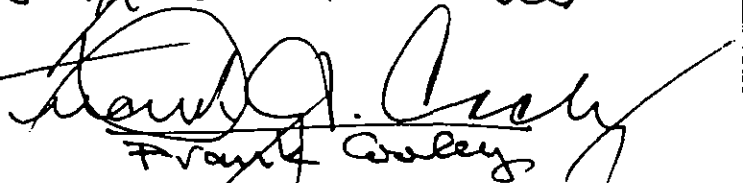


COLORADO WATER CONSERVATION BOARD
721 STATE STREET, DENVER, CO 80202
313 SHEPARD ST.
DENVER, CO 80202

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M I N U T E S
OF
ANNUAL MEETING
OF THE
ARKANSAS RIVER
COMPACT ADMINISTRATION
ON
DECEMBER 12, 1989
8:30 A.M.
AT
STAGECOACH MOTOR INN
LAMAR, COLORADO

These minutes were approved by the
Administration at the Annual Meeting
held on December 11, 1990 in Lamar
Colorado


Frank Wesley
Chairman

(P R O C E E D I N G S)

1
2 MR. COOLEY: Gentlemen, it is 8:30 and time
3 to call the meeting of the Arkansas River Compact
4 Administration to order.

5 We are very honored this morning that with us
6 is Guy Gibson who had a lot to do with putting the
7 Arkansas River in place, and for many years was
8 chairman of the Kansas delegation, and we will
9 certainly hear from Mr. Gibson later in the proceed-
10 ing.

11 Welcome aboard, sir.

12 I will call on David Pope on behalf of Kansas
13 and then I will call on Bill McDonald to make
14 introductions on behalf of Colorado, and I will,
15 while that is going on, hand to Carl Bentrup the
16 attendance list, and if each of you would write his
17 name legibly, and organization, it is going to help
18 us conduct the meeting.

19 David Pope?

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

21 It is my pleasure to introduce the other two
22 members of the Administration and some additional
23 folks from Kansas.

24 On my right, your immediate left, is Carl
25 Bentrup from Deerfield, a member of the Administration.

1 Also, Ron Olomon from Garden City, the other
2 appointed member of the Administration.

3 On my left is Richard Simms from Santa Fe,
4 New Mexico, a Special Assistant Attorney General
5 for Kansas on the Arkansas River Compact litigation.

6 Next to him is Dale Book from Denver, an
7 engineering consultant for Kansas.

8 And then to his left or to our far left on the
9 table is Leland Rolfs, legal counsel for the Division
10 of Water Resources, Kansas State Board of Agriculture.

11 I would also like to introduce from our staff,
12 Jim Bagley from Topeka, here towards the front
13 of the room, head of our engineering technical
14 services section.

15 We have Steve Frost, Water Commissioner from
16 the Garden City field office.

17 And from his staff, Dale Jacobs, next to him.

18 And Mark Rude, I believe, is in the room also,
19 also on the staff of the Garden City field office.

20 You have already alluded to, Mr. Chairman, our
21 pleasure in having Mr. Gibson with us today, so I
22 guess I will pass any further introduction there.
23 Guy was able to ride out with us today and be
24 available for the photography sessions and other
25 events here today.

1 Also, we have several representatives of ditch
2 companies from Kansas. I see at least a couple.
3 There are probably others.

4 David ^{Brown} Brown from the Great Eastern system.

5 Wayne Miller. And there may be others there.

6 Fellows, help me out if I don't know people
7 personally.

8 Oliver Hines. I didn't see Oliver. Yes. There
9 he is back there. From the Frontier system.

10 MR. COOLEY: Where is Ed DeKaiser?

11 MR. POPE: I don't see Ed.

12 MR. COOLEY: You tell him we may have to conduct
13 the meeting anyway.

14 MR. POPE: I believe that concludes the
15 introductions from Kansas, Mr. Chairman.

16 MR. COOLEY: Thank you.

17 Mr. McDonald?

18 MR. McDONALD: Thank you, Frank. I would
19 introduce my fellow representatives.

20 First of all, to my left is Jim Rogers represent-
21 ing Colorado Water District 67.

22 To my immediate right, Carl Genova representing
23 Water Districts 14 and 17.

24 And for the record, I would reflect those two
25 gentlemen have been reappointed by Governor Romer

1 to serve another four-year term, that paperwork having
2 been completed last week, and I will get that down to
3 the Administration's office for the record.

4 Second to my right is Dennis Montgomery, Special
5 Assistant Attorney General to the state in the
6 litigation of Kansas v. Colorado.

7 And then I think, finally, I will introduce
8 Steve Witte, who is the administration's Operations
9 Secretary, of course.

10 Steve, if you would like to introduce your
11 staff people, I will leave that to you, please.

12 MR. WITTE: I would be pleased to.

13 Ken Knox and Chuck Roberts, Assistant Division
14 Engineers on my staff.

15 Bill Howland, my right arm, and Assistant
16 Operations Secretary. He is Assistant Operations
17 Secretary doing the operations on site for John
18 Martin Reservoir.

19 MR. COOLEY: To help me out, I would like the
20 representatives first from the Corps of Engineers
21 to introduce themselves.

22 Would you, please?

23 MR. KREINER: Yes. My name is Dick Kreiner.
24 I work for the Reservoir Control section in Albuquerque,
25 and with me is Bill Bullens who will be the new

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Project Engineer in the Southern Colorado project office in Pueblo.

MR. COOLEY: Welcome to sunny, warm Colorado. And the Bureau of Reclamation?

MR. CLARK: My name is Steve Clark. I am the Project Manager for eastern Colorado.

And this is Jack Gardner, our Pueblo office Field Director.

MR. COOLEY: We have one representative of the USGS here today and maybe more.

MR. KANE: We do have two representatives. I am Doug Kane. I am in charge of the subdistrict office of the USGS.

MR. PUTNAM: Jim Putnam, USGS, from Garden City.

MR. COOLEY: If there is anyone we failed to acknowledge, I apologize. We will try to take care of it during the morning.

The agenda has been prepared by their excellencies the chairs of the state delegations.

Is there a motion that we adopt the agenda?

MR. McDONALD: Mr. Chairman, I would move we adopt the agenda and insert it into the record as Exhibit A.

MR. COOLEY: It has been moved. Is there a

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second?

MR. GENOVA: Second.

MR. COOLEY: All right. How does Kansas vote?

MR. BENTRUP: Kansas votes aye.

MR. COOLEY: Kansas votes aye.

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Colorado votes aye.

We are going to proceed with this procrustean bed.

The transcript of the December, 1988, annual meeting, Mr. McDonald, do you have a copy of that?

MR. McDONALD: I just received that last night so my suggestion would be as follows: That if it is suitable to the Administration, why don't David Pope and I do our usual review and corrections and submit to the Administration those corrections via mail.

If those corrections are found satisfactory after the transcript is corrected, if needed, I will send you, Frank, the title page as we have done for signature so that that becomes an indication that the transcript has been approved.

MR. COOLEY: David, if my recollection is correct, we have adopted the transcripts at the annual meetings under similar routines before. That is to say,

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if something shows up, we have the mechanism to correct it, but we might formally adopt the thing now, subject to your and David's review.

Is that a satisfactory way to proceed?

MR. POPE: I think it is, with the caveat that if there are problems, we will have to deal with those, and, if necessary, come back later, but I don't see any problems with that.

MR. COOLEY: Okay. Would you make a motion that we adopt pro forma the transcript of the 1988 meeting subject to any corrections that you and Mr. McDonald might find?

MR. POPE: So moved.

MR. COOLEY: Is there a second?

MR. McDONALD: Second.

MR. COOLEY: Colorado?

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Kansas?

MR. BENTRUP: Aye.

MR. COOLEY: Gee, fellows, we are halfway through the agenda.

The chairman has nothing significant to report.

There will be a photography session that has been advertised for the last three years and I have warned the Compact members to wear a shirt, clean

1 shirt. Carl complains that he has worn a clean
2 shirt for the last two years and there hasn't been
3 a photographer.

4 And a word or two about that. The Compact
5 Administration has approved the expenditure through
6 the chair of enough to take several group photo-
7 graphs. We certainly will want the Compact members.
8 We are going to also want a photograph of some of the
9 senior Compact members, Harry Bates and Guy Gibson,
10 who are here, and it seems to me that we have got
11 some people--or I hope we have got some people
12 who have forty or fifty years on the river. Bill
13 Howland has got sixty years. And we will get some
14 of them.

15 The photographer is going to set up a shop to
16 take individual photographs, and I am going to do
17 everything I possibly can to force each one of you
18 to have his photograph taken because I don't think
19 later we want to have the situation of needing a
20 photograph of anyone that is not available in the
21 files and this whole business has developed so much
22 in the last twenty years with the photography of
23 school classes and individual school children, and
24 the man who is coming is experienced in that.

25 Will the Recording Secretary-- She is not here,

1 is she? Pardon me. Bernice cannot make it.
2 Mr. Thomson, we started anyway.
3 MR. THOMSON: Thank you very much.
4 MR. COOLEY: Has she sent any materials that
5 need comment or action?
6 MR. ROGERS: I don't think so. I think every-
7 thing is covered in the reports.
8 MR. COOLEY: There is one thing that I want to
9 bring up some time here, and that is, I read the
10 draft pretty thoroughly of the annual report. Was
11 that for '88, Bill, or was that the annual for '87?
12 MR. McDONALD: That's the annual report for
13 '87, which is a subsequent agenda item.
14 MR. COOLEY: Okay. That takes care of that.
15 Now, we will hear from the Treasurer.
16 MR. ROGERS: I think I passed out to all the
17 Compact members a copy of our transactions for the
18 past year.
19 We had total receipts of \$21,605.92 come in
20 from Kansas and Colorado through interest earnings.
21 We had disbursements of \$15,074.55.
22 We got \$210.08 in the checking account.
23 In the money market account, we have \$53,006.37,
24 which brings a total of \$53,216.45 left.
25 All the bills have been paid up to yesterday

1 with two exceptions: One to Farmer & Rankin for the
2 audit and copying, and then there will be the bill
3 for the motel.

4 MR. COOLEY: Well, I have a question. Mr.
5 McDonald has very carefully, as a public official,
6 arranged our situation so we go in the red every
7 year and you eat up our surplus gradually, and it
8 appears to me that, god forbid, we have made 6,500
9 bucks.

10 Is that where we are or is there some expenditure
11 that we haven't taken into consideration?

12 MR. McDONALD: For this fiscal year, we still
13 have some expenditures to make, notably the Annual
14 Report. That will be the biggest piece of loose
15 change.

16 MR. COOLEY: Printing the Annual Report.

17 MR. McDONALD: If there is still a surplus, I
18 will correct that when we get to budget items for
19 1990-1991. I think probably Mr. Pope will help me
20 because we both have the same problems.

21 MR. COOLEY: Okay, fine.

22 Are there any legitimate questions to the
23 Treasurer's Report, other questions of any sort?

24 MR. McDONALD: Frank?

25 MR. COOLEY: Pardon me. Bill has a comment.

1 MR. McDONALD: I was going to make a motion,
2 but I think maybe you had a question first.

3 MR. COOLEY: Oh. Carl?

4 MR. BENTRUP: It seems like the auditors expenses
5 are twice what they have been. Have accountants
6 doubled their fees or what?

7 MR. ROGERS: Carl, on their bill, there is
8 \$300 for copying which we mail out to copy the
9 reports of the audit to each one of you, and the
10 \$700 is for the accountants and they claim that
11 it went up, it just cost more to do it. It hasn't
12 been paid because that was over budget and I do
13 need your input on that.

14 MR. COOLEY: \$700 to go over 43 checks or
15 whatever seems inordinate.

16 With local government audit law, in Colorado,
17 at least, we are allowed on local government units
18 to do our own auditing about two years out of
19 three, as long as there is a C.P.A. that moves in
20 on the third year.

21 David, do you know whether we have to have a
22 C.P.A.'s audit of the books?

23 MR. POPE: No. I can't answer that question for
24 sure.

25 MR. COOLEY: Lee, do you have an idea on that?

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MR. ROLFS: I don't know the answer to that either.

MR. COOLEY: Bill, do you have an idea on that subject?

MR. McDONALD: I am unaware of any Colorado state law requirements. I have some vague recollection that we may have buried in our bylaws as an Administration, that requirement, but I would have to research that.

MR. POPE: Here is a statement, Mr. Chairman. I was just looking and pulled out the bylaws. In Article VII, there is an item, number 5: "All receipts and disbursements of the Administration shall be audited yearly by a Certified Public Accountant to be selected by the Administration and the report of the audit shall be included in the report of the Administration."

So it appears that we are, by virtue of our bylaws, committed to this until such time as we change the bylaws.

MR. McDONALD: Could I suggest a way of proceeding?

MR. COOLEY: You sure could. I would take any suggestion.

MR. McDONALD: The audit is done. That's history.

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Why don't we deal with the question of the price of future audits when we get to the budget item at the end of the agenda and we can deal particularly with approving the one audit item expenditure that is over budget. I don't personally have any problem with it. We didn't really establish any precise guidance to the auditor, so I don't know as we can jerk his chain at this point, but when it comes to the next budget, I frankly have some concerns about the format of the audit and I think the price is outrageous and I am prepared to look for a new auditor if we can't make an accommodation with the gentleman.

