I guess I would respond to Richard, not you, Frank; you have given or you have expressed an argument with respect to how to view the sequence of events between 1980 and January of 1982 with respect to the allegation that the rollover storage in Trinidad is a violation of Article IV(D). That is an argument of first impression to me, I simply have not thought of it. I'm not prepared to say yes, nor am I prepared to say no today. I can commit to you we will give you a specific answer to your point of view within the next few weeks. I think you will have to agree you have gotten a specific answer on everything else today. If I anticipated, I prepared an answer. I did not anticipate that argument, and I'm not prepared to answer it today, but I certainly will get you an answer within the next few weeks. Our Attorney General has yet to respond to your Attorney General, and that is being prepared, and we can respond in that context.

MR. SIMMS: Let me ask this question.



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1 We aren't at that point on the agenda yet where
2 Kansas and Colorado are going to propose some
3 action to resolve some of these issues, but what of
4 the provision in Article VIII(H)--and I must
5 preface my question and my remarks by saying that
6 we don't think that Article VIII(H) and VIII(D) are
7 parallel articles. One is expressly restricted and
8 very narrow, and the other flies off in an entirely
9 different direction, so the Compact is not
10 contemplated that you do something under VIII(H)
11 first and then plug yourself into VIII(D). They
12 are conceptually different provisions, but with
13 that preface, and assuring that Kansas were
14 amenable to treating some of these issues that we
15 have discussed today under Article VIII(H), what
16 does the term promptly investigate mean to Colorado
17 in terms of time frame?

18 MR. MCDONALD: Richard, I think time
19 frame will be a function of the specific issue that
20 Kansas is prepared to allege in the context of the
21 Compact violation, and bring to an Article VIII(H)
22 investigation. Could I suggest that we finish our
23 soliloquy issue at a time so we can find out which
24 ones we may or may not be willing to put into the
25 VIII(H) process, then I will respond to your



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1 question with respect to each of those issues.

2 CHAIRMAN COOLEY: I would comment
3 that I think it's clear from the findings of 1980
4 that these matters have been pursued by both states
5 in the past, and I would presume they would be so
6 in the future. Do you agree that it's appropriate
7 now to proceed on the agenda?

8 MR. SIMMS: Yes, Mr. Chairman.
9 Assuming that this issue we've been discussing, the
10 rollover in Trinidad Reservoir were somehow an
11 issue that might get replugged into VIII(H), what
12 kind of facts, in Colorado's opinion, would have to
13 be discovered beyond the amounts of water that have
14 been rolled over in previous years?

15 MS. WEISS: I think that the facts
16 that would have to be demonstrated are facts that
17 would show a violation of IV(B) of the Compact--
18 excuse me, of IV(D) of the Compact, that is that
19 the waters of the Arkansas River have been
20 materially depleted in usable quantity or
21 availability for use to the water users in Kansas.

22 MR. SIMMS: Let me put the question
23 this way. If that issue were before a Court that
24 could consider all of the applicable federal law,
25 would anything have to be known beyond the amount



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1 of water that was rolled over in recent years? Let
2 me further suggest that we know of no such facts
3 that would be needed to be ascertained.

4 MS. WEISS: I think that numerous
5 other facts would have to be known. I, in some
6 ways, regret that our State Engineer is not able to
7 be here today. He's at another Compact meeting, in
8 fact, because he certainly is better able than I to
9 discuss the numerous facts that would have to be
10 known, both as to the historic pre-Compact regimen
11 on the stream, and also as to the effect that
12 Trinidad has had since the Compact was enacted. I
13 think there are a myriad of facts that would need
14 to be investigated.

15 MR. SIMMS: Could we have any
16 indication, even categorically, of what those kinds
17 of facts might be?

18 MS. WEISS: Let me correct my
19 statement, by the way. I said pre- and post-Compact.
20 Mr. McDonald has called to my attention, it's
21 actually pre- and post-project, the completion of
22 John Martin. Excuse me, did you ask another
23 question? I am afraid I missed it.

24 MR. SIMMS: If these facts could not
25 be specifically identified, I wonder if we might



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1 know what kinds of facts Colorado believes are in
2 need of some investigation as a categorical matter--
3 I mean, what categories of facts are there that
4 would apply to the legal resolution of this issue?
5 Again, we see none except the amount of water
6 unlawfully impounded behind the dam.

7 MS. WEISS: Let me defer to Mr.
8 McDonald.

9 MR. MCDONALD: Richard, it seems to
10 me there's a number of kinds of facts that need to
11 be examined before one can determine whether waters
12 of the Arkansas have been materially depleted in
13 usable quantity or availability. That standard is
14 quite clearly pegged to the observation in Article
15 IV(D) that the Compact is not intended to prevent
16 or impede future beneficial development, and so one
17 has got to ascertain prior to the implementation of
18 any such future beneficial development what the
19 conditions under the Compact were. That would
20 require a vast amount of data I think, about, in
21 the case of Trinidad, the conditions on the
22 Purgatoire River prior to Trinidad going into place,
23 what historic diversion and storage practices had
24 been, what the consequences in terms of inflow to
25 John Martin were, and all the related information,



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1 so that you can measure new practices against the
2 question of whether the river is any different than
3 it used to be. Merely saying that we had a couple
4 of storage events in Trinidad, which are not in
5 dispute--there is an agreed upon description of
6 what was stored in Trinidad--in no way addressed
7 the question of whether that materially depleted
8 the waters of the Arkansas River. That was merely
9 a bald assertion that two storage events took place.
10 There's many more facts that establish the
11 measurement, the yard stick by which material
12 depletion will have to be discovered.

13 MR. POPE: Bill, weren't the studies
14 that were conducted by the Bureau pre-project that
15 outlined the way the project would be proposed and
16 be operated, and the operation principles that were
17 developed regarding the operation of the project
18 intended to do that very thing, to determine what
19 the effect would be, and to insure that the future
20 operation would not result in material depletion or
21 other adverse effects? And all of those very
22 things were done to do exactly what you just said,
23 and that's why I again wanted to follow that up,
24 that we feel there's a clear concern there that
25 needs no further argument other than the issue, the



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legal issue of rollover.

MR. MCDONALD: For the sake of argurent, let me agree with you, David, but I think the point is that that demonstrated one way in which Trinidad could be operated and not materially deplete the waters of the Arkansas River. It was not dispositive of whether there are other ways that Trinidad could be operated and also be in compliance with the Compact.

MR. SIMMS: It would seem to me that the project operation studies were designed with the concept to provide precisely the information that you are suggesting need be obtained now. Given this discussion, is there any idea of the time frame that might be needed with regard to this particular issue?

MR. MCDONALD: Let me be sure I get the question, Richard. You are asking over what period of time will Colorado respond to your question to us, is rollover, as an alleged violation of the Compact, ripe for arbitration? I'm sorry, I wasn't listening.

MR. SIMMS: From the discussion we've just had, do you have any idea--can you get any handle on what kind of time frame Colorado would



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1 need to quote, "promptly investigate," end quote
2 your VIII(H)?

3 MR. MCDONALD: Richard, I can't say
4 one year versus one year, two and a half weeks, but
5 I think we can candidly say, and it's no surprise
6 to you or anybody else, that something this
7 complicated is not a matter when promptly pursued
8 that will be done in weeks. It will be a matter of
9 months to perform that kind of investigation. I
10 don't think there's any doubt about it, for this
11 Administration to perform that kind of
12 investigation. By the time we go back and forth
13 with our respective engineers' data and necessary
14 discussions, it's bound to take a matter of months.

15 CHAIRMAN COOLEY: I think that the
16 records, in fact, of investigations done under the
17 Compact demonstrated good faith progress in the
18 past when that chore has been undertaken. I
19 suspect we've ridden this horse about far enough.
20 Unless you have some other matters on the subject I
21 wonder if we could pass on to the next point.

22 MR. SIMMS: No. I would only comment,
23 I think it's unfortunate that Doctor Danielson
24 couldn't be here, but perhaps it's no small
25 coincidence that he is attending a meeting of the



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1 Rio Grande Compact, where the City of El Paso is
2 trying desperately to suck out from under the
3 ground waters that would ultimately have the effect
4 of depleting surface flows of that river to the
5 tune of about three hundred thousand acre feet a
6 year, the problem not unlike the one Colorado has
7 tried to address with regard to the alluvial wells
8 between Pueblo and John Martin.

9 CHAIRMAN COOLEY: We're competing
10 against a very good show, and we've lost a number
11 of people thereby. The next item?

12 MR. SIMMS: Mr. Chairman?

13 CHAIRMAN COOLEY: Yes.

14 MR. SIMMS: Trying to speed things up
15 somewhat, let me ask if the general tenor of
16 Colorado's response with regard to the question of
17 time frame under Article VIII(H) is the same with
18 respect to the accounting of winter direct flows in
19 Trinidad, as well as other aspects of the project
20 accounting, including the excess diversions, or
21 diversions in excess of diversion requirements that
22 Mr. Spronk spoke about this morning?

23 CHAIRMAN COOLEY: Mr. McDonald?

24 MR. MCDONALD: Richard, before I
25 respond, let me clarify something. You've



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1 obviously taken the position that the Article
 2 VIII(H) procedure has occurred, and there has been
 3 a divided vote insofar as rollover is an alleged
 4 violation of the Compact. I take it you are not
 5 saying that with respect to your other two points
 6 on Trinidad there has ever been an Article VIII(H)
 7 investigation?

8 MR. SIMMS: No, we are not.

9 MR. MCDONALD: So to answer your
 10 question, yes, the general tenor of my response
 11 would be the same. I view those as all factually
 12 complicated issues that are not disposed of in a
 13 matter of weeks; it will be a matter of months, and
 14 exactly how long is, in the first instance, I think
 15 a function of Kansas coming forward with its
 16 engineering, number one; and number two, the
 17 availability of funding to the State of Colorado by
 18 our General Assembly, which as you know, we have
 19 now requested, it has been approved by our joint
 20 budget committee, has yet to go through the House
 21 and the Senate.

22 MR. SIMMS: If the response then is
 23 the same, or the general tenor of your response in
 24 our discussion over rollover is the same, are you
 25 talking months individually for these issues, or



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1 collectively? Do the months turn into years when
2 we end up with five or six issues, or as you
3 perceive the term, "promptly investigate" under
4 VIII(H) could we enter, assuming there were no
5 other legal constraints preventing us from entering
6 the mechanism of investigation under VIII(H), and
7 get done with it in a period of months?

8 MR. MCDONALD: You know, I just don't
9 think there's a way I can commit to it being done
10 in any particular time. That will depend on the
11 complexity of the issues, and as I've said, who
12 puts forward what when, I think. I think I can
13 commit, assuming the support of our General
14 Asserby for funding, that we will proceed in good
15 faith as absolutely as quickly as we can, I think
16 as was demonstrated in 1980 when we made all the
17 necessary special trips and whatever else was
18 required to confer with the then State Engineer of
19 Kansas and his staff and his attorneys, to come up
20 with those findings of facts that I think were
21 produced in the course of about four months, with
22 no delay whatsoever. I simply can't commit to it
23 being, you know, for sure less than two years, for
24 example, because that would remain to be seen. We
25 will proceed in good faith.



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1 MR. SIMMS: Just one other question
2 and I think we can get into the proposed action
3 part of the agenda, which is really the rest of
4 this discussion. Excuse me just a minute. Bill, if
5 a particular issue were in all respects amenable to
6 investigation pursuant to Article VIII(H), that is,
7 there were no legal problems with it and it was
8 within the purview of the Administration, as
9 opposed to something a Court ought to be addressing,
10 would that automatically lead Colorado to
11 arbitration, or would Colorado take the view then
12 that arbitration is triggered not as a result of
13 that investigation, but rather by an exercise of
14 discretion on the part of each state in a vote to
15 determine whether or not to arbitrate the matters
16 that were previously investigated under VIII(H).

17 MR. MCDONALD: The latter clearly.
18 We think it would take the investigation with a
19 split vote on proposed findings and recommendations,
20 that being a divided vote. You shift over to
21 Article VIII(D), and at that point the states vote
22 again, and have to vote unanimously to go into
23 arbitration--discretionary.

24 MR. SIMMS: One other question, is it
25 Colorado's opinion that any kind of violation, no



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1 matter what it is, of the Compact, no matter what
2 the allegation might be, can be investigated
3 pursuant to VIII(H)?

4 MR. MCDONALD: Mr. Chairman, I take
5 five minute breaks on occasions like these, if
6 that's okay. I seriously do need a five minute
7 break to think, and to do other things.

8 CHAIRMAN COOLEY: The question
9 apparently was a hot one. We'll take a five minute
10 break.

11 (At this time a short recess was taken, after which
12 the following proceedings were had.)

13 CHAIRMAN COOLEY: The meeting will be
14 in order. Bill, it seemed like a simple enough
15 question to me. Would you like to answer it now?

16 MR. MCDONALD: Sure. Simple
17 questions should have simple answers. It seems to
18 me it's a hypothetical question on
19 cross-examination, and I don't respond to
20 hypothetical questions, and I cannot hypothesize,
21 Richard, all of the conceivable violations of the
22 Compact, and would be reluctant obviously, to bind
23 myself, but I would think, as a general proposition,
24 you know, not knowing what the hypothetical
25 circumstances might be, Article VIII(H) would



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1 trigger the investigation for an alleged violation
2 of the Compact under any circumstances, and if
3 findings came to a divided vote, then discretionary
4 arbitration could be considered under Article
5 VIII(D), but again, hypothetical question,
6 hypothetical answer.