MR. COOLEY: Did you have any other questions, Carl?

MR. BENTRUP: No.

MR. COOLEY: Mr. Rogers, is there a motion that we approve the Treasurer's Report?

MR. BENTRUP: I will so move.

MR. COOLEY: Is there a second?

MR. OLOMON: I will second.

MR. COOLEY: It has been moved and seconded. Kansas?

MR. BENTRUP: Aye.

MR. COOLEY: Kansas votes aye.

1 MR. McDONALD: Colorado votes aye.

2 MR. COOLEY: Colorado votes aye.

3 MR. McDONALD: Frank?

4 MR. COOLEY: Yes.

5 MR. McDONALD: Pardon me. Could we reflect
6 the receipts and disbursements from July 1 through
7 December 11 as Exhibit B, and the list of checks
8 written since June 30, 1989, as Exhibit C?

9 MR. COOLEY: It is done.

10 MR. McDONALD: Thank you.

11 MR. COOLEY: The Operations Secretary's Report.
12 Steve, if you would?

13 MR. WITTE: Thank you, Mr. Chairman.

14 You should all have received by mail, and I
15 hope at least had, within the last week, or hopefully
16 have had more than a week to review the annual report
17 of the Operations Secretary.

18 The highlights I would like to address simply
19 are that during the winter storage period, we
20 stored 53,504 acre-feet of water in John Martin
21 Reservoir, and during the summer storage period,
22 17,464 acre-feet.

23 Included in that was a quantity of 1805 acre-
24 feet of Fryingpan-Arkansas project water that was
25 regulated through John Martin Reservoir for the

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benefit of the City of Lamar.

That extraordinary measure was approved by polling the Administration, and I have included in my annual report the pages 4 through 6 memoranda summarizing the steps that were taken to secure the approval of the Administration for that operation.

I would like to thank each of you for your prompt response to those requests and for the approval.

The matter of how such extraordinary operations ought to be approved in the future I had planned to address during the portion of the Operations Committee Report later in the agenda.

Overall, at the end of the Compact year, 27,406 acre-feet remained in accounts, which is nearly 50,000 acre-feet less than what was in storage in accounts one year ago.

Also of significance in the annual report is the annual agreement that has historically been entered into by the Division Engineer for Colorado and the Water Commissioner from Kansas regarding the disposition of the transit loss account.

There was an addendum to that agreement this year to extend the period, the deadline for

1 redistribution of excess transit loss, excess water
2 that remained in the transit loss account at the
3 end of the Compact year to a later date, and this
4 addendum covers that operation.

5 I would also note that the Operations Committee
6 did discuss that matter last evening and will report
7 at this time that the recommendation of the Operations
8 Committee has been to distribute that excess
9 4,719 acre-feet at the earliest opportunity.

10 The form of the report should be somewhat
11 familiar to most of you by now. It hasn't changed
12 that much in the past few years with the exception
13 that at the request of the Operations Committee
14 made last year, we did include a new table identified
15 as table 12 on page 13 of the report which shows
16 the releases and credited deliveries to the State
17 of Kansas by run instead of by month as had been
18 previously the practice.

19 I believe that concludes my report as Operations
20 Secretary for 1989 and I would submit to you this
21 report for your formal approval.

22 MR. COOLEY: Thank you, Steve. It will be acted
23 on in due course.

24 I read the monthly accountings and I reviewed
25 your report, but I would very much like it--you have

1 been on the board for more than a year--very much
2 like it if you could give us in a few paragraphs
3 a narrative of what has happened on the Arkansas
4 River this year, not with specific numbers so much
5 as in general terms.

6 MR. McDONALD: The Chairman is arranging the
7 noose. You may go right ahead, Steve. Don't
8 hesitate.

9 MR. WITTE: Very well. The operations in the
10 past year were conducted to the best of our ability
11 within the guidelines of the 1980 operating agree-
12 ment. There really were not any notable exceptions
13 other than those I have already recounted to you
14 to normal ordinary operations.

15 The winter storage period was operated precisely
16 in accordance with the dates set forth, and the
17 distribution, to the best of my knowledge, happened
18 in a very normal, ordinary fashion according to the
19 schedules that have been presented to us in the
20 1980 operating agreement.

21 MR. COOLEY: Were there any large storm events
22 in the summer, significant amounts of water boiling
23 down the river at any season of this year?

24 MR. WITTE: There was an occasion in--I believe
25 it was April of this year when there was a high

1 river that brought the Great Plains storage decrees
2 into priority in Colorado that resulted in a couple
3 days of storage in John Martin that was credited
4 as Article III water, but other than that, no, sir.

5 MR. COOLEY: Thank you.

6 Are there any other questions? Anybody in the
7 audience have any questions?

8 I used to enjoy this part of the program because
9 we had a chance to put Bob Jesse in the frying pan
10 where he spent a good bit of his time.

11 Have we got a question back here (indicatng)?

12 No. He just bid \$3,000 on a boat.

13 Is there a motion that the report of the Operating
14 Secretary be accepted?

15 MR. BENTRUP: I move that the report be
16 accepted.

17 MR. OLOMON: Second.

18 MR. COOLEY: It has been moved and seconded that
19 the report be accepted.

20 Colorado?

21 MR. McDONALD: Colorado votes aye.

22 MR. COOLEY: Kansas?

23 MR. BENTRUP: Aye.

24 MR. COOLEY: Kansas votes aye.

25 Thank you very much, Steve.

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MR. WITTE: Yes, sir.

MR. COOLEY: "Committee reports for compact year 1989."

The first committee is Administrative and Legal, and I must confess I don't know which of the persons had that chair this last year.

MR. McDONALD: I am looking at the transcript of last year trying to remember. The important thing is that Carl and I were not at any meetings.

MR. COOLEY: Okay. Nothing to report.

MR. McDONALD: Either one of us.

MR. COOLEY: We won't take any action.

Engineering Committee. Was there a meeting of the Engineering Committee?

MR. POPE: I think we can essentially report the same thing.

MR. COOLEY: Okay. Fine. Moving right along. Operations?

And the Operations Committee, I think their report has, in essence, been wrapped up by Steve.

MR. OLOMON: That is true. I think that Steve, during the time of our report, he would like to discuss some of the mechanisms that we sort of put in place last night on the transfer of water to the City of Lamar.

1 MR. WITTE: Good. Perhaps I should have handled
2 this in the first part of the report and I guess I
3 could be sitting down by now.

4 As I mentioned earlier, last year, I was
5 presented with a request to utilize John Martin as
6 a regulating device for release of water for the
7 benefit of the City of Lamar to be used for recharge
8 purposes, and felt that it was necessary to poll
9 the Administration for its approval of that 2,000
10 acre-foot release to be released from Pueblo Reservoir
11 at a higher rate of release than to be released from
12 John Martin Reservoir, initially at a rate of
13 40 c.f.s. continuously, and that was found to be
14 in excess of the City of Lamar's capability of
15 handling that volume through the recharge facility,
16 and so I repolled the Administration to seek their
17 approval for a lower rate of release from John
18 Martin.

19 In the course of that exercise, it was suggested
20 to me that perhaps I should come up with a blanket
21 procedure for securing approval of any such
22 extraordinary measures.

23 I confess that I have failed in that effort
24 simply because I think it is impossible to foretell
25 exactly what circumstances might arise.

1 However, with respect to any future operations
2 for the benefit of the City of Lamar such as happened
3 last year, a procedure was discussed by the Operations
4 Committee last evening in response to a letter from
5 the City of Lamar's attorney, Mr. Shimmin, which I
6 believe you have received a copy of, addressed both
7 to the Administration and to myself.

8 In essence, the Operations Committee directed
9 me to draft a letter to Mr. Shimmin on behalf of the
10 City of Lamar advising them that a three-week advance
11 notice in writing giving specifics of the specific
12 details of the operation requested would be necessary
13 prior to the use of John Martin as a regulatory
14 vessel in the future.

15 That letter will also contain a confirmation
16 of our understanding that the City of Lamar is not
17 interested in any long-term storage in John Martin
18 Reservoir, and that the accounting would show the
19 water to be temporarily withheld in the Fort Bent
20 account, of which the City of Lamar is a part owner,
21 but that that water is not to be considered as
22 being in part of the regular account, and so it
23 would be subject to first spill in the event that
24 those circumstances arose.

25 Thirdly, the Operations Committee directed me

1 to include in the letter a caveat that any departure
2 or change from the plan as previously approved may
3 result in forfeiture of the water, and so that is,
4 in essence, the procedure that has been given to
5 me through the Operations Committee to relate to the
6 City of Lamar regarding future operations of this
7 kind.

8 MR. COOLEY: Straighten me out on a couple of
9 basics. Have there been releases of this kind for
10 the City of Lamar?

11 MR. WITTE: Yes, there have. These kinds of
12 operations have been previously done in 1979, 1980,
13 1981, and 1982, as well as in 1989, this summer
14 past, so there has been some kind of precedent for
15 this kind of operation previously.

16 MR. COOLEY: And the second question: Where,
17 physically, and how does Lamar pick up the water?
18 Does it have a pump on the side of the river?

19 MR. WITTE: It diverts the water through the
20 Fort Bent Ditch and then routes that to a well
21 field that is used as a source of municipal supply
22 to recharge that well field.

23 MR. COOLEY: And thirdly, there is nothing here
24 of water out of priority or water that is not owned
25 by Lamar?

1 MR. WITTE: No, sir. The source of this water
2 is water purchased from the Southeastern Colorado
3 Water Conservancy District which has been imported
4 into the Arkansas basin through their transmountain
5 diversion facilities that has been allocated to the
6 City of Lamar and been residing in one of the project
7 facilities.

8 MR. COOLEY: And is this a recommendation of
9 the committee? Do they recommend it for adoption
10 by the Compact Administration? Did you reach a
11 conclusion last night?

12 MR. WITTE: Sir, I understood the directive
13 that I received last night to be the will of the
14 Operations Committee, yes.

15 MR. COOLEY: So, really, essentially what the
16 committee is presenting to the Compact is a procedure
17 or drill for delivery of water by the use of John
18 Martin, but with the safeguards in it that you have
19 recited from the committee report?

20 MR. WITTE: Yes, sir.

21 MR. COOLEY: And is there any reason we should
22 not now discuss that proposal? Can think of any?

23 MR. WITTE: No, sir.

24 MR. COOLEY: Okay. Fine. That will be up for
25 discussion then.

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Mr. Pope?

MR. POPE: I take it from your report, Steve, and apparently the discussion of the Operations Committee, that you didn't feel it was necessary to formalize a process for this particular entity to deal with this issue on a one and one basis, and instead, the three items that you referred to was a manner of how to deal with it if it comes up at some time in the future? Is that my understanding?

MR. WITTE: I believe that's correct, yes. Any member of the Operations Committee can correct me if I am wrong, but the procedure that was discussed last evening was intended to provide a mechanism for approval of an operation that has occurred on several occasions in the past, and that the Operations Committee felt that the Administration had developed a certain degree of comfort with, provided that the specific details of the operation did not vary significantly from those outlined in the memoranda that recount the conditions that applied last year.

This procedure is, I guess, an approval in concept. The committee felt that the Administration should have some advanced notice of the proposal rather than the eleventh hour phone calls that were

1 used to obtain approval last year and felt that
2 three weeks' notice was adequate to do that.

3 The committee went on to say that the Operations
4 Secretary should consider approval to have been
5 granted if no objection had been received by any
6 member of the Administration prior to the elapse
7 of the three-week period.

8 MR. POPE: So essentially, I take it from your
9 comments, that the committee felt that a procedure
10 of this sort would be adequate and that no formal
11 action need be taken by the Administration until
12 if and when such proposal comes up sometime in the
13 future. Is that it?

14 MR. OLOMON: That is the way I understand it.
15 Now, I don't know whether we are on solid ground or
16 not. If we need the full Compact approval, now is
17 the time to try and get it.

18 MR. COOLEY: We are really almost falling
19 between two chairs. There seem to be reasons why
20 there should be some documentation of the safe-
21 guards. Whether we need to go a full-blown resolution
22 of the action of the Compact is a tough one.

23 One thought that was going through my mind is
24 it might be appropriate for the Compact Administration
25 through the Operations Secretary to write a short

1 letter to the city telling it what the safeguards and
2 conditions would be and if these safeguards and
3 conditions were understood by the town, to acknowledge
4 receipt of the letter and send it back and then the
5 matter can come up in a year if anyone would want to
6 bring it up and we would still have those questions
7 of notice, of spilling first, and so forth, that are
8 appropriate to this type of action.

9 How does that stike you?

10 MR. POPE: I think that is essentially consistent
11 with what Steve was suggesting. He was suggesting
12 an exchange of letters between the Operations Secretary
13 and Mr. Shimmin for the City of Lamar.

14 MR. COOLEY: You are dealing with a lawyer. I
15 think maybe you better send him a letter, but not
16 get a reply is what I am concerned with.

17 Mr. McDonald, do you have any comment to make at
18 this point?

19 MR. McDONALD: I thought David characterized it
20 appropriately. It is a procedure that the Operations
21 Committee has outlined. The decision really awaits
22 Lamar asking to pursue the procedure. I don't think
23 we need to do anything today unless somebody is
24 troubled by the proposed procedure other than
25 acknowledge that if and when Lamar asks, this is

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the procedure we will go through in making the decision at that time.