7 MR. SIMMS: Let me ask it
8 specifically.

9 MR. MCDONALD: That's better.

10 MR. SIMMS: If the question of
11 whether or not Congress and the Bureau had in mind
12 the rollover of water from a sediment pool into the
13 joint use pool were brought before the
14 Administration, as you might propose under Article
15 VIII(H), could the Administration treat that legal
16 issue?

17 MR. MCDONALD: I think we've answered
18 it, Richard. Wendy answered it--let me say it
19 again, that the operation of Trinidad Reservoir
20 need be in compliance with Article VIII(D), but
21 your allegations--that it is, that operations are
22 not as contemplated by the Bureau's reports, all
23 that legislative history, the authorizing act, the
24 operating principles--are to us issues of federal
25 law, they are not allegations that the Compact has



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been violated, and as issues of federal law, don't fall within VIII(H).

MR. SIMMS: Well, I understand your position then clearly to be that as it was before expressed in letters from your Attorney General, that issues, legal issues--then it was legal issues and mixed questions of law and fact, did not fall within the embrace or authority of the Compact Administration. Now, at least clearly legal issues do not fall within the authority of the Administration?

MR. MCDONALD: Yeah, two things. I don't think that's what I just said. I think I said it was an issue. I think your allegations, in part, are allegations that there has been a violation of federal law. I choose not to argue with those one way or the other today, but to the extent that is the allegation, it is not for this Administration under Article VIII(H) or any other provision of the Compact to go through any kind of procedure to make a conclusion as to whether there has been a violation of federal law or not. Secondly, I don't think that's what our Attorney General's letter said. I think the Attorney General was responding to the question of what



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matters are suitable for arbitration, and I think the observation was only those matters within the purview of the Administration. And secondly, at the time the position was taken, with respect to the mixed facts and law and pure law, that Colorado thought some things were appropriate for arbitration as a matter of resolution, and others were not, even though all could be under the Compact.

MR. SIMMS: If the question of the rollover, as an example, and to continue with that specifically, could be addressed as an issue of law by a Court having appropriate jurisdiction, would any investigation that you proposed then under VIII(H) interfere with the ability of the Court to entertain those questions?

MS. WEISS: We're not prepared to answer that question at this time.

MR. SIMMS: Would it be fair to conclude that if an investigation pursuant to VIII(H) were undertaken on matters that didn't relate to the information needed to resolve a question in a Court of law that that investigation would not interfere with the prosecution of such a case?



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MS. WEISS: We're not prepared to respond. We would have to consider the facts at the time.

CHAIRMAN COOLEY: Is it possible that we can turn from Trinidad to the Pueblo questions, or have they been treated generically?

MR. SIMMS: I think, Mr. Chairman, they have been treated generically. That's sufficient.

CHAIRMAN COOLEY: Is that also true as far as alluvial well depletions are concerned?

MR. SIMMS: I believe so, Mr. Chairman.

CHAIRMAN COOLEY: If that is the case, Mr. McDonald, are we--I'll hold on for a minute.

MR. POPE: Mr. Chairman, I think probably what that leads us to is proposed actions.

CHAIRMAN COOLEY: That's about where I'm at, David, and I want to see if Bill is at that point.

MR. MCDONALD: One moment, please. Frank, we're prepared to deal with the question of proposed action, and would like to make a specific proposal in that regard.

CHAIRMAN COOLEY: I think both states--



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1 (interrupted)

2 MR. MCDONALD: David pay well, too.

3 CHAIRMAN COOLEY: (continuing)--are
4 at the same point. I overheard at breakfast that
5 he has five proposed actions, and you only have one.
6 I've been inclined to tilt a little to Colorado
7 with respect to who to recognize at this point.
8 Mr. McDonald?

9 MR. POPE: Mr. Chairman, let me just
10 indicate that while I appreciate the fact, and
11 understand that Bill has a resolution, and we're
12 willing to consider that in due time, we think the
13 primary purpose of this was originally to consider
14 the Kansas concerns regarding violations of the
15 Compact, and we would like to proceed with some
16 things we have at this time.

17 CHAIRMAN COOLEY: Your logic is
18 overwhelming. Mr. Pope?

19 MR. POPE: First of those, and I'll
20 pass copies of this on down for everyone here. I
21 think there's plenty. There's a signature page,
22 also. This resolution is entitled at the top,
23 "Resolution of the Arkansas River Compact
24 Administration." Let me indicate that this is the
25 first of several proposed actions. This particular



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1 one, I think, Mr. Chairman, might be of particular
2 interest to you. We think it follows quite closely
3 in line with the comments of your letter dated
4 January 14, 1985, really, that specifically relates
5 to the Trinidad--excuse me, the Pueblo project.

6 CHAIRMAN COOLEY: Exhibit F, in two
7 pages?

8 MR. POPE: That's correct. Let me
9 basically go ahead and read this briefly. "Whereas,
10 the Southeastern Colorado Water Conservancy
11 District, et al., has filed Application No. 84CW179
12 in the Colorado District Court for Water Division
13 No. 2 for the change, exchange and substitution of
14 water rights; and whereas, said Application seeks
15 an adjudication of a proposed winter storage
16 program for Pueblo Reservoir; and whereas; said
17 proposed winter storage program will affect flows
18 into John Martin Reservoir; and whereas, said
19 proposed winter storage program requires
20 consideration and approval by the Arkansas River
21 Compact Administration; and whereas, by Resolution
22 of July 24, 1951 the Arkansas River Compact
23 Administration approved the Fryingpan-Arkansas
24 Project (Act of August 16, 1962, PL 87-590, 76
25 Stat. 389) subject to the approval by the



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Administration of any plan for reregulation of
Arkansas River waters as defined in Article III(B)
of the Arkansas River Compact; now, therefore, be
it resolved that the Administration shall review
and approve any plan for reregulation of the waters
of the Arkansas River prior to the submittal and
adjudication of such plan by the Water Court in
Colorado. dated this 28th day of March, 1985."

Mr. Chairman, I would move the adoption of said
resolution and append to that for this exhibit your
letter dated January 14, 1985, dealing with
essentially the same subject, in terms of that
proposed decree.

VICE CHAIRMAN BENTRUP: I will second
the motion.

CHAIRMAN COOLEY: Motion has been
regularly made and seconded, and is subject to
discussion at this time. Mr. McDonald?

MR. McDONALD: In the interest of
time, and because I think the issue has been
thoroughly explored today of Colorado's view on the
interpretation and application of the resolution of
July 24, 1951, it has been stated several times
during the course of the day, the resolution now
presented obviously reflects Kansas' reading of the



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1 efficacy of that 1951 resolution. We respectfully
2 disagree for the reasons that have been previously
3 stated.

4 CHAIRMAN COOLEY: We'll take a vote
5 rather shortly. Mr. Pope, before the vote is taken,
6 does Kansas have any comments which it wishes to
7 put on the record in connection with this proposed
8 resolution?

9 MR. POPE: Mr. Chairman, I think I
10 would just briefly say that I think, as Mr.
11 McDonald has just referred to, the issues related
12 to this particular resolution have been thoroughly
13 discussed and I don't think we need to delay that a
14 lot further. I would ask Mr. Simms if he has any
15 further comment.

16 MR. SIMMS: The only comment that I
17 would add, Mr. Chairman, derives from your letter
18 of January 14, 1985, and I think it expresses
19 Kansas' frustration over some of these issues. You
20 state that after referring to the proceedings to
21 which the resolution alludes, that "to the best of
22 my knowledge the Compact Administration is not a
23 party to the proceedings in the Colorado Water
24 Court in Pueblo." The application made to the
25 Water Court clearly shows that the application and



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1 its fruition will affect the flow from the John
2 Martin Reservoir, and the proposed decree affects
3 storage of water in John Martin Reservoir. That
4 paragraph, in our opinion, Mr. Chairman, succinctly
5 states the frustration of Kansas in its ability to
6 get directly to some of these issues as opposed to
7 having to await lengthy five year investigations
8 first, and then perhaps multiple investigations
9 following that.

10 CHAIRMAN COOLEY: Mr. Pope, will you
11 make sure that a copy of my notorious letter is
12 furnished to the reporter?

13 MR. POPE: I would be happy to, Mr.
14 Chairman.

15 CHAIRMAN COOLEY: Is Kansas ready to
16 vote for the resolution?

17 MR. POPE: Yes, we are. We vote aye.

18 CHAIRMAN COOLEY: Is Colorado ready
19 to vote for the resolution?

20 MR. MCDONALD: Colorado votes no.

21 CHAIRMAN COOLEY: The resolution
22 fails. Mr. Pope, your next proposed action. That
23 will also be part of Exhibit F, the letter that
24 will be furnished to you.

25 MR. POPE: Thank you, Mr. Chairman.



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1 This next resolution is quite brief. Also entitled
2 "Resolution of the Arkansas River Compact
3 Administration," copies are on the way down the
4 table. I'll go ahead and read it while they are
5 being passed out since it is quite brief. "It is
6 hereby resolved that the question of the legality
7 of quote, "rolling over," end of quote, to the
8 joint use pool water stored in the conservation
9 pool in Trinidad Reservoir is, as a matter of
10 principle, conducive to arbitration pursuant to
11 Article VIII(D) of the Arkansas River Compact."

12 CHAIRMAN COOLEY: Exhibit G. Is
13 there a second?

14 MR. OLOMON: I'll second it.

15 CHAIRMAN COOLEY: One question before
16 it's up for discussion. Do you want the operative
17 verb in the next to the last line to be "conducive
18 to arbitration," or do you want it to be "subject
19 and appropriate to arbitration"?

20 MR. MCDONALD: Richard, I'm glad to
21 have you here, because Frank used to pick on only
22 me. I can tell that you will deflect the majority
23 of that from here on out.

24 MR. SIMMS: Mr. Chairman, I taught
25 English for a long time, but I think I would prefer



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1 your language.

2 MR. POPE: Mr. Chairman, I would be
3 happy to accept that suggested change and amend my
4 motion to so include, if you will repeat the exact
5 language for me.

6 CHAIRMAN COOLEY: "Subject and
7 appropriate to arbitration"--I had two words--
8 "subject and appropriate to arbitration."

9 MR. POPE: Yes, so after the comma it
10 would now read, "subject and appropriate to."

11 CHAIRMAN COOLEY: "Subject and
12 appropriate to."

13 MR. POPE: Okay.

14 CHAIRMAN COOLEY: In the interest of
15 moving along, I think Mr. McDonald, that the
16 position of Colorado is perhaps clear as to this
17 resolution. Are you ready to enunciate--
18 (interrupted)

19 MR. McDONALD: No, sir; just a second.
20 Richard or David, a question, please. It's unclear
21 to me in this resolution now before us if the issue
22 of rolling over is in the context of an alleged
23 violation of the Compact or in the context of an
24 alleged violation of the operating principles.

25 MR. SIMMS: It is in the context of



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1 an alleged problem with the legality, and purely
2 the legality of rolling over of water, whether it
3 be under federal common law, or some other source
4 of law.

5 MR. MCDONALD: I don't think the
6 resolution as you have it worded is clear. If you
7 would like to spell out in that resolution the
8 nature of the response you just gave me, I think it
9 would clarify what it is we're being asked to vote
10 upon.

11 MR. SIMMS: Perhaps we could do it
12 this way, just a moment. Mr. McDonald, let me try
13 this. "It is hereby resolved that the question of
14 whether the rolling over to the joint use pool of
15 water stored in the conservation in Trinidad
16 Reservoir constitutes a violation of Congressional
17 intent, is, as a matter of principle, subject and
18 appropriate to arbitration pursuant to Article
19 VIII(D) of the Arkansas River Compact."

20 MR. MCDONALD: Could you please read
21 back through that more slowly, Richard?

22 MR. SIMMS: "It is hereby resolved
23 that the question of whether"--excuse me just a
24 second. I'm going to have to think about it a
25 moment longer. The sense of what we're trying to



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say, which I think everybody does understand, is precisely what we've been talking about all morning and most of the afternoon.

MR. MCDONALD: Eight hours later, I want to be sure I know what that is.

CHAIRMAN COOLEY: I'll take judicial notice of what it is we've been talking about.

MR. POPE: Mr. Chairman, I think maybe we ought to take another recess, and we could make it just as quick as we can, and rewrite this. Maybe five, ten minutes.

CHAIRMAN COOLEY: Let's stand at ease for three and a half minutes.

(At this time a short recess was taken, after which the following proceedings were had.)

CHAIRMAN COOLEY: We were considering a motion which was being rewritten, but without objection, something very important has come to our attention and we don't want to overlook it, and that is our concern for Leo Idler, who is in the hospital in Denver, with apparently a very serious health matter concerning his spine, and Mr. McDonald, if you would be kind enough to communicate to Leo Idler our concern and our prayers for him, not only on behalf of the



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Administration, but on behalf of those seventy persons who were in attendance, why, we would appreciate it.

MR. MCDONALD: I would, of course, be glad to; and I know, having seen Leo two nights ago, that he will be very appreciative of our remembering him. He's a little down and out at the moment and can stand to be bucked up.

CHAIRMAN COOLEY: Fine. Mr. Simms, you have drafted a legible copy, I hope, of the resolution, expressing the intent of the previous one. Will you please give us the current version, sir?

MR. SIMMS: Could I read it first, and it's the only copy we have, Mr. Chairman.

CHAIRMAN COOLEY: Please do.

MR. SIMMS: "It is hereby resolved that the following issue is, as a matter of principle, subject and appropriate to arbitration pursuant to Article VIII(D) of the Arkansas River Compact: Whether the quote, "rolling over," end quote of water stored in the irrigation pool under the transferred model reservoir right to the joint use pool of Trinidad Reservoir is contrary to the intent of Congress, as reflected in the operating



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1 principles and other congressional documents, in
2 authorizing and funding the Trinidad Project as
3 approved by the Arkansas River Compact
4 Administration." It may or may not be legible.
5 Bear in mind that I'm left-handed.

6 CHAIRMAN COOLEY: A truly sinister
7 document. Comments, Mr. McDonald?

8 MR. MCDONALD: Could I take a glance
9 at it?

10 CHAIRMAN COOLEY: Yes. Do we need
11 the first draft in the record? I think not. This
12 is the one that's seriously being proposed. Let's
13 designate this as G, and not clutter the record.

14 MR. MCDONALD: We're ready.

15 CHAIRMAN COOLEY: Could we have a
16 comment from the State of Colorado, but first for
17 the record, in the form in which it has just been
18 read into the record by Mr. SIMMS, is there a
19 motion for this resolution in this form as Exhibit
20 G, and a second?

21 MR. POPE: Mr. Chairman, yes, I would
22 so move that this be the motion on the table
23 substituted for the previous one I mentioned a few
24 minutes ago.

25 CHAIRMAN COOLEY: Is there a second?



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VICE CHAIRMAN BENTRUP: I'll second the motion.

CHAIRMAN COOLEY: And for the record, it is this identical resolution as just read by Mr. Sims that is indeed Exhibit G, there is no other. Mr. McDonald?

MR. MCDONALD: Again, in the interest of time, I think the proposed resolution has been rewritten to make clear the issue that I think was articulated this morning, and Colorado has already responded. The record will reflect that response. The issue as posed is one of federal law; we do not think that is a matter within the purview of the Administration. There has not been any investigation. Indeed, as posed, it would not even be appropriate for an Article VIII(H) investigation to come to a divided vote, therefore, isn't a matter that's appropriate to consider for arbitration.

CHAIRMAN COOLEY: Is Kansas ready to vote?

MR. POPE: Yes. We vote yes.

CHAIRMAN COOLEY: Kansas votes yes. Colorado?

MR. MCDONALD: Colorado votes no.



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CHAIRMAN COOLEY: Colorado votes no.
The resolution in the form of Exhibit G is
therefore defeated. Mr. Pope?

MR. POPE: Thank you, Mr. Chairman.
Our next resolution--(interrupted)

CHAIRMAN COOLEY: Just a minute. Mr.
Pope, Exhibit H?

MR. POPE: Mr. Chairman, I would move
the following resolution, which will have some
minor changes as compared to the typed version
that's been passed out. It would read, "it is
hereby resolved that the question of whether the
Resolution of July 24, 1951 precludes the adoption
of any plan for reregulation prior to its approval
by the Arkansas River Compact Administration is, as
a matter of principle, subject and appropriate to
arbitration pursuant to Article IV(D) of the
Arkansas River Compact."

CHAIRMAN COOLEY: IV(D) or VIII(D)?

MR. POPE: VIII(D), excuse me.

CHAIRMAN COOLEY: Do you move this as
a resolution?

MR. POPE: I omitted one other phrase.
In line three, after the word "reregulation,"
should be inserted "of native Arkansas River water,"



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and I so move with that change.

MR. OLOMON: I'll second it.

CHAIRMAN COOLEY: This motion, Exhibit H, as to reregulation, has been regularly moved and seconded.

MR. MCDONALD: Richard, on the previous resolution, at least as it was originally introduced, our resident chairman suggested that the phrase, "conducive to arbitration" would be better put if it was, I think the words "subject to and appropriate for," at least that's what I jotted down.

CHAIRMAN COOLEY: That was the way it was read into the record, Bill, "subject and appropriate to arbitration." "Conducive" is not in the resolution as it was read. It's in it as it was typed, but that change was made in the resolution as read, "subject and appropriate to."

MR. POPE: That change, Bill, plus the one I referred to in line three, were my intent as I moved the adoption of the resolution. Did you get the one in line three also?

CHAIRMAN COOLEY: Reregulation of native--(interrupted)

MR. MCDONALD: Yeah. David, I think



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1 the issue being posed might be more precise if the
 2 resolution were amended to read, in addition to the
 3 amendment which you have already proposed, in the
 4 fourth line, Compact Administration, strike the
 5 words "is, as a matter of principle conducive to,"
 6 and insert, in lieu thereof--well, strike "arbitration"
 7 also--strike the words, "is, as a matter of
 8 principle conducive to arbitration," and insert in
 9 lieu thereof, "shall be arbitrated."

10 MR. SIMMS: Repeat that, please.

11 MR. MCDONALD: Yeah. Fourth line,
 12 after Compact Administration, strike the rest of
 13 the line. In the next line strike, "to arbitration,"
 14 insert in lieu thereof "shall be arbitrated."

15 MR. SIMMS: Let me have just a moment,
 16 please.

17 CHAIRMAN COOLEY: You want to go off
 18 the record?

19 MR. SIMMS: No, I don't want to go
 20 off the record. Mr. Chairman, the suggested change
 21 alters the sense of the resolution, and as it would
 22 be changed it doesn't state what we wish the
 23 resolution to state, and I would suggest that we
 24 would like to see the original language left as it
 25 is. It states a different proposition, is what I'm



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saying; it doesn't state what we stated.

CHAIRMAN COOLEY: Yeah, it does indeed, state a different proposition. Mr. McDonald?

MR. MCDONALD: Rather than drag the matter out, I guess I would simply state that I don't know what the resolution means by saying, "as a matter of principle conducive to." That is a very ambiguous and imprecise statement, and it is for that reason, among others, that we will vote no, because I don't know what I'm being asked to vote on.

CHAIRMAN COOLEY: Well, of course, the "conducive to" business has been disposed of, Mr. McDonald.

MR. POPE: The language, as we were suggesting, would remove the word "conducive" and insert "subject and appropriate to arbitration," Bill.

MR. MCDONALD: Okay, I didn't catch that, David, but I still don't know what, "as a matter of principle" means. What Article VIII(D) says is, if there's a divided vote on the matter within the purview of the Administration--we stated earlier today that an entity always has within its



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1 purview the question of what its authorities are,
 2 and we have differed many times on that issue.
 3 There have been several divided votes. It seems to
 4 me we are now putting to a vote of this
 5 Administration, do we choose to arbitrate that
 6 issue or do we not, and I don't know what all this
 7 stuff about, "as a matter of principle" means.

8 MR. SIMMS: That language didn't seem
 9 to bother Colorado in the last resolution, and it
 10 is no different in this resolution. It means just
 11 what it says. Stripped of factual considerations
 12 can the legal question of whether the resolution of
 13 July 24, 1951, as that is found, if you will, in
 14 federal common law, can that question--or is it
 15 subject to and appropriate to arbitration under
 16 Article VIII(D)?

17 MR. MCDONALD: I think I need not say
 18 more. Despite the proposed changes, I find it
 19 ambiguous, and for that and other reasons, have
 20 indicated how we'll vote.

21 MR. POPE: Mr. Chairman, I think
 22 we're ready for a call of the question.

23 CHAIRMAN COOLEY: The question has
 24 been called for. Is Colorado ready to vote?

25 MR. MCDONALD: Yes, we are. Colorado



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votes no.

CHAIRMAN COOLEY: Colorado votes no.
Kansas?

MR. POPE: Kansas votes yes.

CHAIRMAN COOLEY: Kansas votes yes.
The resolution fails.

MR. MCDONALD: Frank, I would like to respond to one previous comment Richard made, that this phrase "as a matter of principle" was on the previous resolution, and that's true, and it was among the reasons prompting Colorado to vote no, along with the other reasons that I articulated at the time.

MR. POPE: Mr. Chairman, the next resolution that we are proposing reads, "it is hereby resolved that the quantification of the irrigation requirements at the farm headgates in the Trinidad Project and the composition of the irrigated acreages under individual ditches in the Project are, as a matter of principle," and I'll change conducive to "subject and appropriate," and go on with the original language, "to arbitration pursuant to Article VIII(D) of the Arkansas River Compact," and I would so move.

CHAIRMAN COOLEY: Exhibit I has been



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moved. Is there a second?

VICE CHAIRMAN BENTRUP: I will second it.

MR. POPE: Mr. Chairman, while we are in the initial phases of discussion on this, I think it might be clearer and more in accordance with the operating principles to delete the language in line two, after "irrigation requirements" delete "at the farm headgates" from the proposed resolution.

CHAIRMAN COOLEY: Does your second accept the change?

VICE CHAIRMAN BENTRUP: Yes.

CHAIRMAN COOLEY: "At the farm headgates" is deleted. May I inquire, Mr. Pope, if there has been a request for a findings with respect to Exhibit I?

MR. POPE: I think the answer to that, Mr. Chairman, is apparently no, however, the resolution deals with the matter as a matter of principle, and that would not be necessary to answer the question in the affirmative to take action on the resolution.

MR. MCDONALD: Frank?

CHAIRMAN COOLEY: Yes.



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MR. MCDONALD: We're ready if you are ready.

CHAIRMAN COOLEY: Do you want to comment, or do you want to call for the question?

MR. MCDONALD: Were you asking for comments? I kind of lost track.

CHAIRMAN COOLEY: I was silent, believe it or not.

MR. MCDONALD: We have a comment. I would like to call on Wendy, please.

CHAIRMAN COOLEY: Mr. McDonald?

MS. WEISS: We have a real problem with this resolution, because we think it is extremely ambiguous, to the point of being virtually incomprehensible. We've taken the position that the question of whether the operation of Trinidad Reservoir has resulted in a violation of Article IV(D) of the Compact is a proper subject for fact finding, for an investigation and possible fact finding. We've also taken the position, I think quite clearly on the record, that if there is a divided vote on proposed findings of fact and recommendations, that's at the discretion of both states, that would be a proper subject for arbitration, but I'm not sure that this resolution



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says that. I'm not sure what this resolution says. It doesn't talk about IV(D) violations. It doesn't talk about violations of the Compact.

MR. POPE: Just one minute.

MR. SIMMS: In response, Mr. Chairman, we had used the terms of art from the operating principles that we thought would eliminate the ambiguities that Colorado has discerned, but in order to make it clear, let me suggest the inclusion of the articles in the operation principles, and it would read as follows. "It is hereby resolved that the quantification of the irrigation requirement in the Trinidad project under Article IV(B)2 of the operating principles"-- (interrupted)

CHAIRMAN COOLEY: Just a moment.

MR. SIMMS: IV(B)2. "And the composition of the irrigated acreages under individual ditches in the project under Article IV(B)1."

CHAIRMAN COOLEY: Okay.

MR. SIMMS: Then continuing with the same language.

MS. WEISS: I don't believe that answers our question. Are you talking about a



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1 violation of Article IV(D) of the Arkansas River
2 Compact?

3 MR. SIMMS: This resolution does not
4 necessarily speak to a IV(D) violation.

5 MS. WEISS: I think the answer would
6 be different, depending on whether or not, under
7 the specific facts a IV(D) violation were alleged.

8 MR. SIMMS: May we have just one
9 moment please, Mr. Chairman? Let me try one more
10 amendment to the resolution. In the first line
11 scratch the word "quantification" and replace it
12 with "use of water in violation;" after the first
13 insertion of "Article IV(B)2 of the operating
14 principles" add, "as provided in federal law and
15 approved by the Compact Administration."

16 CHAIRMAN COOLEY: In federal law?

17 MR. SIMMS: Yes. And after the
18 second insertion that we talked about earlier under
19 Article IV(B)1, also add the same language, "as
20 provided in federal law and approved by the Compact
21 Administration." And I'll read it here in just a
22 second. "It is hereby resolved that the use of
23 water in violation of the irrigation requirements
24 under Article IV(B)2 of the operating principles as
25 provided in federal law and approved by the Compact



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Administration in the Trinidad project and the composition of the irrigated acreage under individual ditches in the project under Article IV(B)1, as approved in federal--as provided in federal law and approved by the Compact Administration are, as a matter of principle, subject and appropriate to arbitration under Article VIII(D) of the Arkansas River Compact."

CHAIRMAN COOLEY: I've got a problem with that grammatically. It seems to me you are saying it's hereby resolved that illegal activities are subject to arbitration, and you've pretty well foreordained the result of the arbitration.

MR. SIMMS: I think that's an excellent point, grammatically. You should insert "the issue of the use of water in violation of," and I think that would solve your problem.

MR. POPE: I like the first version better.

MR. MCDONALD: Care to comment on the Chairman's legal analysis?

CHAIRMAN COOLEY: Wendy?

MS. WEISS: Comments? We still find it ambiguous and somewhat incoherent. Again, we would object to the language, "as a matter of



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principle," would note that there has been no divided vote on findings, and with that I'll leave it to the delegation to vote.

CHAIRMAN COOLEY: I would like to speed this up for reasons I'll get into in a moment. Is Kansas ready to vote on Exhibit I with all of the amendments?

MR. POPE: Yes.

CHAIRMAN COOLEY: And Kansas votes?

MR. POPE: Votes yes.

CHAIRMAN COOLEY: Colorado?

MR. MCDONALD: Votes no

CHAIRMAN COOLEY: Colorado votes no. Mr. Pope, is this all of the Kansas resolutions?