MR. COOLEY: Well, well and good, but there seems to be a slight discomfort in how to put the thing in operation, notices and stuff like that, and I think maybe a one-page letter from the Compact or Operations Secretary to Mr. Shimmin might at least nail those down informally pending other action of the Compact.

MR. McDONALD: I thought I had understood that to be, in fact, what Steve was going to do on behalf of the Operations Committee.

MR. COOLEY: It could well be, but it is more official when I say it, I guess. I am afraid that's my hang-up, isn't it?

MR. McDONALD: Hurry up and say it. Let's move on.

MR. COOLEY: Yes. Tommy?

MR. THOMSON: At the appropriate time, I would like to speak on the subject, if I may.

MR. COOLEY: Well, this is the appropriate time, Mr. Thomson. Come on up.

MR. McDONALD: Introduce yourself for the record, please.

MR. THOMSON: I am Charles L. (Tommy) Thomson,

1 General Manager of the Southeastern Colorado Water
2 Conservancy District.

3 Well, I can just say right now, and Mr. Northrup
4 is sitting here, a member of the board of directors
5 from the Southeastern Colorado Water Conservancy
6 District representing the City of Lamar and Prowers
7 County, that there will be a request for some water
8 by the City of Lamar this year because they have
9 water in their storage account in Pueblo Reservoir,
10 and the reason they drew water out this last year
11 is that they had need for that water.

12 As dry as it is now, I foresee that request
13 is going to come in. I know from the standpoint
14 of the board of directors of the district, Lamar
15 is an integral part of our district and they came
16 in our district specifically with the purpose of
17 being able to buy project water, store it in
18 Pueblo Reservoir, and then draw on that account
19 when they needed the water.

20 They have been accumulating in that account, I
21 think, for the last three years, buying a specific
22 amount each year and not using the water because
23 we did have an above normal precipitation, so I
24 respectfully request that if there is a problem
25 with the way it has been delivered in the past,

1 that you perfect a procedure at this time.

2 Now, the three-week notice, I don't see--well,
3 I don't know whether we have a problem with that.
4 In other words, we deliver water to Colorado Springs
5 and so on.

6 Bob, do you--

7 MR. NORTHRUP: We were running out of water--

8 MR. THOMSON: The gentleman responding-- Wait.
9 Hold it.

10 MR. NORTHRUP: --and, why, things have a way of
11 being an emergency.

12 MR. THOMSON: The gentleman is taking this down.
13 Would you identify who you are, please?

14 MR. NORTHRUP: Robert Northrup, a citizen of
15 Lamar and director of the Southeast Colorado Water
16 Conservancy District.

17 The reason it was an emergency this past year
18 was that we received a call that they expected the
19 river to go low enough that you couldn't make a
20 delivery of project water and the city was advised
21 that we probably should get the water down before
22 the river went too low, so the city made arrangements
23 with Fort Bent that they be allowed to put that water
24 in the Fort Bent account since the city owns roughly
25 10 percent of the water and has an account with

1 Fort Bent and we felt that we should draw down
2 faster than we could deliver it down to Fort Bent
3 because if the river went down, why, it gets to
4 where things are a futile call and you can't deliver
5 without hurting the river, so we got the water down
6 as fast as we could and wanted to put it in that
7 account so we could turn it through the Fort Bent
8 at a rate that the city's recharge system could
9 take the water, and that could happen again this
10 year, you know. It is not impossible.

11 I would think that the city, with proper planning,
12 three weeks' notice would not be impractical, but
13 every once in a while there is an emergency that
14 forces you to do things a little quicker, but that
15 is the background on the thing.

16 It used to be this wasn't a problem because we
17 didn't have account systems in John Martin and our
18 water just went through, went into Fort Bent, and
19 we delivered it right down. With the account system,
20 why, it doesn't work quite that smoothly anymore.

21 MR. COOLEY: Thank you.

22 MR. THOMSON: But that is the important part
23 about it, Mr. Chairman, is our customers should be
24 able to get their water and it is fully accounted
25 for with the satellite gaging programs under the au-

1 thority of the Division Engineer, and if we can't do
2 it that way, then they are penalized.

3 Thank you.

4 MR. COOLEY: Thank you, Mr. Thomson.

5 Mr. Pope, there seems to be a consensus that we
6 move on from this item. It has been fully aired.

7 MR. POPE: I think that's correct, Mr. Chairman.

8 I don't believe there is need for formal action.
9 I think we should just accept the committee's report
10 and presume that this issue will be dealt with as
11 proposed with your specific suggestion that the
12 letters be exchanged.

13 MR. COOLEY: Would you make that a motion?

14 MR. POPE: I will move--

15 MR. COOLEY: Why not.

16 MR. POPE: I will move that the procedure outlined
17 by the Operations Committee be accepted in general
18 as a manner in dealing with this matter with any
19 specific approval to await action as per the outline.

20 MR. COOLEY: And that their report be adopted?

21 MR. POPE: That's correct.

22 MR. COOLEY: Is there a second?

23 MR. GENOVA: I will second that.

24 MR. COOLEY: Colorado?

25 MR. McDONALD: Colorado votes aye.

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MR. COOLEY: Kansas?

MR. BENTRUP: Aye.

MR. COOLEY: Kansas votes aye.

We have come to the "Election of officers for compact year 1990."

Is there a nomination for the office of Vice-chairman?

MR. POPE: Mr. Chairman, I would move the name of Carl Bentrup.

MR. COOLEY: The name of Carl Bentrup has been placed in nomination. Are there any other nominations?

MR. McDONALD: I move the nominations cease and a unanimous ballot be cast.

MR. COOLEY: Is there a second?

MR. GENOVA: Second.

MR. COOLEY: I think I would like a voice vote on this one, if you please. All in favor say aye.

All opposed?

(On voice vote, the motion carried.)

MR. COOLEY: Vice-chairman for life, Carl.

MR. BENTRUP: I don't know how long that is, though.

MR. COOLEY: None of us do.

Recording Secretary.

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MR. McDONALD: I would move the nomination of Bernice Carr who Jim advises is available for another year.

MR. COOLEY: The name of Bernice Carr has been placed in nomination.

Are there any other nominations?

Is there a motion that nominations cease and that she be elected by acclamation?

MR. McDONALD: So moved.

MR. COOLEY: I call for a voice vote on this motion. All in favor?

All opposed?

(On voice vote, the motion carried.)

MR. COOLEY: Motion carried. She is elected. Treasurer.

I call for nominations for the office of Treasurer. It is going to be more dangerous without a C.P.A.

MR. BENTRUP: I move that Jim Rogers be renominated for Treasurer.

MR. COOLEY: Jim Rogers has been renominated. Are there any other nominations for the office of Treasurer?

MR. McDONALD: I move the nominations close and a unanimous ballot be cast.

1 MR. COOLEY: I will call for a voice vote on
2 this. All in favor say "Aye."

3 Opposed, "No."

4 (On voice vote, the motion carried.)

5 MR. COOLEY: Jim, you have got it.

6 Operations Secretary.

7 MR. POPE: Mr. Chairman, I move the election
8 of Steve Witte as Operations Secretary.

9 MR. COOLEY: Steve Witte has been nominated as
10 Operations Secretary. Are there any other nominations?

11 I will entertain a motion that nominations
12 cease and Steve be elected by acclamation.

13 MR. McDONALD: So moved.

14 MR. COOLEY: And second?

15 MR. OLOMON: I will second.

16 MR. COOLEY: It has been moved and seconded. All
17 in favor, voice vote?

18 VOICES: Aye.

19 MR. COOLEY: Opposed?

20 (On voice vote, the motion carried.)

21 MR. COOLEY: Steve, you are in.

22 The appointment of committee members for the
23 compact year.

24 Bill, have you got the minutes out?

25 MR. McDONALD: Yes. If we do our normal rotations,

1 it would appear that taking the committees in the
2 order listed in the agenda, I would be chair of the
3 Administrative and Legal, and Carl Bentrup would be
4 the other member.

5 With respect to Engineering, David Pope would
6 be chairman, Carl Genova would be the other member.

7 With respect to the Operations Committee, Ron
8 Olomon would be chairman, and Jim Rogers would be
9 the other member.

10 MR. COOLEY: David, would you move that those
11 committees have the format that was indicated by
12 Mr. McDonald?

13 MR. POPE: Yes, Mr. Chairman. I would be happy
14 to, and I so move.

15 MR. COOLEY: And Jim, would you second?

16 MR. ROGERS: I second that.

17 MR. COOLEY: I would now put up for voice vote
18 the appointment of committees as read by Mr. McDonald.

19 All in favor, say "Aye."

20 VOICES: Aye.

21 MR. COOLEY: Opposed, "No."

22 (On voice vote, the motion carried.)

23 MR. COOLEY: That is taken care of.

24 We now turn to the "Reports of federal agencies."

25 The first here is the Bureau of Reclamation.

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Steve Clark, will you please give the report for the Bureau of Reclamation?

MR. CLARK: Mr. Chairman, I am going to defer to Mr. Gardner on that.

MR. COOLEY: Fine. Jack, if you would come forward, please?

MR. GARDNER: Thank you, Mr. Chairman.

The report on the Fryingpan.-Arkansas Project for operations for FY 1989.

First, I will tell you the construction projects that have taken place on the Fryingpan-Arkansas Project. We are currently within about a month of completing the Pueblo Fish Hatchery just below the dam. Phase 1 was completed approximately two years ago and the Division of Wildlife who will take over the operation of the hatchery has fish that they are growing in the hatchery and we will complete the ponds within about a month and it will be a fully operational hatchery to the tune of about \$16,000,000 in the last four years.

We are presently about 77 percent complete with the additional recreation facilities around Pueblo which include two campgrounds and a number of other facilities at 4.1 million.

During the time frame from the end of August

1 to November 13th, we went in and removed the dikes
2 and the old dam at Twin Lakes. That contract was
3 \$149,000, and as a result of the removal of that,
4 the dikes and the dam, we changed our operation of
5 the Fryingpan--Arkansas Project this summer in which
6 we moved approximately 50,000 acre-feet of water
7 down to Pueblo to get the water level in Twin Lakes
8 down to where we could remove the dike and dam.
9 That was successful, and that work has been completed.

10 We opened bids on November 21st for the Leadville
11 Mine Drainage Tunnel, in which we are going in and
12 constructing a treatment plant for mine drainage
13 coming out of that tunnel. This tunnel is one that
14 we acquired in our great wisdom from the Bureau of
15 Mines for one dollar, thinking that we could acquire
16 some water rights out of it, which the state promptly
17 told us we could not, and so now we are to let a
18 bid for 4.9 million dollars to build a treatment
19 facility. That was one of our better deals.

20 We completed the Fountain Valley Authority work
21 over on the Fountain Valley water system delivering
22 water to Colorado Springs and the other entities
23 in that area.

24 We had some product testing work that needed
25 to be done. That was completed in 1989 and that

1 system is fully operational.

2 In addition, in 1989, we had some special
3 legislation in which we did a cost sharing program
4 with the Bessemer Ditch and the City of Pueblo and
5 are lining approximately 11,000 feet of the Bessemer
6 Ditch going through the City of Pueblo. That is a
7 22 percent cost share with Bessemer, of which 11
8 percent Bessemer is taking, and 11 percent the
9 City of Pueblo is taking.

10 Last year or last spring, they completed approxi-
11 mately one-third of that 11,000 feet, and this
12 winter, they proposed to complete the other two-
13 thirds of it and have that work done.

14 In the operations of the Fryingpan - Arkansas
15 Project, we have a number of studies that are
16 going on. The Fryingpan - Arkansas study, which
17 is in its, I believe, third year--second or third
18 year, there will be a draft report out on that
19 in January. In that study, it was with the
20 Southeast Colorado Conservancy District, and some
21 of the items that were looked at in the study were
22 the possible raising of Pueblo Dam by either 5 or
23 10 feet, dedicating some space to winter water,
24 and one of the rural benefits was that we extended
25 data that we received in the first planning studies

1 and we added on data from '65 to '85, so that we
2 have a greater base of data to draw from on project
3 operations.

4 Like I said, that draft report will be out in
5 January. There have been no conclusions at this
6 point.

7 We released approximately 10,000 acre-feet of
8 water out of Ruedi Reservoir for endangered fish
9 releases down just above Grand Junction. A lease
10 has been signed with the Colorado Water Conservation
11 Board so that they will operate that release in
12 the future. I believe that all signatures have been
13 affixed to that lease and they are going through
14 a thirty-day period right now in which they are
15 getting comments to see if there is any adverse
16 comments on that.

17 The Department of the Interior has given the
18 Bureau of Reclamation about \$250,000 to do a study
19 on the upper Arkansas water quality. It is primarily
20 directed to the Leadville area and is for the
21 improvement of fisheries in the Leadville area
22 on the Arkansas.

23 We are working in cooperation with the EPA and
24 USGS and other agencies to come up with a program
25 and hopefully we will get some actual in-field

1 work done on improving water quality. This is in
2 addition to the work that is being done on the
3 Leadville mining drainage tunnel and Yap tunnel
4 by EPA and the superfund..

5 As far as water operations on the Fryingpan-
6 Arkansas Project, last year, we imported through
7 the Boustead Tunnel, approximately 36,500 acre-feet
8 of water. We sold to the Southeastern Colorado
9 Water Conservancy District 109,000 acre-feet of
10 water, of which 80,500 was actually run.

11 In addition to the 80,500, there was 11,000
12 of carryover from the previous year, and of that
13 total, which was approximately 91,500, 85,000 of
14 that was irrigation water and 6,700 was M and I
15 water.

16 We stored 41,000 acre-feet of winter water
17 last winter, of which, by about November 1, we
18 had approximately 6,500 remaining in that account
19 on winter water.

20 Thus far, since November 15th when this year's
21 winter water program started, we have stored
22 approximately 11,000 acre-feet of winter water
23 for the direct flow entities in Pueblo Reservoir.

24 Total space available in the system at this
25 time is approximately 160,000 acre-feet, of which

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most of it is available in Pueblo.

We have approximately 140,000 space available in Pueblo. Top of conservation is about 264,000 acre-feet, and we are presently about 124,000 acre-feet.

We carried on a couple of exchanges. One of them was with Twin Lakes Canal Company in which, during the year, we exchanged approximately 1,700 acre-feet of water, and then we got a contract with the City of Colorado Springs for a temporary exchange contract in which we exchanged 3,000 acre-feet of water.

That completes my report.

MR. COOLEY: Thank you very much. I know I have some questions and I am sure there are going to be some others.

Questions from the Compact?

MR. BENTRUP: I have one. You mentioned that you are considering raising Pueblo Dam 10 feet?

MR. GARDNER: There was a consideration. The Southeast District brought up the consideration of raising Pueblo Dam either 5 or 10 feet.

MR. BENTRUP: How much would this increase the capacity?

MR. GARDNER: Tommy, do you remember?

1 MR. THOMSON: It won't increase the capacity.
2 It merely gives the Corps of Engineers the capability
3 to carry water to April 15th--May 15th instead of
4 having to release it March 15th. We don't go into
5 the flood storage.

6 MR. GARDNER: What we have is the situation
7 where the Corps of Engineers has put an operating
8 restriction on it.

9 As of April 15th, we can only go to 264,795,
10 which is the top of conservation. Prior to that, we
11 can go into the Joint Use Pool, and what this would
12 do is allow us to invade part of that Joint Use
13 Pool without having to vacate it. The Joint Use
14 Pool has approximately 65,900 acre-feet of space
15 available in it and this would allow us to operate
16 in the Joint Use Pool without having that restriction
17 on us after April 15th.

18 MR. THOMSON: The maximum we have had in storage
19 in Pueblo is 293,000 acre-feet. That is one vertical
20 foot below the campground flush-type toilets and
21 the tops of the boat launching ramps. That's when
22 the board started the study which would then permit
23 us merely to keep the water an extra thirty days.
24 We are working with the Corps of Engineers on that.

25 There is no plan to increase the storage

1 capacities because then we would have to go out and
2 do a tremendous amount of revamping on those
3 facilities.

4 MR. POPE: There is a follow-up question to
5 that. Then the proposal, the study related to
6 raising the dam would not be a physical change, it
7 would be an operational change?

8 MR. GARDNER: Well, I think we looked at it
9 from both standpoints. I think the Southeast District
10 was working with the Corps to look at it from an
11 operational standpoint to see if it couldn't be
12 done without a physical change. We also looked at
13 it from a physical change in going in and actually
14 raising the dam to increase our flood storage in
15 the area.

16 Our estimate on price range if you went 5-feet
17 higher or 10-feet higher was roughly about 6 million
18 for 5 feet and about 11 million for 10 feet to raise
19 it up, so we looked at it from both standpoints.

20 MR. POPE: The January draft report is going to
21 deal with both issues, the physical and the
22 operational?

23 MR. GARDNER: It will deal with physical only.

24 MR. POPE: Physical only.

25 MR. GARDNER: Yes. The Southeast District is

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working with the Corps on the operational change.

MR. BENTRUP: If it increases the flood storage capacity, isn't that changing your operation?

MR. GARDNER: It will give us the buffer zone in there. It will allow us to go above the conservation pool for a period of time.

At this point, we don't have the capacity in the flood pool, so by raising the dam, it will physically give us the additional capacity.

MR. BENTRUP: Well, my concern would be would you be storing flood water that otherwise now would be going down the river to John Martin?

MR. GARDNER: No.

MR. POPE: Just a follow-up question.

MR. COOLEY: Go ahead.

MR. POPE: What is the distribution plans for the draft report? Will it show, for example, to us?

MR. COOLEY: It will now.

MR. THOMSON: He has never been secretive about these kind of reports, so I would think on behalf of the board, there is only three members of the board, they certainly would be available.

MR. POPE: I would appreciate that.

MR. COOLEY: I have got a number of questions.

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I was hoping that David would ask more so I could ask more.

Are there one or two Leadville drainage tunnels?

MR. GARDNER: There is one Leadville mine drainage tunnel, but then there is also the California Gulch and the Yak tunnel which is an EPA superfund site and they are kind of over the ridges from each other.

One is, I guess, to the south of Leadville, the Leadville mine drainage tunnel. The one we are dealing with is to the north of Leadville.

MR. COOLEY: The one to the north, if I got it right, was built in World War II--

MR. GARDNER: Right.

MR. COOLEY: --to de-water a number of mines, or, frankly, the whole mining area, and was immensely successful, at least for the first few months. And is that the place you are going to put in a plant to do what, to take out the heavy metals?

MR. GARDNER: That is the location and that was what the mine tunnel was put in for was to drain those mines to get the metals out of them for the war effort, and we are going in and putting a treatment plant in there.

There is about 4 c.f.s. that comes out of there. We will treat that material, take the sludge, and we

1 did a pilot treatment plant on that approximately a
2 year ago and the pilot treatment plant showed that
3 the material that would be coming out of it is not
4 of a toxic nature and so it can be disposed of in
5 a location in the area.

6 MR. COOLEY: Just as an aside, I guess that the
7 drainage tunnel collapsed at some point back in the
8 tunnel?

9 MR. GARDNER: Yes.

10 MR. COOLEY: So it isn't producing anywhere near
11 the amount of drainage from Dyer Hill that it was
12 designed to produce?

13 MR. GARDNER: I don't know that I can really
14 answer whether it is producing the amount that
15 it was designed to produce. There was a collapse
16 of the tunnel and they bulkheaded it off. They are
17 pumping water from behind the bulkhead and draining
18 it. In addition, there is seepage coming through,
19 so there is water coming through both locations. Now,
20 whether that has changed over the years in the amount,
21 I am not aware of that.

22 MR. COOLEY: Just a word or two. The other
23 tunnels are not government built. They are drainage
24 from existing mines.

25 MR. GARDNER: Yes.

MR. COOLEY: And could you, in a few words,

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characterize the gunk that is coming out of the three different tunnels?

MR. GARDNER: It is not good stuff.
(Laughter.)

MR. GARDNER: The Leadville mine drainage tunnel, I believe that the effluent that is coming out of there, like I said, we did a treatment plant on a model treatment plant and were able to determine that we could remove the material from it and be able to dispose of the waste without it being considered toxic waste. The Yak tunnel, EPA is going through a number of efforts at this point to try to get that cleaned up.

The Yak tunnel is considerably worse than the Leadville mine drainage tunnel in the amount of material that is going into the Arkansas, and that is going to be an expensive operation to clean up the Yak tunnel, plus you are talking about a greater quantity of water.

MR. COOLEY: One other thing. The amount through the Boustead Tunnel, 36,500 acre-feet, what was that in relation to the availability of water through the tunnel or the capability of the system, either one?

MR. GARDNER: It was nowhere near the capacity of the system nor-- Well, back when we did our

1 original annual operating plan in April, we
2 estimated that we would be importing approximately
3 70,000 acre-feet of water. That was prior to our,
4 I believe, May 1 forecast in which the chinooks came
5 through and took most of the water.

6 We had areas, I believe, in the upper reaches
7 of the Purgatoire where we went from 160 percent of
8 normal to zero in that time frame, so we had originally
9 estimated we were going to bring about 70 through.
10 I believe 80 is pretty much our average that we
11 bring through, so 36 is way below what we anticipated
12 or what the capacity of the system was.

13 And what was the first question?

14 MR. COOLEY: Well, or in relation to the availability
15 of water.

16 MR. GARDNER: We took everything that we could
17 from the Western Slope. In fact, at one point--

18 MR. COOLEY: Well, within that time frame, is
19 it right that it was, as it were, a late decision,
20 that if you had known then what you know now, you
21 would have taken more; is that correct?

22 MR. GARDNER: No, I don't believe so. I believe
23 that we took everything that was available to us,
24 and, in fact, we took it for a while and then we got
25 some rains in July and we came back into priority and

1 we reopened the system and took more at a later
2 date.

3 MR. POPE: On that same line of questioning,
4 is the 109,000 acre-feet sold? You mentioned it
5 was sold to Southeast?

6 MR. GARDNER: Yes.

7 MR. POPE: How does that figure mesh in with
8 the 36.5?

9 THE GARDNER: The 36.5 was just added to existing
10 project water that was in storage in either Turquoise,
11 Twin or Pueblo, and the 109 would have been a result
12 of water previously stored in the system and the 36
13 just added to that.

14 MR. COOLEY: I wanted to ask that question, but
15 I didn't want to show my ignorance. I am glad you
16 did.

17 MR. POPE: I am not as careful, Frank. I
18 assumed it would have to be something like that.

19 MR. COOLEY: Are there any other questions?

20 Yes.

21 MR. GENOVA: Jack, what are the amounts of water
22 that drain out of the tunnels that you are cleaning
23 up?

24 MR. GARDNER: The Leadville mine drainage tunnel
25 produces 4 c.f.s. I don't know what the Yak tunnel

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produces in comparison to that.

MR. COOLEY: You don't know whether it is more or less?

MR. GARDNER: It is more, but I don't know how much more.

MR. COOLEY: Any questions from the audience? We have got a live one here.

Yes?

MR. KANE: I would like to just add a little bit more information for the Compact about the quality of the water in the Arkansas River.

MR. COOLEY: Please keep your voice up.

MR. KANE: My name is Doug Kane. I am with the USGS in Pueblo. The drainage from the Yak tunnel has a pH near about 3 where neutral would be 7, so it is quite acid.

The Leadville drain, my recollection is that it is a pH near neutral, somewhere around 6 or 7. The major contaminants from both of them are iron, manganese, and zinc, smaller amounts of copper, lead, cadmium, but as Jack indicated, the Yak is much more contaminated than the Leadville drain, probably close to an order of magnitude. I just thought I would add that.

MR. COOLEY: Any other questions?

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Thank you very much, Jack.

The Corps of Engineers.

Dick, will that be your presentation?

MR. KREINER: Yes, sir.

MR. COOLEY: Dick Kreiner.

MR. KREINER: I am going to present a little more formal report to the Administration today.

Periodically, we expand a little bit on our continuing authorities and that's primarily the purpose of this report, being a little more formal in this nature.

If anyone in the audience cares for a report, there are plenty of copies here.

MR. COOLEY: You will need a couple more up here.

MR. KREINER: During calendar year '89, the activities of the Corps in the Albuquerque District in the Arkansas Basin consist of reservoir regulations, flood control, related studies, flood plain management services, and 404 regulations directed to fill materials into the waterways.

Given the relatively low snowmelt runoff and extremely dry conditions during the summer months, there were no flood control regulations in John Martin, Trinidad or Pueblo Reservoirs.

1 Work did continue in the development of a
2 drought contingency plan for the Arkansas River where
3 it extends basically down to the Garden City, Kansas,
4 area.

5 As part of the Corps' overall water management
6 responsibility, a plan was prepared to serve as a
7 framework for dealing with drought conditions in the
8 basin.

9 MR. COOLEY: Dick, would I embarrass you if I
10 interrupted?

11 MR. KREINER: No. I can handle that.

12 MR. McDONALD: It won't make any difference.

13 MR. COOLEY: I was very much interested in the
14 drought contingency plan that was sent to us in
15 June, but the plan itself was most complex and most
16 worked out, but had a disclaimer at the beginning
17 that the one thing that the drought contingency plan
18 could not do was to do anything that had any effect
19 on water--which is my words, not the words of the
20 report--but you felt apparently that you had to, under
21 the constraints of law, stay out of the business of
22 water in respect to drought, and put together a
23 framework on how drought might be handled by the
24 various agencies, and, of course, as you know, on
25 the agenda and you know from my experience, I am

1 requesting the Compact to consider that matter this
2 morning.

3 Would you clarify that some and comment on that
4 for a minute or two?

5 MR. KREINER: The Corps has very broad authorities
6 as it relates to the use of water in storage in Corps
7 reservoirs. We wanted to come up front in the
8 purpose of that report and state that we weren't
9 about to identify excess storage from existing and
10 appropriated water in storage in John Martin or
11 Trinidad, so we see that report as a framework, and
12 our role, basically, as a facilitator if a federal
13 agency is needed to assist in handling drought
14 measures within the basin. It is very elaborate and
15 the committees that are set up personally feel it
16 is not too appropriate for a plan in the Arkansas
17 Basin to be headed up by the Corps of Engineers. In
18 other places in the nation , it is very appropriate
19 for the Corps to take the lead in that and there
20 are many Corps projects with excess storage,
21 uncontracted water that is used for recreation or
22 hydropower, and in that vein, on a national basis,
23 the Corps is assuming the lead in that.