MR. POPE: I think we have one more.

MR. SIMMS: Mr. Chairman, there is one left that should not be controversial, and I think one that Colorado will vote on readily.

CHAIRMAN COOLEY: Okay. We're approaching five o'clock. I will leave at five thirty to catch the vomit comet here, and I'm very concerned about two things. One is that I only have so much energy this afternoon, and plan to husband and conserve it; and secondly, there have been, notwithstanding the problems with regard to



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1 these resolutions, there's obviously an effort on
 2 the part of both states to proceed with an orderly
 3 process to solve their disputes. I want to devote
 4 some of my energy this afternoon, and some of the
 5 remaining minutes to keeping those embers alive,
 6 and in fact, fanning them into flame if that can be
 7 done; and I'll be conducting the meeting from here
 8 on with that in view, not to denigrate any of the
 9 work that's been done so far. This is exhibit J,
 10 alluvial wells. Mr. Pope?

11 MR. POPE: Thank you, Mr. Chairman.
 12 Again I will read the resolution, and it does have
 13 the same change that we have agreed to, language in
 14 replacing "conducive" with "subject and appropriate."
 15 It would then read, "it is hereby resolved that the
 16 question of whether diversions from post-Compact
 17 alluvial wells in Colorado have caused a material
 18 depletion in usable quantity or availability of the
 19 waters of the Arkansas River is, as a matter of
 20 principle, subject and appropriate to arbitration
 21 pursuant to Article VIII(D) of the Arkansas River
 22 Compact."

23 CHAIRMAN COOLEY: Do you so move?

24 MR. POPE: I so move.

25 CHAIRMAN COOLEY: Is there a second?



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VICE CHAIRMAN BENTRUP: I will second it.

CHAIRMAN COOLEY: Mr. Simms, may I ask of you, if the deletion of the phrase, "as a matter of principle," would in your judgment impede any of the meaning or the clarity of the resolution?

MR. SIMMS: I think its deletion would change the meaning of the resolution, but I don't think it's important to Colorado's vote in this regard, and I would anticipate that Colorado would find this one considerably easier to vote upon.

CHAIRMAN COOLEY: If forced to the wall on that issue, I take it that you would not stand on the phrase, "is, as a matter of principle," if that were the up or down issue on this resolution?

MR. SIMMS: It's our desire that "as a matter of principle" stay in the resolution, as it is embodied in all of the other resolutions.

CHAIRMAN COOLEY: Without further intrusion, Mr. McDonald?

MR. MCDONALD: Carl, are you in the chair now, sir?

VICE CHAIRMAN BENTRUP: Yes, I am.



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MR. MCDONALD: There is a motion and a second on the table. I would move an amendment to that motion to read as follows: "It is hereby resolved that," insert a comma after the word "that," and continue with the words, "in the event of a divided vote on findings and recommendations pursuant to Article Roman Numeral VIII(H)" comma, then continue with the typed text that the commissioners have in front of them, "the question of whether diversions from post-Compact alluvial wells in Colorado," insert "and Kansas," continue with the typed material, "have caused a material depletion in usable quantity or availability of the waters of the Arkansas River, strike the words "is, as a matter of principle conducive," and insert in lieu thereof, "could be subject," and then complete with the typed text, to arbitration pursuant to Article VIII(D) of the Arkansas River Compact." I would move that amendment.

MR. GENOVA: I would second it.

MR. SIMMS: Repeat it again, please.

MR. MCDONALD: Sure. Why don't I read the text straight through. "It is hereby resolved that, in the event of a divided vote on findings and recommendations pursuant to Article



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1 Roran Numeral VIII(H), the question of whether
 2 diversions from post-Compact alluvial wells in
 3 Colorado and Kansas have caused a material
 4 depletion in usable quantity or availability of the
 5 waters of the Arkansas River could be subject to
 6 arbitration pursuant to Article VIII(D) of the
 7 Arkansas River Compact."

8 VICE CHAIRMAN BENTRUP: This
 9 resolution has been moved and seconded.

10 MR. SIMMS: Mr. McDonald, did you
 11 mean Article VIII(H) or VIII(D)?

12 MR. MCDONALD: In the last line,
 13 Richard?

14 MR. SIMMS: No. In your insertion
 15 you said, "it is hereby resolved that in the event
 16 of a divided vote on findings and recommendations
 17 pursuant to"--(interrupted)

18 MR. MCDONALD: I meant VIII(H), as I
 19 said.

20 MR. SIMMS: VIII(H).

21 MR. MCDONALD: That would be a
 22 divided vote on findings and recommendations
 23 following an investigative procedure.

24 VICE CHAIRMAN BENTRUP: Any further
 25 comment?



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1 MR. POPE: Just a minute, Mr.
2 Chairman.

3 MR. SIMMS: Mr. McDonald, would you
4 explain, or let me put it this way, it's our
5 understanding that your insertion of the term "could
6 be," is an allusion to a second vote under Article
7 VIII(D), is that correct?

8 MR. MCDONALD: That's correct.

9 MR. SIMMS: Let me ask a question.
10 Mr. McDonald, could I ask you one question?

11 MR. MCDONALD: Sure.

12 MR. SIMMS: In your initial
13 parenthetical statement, "in the event of a divided
14 vote on findings and recommendations pursuant to
15 Article VIII(H)," should we take to mean by that
16 statement that all issues that can be investigated
17 under Article VIII(H) are within the purview of the
18 Administration under Article VIII(D)?

19 MR. MCDONALD: I'm only talking about
20 the issue of whether diversions from post-Compact
21 alluvial wells are causing a material depletion.

22 MR. SIMMS: So there is no
23 implication then that all issues that would fit
24 under VIII(H) would also fit under VIII(D)?

25 MR. MCDONALD: I am speaking to the



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facts in front of us only. I am not implying anything one way or the other.

MR. POPE: In that case I would just suggest one bit of additional clarifying language. Right after "Arkansas River" insert the words, "for use to the water users in Colorado and Kansas," which is language from IV(D).

MR. MCDONALD: David, I don't have any objection to that. In fact, let's offer a further change that I think will say what Richard said earlier on this could be subject too. Wendy, would you propose that?

MS. WEISS: In lieu of the "could be subject to," after "for use to water users in Colorado and Kansas," insert "may, comma, upon a subsequent unanimous vote of the Administration, comma, be subject to arbitration pursuant to Article VIII(D) of the Arkansas River Compact."

MR. MCDONALD: That, Richard, to make clear your question to me and my answer to you, that the implication of the words "could be subject to" were with allusion to that sentence and Article VIII(D) that called for that subsequent unanimous vote.

MR. POPE: Wendy, could you reread



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that one more time?

MS. WEISS: Certainly. "It is hereby resolved that, comma, in the event of a divided vote on findings and recommendations pursuant to Article VIII(H), comma, the question of whether diversions from post-Compact alluvial wells in Colorado and Kansas have caused a material depletion in usable quantity or availability of the waters of the Arkansas River for use to water users in Colorado and Kansas may, comma, upon a subsequent unanimous vote of the Administration, comma, be subject to arbitration pursuant to Article VIII(D) of the Arkansas River Compact," with apologies for the length of the sentence and its complexity.

MR. POPE: My understanding is that your motion, Bill, to amend would include all of what Wendy just read?

MR. MCDONALD: Plus the words--yeah, which included the words you inserted.

MR. POPE: Which included our words?

MR. MCDONALD: Right. If my second will accept, the record will reflect that that is, all of those words are our motion to amend the original motion.



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MR. POPE: In that case, I think we have a motion to amend and a second already, I take it then, as Carl seconded it.

VICE CHAIRMAN BENTRUP: No, this was the amended motion and seconded by Carl Genova.

MR. POPE: Carl Genova. I guess what we were saying, we are now in a position to act on the amendment in the motion.

VICE CHAIRMAN BENTRUP: Act on the amended motion first, is that correct?

MR. MCDONALD: We do.

VICE CHAIRMAN BENTRUP: And we're ready for the question. Let's see, how does Colorado vote?

MR. MCDONALD: Colorado votes aye on the amendment to the original motion.

VICE CHAIRMAN BENTRUP: How does Kansas vote?

MR. POPE: Kansas would vote aye.

VICE CHAIRMAN BENTRUP: Now, what do we do with the original motion?

MR. MCDONALD: We vote a second time on the original motion as now amended.

VICE CHAIRMAN BENTRUP: We've already done that.



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MR. MCDONALD We have to vote one more time, let's put it that way.

VICE CHAIRMAN BENTRUP: On the original motion, is there any discussion now whether we have--(interrupted)

MR. POPE: I think we call for the question, and I think we're ready to agree on something today.

MR. MCDONALD: Quick, call for the question.

VICE CHAIRMAN BENTRUP: How does Kansas vote on the original motion?

MR. POPE: Kansas votes yes.

VICE CHAIRMAN BENTRUP: How does Colorado vote?

MR. MCDONALD: Colorado also votes yes.

(Applause)

MR. MCDONALD: Let it not be said that there is not interstate comity out and about.

VICE CHAIRMAN BENTRUP: Any others?

MR. POPE: Mr. Chairman, I inadvertently misspoke myself when I said that was the last resolution. We have one more. Hopefully it won't take long, then maybe we can proceed to



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1 whatever comes next after that. Here we have one
 2 additional--we have one additional resolution that
 3 dealt with the overall Trinidad issue that we
 4 didn't get in at that time. This one deals with
 5 the issue of the direct diversion of winter flows.
 6 It would read as follows. (Exhibit K) "It is hereby
 7 resolved that the question of whether the storage
 8 in Trinidad Reservoir in lieu of the direct
 9 diversion of winter flows is accountable under the
 10 transferred Model reservoir right is, as a matter
 11 of principle, subject and appropriate to
 12 arbitration pursuant to Article VIII(D) of the
 13 Arkansas River Compact," again noting the change
 14 from "conducive" to "subject and appropriate," from
 15 the typed version.

16 VICE CHAIRMAN BENTRUP: Any comments?

17 MR. POPE: I would so move.

18 VICE CHAIRMAN BENTRUP: Excuse me, do
 19 we have a second?

20 MR. OLOMON: Second.

21 VICE CHAIRMAN BENTRUP: It's been
 22 moved and seconded this resolution be adopted.
 23 Does Colorado have any comments?

24 MR. MCDONALD: Carl, I would just
 25 renew the same line of observations that we made



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about the previously proposed resolution that pertain to irrigation requirements and irrigated acreages on the Trinidad Project, the ambiguity and lack of specificity as to what standard is alleged is being violated.

VICE CHAIRMAN BENTRUP: Kansas have any further comments?

MR. POPE: Bill, let me ask you, I think I understand what you are saying, but we went through the exercise on the case of the resolution appended as I, regarding the irrigation requirements issue for Trinidad, and suggested some alternative language dealing with the principles of federal law and as approved by the Compact Administration. Would inserting that kind of language make any difference in the terms of the ultimate disposition of this resolution?

MR. MCDONALD: It would make clear Kansas alleges not a violation of the Compact, but of federal law, and would therefore make clear why we will vote no, that that is not a matter within the purview of the Administration; and I would be content to vote at that point.

MR. POPE: Okay. Well, I think if we take a couple of minutes we can quickly take,



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essentially that same language perhaps and put it in.

MR. MCDONALD: That certainly would create your record.

VICE CHAIRMAN BENTRUP: Kansas?

MR. POPE: Thank you, Mr. Chairman. Bill, we do have some language I think will be fairly easy to insert into the proposed resolution. The new language--let me read the resolution. "It is hereby resolved that," and I think the word "question could be changed to "issue," being more in line with what we did before, "issue of whether the storage in Trinidad Reservoir in lieu of the direct diversion of winter flows is," and we'll delete "accountable under the transferred model reservoir right," and insert the following new language, "a violation of Article IV(D) of the operating principles as provided in federal law and approved by the Compact Administration, "and then go back to the original language, "is, as a matter of principle, subject and appropriate to arbitration pursuant to Article VIII(D) of the Arkansas River Compact."

VICE CHAIRMAN BENTRUP: Is there a second for this?



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MR. OLOMON: There is, I second it.

VICE CHAIRMAN BENTRUP: All right,
the amended resolution--(interrupted)

MR. POPE: I would just move to amend
the previous motion to include the new language.

VICE CHAIRMAN BENTRUP: And Ron has
seconded it. Any comments from Colorado?

MR. MCDONALD: Just quickly, Carl,
for all the reasons expressed on the earlier
resolution about the irrigation requirements and
the irrigated acreages, we find this proposed
resolution also unacceptable.

MR. POPE: In that case I think we
call for the question.

VICE CHAIRMAN BENTRUP: How does
Colorado vote?

MR. MCDONALD: Colorado votes
respectfully no.

VICE CHAIRMAN BENTRUP: How does
Kansas vote?

MR. POPE: Kansas votes yes. Mr.
Chairman, I think that at this point, given the
hour of the day, almost five thirty, and we
obviously have not even considered the draft
resolution that Colorado, I believe has alluded to



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1 earlier, nor have we considered the rest of the
2 agenda, I wonder if it might be appropriate to
3 adjourn and reconvene tomorrow morning? There's
4 quite a bit of work, I think to do, maybe even
5 language wise yet.