24 Our role in the Arkansas Basin is quite a bit
25 different, so we wanted to first of all state that

1 we weren't going to meddle in state water rights,
2 but yet, we see that there is an opportunity where
3 we might be called upon to assist in drought systems
4 and this drought contingency plan thus sets up the
5 framework if it is needed.

6 MR. COOLEY: I think that is a very articulate
7 and appropriate and nonevasive response to my
8 comments.

9 MR. KREINER: We did receive some excellent
10 review and comments from those agencies, and I
11 appreciate that.

12 If it is appropriate, when we discuss this
13 at a later time, we can sure get into the aspects
14 of that plan in more detail.

15 Again, the plan is still in draft form. We
16 expect to get approval of that from our division
17 office next month, so, at that time, it will be
18 distributed to the Compact Administration and all
19 the federal and state representatives that had
20 received a draft review.

21 If, at that time, the report is disseminated
22 and entities that do think they need to get a copy
23 of that report, contact the Albuquerque District
24 office and we would be glad to provide a copy.

25 Our construction activities for '89 centered

1 around the Fountain Creek flood control project. The
2 construction of the project began in September, '87.
3 It was completed in July of '89. It was completed
4 nine months ahead of schedule and was dedicated in
5 November of 1989.

6 The project consists of 11,000 feet of channel
7 improvements, 9,700 feet of levee with attendant
8 interior drainage features, recreation areas, and
9 pedestrian walk paths. These improvements are
10 designed to convey a peak of 85,000 c.f.s., a project
11 which was cost shared by the City of Pueblo was one
12 of the first in the nation authorized by the Water
13 Resources Redevelopment Act of 1986.

14 At the request of the City of Pueblo, we are
15 providing hydrologic data used in the project to
16 the Federal Emergency Management Agency to revise
17 flood insurance rate maps. This transfer of data
18 should be completed in December of this month.

19 Flood control studies that the Albuquerque
20 District conducted during 1989: The Colorado Springs
21 feasibility study was initiated in July of '88 to
22 investigate possible flood protection along Fountain
23 Creek, in Old Colorado City, and western Colorado
24 Springs.

25 The City of Colorado Springs assumed responsibility

1 for one-half of the cost necessary to complete the
2 study. The study results have indicated that it
3 was too costly to pursue a project in this area.

4 The cost of all the alternatives analyzed far
5 outweigh the flood control benefits that can be
6 gained, therefore, the final report will recommend
7 that the study will be terminated when the final
8 report is scheduled for January, 1990.

9 MR. COOLEY: Dick, would you stand at ease for
10 a moment? We will stand at ease here for a minute
11 or two.

12 MR. McDONALD: Frank, why don't we take an
13 official five-minute recess?

14 MR. COOLEY: I think a recess would be appropriate
15 right now.

16 (Short recess.)

17 MR. COOLEY: The meeting will reconvene.

18 Dick? You were taking us through the report
19 of the Corps of Engineers. Would you continue,
20 please?

21 MR. KREINER: Okay. Let me pick up with a small
22 project program. Under Section 14, the continuing
23 authorities' program, the Corps is able to provide
24 emergency stream bank protection works to prevent
25 damages to highways, bridge encroachments, public

1 works, churches, hospitals, schools, and other
2 nonprofit public facilities.

3 No more than 500,000 in federal funds can be
4 spent on each project.

5 We also have authorities under Section 205 in
6 the continuing authorities' program if such projects
7 are economically feasible and they have local
8 sponsorship. The federal share of these projects
9 is limited to \$5,000,000.

10 If an entity has an interest or sees an
11 opportunity to investigate some work under these
12 authorities, they should work with the Southern
13 Colorado project office in Pueblo.

14 Activities conducted under these authorities
15 in 1989 consisted of construction completed on
16 two emergency stream bank protection projects
17 along Fountain Creek: One at Pinon bridge for
18 Pueblo County, and one at Academy Boulevard for
19 the Stratmoor Hills Sanitary District.

20 Plans and specifications are under way for an
21 emergency stream bank protection project along the
22 Arkansas River at the Pueblo state recreation area
23 just below Pueblo Dam and also new emergency stream
24 bank protection studies were initiated at three
25 locations along the Fountain Creek for the City

1 of Fountain, and one along the Arkansas River, at
2 Fort Bent and for the Colorado Highway Department.

3 MR. COOLEY: Could you summarize those, please,
4 Dick? Could you summarize those? They are contained
5 in your report.

6 MR. KREINER: Basically, the stream bank erosion
7 to public facilities and the Corps has authorities
8 to go in and put protective works, whether it be
9 riprap or gabions or something along there to
10 prevent the damage to public facilities.

11 MR. COOLEY: Okay. Does that cover the report
12 that you have?

13 MR. KREINER: No. I still got some more.

14 MR. COOLEY: Keep going.

15 MR. KREINER: Under the Corps' authority for
16 flood plain management services, the objective of
17 the program is to support comprehensive flood plain
18 management planning, providing technical services and
19 planning guidance to appropriate governmental levels
20 and thereby to encourage and to guide prudent use
21 of the nation's flood plains.

22 The services are provided using existing data
23 to public facilities, to private entities. Currently,
24 there is no cost for that, that portion of it.
25 This primarily is for governmental agencies, but

1 private citizens or organizations may request an
2 evaluation of a site for flood hazards.

3 In 1989, we responded to 51 requests for
4 technical services in flood hazard evaluations of
5 specific sites in the Arkansas River Basin.

6 This is handled out of the Albuquerque District
7 office and someone wishing those types of services
8 should contact the Albuquerque District office for
9 that.

10 Also, under technical services, in August of
11 1989, the Corps of Engineers completed implementation
12 of the Pikes Peak flood warning system for the area
13 including Colorado Springs, Fountain, Green Mountain
14 Falls, Manitou Springs, Palmer Lake, and El Paso
15 County, Colorado.

16 The flood warning system consists of a hydrologic
17 model in concert with 29 river rainfall recording
18 gages, three stream gages, and alert software to
19 obtain real time rainfall data. The rainfall data
20 is automatically input into the hydrologic model to
21 compute runoff peaks and times.

22 The model predicts flood stage at critical
23 sections and utilizes stream gage readings where
24 available.

25 This data is used together with flood plain maps

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to determine possible inundation locations and potential evacuation areas.

Under our Section 404 of the Clean Water Act authorities, the act prohibits discharge and to dredge for fill materials into the waters of the United States including adjacent wetlands without the permit of the Corps of Engineers.

This function is handled out of our Pueblo Southern Colorado office and thus far in 1989, nine permits were issued and one was denied, and there are several permits pending.

This concludes my report and I would be glad to address any questions you may have.

MR. COOLEY: Thank you.

Questions from the Compact?

David?

MR. POPE: I have none.

MR. COOLEY: Apparently there are no questions.

Thank you very much.

I appreciate that very much, David.

The next item on the agenda is the report from the U.S. Geological Survey, and that may be one report or two.

Doug, are you going to lead off?

MR. KANE: Yes. I would like to lead off.

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MR. COOLEY: If you would. Doug Kane.

MR. KANE: I would like to try to update the Compact on some of our activities within the Arkansas Basin, especially out of the Pueblo subdistrict office that occurred over last year.

A VOICE: I can't hear you.

MR. KANE: Probably one of the most important ones from the standpoint of the Compact might be that Russ Livingston, who was formerly the subdistrict chief in Pueblo and also had dealings with the Compact when he was associate district chief in Kansas, transferred to the Albuquerque office last February.

I was appointed subdistrict chief in April and although I am new at that job, I am not new to the office or the basin. I have worked in the Pueblo office for about twelve years, so I am quite familiar with the Arkansas basin.

Several of the activities or milestones in activities that occurred during the past year: We published the final report as part of the study that we have done with the Southeastern Colorado Water Conservancy District for the last several years in February. This is a report on the calibration of the Arkansas Basin Water Management Model. That

1 report was also published last spring and was
2 distributed to many agencies within the basin including
3 members of the Compact.

4 Another significant point maybe to mention is
5 that we have continued to operate the gaging station
6 network for the Compact stations within Colorado.
7 That operation went smoothly this year. There was
8 really nothing major to report as far as difficulties
9 in the operation of the gaging station network during
10 the year.

11 Something that Compact members may be interested
12 in, we established or reestablished a gage on the
13 Arkansas River at Nathrop, which is in the vicinity
14 of Buena Vista and Salida in the upper Arkansas basin
15 during the past year.

16 The gage is installed at a location that is
17 extensively used by rafters and kayakers and it is an
18 informational gage.

19 In addition to recording information on stream
20 flow and water quality, it also has descriptive
21 panels on it that tell how that information is
22 collected and how it is used. It is estimated that
23 something on the order of 100,000 rafters or kayakers
24 visit that site annually and so our goal there is to
25 try to spread a little bit more information about

1 the importance of hydrologic information.

2 A study that we are involved with that was
3 alluded to earlier in cooperation with the Southeast
4 Colorado Conservancy District and the consultation
5 from the Corps of Engineers is an evaluation of
6 the potential risks associated with extending the
7 period of storage of water in Pueblo Reservoir in
8 the Joint Use Pool past the April 15th date. That
9 study is in its second year and it is proceeding
10 fairly well on schedule.

11 We have decided as a part of that study to use
12 extensive data and the model that has been used
13 extensively by the National Weather Service. There
14 will be a daily stream flow model that will be
15 coupled with an evaluation of the probability of
16 needing to use the Joint Use Pool during the April 15th
17 through May 15th period based upon the hydrologic
18 conditions that exist in the basin at the time that
19 decision needs to be made.

20 We completed our first full year of data
21 collection on a study that began a little over a year
22 ago on water use under the Fort Lyon Canal within
23 Colorado. It is a study that is designed to look at
24 surface water use, ground water use, and the consumptive
25 use under that canal.

1 We really haven't had an opportunity to analyze
2 the data from the first year at this point, but we
3 will have another full year of data collection on
4 that project next year.

5 We continued to work with the Army out of Fort
6 Carson in doing hydrologic evaluations of the Pinon
7 Canyon maneuver site between Trinidad and La Junta
8 along the Purgatoire River.

9 Many of you know the Army purchased about 450
10 square miles of land for mechanized maneuvers in
11 that area during the early '80's.

12 We have been doing studies to look at the effects
13 on hydrology, on water quality of their maneuvers.

14 We have a report in review discussing the
15 effects that we have seen to date, and, at this
16 point, there isn't enough data to document that they
17 have appreciably affected stream flow or water
18 quality in this area.

19 We are also working on a fairly large scale
20 water quality study within the basin. As part of
21 a cooperative effort with eight entities in the
22 basin, we developed a plan to study water quality
23 in the basin and put out for review that draft work
24 plan.

25 We got an initial meeting with those entities

1 and it looks likely, after we go through some
2 revisions to that plan, that that study will be
3 funded and hopefully we will begin by April of this
4 fiscal year.

5 Several members of the Colorado delegation
6 to the Compact asked us to follow up with some
7 discussion on a letter that Russ Livingston sent
8 to the Compact after the meeting last year.

9 My understanding is that that would come up
10 under the budget discussion rather than at this
11 time.

12 MR. COOLEY: I think that's right.

13 MR. KANE: That's all I have to report at this
14 time.

15 MR. COOLEY: Thank you very much.

16 Are there any questions of Doug?

17 How many years does the--

18 Pardon me. Go ahead, Bill.

19 MR. McDONALD: Two questions. There is another
20 budget issue. If both you and your Kansas colleague
21 are going to be here, we can wait. That is the
22 annual cooperative agreement.

23 MR. KANE: All right.

24 MR. McDONALD: I have some questions about that.

25 MR. KANE: All right.

MR. McDONALD: I will hold those.

1 Could you indicate to me or maybe somebody from
2 Fort Lyon needs to speak, was it Fort Lyon that
3 requested the study you were doing, and for what
4 purpose?

5 MR. KANE: The study was really begun on a
6 cooperative basis, and it is being done under our
7 cooperative program.

8 We had an interest in gaining more current
9 water use information in the lower Arkansas. Fort
10 Lyon had an interest also in that information, and
11 so we embarked on the joint study. I believe it
12 actually started about a year and a half ago.

13 MR. McDONALD: Thank you.

14 MR. COOLEY: How many years will that study
15 continue?

16 MR. KANE: The study is planned for one more
17 year on data collection and there will be a year
18 of report preparation following that, so it is
19 approximately two more years.

20 MR. COOLEY: Any other questions?

21 MR. POPE: It is essentially a water use study
22 of what has been done?

23 MR. KANE: Primarily oriented toward water
24 use, and there will be a water budget that will be
25 developed as a part of that study.

1 The level of detail that we will be able to get
2 into on water budget depends pretty strongly on the
3 fiscal resources that we have, so it may not be in
4 real detail. The intention is to develop a water
5 budget. We will also be looking at seepage losses
6 along the canal.

7 MR. POPE: What types of data will you be
8 collecting that isn't otherwise available?

9 MR. KANE: As part of the study, there are
10 gages that have been established along the canal.
11 There will be several seepage investigations. We
12 will be collecting some information on ground water
13 pumpage and measuring some return flow, surface
14 return flow locations on a return basis.

15 MR. COOLEY: Thank you very much.

16 MR. KANE: Thank you.

17 MR. COOLEY: Does the Kansas representative
18 of the USGS have anything? Nothing at this phase
19 of the meeting?

20 A VOICE: No, not really.

21 MR. COOLEY: You will be hitting us for money
22 at the other phase of the meeting?

23 A VOICE: Yes.

24 MR. COOLEY: Thank you.

25 That concludes the "Reports of federal agencies,"

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as far as I am able to tell.

We will now turn to the "Proposed revisions to the Trinidad Reservoir Project operating principles," and I believe Sandy MacDougall is the principal spokesman on this subject on behalf of Purgatoire.

Sandy?

MR. MacDOUGALL: Thank you, Mr. Chairman.

Members of the Administration, my name is MacDougall, I am from Colorado Springs, and I am the lawyer for the Purgatoire River Water Conservancy District.

Also present in the meeting today are two members of the board of directors of the district, Mr. Harold Winter, and Mr. Ruben Gutierrez, to my right.

Also present is our water coordinator, Mr. Carmel Garlutzo, and Danny Marquez, the Water Commissioner for the upper reaches of the Purgatoire River.

They are here to answer questions or respond to requests, if possible.

The record, Mr. Chairman, should include some documents that I would like to ask be included.

First of all, I would like to have the record include my request to you dated November 2, 1989, and its enclosures. First of all, they include the minutes of this Administration for June 6, 1967,

1 include a letter from the Regional Director of the
2 Bureau of Reclamation to the Honorable Mike Hayden,
3 Governor of Kansas, on October 18, 1989, and the
4 proposed new operating principles that are attached
5 to that letter.

6 There was a response to that letter by Mr. David
7 Pope, Chief Engineer and Director of the Kansas State
8 Board of Agriculture, dated November 17, 1989.

9 My response to that letter dated November 28,
10 1989, with certain enclosures, including the decision
11 of the Special Master in Kansas v. Colorado, dated
12 October 21, 1988.

13 Pages 1 through 33 of an appendix to that decision
14 Face page and pages 1 through 8 of the final
15 report of the Trinidad project.

16 Bureau report, December, 1988, and a portion of
17 the Administration's minutes of December 11, 1984.

18 There is also a letter from J. William McDonald,
19 the Director of the Colorado Water Conservation Board,
20 dated November 20, 1989, and my response to that
21 letter dated December 9, 1989, with other enclosures.

22 Now, that last letter, I just mailed last
23 Friday, and I am not sure everyone got a copy. I
24 have some extras if they don't.

25 MR. COOLEY: I got mine, but let me get this

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straight procedurally.

Your initial letter, if admitted to the record, would be D, and there are a number of attachments to that?

MR. MacDOUGALL: Yes.

MR. COOLEY: The first letter.

And then we would have David's response, which, if admitted, would be F.

Your response, which was November 2nd?

MR. MacDOUGALL: My response to Mr. Pope was November 28th.

MR. COOLEY: November 28th. And weren't there some attachments to that?

MR. MacDOUGALL: Yes, sir.

MR. COOLEY: Okay. The last two, again, was it a letter of Bill McDonald's or what were--

MR. MacDOUGALL: Yes.

MR. COOLEY: A letter of Bill McDonald's. What was the date of his?

MR. MacDOUGALL: November 20th.

MR. COOLEY: November 20th. And then finally your last letter, and the date of that?

MR. MacDOUGALL: December 9, 1989.

MR. COOLEY: I don't know what the attachments would do to the record. I don't have any particular

1 objection to admitting these as D, E, F, G, and H,
2 but before I do so, I would like to hear from the
3 two states just as to the question of putting these
4 in the record.

5 Would you please help me with a comment, Mr.
6 Pope?

7 MR. POPE: Kansas does not have any objection
8 to them being made a part of the record with the
9 understanding that these documents are not the
10 only documents which bear on the continuing Trinidad
11 issues that are being discussed, and particularly
12 as related to Kansas v. Colorado.

13 MR. COOLEY: I think that that almost goes
14 without saying, and I think that comment is reasonable.
15 Mr. McDonald?

16 MR. McDONALD: That's fine with us.

17 MR. COOLEY: Well, that being so, then I am
18 uncomfortable about us making minutes of prior
19 meetings a part of the minutes of this meeting, but
20 I can see reasons both ways.

21 But having made that comment, Items D, E, F, G,
22 and H, and all the attachments thereto, will be
23 admitted and will be made a part of the official
24 record of this meeting, and you will furnish pristine
25 copies of those to the court reporter hopefully at

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the end of this meeting, but, if not, as soon as possible.

MR. MacDOUGALL: Mr. Cooley, by my alphabet, we got to I. I had D, November 2nd letter.

MR. COOLEY: Tell me who they are.

MR. MacDOUGALL: I mislabeled one. I forgot to label E. Your alphabet is better than mine. I apologize.

MR. COOLEY: Very old alphabet.

MR. POPE: Mr. Chairman?

MR. COOLEY: Yes. Mr. Pope. Go ahead.

MR. POPE: Sandy, most of the documents you referred to, I think I was somewhat familiar with that exchange of correspondence that has occurred.

You alluded to the letter from the Bureau of Reclamation to the Governor of the State of Kansas. I don't recall whether you said you were including the response from the Governor of the State of Kansas. Was that on your list?

MR. MacDOUGALL: I am unaware of any response, but if there is a response, it should be included.

MR. POPE: There was a response, and I agree that it should be included.

Apparently that was not copied or has not yet been received by you or perhaps some of the other

1 parties, so I would simply just request that that
2 document, since it is a part of the same exchanges
3 that you are referring to, be made a part of the
4 record.

5 MR. COOLEY: That will be made a part of the
6 record, and you and Mr. MacDougall will take care--

7 MR. POPE: Yes.

8 MR. COOLEY: --of the physical part of the
9 thing informally.

10 MR. POPE: Yes. I will be happy to provide a
11 copy of that letter. I didn't realize he didn't have
12 that. It is under date of November 22, 1989.

13 MR. COOLEY: Yes. Hold on.

14 Mr. McDonald?

15 MR. McDONALD: David just answered my question.

16 Your Governor under that date has responded to
17 Reclamation?

18 MR. POPE: To Reclamation.

19 MR. McDONALD: All right. Then, Sandy, I have
20 not seen your December 9th letter. If you have
21 copies--

22 MR. MacDOUGALL: I do.

23 MR. POPE: I don't recall that letter either.

24 MR. McDONALD: David, do you have extra copies
25 of your Governor's letter, since we haven't seen

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that or some of us haven't, at least?

MR. POPE: Yes. I guess. Yes. I don't know whether it is possible to get something like that copied here today or whether I should just furnish it to you when I get back home.

MR. McDONALD: They have a Xerox downstairs. I would be glad to have my staff run down.

MR. MacDOUGALL: Mr. McDonald, just to make the record clear, the letter is short, I will read it into the record.

It is from Governor Mike Hayden, addressed November 22, 1989, to Roger K. Patterson, Regional Director, United States Department of the Interior, Bureau of Reclamation, Great Plains Region, Billings. "Dear Roger: I am hereby acknowledging receipt of your letter dated October 18, 1989, requesting my review, comments, and approval of the proposed amended operating principles for the Trinidad Dam and Reservoir Project, Colorado. The issues raised by the proposed amended operating principles for the Trinidad Dam and Reservoir Project are framed in the pleadings in Kansas versus Colorado, Original Number 105, and will be addressed in the course of that litigation. Therefore, the State of Kansas formally objects to any amendment of the operating

1 principles for the Trinidad Dam and Reservoir Project
2 prior to the completion of the litigation in Kansas
3 v. Colorado, Number 105. Sincerely, Mike Hayden,
4 Governor."

5 MR. McDONALD: Could we give that to Gene
6 Jencsok and ask him to run six or seven copies?
7 No need to wait for him to come back. We can proceed.

8 A VOICE: Could I have one also, please?

9 MR. McDONALD: Make ten copies.

10 MR. COOLEY: Now, Sandy, proceed.

11 MR. MacDOUGALL: Let me finish suggesting a
12 record or a portion of a record, at least, Mr. Chairman

13 Last year in December at the annual meeting of
14 this Administration, the Bureau presented their
15 final report dated December of 1988.

16 I wish to be certain that the Administration has
17 a copy of this document because it is the document
18 on which the proposed revised principals are
19 based.

20 Shall I tender this copy?

21 MR. COOLEY: No. The Compact Administration
22 will take notice of that document as of that date
23 which was widely circulated and of which both states
24 have copies.

25 MR. MacDOUGALL: Similarly in one of my letters,

1 I referred to two USGS reports. One of them, Water
2 Supply Paper 2200, which is referred to in Water
3 Supply Paper 2253.

4 I have brought complete reports of those also
5 in case the Administration doesn't have copies.

6 MR. COOLEY: I am not as free to comment on
7 those.

8 Mr. Pope, can you help me any on those two
9 reports as far as the record itself is concerned?

10 MR. POPE: I don't recall the numbers.

11 Are those the two studies that were done by
12 the USGS in portions of Kansas?

13 MR. MacDOUGALL: Yes, sir.

14 MR. POPE: Yes. Those are published reports
15 by the United States Geological Survey. I am not
16 sure at this point, the connection.

17 MR. MacDOUGALL: I referred to them in a letter
18 and I wanted the whole document to be available to
19 the Administration.

20 MR. COOLEY: And I don't think Mr. Pope minds,
21 but we will take notice of the existence of and
22 the availability of those published reports of the
23 USGS.

24 MR. MacDOUGALL: Finally, I would like to ask
25 that the record include a reference to the letter

1 from the Secretary of the Army to Congress, which
2 is the foundation document for the Trinidad project.
3 It is referred to as House Document Number 325, 54th
4 Congress, Second Session, published by the United
5 States Government Printing Office January 30, 1956.
6 It is a document we are all familiar with and know
7 of, but I wish to make sure that the record refers
8 to that. It is part of the federal law. I don't
9 think I need to tender a copy.

10 Mr. Chairman, on behalf of the Purgatoire Water
11 Conservancy District, I would point out that in
12 the minutes of the meeting of this Administration
13 in 1967, the specific date referred to in one of
14 my exhibits--

15 MR. BENTRUP: June the 7th, I believe.

16 MR. MacDOUGALL: It was the meeting that the
17 Administration approved the operating principles.

18 Was it not '67?

19 MR. BENTRUP: Yes. '67 is the right date. I
20 believe it was June 7th.

21 MR. MacDOUGALL: Yes. June 7th.

22 This Administration approved the previous
23 operating principles. Included in those operating
24 principles were two conditions: One of them of which
25 I referred to as Kansas Condition 4, and one of

1 them of which I referred to as Kansas Condition
2 2. They were both attached at the end of the
3 principles and were imposed at the request of the
4 State of Kansas, with the consent of not only the
5 State of Colorado, but the Purgatoire District.

6 Those conditions require after a five-year
7 interval from the initiation of the Trinidad project,
8 a review of the project and principles, and they
9 also require that if the principles were proposed
10 to be amended, they would be tendered to the same
11 entities which approved the principles in the first
12 place for review and approval.

13 The Bureau of Reclamation, in response to those
14 principles and to the request of this Administration
15 in 1984, performed that review. It was concluded in
16 December, 1988, and they made certain recommendations
17 and conclusions.

18 In response to those recommendations and
19 conclusions, the Bureau and the Purgatoire Water
20 Conservancy District worked out the proposed amended
21 operating principles which are attached to the
22 letter from the Acting Director to the Governor of
23 Kansas, along with my first request of November 2,
24 Exhibit D.

25 The Bureau and the District have now performed

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the requirements of Kansas Conditions 4 and 2.

They have tendered for review and approval of this body, the Governor of Kansas, and other parties the proposed amended operating principles and the Bureau's report on which those proposals are based.

For the information of the Administration, the Colorado water users were tendered those principles in the mid-'60's in a case pending in the District Court in and for Las Animas, Colorado, and that was the adjudicating court for the upper reaches of the Purgatoire in those days. It has now become the District Court for Water Division Number 2 and I have filed an application in Colorado Water Division 2 which sits in Pueblo, Case Number 88 CW 21, to seek in that proceeding the review and approval of the Colorado water users in the manner similar to the way it was done in 1965, 1966, and 1967.

So on behalf of the Trinidad project, we seek, as required by the operating principles and as requested by Kansas and this Administration, review and approval of the proposed amendments.

The District does not agree with the position previously taken by Mr. Pope in his letter of November 17th, now reiterated by Governor Hayden in his letter of November 22nd, that the proposed

1 operating principles need be approved by the Master
2 in the Supreme Court case called Kansas v. Colorado.

3 As a matter of fact, we don't think that the
4 issue of the proposed operating principles is before
5 that Master. We don't think he has any authority
6 to review or approve these principles. We think
7 that that is something which this Administration
8 undertook. We agreed to it, everybody else agreed
9 to it, so we request respectfully, based on Exhibits
10 D through H, and the letter from the Governor, I
11 guess we will call that I, that the Administration
12 proceed to review and approve the principles based
13 upon the Bureau's report and the documents that are
14 in the record there and available to the Administration.