6 VICE CHAIRMAN BENTRUP: I will ask
7 Colorado.

8 MR. MCDONALD: David, in terms of our
9 personal schedule, we have the luxury of a
10 chartered aircraft, so flight schedules are not a
11 problem. I think we're willing to defer or handle
12 over the telephone, or otherwise dispose of all the
13 other agenda items other than the resolution we
14 would like to propose with respect to alleged
15 violations of the Compact, and unless you folks
16 need overnight to pick it apart, we can be done
17 with it, up or down, as the case may be.

18 MR. POPE: The issue of some of the
19 other agenda items, I expect conceivably could be
20 handled by telephone, although I think they would
21 be better handled in meeting format; but I think
22 the key question is, I think there probably would
23 be some good use of time to rewrite tonight perhaps
24 a resolution that you are apparently going to
25 suggest dealing with several issues there



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apparently on the Article VIII(H).

VICE CHAIRMAN BENTRUP: I wonder if we might dispose of some of the other items that we seem to be fairly much in agreement first, get that out of the way today, is that agreeable if we do that?

MR. MCDONALD: If we're going to stay over, and I'm not sure we can, I guess I am about ready to break for the night, too, and be done with it; but I am not sure we will have a quorum tomorrow. Let me find out.

VICE CHAIRMAN BENTRUP: The meeting will recess until 7:30 p.m. central time.

(At this time a recess was taken, after which the following proceedings were had.)

VICE CHAIRMAN BENTRUP: I believe we're ready to resume the adjourned meeting at 7:30 and we're ready to go, and I believe at this point Colorado is to present a resolution, is that correct?

MR. MCDONALD: Right, Carl, I think that's where we are. And to put it in order for discussion I will move that the Administration adopt what I've entitled the "Proposed Resolution, Concerning Alleged Violations of the Arkansas River



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Compact," (Exhibit L), which is the same proposed resolution that I provided to David late yesterday evening.

MR. GENOVA: I will second it.

MR. BENTRUP: The motion was made and seconded. We're ready for discussion.

MR. POPE: Mr. Chairman, we have some suggested changes we would like to make to the proposed resolution, and would be happy to suggest those at this time, if that's acceptable, Bill.

MR. MCDONALD: Yes, that's fine, David.

MR. POPE: Richard, why don't you go ahead? I think you've got them right there before you.

MR. SIMMS: I believe it's apparent from the discussion through the course of the day that the states of Colorado and Kansas have some disagreement over the breadth and scope of certain provisions in the Compact, and may have some disagreement over the amount of time contemplated by the Compact that an investigation pursuant to Article VIII(H) might take. The State of Kansas is particularly concerned about time, given the fact that quite a number of years has passed since these



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1 issues became the subject of active discussion
 2 between the states, and quite a bit of time has
 3 passed since actual findings and conclusions and
 4 resolutions have been made, and respectively
 5 rejected by the Compact Administration. Kansas is
 6 also, however, sincerely interested in responsibly
 7 attempting to amicably resolve the differences
 8 between the states, if that is possible, and to do
 9 so Kansas would very much like to see the essence
 10 of the proposed resolution adopted. While we've
 11 had very little time to review the resolution, we
 12 began initially late last night about eleven
 13 o'clock to rewrite it in large part, to accommodate
 14 the differences that emerged from today's
 15 discussion, the differences between the two states.
 16 In the interest of comity, we have retreated from
 17 that position and want to recommend very few
 18 changes to the proposed resolution, changes however,
 19 that we believe will constructively advance the
 20 investigation that is proposed. On page two of the
 21 resolution, we would request that the entirety of
 22 Article VIII(H) be quoted, instead of leaving out
 23 the latter two-thirds of the article as is
 24 presently presented in the proposed resolution.

25 MR. MCDONALD: That is fine.



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MR. SIMMS: We would also suggest that the whereas clause appearing on the top of page three should properly precede the whereas clause on the bottom of page two, and should be rewritten to eliminate what we conceive to be argumentative statements in that whereas provision now. We would rewrite it as follows, and I think I ought to start it fresh, simply because it's probably easier to do it this way than to do it by deletion. After inserting it on page two above the comity, the whereas relating to interstate comity, it would read, "whereas Article VIII(H) of the Compact provides mechanisms for determination by the Compact Administration of certain questions of fact and for recommendations to the respective state officials for appropriate action, period." Followed by and; semicolon--I will repeat it again. "Whereas Article VIII(H) of the Compact provides mechanisms for determination by the Compact Administration of certain questions of fact and for recommendations to the respective state officials for appropriate action. And;" We would then suggest along with this change, a change in the resolution clause so that it reads--well, we would delete, "as required by Article VIII(H) of the



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1 Arkansas River Compact," and insert in its place, "in
 2 accordance with Article VIII(H)." The intent and
 3 purpose of that article, as we view it, having been
 4 stated objectively in the whereas clause that I
 5 just recited. The resolution clause would then
 6 read, "now therefore, be it resolved that the
 7 Arkansas River Compact Administration, in
 8 accordance with Article VIII(H) promptly
 9 investigate."

10 MR. MCDONALD: Richard, I think you
 11 might have inadvertently left it out. Should it
 12 read the "Compact Administration shall, in
 13 accordance with the Arkansas River Compact,
 14 promptly investigate"?

15 MR. SIMMS: That's correct. Under
 16 item 1(c) we would change that to read--we would
 17 insert the word "alluvial" in front of well
 18 development, and then insert the phrase, "of the
 19 waters of the Arkansas River" after "development,"
 20 so that C would read, "alluvial well development of
 21 the waters of the Arkansas River in Colorado, and."
 22 We would also make the same change with respect to
 23 D, so that it would read, "alluvial well
 24 development of the waters of the Arkansas River in
 25 Kansas." The next change--let me back up and make



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1 one more modification that I missed, it's on page
 2 two, in the middle whereas, we would delete "above
 3 cited provisions," or just "above cited," pardon me,
 4 leaving in the word "provisions," so as not to
 5 restrict the investigation. On page four we would
 6 leave items two and three the way Colorado proposed
 7 them. In the first, be it further resolved clause,
 8 in the second line we would delete the phrase "full
 9 and complete," as being unnecessary, redundant and
 10 inviting delay. We would then add after that
 11 clause, that paragraph, three more provisions. The
 12 first one would read, "be it further resolved that
 13 a committee consisting of the State Engineer of
 14 Colorado and the State Engineer of Kansas--Chief
 15 Engineer of Kansas," pardon me, "be constituted to
 16 conduct this investigation pursuant to Article
 17 VIII(H)." The next added provision would read, "be
 18 it further resolved that the above-mentioned
 19 committee shall report in writing to Compact
 20 Administration members on a monthly basis in regard
 21 to each issue for which the investigation is
 22 incompleted."

23 MR. MCDONALD: Incompleted or
 24 incomplete, is it?

25 MR. SIMMS: "Incompleted," the D on



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1 the end of the word. "On the first day of May,
 2 1985"--that should be, "beginning on the first day
 3 of May, 1985, period. On or about the first day of
 4 July, 1985, a special meeting of the Compact
 5 Administration shall be held to discuss and
 6 evaluate the progress of the investigation." I
 7 will read the whole revision. "Be it further
 8 resolved that the above mentioned committee shall
 9 report in writing to the Compact Administration
 10 members on a monthly basis in regard to each issue
 11 for which the investigation is incompleted on the
 12 first day of May--beginning on the first day of May,
 13 1985, period. On or about the first day of July,
 14 1985, a special meeting of the Compact
 15 Administration shall be held to discuss and
 16 evaluate the progress of the investigation." One
 17 final short clause, "be it further resolved that
 18 this investigation shall in no event exceed four
 19 months, except upon a showing of good cause by the
 20 state requesting delay. These amendments as
 21 proposed, in Kansas' opinion, would not lock
 22 Colorado into a time certain within which to
 23 complete the investigation, but would by the same
 24 token, encourage the expeditious completion of the
 25 investigation and leave room for good cause to have



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1 it delayed. It also makes it possible for some of
 2 the issues that are comparatively easy to
 3 investigate and reach conclusions on, can indeed be
 4 concluded ahead of the completion of the report or
 5 investigation in its entirety. I missed one
 6 modification, and it's on page three under item 1B.
 7 We would change it to read, "the operation of
 8 Pueblo Dam and Reservoir, Colorado," delete "the
 9 purposes of," and insert, "and the reregulation of
 10 native flows of the Arkansas River in accordance
 11 with," continue "the winter," then insert "water,"
 12 continue "storage program," delete "carried out,"
 13 and insert "on the Arkansas River in," or "on the
 14 Arkansas River," so that that would read now, "the
 15 operation of Pueblo Dam and Reservoir, Colorado,
 16 and the reregulation of native flows of the
 17 Arkansas River in accordance with the winter water
 18 storage program on the Arkansas River in Colorado."
 19 The purpose of that amendment, I think is obvious.
 20 This is simply to eliminate any unnecessary
 21 restriction on the scope of that investigation, and
 22 to properly state that it's the winter water
 23 storage program on the Ark River in its entirety.

24 MR. POPE: Mr. Chairman, I think it
 25 would now be appropriate for me to move the



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arendments to the motion as have been outlined by Mr. Simms.

MR. BENTRUP: Do I hear a second?

MR. OLOMON: I would second it.

MR. BENTRUP: A motion has been moved and seconded. Do we have comments from Colorado?

MR. MCDONALD: Carl, could we provide as follows--could I run through one more time and be sure I have got them all, Richard, then could we have ten, fifteen minutes perhaps, and I think we can wrap this up in a positive way. Let me just go through a page at a time, Richard. No changes on page one?

MR. SIMMS: Correct.

MR. MCDONALD: On page two, the second whereas clause, strike "above cited."

MR. SIMMS: Right.

MR. MCDONALD: And the next whereas clause, quote Article VIII(H) in its entirety?

MR. SIMMS: Correct.

MR. MCDONALD: Below that insert a new whereas clause to read as follows, "whereas Article VIII(H) of the Compact provides mechanisms for determination by the Compact Administration of certain questions of fact and for recommendations



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to the respective state officials for appropriate action; and."

MR. SIMMS: It would be following the format of your initial proposal. There would be a period after appropriate action, and then return to the left margin, and semicolon.

MR. MCDONALD: Are you quoting Article VIII(H), is that what you are doing there?

MR. SIMMS: No, that's just the way stylistically you coupled the preceding whereas clauses.

MR. MCDONALD: I see what you are saying, fine. The words I got right, even if the punctuation was wrong.

MR. SIMMS: Right.

MR. MCDONALD: I did get the words right. I see your point, that's fine.

MR. SIMMS: And I would note also, it was just pointed out to me, that whereas you did it that way most of the time, you did it inconsistently in what would be the following whereas clause.

MR. MCDONALD: Well, you know, without our resident grammarian, I don't know what we can do. The reason for that is where a provision of the Compact is quoted and ends with a



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period, you put the period in, then you put the and in, and if you are not quoting something you put a semicolon and an and.

MR. SIMMS: All right.

MR. MCDONALD: That's neither here nor there. I am not worried about that insert, however punctuated.

MR. SIMMS: I think I see what you have done. There's no inconsistency to it. I simply missed it. It ought to be done according to the format you followed.

MR. MCDONALD: Okay, that insert with that punctuation then, that completes the changes on page two. Top of page three, effectively strike that first whereas?

MR. SIMMS: Yes, sir.

MR. MCDONALD: And the first "now therefore be it resolved that the Arkansas River Compact Administration shall, in accordance with Article VIII(H)," so on and so forth?

MR. SIMMS: Correct.

MR. MCDONALD: In 1B, "the operation of Pueblo Dam and Reservoir, Colorado, and the reregulation of the native flows in accordance with the winter storage program on the Arkansas River in



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Colorado." I may not--(interrupted)

MR. SIMMS: "And the reregulation of native flows of the Arkansas River."

MR. MCDONALD: Thank you.

MR. SIMMS: "In accordance with the winter water storage program." The rest is correct.

MR. MCDONALD: "The operation of Pueblo Dam and Reservoir, Colorado, and the reregulation of native flows of the Arkansas River in accordance with"--(interrupted)

MR. SIMMS: "In accordance with the winter water storage program."

MR. MCDONALD: "On the Arkansas River in Colorado."

MR. SIMMS: "In Colorado."

MR. MCDONALD: Thank you. C and D, insert in both cases before the word "well," the word "alluvial," insert in both cases after the word "development," the words, "of the waters of the Arkansas River"?

MR. SIMMS: Correct.

MR. MCDONALD: Okay. Next change, page four, the first be it further resolved clause, second line, delete the words "full and complete."

MR. SIMMS: Yes, sir.



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MR. MCDONALD: After that, insert two new be it further resolved clauses?

MR. SIMMS: Three new clauses, I believe.

MR. MCDONALD: You said three, yeah. I'm sorry, I stand corrected, three new be it further resolved. May I read those, please? "Be it further resolved that a committee consisting of the State Engineer of Colorado and the Chief Engineer of Kansas be constituted to conduct this investigation pursuant to Article VIII(H), period. Be it further resolved that the above mentioned committee shall report in writing to Compact Administration members on a monthly basis in regard to each issue to which the investigation is incompleated, beginning on the first day of May, 1985. On or about the first day of July, 1985 a special meeting of the Compact Administration shall be held to discuss and evaluate the progress of the investigation. Be it further resolved that this investigation shall in no event exceed four months except upon a showing of good cause by the state requesting such delay," or just "delay"?

MR. SIMMS: Just "delay."

MR. MCDONALD: Fine. Period, is that



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correct?

MR. SIMMS: That's it.

MR. MCDONALD: And no more changes?

MR. SIMMS: No, sir.

MR. MCDONALD: Okay, give us about ten minutes if you would, please? Would that be okay?

VICE CHAIRMAN BENTRUP: Okay, ten minutes. I've got eight o'clock, and I'm four minutes fast.

(At this time a recess was taken, after which the following proceedings were had.)

MR. BENTRUP: The meeting is in session. We are now ready for Colorado's response to Kansas' amendments to your original resolution, is that right?

MR. MCDONALD: That's right, Carl. Without removing amendments to amendments, let me make a few changes and see where we get, and then we can make whatever motions to put things in order. I would go to page two. The insert you proposed, Richard, after quoting Article VIII(H) at length, you proposed the insertion of a new whereas?

MR. SIMMS: Yes.

MR. MCDONALD: We would ask if that



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whereas is necessary? Since Article VIII(H) would be quoted in its entirety, it seemed redundant. Why not simply stand with Article VIII(H) being quoted in its entirety, then the whereas that's already at the bottom of two would simply observe that that procedure quoted in its entirety, the states desire to use as a means of seeking amicable resolutions.

MR. SIMMS: With the adjustment--

(interrupted)

MR. MCDONALD: Still leave the whereas at the top of page three?

MR. SIMMS: With the adjustment, now therefore be it resolved clause that we proposed, I think we could simply eliminate the clause that we proposed.

MR. MCDONALD: We would accept your amendment, in accordance with wording in the now therefore clause. Does that make sense? Okay, I think the next thing we wanted to talk about was 1B. We would ask if we could change that to read "the operation of Pueblo Dam and Reservoir, Colorado," and strike the word "reregulation," insert the words "beneficial development of," strike the word "native flows," insert the word "waters," so that



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1 1B in its entirety would read, "the operation of
 2 Pueblo Dam and Reservoir, Colorado and the
 3 beneficial development of waters of the Arkansas
 4 River in accordance with the winter water storage
 5 program on the Arkansas River in Colorado." Those
 6 two changes are suggested so that they track the
 7 language of Article IV(D) of the Compact. It would
 8 be our view that reregulation is a form of
 9 beneficial development, if we're understanding what
 10 you're getting at there. We're not trying to
 11 narrow the scope, but only quote the Compact.
 12 Likewise, native flows is not a term of art in the
 13 Compact. The phrase used in the Compact is waters
 14 of the Arkansas River.

15 MR. SIMMS: Excuse me, just a second.

16 MR. MCDONALD: Sure, go ahead.

17 MR. SIMMS: Bill, how about this way
 18 of compromising the two suggested changes? It
 19 would read, "the operation of Pueblo Dam and
 20 Reservoir, Colorado, and the winter water storage
 21 program on the Arkansas River in Colorado," leave,
 22 and scratch all the rest of it.

23 MR. MCDONALD: Okay, so it would read,
 24 "the operation of Pueblo Dam and Reservoir,
 25 Colorado and the winter water storage program on



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the Arkansas River in Colorado"?

MR. SIMMS: Yes.

MR. MCDONALD: Let me try an alternative to that, Richard. What if we said, "the operation of Pueblo Dam and Reservoir and other storage reservoirs in Colorado in accordance with the winter water storage program on the Arkansas River in Colorado"? Seems to me the observation you are trying to get at, if I anticipate it correctly, although you have not said it, is there are other storage vessels besides Pueblo that are used in the course of that winter water program; we understand that and are willing to have their operations, along with Pueblo, be part of the inquiry.

MR. SIMMS: Just a moment. Bill, in response, what we're trying to include is other aspects of the operation of Pueblo Dam and Reservoir along with the winter water storage program part of that operation.

MR. MCDONALD: What are those other concerns, Richard? We've spent all day talking about winter storage. I guess you've got me off guard.

MR. SIMMS: We have not engineeringly



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identified those concerns. We've discussed some.
We just want to leave open the option in the
investigation, making it as thorough as possible.

MR. MCDONALD: Richard, let me read
back your last suggestion. If I've got it, I think
we're okay. "The operation of Pueblo Dam and
Reservoir, Colorado and the winter water storage
program on the Arkansas River in Colorado"?

MR. SIMMS: Yes.

MR. MCDONALD: We can accept that.
Let me just clean my page up here so I can get it
down. Okay, so 1B will read, "the operation of
Pueblo Dam and Reservoir, Colorado and the winter
water storage program on the Arkansas River in
Colorado."

MR. SIMMS: Yes, sir.

MR. MCDONALD: Okay. Items C and D
in both--I'm on 1C and 1D, in both instances you
suggested inserting the word "alluvial" before "well."
We do not think that's appropriate. We think we
should leave, for factual determination in both
instances, what "waters of the Arkansas River"
prove to be as a matter of engineering
determinations, about tributariness and what have
you.



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MR. SIMMS: We would leave in then the phrase, "of the waters."

MR. MCDONALD: I would like to leave in "the waters of the Compact." That's the Compact standard.

MR. SIMMS: I believe that's agreeable to the State of Kansas.

MR. MCDONALD: So "alluvial" would be taken out of both C and D. With respect to your three inserted, be it further resolved clauses, the first one of those calls for a committee consisting of the State Engineer of Colorado and Chief Engineer of Kansas. I don't think the Administration is in any position to direct the State Engineer of Colorado to be a part of a committee. We broached this problem in 1980 on the VIII(H) procedure we pursued on Trinidad at that time, and solved that problem by having the Director of the Colorado Water Conservation Board, which is myself of course, and the Chief Engineer of Kansas. I would suggest we do the same thing here, and to do that would say that we strike "State Engineer of Colorado" and insert "Director of the Colorado Water Conservation Board or his designee," and I certainly can consult with the State Engineer.



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I can't imagine we would get anything other than full cooperation, but I am simply in no position to speak for an official over whom I have no jurisdiction.

MR. SIMMS: Bill, as you probably understand, the only reason that we suggested that is because Doctor Danielson is in charge of the administration of the laws and water rights internally within the State of Colorado, and we were simply trying to eliminate a layer of bureaucracy, as it were. I think we understand your concern, as well. Would you anticipate that the change would result in any delay as a result of any communication or anything of that nature?

MR. MCDONALD: No, just absolutely no problem in that regard. I'll personally commit to that. Jeri and I will work hand in glove, as a matter of practical operation. I think the way we handled it in 1980 is demonstrative of that.

MR. SIMMS: And the phrase, "or his designee," if we're going to include that, I presume that would be applicable to the Chief Engineer of the State of Kansas.

MR. MCDONALD: I would be glad to provide that, or strike it. I was only trying to



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1 hold open the possibility if the State Engineer
2 would accept--I can go either way, either strike it
3 with respect to me, or add it with respect to David.

4 MR. SIMMS: Why don't we just--why
5 don't we add it with respect to both.

6 MR. MCDONALD: I guess that makes
7 some sense to me, as officials, lots of things get
8 designated to staff. I think that's a practical
9 way to do it.

10 MR. POPE: And Howard and Bob may
11 need to be involved.

12 MR. MCDONALD: With some luck they
13 will be. Let's have it say, "a committee
14 consisting of the Director of the Colorado Water
15 Conservation Board or his designee and the Chief
16 Engineer of Kansas or his designee." That's the
17 only comment we had on your first addition. On
18 your second addition we have no changes. On your
19 third proposed addition, let me read a suggested
20 alternative, and I think it's easier--well, it's
21 some language that would be inserted--I think an
22 easier way to present it to you would be a complete
23 substitution, you'll get less confused about the
24 words. In lieu of your third suggestion we would
25 suggest as follows. Why don't I read it relatively



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1 quickly once, then I will go slow. "Be it further
 2 resolved that the state alleging violations of the
 3 Compact shall have the burden of presenting
 4 proposed findings and proposed recommendations,
 5 together with supporting engineering data,
 6 information and analyses, after which the
 7 investigation shall in no event exceed so many
 8 months upon a showing of good cause," use your
 9 language. Let me go back and give that to you
 10 slowly, so you can copy it down. "Be it further
 11 resolved that the state alleging violations of the
 12 Compact shall have the burden of presenting
 13 proposed findings and proposed recommendations,
 14 together with supporting engineering data,
 15 information, and analyses, after which the
 16 investigation shall in no event exceed"--let me
 17 have a blank months for the moment, because I want
 18 to talk about that, "except upon a showing of good
 19 cause by the state requesting delay." Let me
 20 explain first why the new language at the beginning.
 21 It seems to us that as a practical matter, the best
 22 way to get the case on the table is that the state
 23 that has concerns, Kansas with respect to Trinidad
 24 and Pueblo operation, winter storage, and well
 25 developrent in Colorado; Colorado with respect to



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1 the allegations we've made, needs to put their case
 2 on the table and square up the issue precisely by
 3 proposing findings and proposing recommendations,
 4 because that is what ultimately is put to a vote,
 5 and then that ought to trigger a time sequence
 6 clearly subject to the good cause standard that you
 7 suggest, to move through that in a reasonable
 8 fashion. It seems to me there needs to be a
 9 triggering point, so we don't simply stand around
 10 with our hands in our pockets saying, I "don't know
 11 what it is I am supposed to respond to," or the
 12 other person saying, "well, you were supposed to
 13 lay it out first." With respect to your proposal
 14 of four months, and I certainly understand where
 15 you are coming from, that strikes us as simply too
 16 short an interval. You, yourselves, have been at
 17 it for fifteen to eighteen months. I'm left with
 18 the impression from the discussions today that at
 19 least some aspects of your engineering are still
 20 not in a presentable stage. It is unfortunately a
 21 tedious process when one does engineering. I don't
 22 mean to detract at all from the necessity to move
 23 promptly, and we certainly would intend to do so,
 24 but four months just struck us as much too short.
 25 I'm wondering if twelve to fifteen wouldn't be far



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more reasonable, given that you've already been fifteen to eighteen in what I take it is, at least to some extent, still preliminary; so really two points being made, a triggering device, and the number of months that we then impose.

MR. SIMMS: One difficulty I see with it, Bill, is that it would leave open delay on the triggering side of the provision. If we were to agree to your language with respect to burden, and then the litany of proposed findings and proposed recommendations together with supporting engineering data, information and analyses, could we put a time limit on that triggering provision?

MR. MCDONALD: I see what you are saying. I guess that didn't strike me as a problem. It seems to me--let's take Colorado as an example, we've made allegations as of today. I candidly stated that they were not supported at this point in time by any detailed engineering. It seems to me, as long as it's clear where the burden lies, Kansas has no obligation, nothing that it needs to respond to, no possibility that Colorado could argue you have not been prompt or faithful or otherwise responsive, when I haven't even put on the table the case to which I wish you to respond;



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so I guess I was thinking by saying where the burden lay you solve the problem of the first step being taken. It could be done, granted. I guess I would have to, as worded, I would have to agree with you, it could be done at the pace the alleging state took; but it put no burden on the other state until the first state stepped out. I guess I thought that solved the problem.

MR. BENTRUP: I have a little problem there, if we've agreed to jointly investigate these various problems and now you come and say each state is responsible for the allegations.

MR. MCDONALD: Okay, I see what you are saying.

MR. SIMMS: Bill, looking at the terms of Article VIII(H), it doesn't seem to me that we can lay the burden on an individual state to do this triggering, and still comply with the thrust of the intended investigation pursuant to the terms of the Article. It says in no uncertain words that these violations shall be promptly investigated by the Administration, and I believe that must mean by the combined efforts of the State of Colorado and the State of Kansas, so it would seem to us that the burden of initiating the



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1 investigation ought properly fall on the
 2 Administration, as an interstate political entity,
 3 and not on an individual state. In the alternative,
 4 would it be possible to retain in essence, in any
 5 event, the language that we had proposed and fill
 6 in the blank that you would like to fill in with a
 7 different number, one that we would still perhaps
 8 idealistically like to meet as expeditiously as
 9 possible?

10 MR. MCDONALD: Richard, I guess the
 11 problem we're sensitive to is that whoever has got
 12 analyses gets them on the table promptly. It seems
 13 to me it just isn't going to be a worthwhile
 14 process unless the analyses that have been done get
 15 out there to be dealt with, and I'm trying to
 16 figure out a way to assure that happens. You are
 17 probably on the other side trying to figure out how
 18 to protect work product, so we need to solve that
 19 problem somehow.

20 MR. SIMMS: Bill, I'm not certain I
 21 understand the position. Is the concern that
 22 concern as you stated it, one over insuring that
 23 the initial data, proposed findings, proposed
 24 recommendations, together with supporting data,
 25 info and analyses be promptly laid on the table?



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1 Is that your concern? The downstream state will
2 most assuredly do that. If there's any area or any
3 room for concern it would appear that Kansas ought
4 to have that concern. That's why we would like to
5 limit the overall gathering of data and the
6 complete process of investigation, and then the
7 judgment as to how it's done mechanically within
8 that time period is left to the discretion of the
9 state that's got to do its share of cooperating.