15 Thank you.

16 Can I answer questions?

17 MR. COOLEY: We will accept Exhibit I into the
18 record. It does seem to me that the Exhibit I and
19 the position of the State of Kansas and of the state-
20 ment that these issues are framed within the pleadings
21 of the Supreme Court case, very substantially fore-
22 stalls any action by the Compact Administration, but
23 certainly questions are in order.

24 Mr. Pope, do you have any questions?

25 MR. POPE: No, not at this time.

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MR. COOLEY: Mr. McDonald, do you have any questions?

MR. McDONALD: I do not.

MR. COOLEY: Does any other member of the Compact Administration have any questions?

Mr. MacDougall, I do not think that as the record now exists, that your request has come before the Compact Administration except insofar as you have stated it well and clearly on behalf of your client. I think that is where the matter is at this time.

I am constrained to make one remark, particularly while some of your board members are here, and that is this: That the state of the litigation has had its effect on the operation of the Compact and the administration of the Compact as an inevitable result thereof. However, I am aware of progress that has been made in Trinidad and the operation of the reservoir and by the members of the Compact Administration, as well as by the State Engineer, the State of Colorado, to continue to resolve and settle disputes and possibly to remove them as disputes between the two states, and that effort, I think, has been substantial and I myself believe that effort has been totally commendable. Anything that makes the

1 operation of the river more acceptable and satisfactory
2 to the users of the river, I think, is a great step
3 forward, nevertheless, as the matter today exists,
4 I think it is clear that your request, at least, is
5 part of an impasse which necessarily perhaps flows
6 from the state of the litigation.

7 You may want to make a comment.

8 MR. MacDOUGALL: I guess I would like to ask
9 the chair for some guidance.

10 Assume, if you will, that Kansas is correct
11 and the U.S. Supreme Court rules that the operations
12 of the Trinidad Reservoir as they exist in the
13 facts presented to the Master harm the Arkansas
14 River, is it the chair's ruling that I need not
15 come back to the Administration after that case
16 is over?

17 MR. COOLEY: Well, I am not sure that your
18 client wants to pay my hourly rates. That is the
19 first problem I have got, and the second problem is
20 that Kansas' statement makes itself.

21 If Kansas has the view that this matter is before
22 the court, it seems apparent to me that the matter
23 is there and not here, and that no other progress
24 can be made on it. Whatever dilemmas flow therefrom,
25 the chair can't give you any comfort.

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MR. MacDOUGALL: Procedurally, then, sir, is the matter not submitted or tabled or denied?

MR. COOLEY: None of the above. I think that you have put the issue before the Compact Administration to the best of your ability.

Without action on the part of the Compact, there is no way for the Compact to proceed further, so the Compact Administration is surely aware of your request and where you want to go from there is for you to determine.

MR. MacDOUGALL: All right, sir. I understand what you are saying.

MR. SIMMS: I would like to clarify for the record that your request to have the proposed amendments placed before the Commission would appear to contradict the decision of the Special Master in what you have appended as Exhibit A to your letter of November 28th, made a part of the record.

In that decision, a Special Master recognized that there were certain legal and factual problems with the operation of the Trinidad Reservoir, problems that relate directly to your proposed amendments.

He also ruled in that decision that the State of Colorado refused to administratively investigate that matter.

1 He also ruled that while the report of the
2 Bureau may contain information that might be valuable,
3 that it most certainly is not a substitute for an
4 administrative investigation.

5 He further ruled those matters relating to the
6 operation of Trinidad are framed by the pleadings
7 in this case and are before the Supreme Court.

8 Kansas' view is not quite as you have
9 characterized it a moment ago.

10 Kansas' view is that theoretically the principles
11 might be amended, but certainly not on the basis of
12 the "evidence" contained in the report of the
13 Bureau.

14 The evidence is a matter of factual dispute
15 in this case and must be resolved before any action
16 can be taken by this body.

17 That's all.

18 MR. MacDOUGALL: May I ask if it is the position
19 of Kansas that the evidence which is going to be
20 introduced before the Special Master will be all of
21 the evidence that is necessary to make the decision
22 about whether the principles should be amended?

23 MR. SIMMS: I don't know as I can answer that
24 question, but I would think not, off the top of my
25 head.

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MR. McDONALD: Frank?

MR. COOLEY: Yes.

MR. McDONALD: I guess I have a question of Richard. I am confused. I understood Kansas' position last year at the annual meeting to be that there essentially was a legal issue on the table and only a legal issue.

You made comments to the effect, Richard, that the issue posed by the proposed changes to the operating principles was whether those proposed amendments violated the objective of the project, as you put it, or, put another way, violated the authorizing legislation, and I understood David Pope's letter of November 17th, in so many words, to say the same thing, on one hand. On the other hand, I thought I just heard you say it was a factual and evidentiary issue. Is it one or the other or both?

MR. SIMMS: It is both, and I think the record is clear on that subject. There is indeed that legal question whether or not there can be amendments to the operating principles which undermine or usurp the objectives of the project. That might be described as almost purely legal.

There are also a number of factual questions

1 relating to whether or not the operation practices
2 have caused material depletion to downstream users.
3 Those matters are before the U.S. Supreme Court.

4 MR. McDONALD: You believe both sets of issues
5 have been framed by the pleadings?

6 MR. SIMMS: Oh, yes.

7 MR. McDONALD: Thank you.

8 MR. COOLEY: You may have the last word, Mr.
9 MacDougall. Go ahead.

10 MR. MacDOUGALL: Mr. Chairman, on behalf of
11 the Trinidad project, I respectfully object.

12 It seems to me that the position that has been
13 taken by Kansas before the Administration is that
14 the Administration is powerless, it can't decide
15 the facts and it can't decide the law. That, to
16 me, makes Kansas Condition 2 meaningless. It is
17 the same as a waiver. They have told you you have
18 no power, you have no authority. I believe you
19 have the power and the authority because we agreed
20 to that in the '60's, and I respectfully request
21 that the Commission do what it set out to do.

22 I thank you for your consideration.

23 MR. SIMMS: Mr. MacDougall, let me add one
24 more time, just to make sure there is no misunder-
25 standing on that point. Kansas sought rather

1 carefully to have the matter administratively
2 investigated pursuant to the terms of the Compact.
3 Colorado, in our opinion, refused to do that. That
4 was debated, indeed, argued in the U.S. Supreme
5 Court, and your Exhibit A reflects, in large part,
6 the holding that Kansas or Colorado did not cooperate
7 in that effort. That is what stopped this administrative
8 body from functioning.

9 MR. MacDOUGALL: I understand that.

10 MR. SIMMS: It seems to me that given that
11 fact, you can't now ask this administrative body
12 to forget how it has demonstrated its behavior in
13 the past and simply take the Bureau's report at
14 face value and act on proposed amendments.

15 MR. COOLEY: I think we will chop this colloquy
16 off at this point and move on to the next item of
17 the agenda.

18 Thank you very much.

19 MR. McDONALD: Frank?

20 MR. COOLEY: Yes.

21 MR. McDONALD: I guess I just want to close the
22 loop on one thing. Kansas certainly has the
23 prerogative to take whatever position it will and I
24 respect that and appreciate Richard's clarification
25 of the position. It just seems to me that in light

1 of that position, the special meeting which had
2 been suggested in my letter of November 20th to
3 Sandy would serve no purpose since the Administration
4 is obviously going to be unable to act and I regard
5 that as where the matter stands respecting Kansas'
6 right to take their position.

7 MR. COOLEY: Now, on that happy note, we will
8 move on to item 10 of the agenda, which is a frolic
9 of my own caused by my receipt of the report of
10 the Corps of Engineers on what levels of press
11 communication, media coverage, meetings of mayors
12 would be necessary in the event of drought, but
13 always subject to the fact that the report gave
14 no mechanism for obtaining as much as a hundred
15 gallons of water and it has been thoroughly and
16 articulately explained this morning in the Corps'
17 report, "How come?" and that was given the constraints
18 of the operation of the river. This was not a river
19 in which the Corps could apparently come up with
20 water.

21 I don't have the slightest foggiest notion how
22 an additional 2,000 to 5,000 or 200 acre-feet of
23 water could be stored in John Martin in the event
24 of a prolonged and severe drought for a supply of
25 domestic water for Garden City, Kansas, or Lamar,

1 Colorado, or anywhere else, but it occurs to me that
2 if we can make a pool for fisheries in John Martin,
3 that it might be appropriate to try to find the
4 mechanism to provide for the kind of drought that
5 the Anasazis suffered in the 1100s and 1200s, that
6 we make some use of the reservoir, the facilities,
7 to supply water for the schools of Garden City,
8 Kansas, or points in between, and it also seemed to
9 me at the time, that if there was a way that could
10 be done without depriving the Manville Ditch of
11 water under its ownership and early priorities or
12 any other water user or entity, that it would seem
13 to me that it would be a relatively easy thing to
14 roll the legislatures of Kansas and Colorado, as
15 well as the Congress of the United States, if some
16 amendment to the Compact were appropriate for this
17 limited subject.

18 Now, this topic or this subject, does it have
19 any appeal to members of the Compact Administration
20 or is it suitable for discussion or exploration at
21 this time or at any time?

22 I am going to call, I think, on Mr. Pope first.

23 MR. POPE: Well, Frank, I can certainly appreciate
24 and understand the desirability of providing for
25 solutions to drought-generated problems. I guess

1 I am unable at this point to quite understand how
2 this might be integrated into the existing system.

3 You mentioned possible amendments to the
4 Compact. That might be a whole different thing, but
5 I wonder if the legal mechanisms to provide for
6 water to the various entities aren't in place through
7 the water right systems that exist in each of the
8 two different states and perhaps that isn't the way
9 these matters should be dealt with. I don't want
10 to oversimplify or overestimate the problem, but I
11 am certainly willing to listen to the views of
12 others.

13 MR. COOLEY: Your suggestion is sure a lot
14 simpler than mine to address the same problem.

15 Mr. McDONALD?

16 MR. McDONALD: I think Carl might have had a
17 comment. He had his hand up.

18 MR. GENOVA: Well, simply put, I am just concerned
19 where the water is going to come from to fill this
20 account.

21 MR. COOLEY: I would suppose the Boustead Tunnel
22 initially. Certainly there would need to be either
23 a great flood event or an importation of water to
24 fund such an account in the first instance, wouldn't
25 there? One or the other.

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Mr. McDonald?

MR. McDONALD: Frank, I guess I was going to kind of echo Carl's comments.

The presumption being that there is a drought, the issue is not going to be space availability in buckets. Almost by definition, there would be space available, but the difficult part of any such proposition is going to be the source of water and whether the Administration, particularly Kansas, is satisfied the source of water is an appropriate source, handled properly, et cetera, et cetera. We have been through that drill. It is a legitimate set of concerns that Kansas raised.

I guess where I come down, I think when it is all said and done is creating the account is the easy part. We could do that, but it really serves no purpose. You have got to wait until the instance, I am afraid, is pretty much at hand and somebody has a proposition for where the water comes from because nobody can really react until that proposition is on the table as to where the water comes from, why it comes from, where it comes from, how it is going to get delivered, et cetera, et cetera.

The Administration will have to review those as they come up. I don't know if we can do more than

1 pledge ourselves as an Administration to react
2 expeditiously and frankly to those specific
3 situations when they arise.

4 MR. COOLEY: I don't see it quite that way.
5 It would seem to me that evaporation of an account
6 would be the most difficult problem as I daydream
7 on this thing.

8 The source of water, again, for the initial
9 slug, it seems to me, would either have to come
10 from the flood or an importation of water. Then
11 if you got the 3,000 acre-feet, say, in John Martin,
12 the problem is to maintain the 3,000 feet without
13 interferring with the rights of others. That's the
14 way it strikes me.

15 MR. McDONALD: I guess I am lost. If there is
16 a flood, it is stored in John Martin. That takes
17 care of itself. Either force water out of the
18 conservation pool, out of the accounts, you know,
19 or it's flood control capacity and it is covered
20 by how it is operated, and I guess, Frank, if you
21 are thinking ahead about creating accounts into which
22 somebody can move water, all well and good, I certainly
23 would want to be supportive of that, but relative
24 to evaporation, I think that's the simplest problem.
25 You put it in an account and it is going to bear

1 its pro rata share. That's simply the way it is
2 going to have to be. If somebody wants to bank
3 water today for the drought ten years from now,
4 they are going to have to eat evaporation for
5 ten years and they may have zero left; and I don't
6 know of any other way other than just deal with
7 evaporation as it occurs on a pro rata basis.

8 It seems to me the problem is the other way
9 around. People don't have accounts in advance,
10 they find themselves short because of whatever
11 their usual supply is and they are scurrying around
12 looking for a new source of supply. There will
13 be space to put it in by definition because you
14 will be in the middle of the drought. Basically,
15 the Administration is going to have to concern
16 itself with what is that source of supply at that
17 point in time, and I don't know how we can review
18 it until we get there is where I end up, particularly,
19 Kansas.