10 MR. MCDONALD: Let us contemplate for
11 a moment here. Richard, maybe this isn't all our
12 concerns, but it seems to me that when a state has
13 made an allegation--let's use one you've made as an
14 example; you obviously think the operation in
15 Trinidad, let's use that as an example, is in
16 violation of a provision of the Compact. We think
17 not of the--I guess the problem I'm trying to solve,
18 it seems to me, you having made the allegation, you
19 need to be in the possession, if not now, sooner or
20 later, of the data that supports your conclusion,
21 and I really don't know what Colorado has to
22 respond to until you've put the information on the
23 table, and vice versa, in the case of the
24 allegations Colorado has made; and I want to avoid
25 the situation in which the allegation is made, we



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1 say we've got to get through the process in twelve
 2 months, and then in the eleventh month the alleging
 3 state finally puts their data on the table and the
 4 responding state is down to thirty days. Somehow,
 5 we've got to be sure there's quid pro quo to keep
 6 the whole process moving along. That's why I
 7 thought maybe the triggering device of putting the
 8 burden on the alleging state to support its
 9 allegations, and then trigger the time frame was
 10 the way to solve that problem.

11 MR. SIMMS: Again, I think that would
 12 not comply with the express provisions, nor with
 13 the spirit of Article VIII(H). It is a provision
 14 which, in the interest of interstate comity, seeks
 15 to, through the cooperative effort of two states
 16 working as a single political institution, to make
 17 this investigation. We don't want to see one state
 18 working like crazy for the first five or six months,
 19 while the other doesn't do anything. We would
 20 rather see a circumstance with an overall deadline,
 21 or an overall goal, wherein the understanding at
 22 the outset is that both states will cooperate to
 23 the hilt to get the job done, and as I say, if
 24 there's any concern on the part of the upstream
 25 state, Colorado, over the vigor with which Kansas



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will address the matter, I think you can forget that concern. Kansas will address it with much more zeal, I believe, than Colorado will be inclined to address it.

MR. MCDONALD: Let me try a little different tact and see if there's a way we can get this one behind us. Rather than the language we proposed, Richard, use the language you've proposed with the blank for the months for the moment, but to express this point of view that I think you have also said that you would expect both states acting through this single interstate entity to cooperate and move expeditiously. Could we perhaps find some words that we would put in the first full, be it resolved clause on page four, where we talk about cooperation of state agencies and officials that would make it clear that the Administration asks of those state agencies and officials that they make available any and all of the information which their employees, agents or assigns might have, that they make that information available to the Administration? I think that would be consistent with provisions in the Compact that, in fact, say that the respective state agencies will make available any information they have at the request



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of the Administration, so it's clear that both states--and I would agree that's not an obligation on Colorado, as much as Kansas, will put their information out there, and then if we could talk about a longer time frame we might be able to go home.

MR. SIMMS: I think Kansas would be agreeable to a provision as you just suggested, but I also think it's redundant of the phrase showing of good cause. In other words, I think the-- coercion is not the right word, but the pressure, as it were, that you are asking for is built into the burden that would fall on the state that does, in fact, delay. If that delay, as an example, arose by virtue of the reticence of that state to provide existing engineering data, I doubt if a Court would construe that as good cause.

MR. MCDONALD: Richard, let's try to find those words. I guess I would take some comfort despite your explanation of good cause. What if on page four in the first be it further resolved-- let me kind of think out loud.

MR. SIMMS: Let me interrupt one moment, Bill.

MR. MCDONALD: Sure.



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MR. SIMMS: Just to make reference to Article VIII(G), which may have some of the language that you are after--(interrupted)

MR. MCDONALD: That's just where I was looking.

MR. SIMMS: The Administration, starting a third of the way down, the Administration shall cooperate in the procurement and interchange, compilation and publication of all factual data bearing upon the Administration of this Compact without a general duplicating measure or publications made by state or federal agencies. All I'm trying to suggest is that that provision, as well as the immediately preceding and immediately following provisions would seem to mandate the kind of behavior that we think is also caught up in the phrase, showing of good cause, but is nevertheless, the kind of behavior that you are seeking some assurance on.

MR. MCDONALD: Perhaps we could get that language into that particular therefore clause by going towards the end of it, and after the "United States Army Corps of Engineers" insert, "in furnishing pertinent factual data," okay? Let those words there, after Army Corps of Engineers,



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1 insert--what did I say?

2 MR. SIMMS: "In furnishing pertinent
3 factual data."

4 MR. MCDONALD: Okay, "furnishing
5 pertinent factual data." One other suggestion that
6 I think we would be comfortable--could we say at
7 the beginning of that clause, "requests the
8 cooperation of the state agencies and officials,"
9 insert "including consultants to them, comma"--let
10 me say that again. "The Administration requests
11 the cooperation of the state agencies and officials,"
12 insert "including consultants to them, in both
13 Colorado and Kansas," so on, so forth.

14 MR. SIMMS: Bill, if that were done,
15 if we were to agree with that language, should the
16 immediately following language, "that are charged
17 with the Administration of water rights" be
18 eliminated, in view of the fact that you are not so
19 charged, and are now on the--or would be on the
20 committee constituted by the resolution?

21 MR. MCDONALD: The point being that
22 any state agency and official in possession of
23 appropriate information we would request to respond?
24 You know, I certainly can speak for myself, that I
25 would do that. I don't see any problem with that.



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Do you? Yeah, sure, we could concur in striking "that are charged with the administration of water rights."

MR. SIMMS: And I think Kansas can agree to the two additions.

MR. MCDONALD: For the record, let me read that back. Be it further resolved--it would read as follows. "Be it further resolved that the Arkansas River Compact Administration requests the cooperation of the state agencies and officials, including consultants to them, in both Colorado and Kansas, and of the U.S. Geological Survey, the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers in furnishing pertinent factual data to the extent that it may be required by the Administration in the conduct of its investigation."

MR. SIMMS: We would be able to agree to that.

MR. MCDONALD: Okay. Months, is that all we're down to? I certainly understand where you folks are coming from, in terms of moving expeditiously. I guess I just have got to say in plain practical terms, I don't see how I can commit to less than fifteen months, since above all, I am subject to an appropriation process that I don't control. We are seeking a supplemental



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1 appropriation for engineering now for the State
 2 Engineer's Office. I guess I've mentioned this
 3 earlier today. It has been approved by the Joint
 4 Budget Committee. I have no reason to think it
 5 won't be approved by the House and Senate in the
 6 course of April, such that Jeris could commence
 7 getting people on board in May, and be underway and
 8 then an appropriations being sought for the next
 9 fiscal year, beginning July 1, but you know, there
 10 goes fifteen months; and we can give you the data
 11 we've got, but if you want us to give you good data
 12 and give you good input, and cooperative input,
 13 it's going to be fifteen months; and I guess I just
 14 would rather lay it out and be very candid about it
 15 than commit to something that I know isn't
 16 practical.

17 MR. SIMMS: Fifteen months,
 18 especially in light of the fact that with many of
 19 these issues, we believe don't require a good deal
 20 of additional factual data, and in view of the fact
 21 that considerable work has already been done, both
 22 by various offices of the State of Colorado and
 23 offices in the State of Kansas, as well as
 24 consultants to the latter, at least, and to the
 25 former, for that matter, under the 407 studies, it



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would seem to me that fifteen months is simply too long. There is an escape valve. That escape valve is good cause. Four months may be too tight in any realistic sense. I do not think that six months is unrealistic. Four months is certainly not unrealistic for some of the issues. We would like to see that limitation, as you indicated you understand, be set initially as one that sets a high goal, but a goal that is conceivably a realistic one, so that the Administration sets out to achieve that goal, instead of building a little lethargy into the investigative process by making the term long. Again, I would say that if, for good reason, and the lack of funding may or may not be good reason, depending on the circumstances, the state seeking delay or needing delay has scope to justify that delay pursuant to the provision.

MR. MCDONALD: I'll split you the difference of twelve months, by some logical arithmetic that I would rather not explain. I just don't--you know, I don't want to get into a process, particularly since I've taken the State Engineer out and put me in, that I honest to God don't think I can get to, and I really don't want to talk about anything less than twelve months.



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MR. SIMMS: Well, we would have to split the difference, as well. We can't exceed nine--we can't get out of this year. Bill, let me interrupt your caucus one moment to suggest that the blank be filled in by changing the provision slightly, so that it reads, "shall in no event go beyond the regular annual meeting of the Arkansas River Compact Administration."

MR. MCDONALD: I presume you mean in 1985?

MR. SIMMS: Yes.

MR. MCDONALD: Just to help you be precise, Richard, I assume you meant to say go beyond the 1985 regular annual meeting?

MR. SIMMS: Correct. And again, I would reiterate that you've got showing of good cause.

MR. MCDONALD: Richard, would you guys be willing to consider, in light of the fact that you've been at it for eighteen months, with special appropriations from the Kansas Legislature on the allegations which you have made, if we agreed to your proposal insofar as the Kansas allegations are concerned, that the investigation shall in no event go beyond the 1985 regular annual



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meeting of the Administration, in exchange for which, with respect to the allegations which Colorado has made, there be a longer time frame? I would suggest the 1986 regular annual meeting of the Administration, which provides us roughly the same fifteen to eighteen month interval that you, yourselves, have taken in the preparation of your allegations.

MR. SIMMS: Well, in that regard, I think in terms of the time that the two states have spent studying the issues, that will take time in this investigation, Colorado is way ahead of Kansas, so the eighteen months doesn't impress me that much. Our concern is not with the speed with which we'll present our own case, or our own side of the story, but rather, we want to see to it that Colorado does so quickly. Again, just by virtue of the fact that you are upstream and we're downstream, and we believe that we're the ones that are suffering, so I don't think we could agree to that kind of split in responsibility or split in the time schedule. I would say this for the record though, that if the period of nine months were adopted, we do not intend to utilize the showing of good cause provision in a way that would overly burden or



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1 unreasonably hasten the investigatory process on
 2 the Colorado side of the investigation. We don't
 3 want to beat you over the head with that. We just
 4 want to set the goal as a reasonable time frame,
 5 one that we think might be met if everything works
 6 well, and shoot for that goal. We think nine
 7 months is long, that it could be done sooner, and
 8 indeed, some issues will be done much sooner than
 9 that. All I can do is relate to you that we're
 10 sincere in the proposal we're making.

11 MR. MCDONALD: I accept that, and I
 12 don't in any way detract from that

13 VICE CHAIRMAN BENTRUP: Bill?

14 MR. MCDONALD: Yeah, I'm waiting for
 15 David there.

16 VICE CHAIRMAN BENTRUP: Dave?

17 MR. POPE: I'm sorry.

18 MR. MCDONALD: Okay. Could we think
 19 about this possibility? We would be arenable to
 20 your idea, Richard, of the investigation not
 21 extending beyond, or however you phrased it, the
 22 1985 regular annual meeting of the Administration
 23 with respect to the investigation of all of the
 24 allegations which Kansas has made and with respect
 25 to the allegation which we have made about storage



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1 in Lake McKinney; but we think the other two
 2 allegations we have made with respect to well
 3 development, which will be particularly complicated
 4 ones, we simply need additional time for, and I
 5 would observe that that time, if anything, works
 6 against us. We are, we allege, the injured party.
 7 Even though we are geographically upstream, if
 8 somebody is being hurt, in our view it's us, it's
 9 not Kansas; so I don't think your argument that you
 10 made a while ago, the reason for haste is because
 11 Kansas is being injured. That's true with respect
 12 to your allegations, and we will be glad to
 13 subscribe to your suggestion about the limitation
 14 of the '85 regular annual meeting, if we could have,
 15 let's say, until July 1 of 1986 as the time frame
 16 for the investigation insofar as our allegation
 17 with respect to Article IV(D) and Article V(E)2 is
 18 concerned, Lake McKinney, our allegation--pardon me,
 19 did I cite the right things--Article IV(D), yes,
 20 and Article--I don't know, I did not cite the right
 21 thing. All of your allegations subject to the time
 22 frame of the 1985 annual meeting, our allegation
 23 with respect to V(E)2 concerning Lake McKinney
 24 subject to the 1985 annual meeting time frame; our
 25 allegations with respect to IV(D) and V(H), the



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1 time frame would be July 1 of 1986. Again, we're
2 the injured party; I don't see that more time hurts
3 you.

4 MR. SIMMS: April 1st of 1986, we
5 would agree to that proposal.

6 MR. MCDONALD: July 1, take it or
7 leave it. I'm sorry, Richard, that's all I can
8 offer. I know how complex engineering on that
9 ground water is going to be.

10 MR. SIMMS: We'll take it.

11 MR. MCDONALD: I appreciate it. I
12 will personally do my best to move everything
13 efficiently. I think we probably need to fiddle
14 with some words to perfect what I think we just
15 agreed to, which I haven't done yet, but let me try.
16 Maybe a couple can scribe while I speak. Could we
17 get the job done in this last inserted, be it
18 further resolved clause by saying, "be it further
19 resolved that this investigation shall in no event
20 go beyond the 1935 regular annual meeting of the
21 Administration, insofar as Kansas' alleged
22 violations are concerned, and insofar as Colorado's
23 alleged violation of Article V(E)2 is concerned."
24 Wendy suggests, and it's a good idea, that we say "the
25 allegations alleged by Kansas," rather than, I



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1 think I said the possessive "Kansas'" alleged
 2 violations." That could--I think that could have
 3 been read as violations being made by Kansas. We
 4 want to make it clear that it's your allegations,
 5 so I guess I would say, "the investigation shall in
 6 no event go beyond the 1985 regular annual meeting
 7 of the Compact Administration, insofar as the
 8 violations of the Compact alleged by Kansas are
 9 concerned and insofar as the violation of Article
 10 V(E)2 alleged by Colorado is concerned, nor," let's
 11 make that, "and in no event shall the investigation
 12 go beyond July 1, 1986, insofar as the violation of
 13 Article IV(D) and Article V(H) alleged by Colorado
 14 is concerned, except upon a showing of good cause
 15 by the state requesting delay."

16 MR. SIMMS: I think I got it all
 17 except the last following July 1, 1986, "and in no
 18 event shall the investigation go beyond July 1,
 19 1986 insofar"--(interrupted)

20 MR. MCDONALD: "Insofar as the
 21 alleged violation"--pardon me, "insofar as the
 22 violation of Article IV(D) and of Article V(H)
 23 alleged by Colorado is concerned."

24 MR. SIMMS: Let me read it back.

25 MR. MCDONALD: Would you please? I



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1 think my verb tense is wrong. I think it should be
2 "violations of IV(D) and V(H) are concerned."

3 MR. SIMMS: "Be it further resolved
4 that this investigation shall in no event go beyond
5 the date of the 1985 regular meeting of the Compact
6 Administration insofar as the violations alleged by
7 Kansas are concerned, and insofar as the violation
8 of Article V(E)2 alleged by Colorado is concerned,
9 and in no event shall the investigation go beyond
10 July 1, 1986 insofar as the violation of Article
11 IV(D)--violations of Article IV(D) and of V(H)
12 alleged by Colorado are concerned, except upon a
13 showing of good cause by the state requesting delay."

14 MR. MCDONALD: I would agree to that.
15 Thank you for taking that down.

16 MR. SIMMS: Just for the record,
17 let's make it clear that the exception is
18 applicable to both clauses. I don't think we need
19 to include language to that effect if we express
20 that understanding on the record.

21 MR. MCDONALD: I would concur with
22 that understanding. I think that substitute of
23 your third inserted be it further resolved clause,
24 along with the changes that we made on page four
25 already to the first be it further resolved clause



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there settle the matter, do they not?

MR. SIMMS: I believe so.

MR. MCDONALD: I think, Carl, procedurally what you've got is a motion to amend, and we've really fiddled with that. David, if you would just accept all these changes as part of your motion to amend we will, or I'll move to amend your amendments, if you want to do it that way.

MR. POPE: I don't think procedurally it matters. I think that the motion to amend can include the changes just previously agreed to.

MR. MCDONALD: That's fine with me.

VICE CHAIRMAN BENTRUP: The amended motion will be accurately in the record.

MR. MCDONALD: It should be. This is a sensitive matter. I would not object to taking the time to read it from cover to cover if we want a good clean transcription, if you have any concerns, David.

VICE CHAIRMAN BENTRUP: No.

MR. MCDONALD: David or Richard?

MR. SIMMS: I believe I have a dirty, clean copy.

VICE CHAIRMAN BENTRUP: Do you believe it's necessary that we read a completed



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amended motion into the record, or do you think it's there?

MR. SIMMS: I don't think so. I think that we have a copy from which the resolution can be drafted and appended to the transcript of the proceedings.

VICE CHAIRMAN BENTRUP: I suppose we're ready to vote. How does Kansas vote?

MR. POPE: Kansas votes aye.

VICE CHAIRMAN BENTRUP: Colorado?

MR. MCDONALD: Colorado votes aye.

VICE CHAIRMAN BENTRUP: All right, then--(interrupted)

MR. POPE: That's just on the amendment, I guess.

MR. MCDONALD: I was going to say, we need one more vote to keep the transcript clean.

MR. POPE: The resolution, itself.

MR. MCDONALD: The resolution, as now amended needs to be voted on.

VICE CHAIRMAN BENTRUP: The resolution, as amended has been moved and seconded. How does Colorado vote?

MR. MCDONALD: Colorado votes aye.

VICE CHAIRMAN BENTRUP: How does



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Kansas vote?

MR. POPE: Kansas votes yes, out of order.

VICE CHAIRMAN BENTRUP: We're through except for a few little details here that we've already agreed. All right, first the funding of satellite monitoring stations, I think we need to get that-- (interrupted)

MR. MCDONALD: David and I and Bob are willing to do that over the telephone, and if we need a formal telephone vote we can do it later. Colorado doesn't need to have that resolved tonight, do we, Bob? We would like to get it resolved in the next three or four weeks.

VICE CHAIRMAN BENTRUP: Is it satisfactory then to handle it that way?

MR. POPE: Carl, I think just as a matter--the only thing that really has to be done tonight is the acknowledgment of the agreement to continue the handling of the transit loss account, as Bob Jesse and Howard Corrigan have agreed to, because of the April 1st deadline provided.

MR. BENTRUP: All right, what needs to be in the record?

MR. MCDONALD: David, what we've



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1 usually done on that is, we have noted that
 2 pursuant to Article II(E)3--I beg your pardon,
 3 pursuant to Article II(E)4 of the operating plan,
 4 transit losses are to be determined by the Colorado
 5 Division Engineer and a representative of the
 6 Kansas Division of Water Resources, and we have
 7 simply placed their agreement in the record each
 8 year as an acknowledgment that they did reach the
 9 agreement that they have the prerogative to reach
 10 under II(E)4 of the operating plan.

11 MR. POPE: I think that's correct. I
 12 don't have that. Howard, is that your
 13 understanding?

14 MR. CORRIGAN: Yeah.

15 MR. MCDONALD: To see if I have done
 16 it right or not.

17 MR. POPE: I think that's correct,
 18 and I have before me a signed copy of that
 19 agreement that I believe Howard and Bob have
 20 reached dated March 28, 1985. It's identical to
 21 the one from the previous year that has now expired,
 22 and I believe there may be another copy around here.

23 MR. MCDONALD: There is, and I'll
 24 give it to the reporter. (Exhibit M)

25 MR. POPE: And that should take care



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of the matter, if we want to formally get that on the record here as being the action of the Administration.

MR. BENTRUP: How do you get it into the record?

MR. POPE: We need a motion on that, I guess.

MR. BENTRUP: An agreement is automatically renewed unless there's an objection.

MR. MCDONALD: I don't recall if we've moved it in the past or we've merely acknowledged they have reached an agreement, and that is their prerogative to. We'll acknowledge they reached agreement, and that will cover the matter for the period April 1 to November 1, 1985.

MR. POPE: Let's do it. Okay, is that all right with you?

MR. BENTRUP: Yes, fine. Okay, that's down to the last item, adjournment. Any other business? The meeting is adjourned.



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On July 12, 1935, the foregoing transcript was adopted as the official minutes of the Special Meeting of the Arkansas River Compact Administration held on March 23, 1935, in Garden City, Kansas.

Frank E. Cooley
Frank E. Cooley
Chairman

Leo Idler
Leo Idler
Recording Secretary



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ATTENDANCE LIST

SPECIAL MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATE: MARCH 28, 1985, 9:00 A.M., HILTON INN

NAME	REPRESENTING	LOCATION
1. Kevin Pratt	SECURED	Pueblo
2. Ray Hemman	The Hutchinson News	Hutchinson, KS
3. Larry Crowell	"	"
4. Don Brown	West Eastern Pub	Garden City, KS
5. Herb S. Stallman	U.S. Geol. Survey	Garden City, KS
6. John Eastman	Co Spst Pueblo	Seneca Co.
7. William	Water Resources Council White Pine Chapter of American Whitewater	
8. Gary Baker	G.M.D. #10.3	Garden City, KS
9. Ken Williams	Finney County Water Users Assn	Garden City, KS
10. Carl E. Venterup	ARCA	Deerfield, KS
11. David Heyd	Commissioner Kansas	Topeka
12. Richard Summs	State of Kansas	Santa Fe, N.M.
13. Brent S. Sprank	SPRONK WATER ENGINEERS, INC	DENVER, CO
14. John Campbell	KS Atty General's Office	Topeka, KS
15. Van Smith	atly. S. water mpt. #1 and 3	Garden City
16. Byron Caloz	KANZ	Piercerville, KS
17. STEVEN FROST	GMD #3	GARDEN CITY
18. IRTA @ Broyles		LAMON, MO.
19. MICHAEL SMITH	KSNG-TV NEWS	GARDEN CITY
20. DOUG STREMEZ	" " " "	" " " "
21. Arnold Schuee	Finney County Water Users	Garden City
22. D.C. HIGGS		" "
23. Gene Tomblak	LAKIN MAYOR	Lakin, KS
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ATTENDANCE LIST

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DATE: MARCH 28, 1985, 9:00 A.M., HILTON INN

NAME	REPRESENTING	LOCATION
1. Martin J. Shams	Woodward & Shaw	Larned, KS
2. Gene Jencsok	Colorado	Denver
3. Jerry Duwall	Ks Water Office	Topeka, Ks
4. Joe Wentz	Ks Water Office	Topeka, Ks
5. Dale Jacob	Ks Div. Water Resources	Garden City, Ks
6. Ron Spriet	DWR	Garden City, Ks
7. Steve Bond	KSBA DWR	GC
8. Hal Schuerman	Keamy Co. Farmers Irrigation	Deerfield
9. John Hawk		Garden City
10. Robert Jene	S & T Coal Co.	Pueblo
11. Wray Lewis	Colo. Hwy. Con. Office	Denver
12. John Couart	Colo. Water Conservation Bd	Colo Spgs.
13. William H. Bassett	Colorado Hwy. General	Denver
14. Carl B. Sarna	Colo. Member Colo. River Compact	Pueblo
15. Ervin Ploeger	Keamy County Irr. Assoc.	Deerfield
16. J. P. Pope	South Side Ditch	Lakin
17. Bill Howland	Colo. Div. Water Resources	Las Animas Co.
18. Dale E. Relf	DWR; KSBA	Topeka, Ks
19. Gerald Ekhnus	" "	" "
20. Henry Sillanp	Garden City Farming & Water Users	Garden City
21. Bob Rumph	Pueblo - Corps of Engineers	Pueblo CO
22. Burgess Wagner	Frontier Ditch	Coolidge Ks.
23. Henry Burt	Garden City Ditch	ks Ks
24. Percy Turner	Wichita Expt. Station	Wichita
25. A. S. Knoll	Garden City Canal	Garden City Ks.

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SPECIAL MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATE: MARCH 28, 1985, 9:00 A.M., HILTON INN

NAME	REPRESENTING	LOCATION
1. Phil Tolletson	City of Colorado Springs	Colorado
2. Pam Zubeck	Telegram	GC, KS
3. Jack Garner	US Bureau of Reclamation	Durham, Ala
4. Lorie Hyren	KMLC Radio	GC
5. G. J. Richman	Soil Conservation Service	Garden City
6. Frank Alden	Farmer	Halscomb, KS
7. Paul Stewart	FRANIER	DEERFIELD, KS
8. Kent Reyer	Fort Lyon Canal Co.	COLO.
9. Dean Smartt	Fort Lyon Canal Co.	Lodumia Co.
10. Jim Rogers	Hyde	Texas Co.
11. Johnnie Weber	Fort Lyon	WILEY COLO.
12. Mark Messer	State of Colorado	Trinidad
13. Joe DeBarbo		Trinidad Co.
14. Norman Lundgren	Garden City Telegram	GC KS
15. Council of Society	Trinidad, P. R. & D	
16. FRANK G. Cooley	Chairman, Ark RCD	Box 98 Macke, Colorado
17. Sarah Daughton	AKMA	Garden City, KS
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SPECIAL MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATE: MARCH 28, 1985, 9:00 A.M., HILTON INN

NAME	REPRESENTING	LOCATION
1. Jim Steenwood	Amity Mutual Irrigation Co.	Holly, Colo
2. Norman Vagler	Amity	Bristol Colo
3. Leo J. Pallant	Amity Mutual Irr. Co.	Holly, Colo.
4. Lewis Davis	amity mutual	Holly Colo
5. Paul Zumpf	Amity Mutual	Holly, Co
6. Charles Thomson	SE Colo Water Cons Dist	Pueblo, Co-
7. Lowell T. Ploss	Bureau of Reclamation	Denver, Co
8. Joe Bender	Pueblo Chieftain	Lamar Co
9. C. V. Mills	Pueblo News	Lamar, Co.
10. J. McManis	Pueblo Water Cons. Dist.	Trinidad
11. Willard Coder	South Side Ditch	Lakonia
12. Ed Zambino	Consult. Hydrologist	Garden City
13. Brent S. Sprunk	SPRUNK WATER ENGINEERS, INC.	Denver, Co
14. Ross Gloman	ARCA	Sheldon, Co.
15. Joe Hancock	High Line Canal	Rocky Ford, Co
16. Bill Huntley	Corps of Eng'rs	Albuquerque
17. Dale Bock	Kansas	Denver
18. Frank Melandri	Catlin Canal	Rocky Ford, Colo
19. Duane Helton	Tipton & Kalmbach	Denver
20. Hank Wagner	High Line Canal	Las Animas, Colo
21. Edward D. Taylor	ASSOC. DITCHES	DEERFIELD
22. Harold E. Miskel	City of Colo Spgs	Colo Spgs, Co
23. Robert Gilmut	Southside	Holcom, KS
24. Howard C. Corrigan	State of Kansas	Garden City, KS
25. Bud O'Hara	PUEBLO WATER BOARD	PUEBLO, CO.

ATTENDANCE LIST

SPECIAL MEETING OF THE ARKANSAS RIVER COMPACT ADMINISTRATION

DATE: MARCH 28, 1985, 9:00 A.M., HILTON INN

	NAME	REPRESENTING	LOCATION
1.	<i>R B Jowell</i>	<i>PRWCD</i>	<i>Trinidad, Colo</i>
2.	<i>Galen Ulrich</i>		<i>Garden City, Ks.</i>
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