20 MR. COOLEY: I think maybe the Corps' report
21 is designed with that kind of hard arithmetic in
22 view.

23 MR. BENTRUP: What kind of drought are you
24 talking about, Frank?

25 MR. COOLEY: I am talking about a ten-year

1 drought, the prolonged drought.

2 MR. BENTRUP: Perhaps we should oppose any more
3 sale of water outside of the Arkansas River then.

4 MR. COOLEY: I run into this same kind of
5 enthusiastic response with some of my comments in the
6 small town I live in, not all of them, but a lot of
7 them, and if any of you now or later can think of
8 any mechanism to provide better in advance for
9 extreme and extended drought, needless to say, I
10 will be most pleased to hear from you because I
11 perceive it to be a problem that deserves thought
12 in advance of the act or in advance of the event.

13 Richard, do you want to solve the problem in
14 whole or in part?

15 MR. SIMMS: I doubt that it is easily solvable,
16 Mr. Cooley. It seems to me the only conceivable
17 solution would be the request to purchase by some
18 entity of transmountain water and the delivery,
19 storage, and accounting of this water somewhere
20 along the Arkansas River in Colorado and the creation
21 of some program of exchange that would allow the
22 release of native waters across the state line
23 where the water is brought in from the Colorado
24 river, all of which adds up, in my view, it would
25 be rather complicated.

1 MR. COOLEY: Yes. You have got a few constraints
2 in there right off the bat.

3 The time is now 11:46. The remaining items
4 on the budget, that is, the approval of the annual
5 report, the auditor's report, the review of the
6 budget, the review of the 1990-1991 budget, the
7 adoption of the 1991-1992 budget, are among the
8 most exciting things that are going to happen this
9 year in Lamar. The only trouble is we never have been
10 able to convince anyone of that fact, and traditionally
11 when we have gone into session in the afternoon or
12 continued the session during the lunch hour, we
13 have lost our audience.

14 What is the pleasure of the Compact, to go
15 into these matters of annual reports and budgets
16 now and get them out of the way or do you want to
17 break for lunch? What is your pleasure?

18 There is a mumbling over here, "Break for lunch."

19 How does that strike you folks?

20 MR. POPE: I was going to suggest that we
21 continue and pound them out. How long is it estimated
22 it is going to take in anybody's view?

23 MR. COOLEY: An hour..

24 MR. POPE: That long?

25 MR. McDONALD: Well, the problem may be we

1 have arranged serving with the restaurant already,
2 David, and I am not sure what their constraints on
3 serving are.

4 MR. POPE: Is that for a noon-type hour, I
5 suppose, for lunch? Well, we are probably not going
6 to get done in ten minutes.

7 MR. COOLEY: Why don't we adjourn until 1:00
8 o'clock and do our best to get out of here within
9 one hour after we readjourn?

10 MR. McDONALD: Frank, why don't we let the
11 audience go through the line first. We can stay
12 with it for fifteen or twenty minutes while the
13 line is going down and we will get that much more
14 done.

15 MR. COOLEY: Fine.

16 MR. McDONALD: I suggest doing our usual off
17 the record so that the reporter doesn't have to try
18 to catch all the little numbers, and after lunch,
19 we can come up, we will confirm it, and be done with
20 it.

21 MR. COOLEY: Gentlemen, you are at liberty as
22 we go into the arcane matters of fiscal procedure
23 as demonstrated by Mr. McDonald. This will be off
24 the record.

25 (Discussion off the record.)

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MR. COOLEY: We are back on the record for the afternoon session of the agenda. The remaining items on the agenda are items commencing with number 11. We have discussed each of these informally during the interim and are ready now to take action.

Mr. McDonald, do you have a resolution proposed with respect to the 1987 annual report?

MR. McDONALD: I would move adoption of the 1987 annual report subject to final changes being agreed to and approved by David Pope and myself.

MR. COOLEY: Mr. Bentrup, is there a second?

MR. BENTRUP: I second.

MR. COOLEY: The resolution having been made and seconded, how does Kansas vote?

MR. BENTRUP: Kansas votes aye.

MR. COOLEY: Colorado?

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Mr. McDonald, would you please give us the audit matters.

MR. McDONALD: First of all, I would move that we accept the audit prepared by Farmer & Rankin for the Administration's fiscal year 1988-1989 as it has been submitted to us.

MR. COOLEY: Ron, is there a second?

MR. OLOMON: I second.

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MR. COOLEY: How does Kansas vote?

MR. BENTRUP: Aye.

MR. COOLEY: Colorado?

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Now, Mr. McDonald, we are at item 13, "Budget matters."

MR. McDONALD: No, you are not. You got one more audit thing.

MR. COOLEY: Okay. Back to 12.

MR. McDONALD: I would move that the Administration request competitive bids for the 1989-1990 audit with firms in Lamar including Farmer & Rankin, but others as well, and that between David Pope's office and mine, we prepare a short specification as to what we seek those competitive bids on and take it forward from there.

MR. COOLEY: Carl, is there a second?

MR. BENTRUP: I will second it.

MR. COOLEY: A motion has been made and seconded. Colorado?

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Kansas?

MR. BENTRUP: Aye.

MR. COOLEY: That motion is carried. Have we got to 13, Bill?

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MR. McDONALD: Yes, you did.

MR. COOLEY: We are at item 13.

I request you take us year by year through the various sheets of the budget as presented to the meeting.

MR. McDONALD: Okay. First of all, the record should reflect that we reviewed the revised FY 1989-90 budget originally adopted on December 8, 1987, and revised at the December 13, 1988, annual meeting, and determined that no changes in that budget nor the assessments were necessary, therefore, no action was taken.

Secondly, let me suggest that we introduce into the record as Exhibit J the budget for FY 1990-91 as adopted at the December 13, 1988, annual meeting, and then I will move changes to that so that the record will be clear what we are changing.

MR. COOLEY: Okay. J is admitted into the record.

Will Gene or someone make sure that the court reporter has a pristine copy of 1990-91 before Mr. McDonald changes it?

Proceed.

MR. McDONALD: Relative to that previously adopted FY 1990-91 budget, I would move the following

1 changes.

2 Increase the Treasurer from \$1,000 to \$1,500.

3 Increase the Recording Secretary from \$1,000 to
4 \$1,500.

5 Increase the Auditor's fees from \$500 to \$700.

6 Increase the Court Reporter's fees from \$500 to
7 \$600.

8 Adjust the subtotal accordingly.

9 In line item for printing of the annual
10 report, adjust that to reflect that it will cover
11 the printing of the 1988-89 annual reports and
12 increase the amount from \$3,500 to \$7,000.

13 Adjust the subtotal accordingly and adjust
14 finally the total expenditures accordingly. The
15 assessments as previously adopted would remain
16 unchanged.

17 MR. COOLEY: Mr. Bentrup, is there a second?

18 MR. BENTRUP: I will second.

19 MR. COOLEY: That has been seconded.

20 Kansas?

21 MR. BENTRUP: Aye.

22 MR. COOLEY: Colorado?

23 MR. McDONALD: Colorado votes aye.

24 MR. COOLEY: Let the record show that the
25 Treasurer and the Recording Secretary are rendering

1 independent contractual services to the Compact
2 Administration and that they are not employees of
3 the Compact Administration.

4 Turning to 1991-1992. Mr. McDonald?

5 MR. McDONALD: Could I, first of all, suggest
6 that we introduce as Exhibit K, the Draft FY91-92
7 budget that in the upper right-hand corner is dated
8 12-08-89?

9 MR. COOLEY: So ordered.

10 And Mr. Jencsok, if we can get a pristine copy
11 to the court reporter.

12 MR. McDONALD: Relative to that draft budget and
13 assessments, I move its adoption subject to the follow-
14 ing changes.

15 Increase Treasurer from \$1,000 to \$1,500.

16 Increase Recording Secretary from \$1,000 to
17 \$1,500. Adjust the subtotal accordingly.

18 In the line item for annual report printing,
19 that should be corrected to read: The 1990 annual
20 report, no change in the dollar amount, and finally,
21 adjust the total for expenditures accordingly, and
22 there would be no other changes to that draft as
23 presented.

24 MR. POPE: Bill, I take it, you are, in both
25 cases, though, allowing an adjustment of the bottom

1 line which is expenditures for surplus, which would
2 then have to be adjusted accordingly?

3 MR. McDONALD: Yes. Please. I am sorry.

4 MR. COOLEY: And I think that same thing is
5 true with--

6 MR. McDONALD: The previous year's budget.

7 MR. POPE: --the previous year's budget. It
8 shouldn't require any further action.

9 MR. COOLEY: Is there a second, Mr. Pope?

10 MR. POPE: Yes.

11 MR. COOLEY: Kansas?

12 MR. BENTRUP: Aye.

13 MR. COOLEY: Colorado?

14 MR. McDONALD: Colorado votes aye.

15 MR. COOLEY: Is there anything else to come
16 before the Compact this afternoon other than me
17 trying to bum a ride back to Denver?

18 MR. McDONALD: Frank, I think we have one more
19 motion--

20 MR. COOLEY: Okay.

21 MR. McDONALD: --to authorize you to execute the
22 USGS cooperative agreement for federal FY 1990 payable
23 from the Administration's FY 1990-91 budget as presented
24 in the two November letters from the Kansas and
25 Colorado districts without a data collection platform

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installed at the Lamar station.

MR. COOLEY: Mr. Olomon?

MR. OLOMON: I second.

MR. COOLEY: We have a second. Any discussion on that one?

Colorado?

MR. McDONALD: Colorado votes aye.

MR. COOLEY: Kansas?

MR. BENTRUP: Aye.

MR. COOLEY: Does anyone have anything they desire to bring before this annual statutory meeting of the Compact Administration?

If not, the meeting is adjourned.

(The Annual Meeting of the Arkansas

River Compact Administration was

adjourned at 2:00 p.m., December 12,

1989.)

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STATE OF COLORADO)
) ss. C E R T I F I C A T E
COUNTY OF PUEBLO)

I, Donald F. Peterlin, Notary Public in and
for the County of Pueblo, State of Colorado, do
hereby certify:

That the foregoing proceedings were taken by
me in shorthand and thereafter reduced to typewriting
by me, and the foregoing 104 pages contain a full,
true and correct transcription of all of the proceed-
ings of the Annual Meeting of the Arkansas River
Compact Administration held at the Stagecoach Motor
Inn, Lamar, Colorado, on December 12, 1989.

Donald F. Peterlin
Donald F. Peterlin
Certified Shorthand Reporter
69 University Circle
Pueblo, Colorado 81005

ARKANSAS RIVER COMPACT ADMINISTRATION

307 South Fifth Street
LAMAR, COLORADO 81052

COLORADO
J. WILLIAM McDONALD, Denver
CARL GENOVA, Pueblo
JAMES G. ROGERS, Lamar
Treasurer

FRANK G. COOLEY
Chairman and Federal Representative
P.O. Box 98
Meeker, Colorado 81641

ARKANSAS
DAVID L. POPE, Coosa
CARL E. BENTRUP, Deerfield
Vice Chairman
RON OLOMON, Garden City

NOTICE OF ANNUAL MEETING

Arkansas River Compact Administration

8:30 a.m. (MST), Tuesday, December 12, 1989
Stagecoach Motor Inn
Lamar, Colorado

The annual meeting of the Administration will be held at the time and place noted above. The meeting will be recessed for the lunch hour at about noon and reconvened for the completion of business in the afternoon if necessary.

The tentative agenda for the meeting, which is subject to change, is as follows:

1. Call to order and introductions
2. Approval of agenda
3. Approval of transcript of the December, 1988, annual meeting
4. Reports of officers for compact year 1989
 - a. Chairman
 - b. Recording Secretary
 - c. Treasurer
 - d. Operations Secretary
5. Committee reports for compact year 1989
 - a. Administrative and legal
 - b. Engineering
 - c. Operations
6. Election of officers for compact year 1990
 - a. Vice-chairman
 - b. Recording Secretary
 - c. Treasurer
 - d. Operations Secretary

5302E

Exhibit A

7. Appointment of committee members for compact year 1990
 - a. Administrative and legal
 - b. Engineering
 - c. Operations
8. Reports of federal agencies
 - a. Bureau of Reclamation
 - b. Corps of Engineers
 - c. Geological Survey
9. Proposed revisions to the Trinidad Reservoir Project operating principles
10. Storage accounts in John Martin Reservoir for drought emergencies
11. Approval of 1987 annual report
12. Auditor's report for FY 1988-89
13. Budget matters:
 - a. Review of current fiscal year budget
 - b. Review of previously adopted FY 1990-91 budget and assessments
 - c. Adoption of FY 1991-92 budget and assessments
14. Adjournment

ARKANSAS RIVER COMPACT ADMINISTRATION

307 South Fifth Street
LAMAR, COLORADO 81052

COLORADO
J. WILLIAM McDONALD, Denver
CARL GENOVA, Pueblo
JAMES G. ROGERS, Lamar
Treasurer

FRANK G. COOLEY
Chairman and Federal Representative
P.O. Box 98
Meeker, Colorado 81641

KANSAS
DAVID L. POPE, Topeka
CARL E. BENTRUP, Deerfield
Vice Chairman
RON OLOMON, Garden City

ARKANSAS RIVER COMPACT ADMINISTRATION

STATEMENT OF CASH RECEIPTS & DISBURSEMENTS & CHANGE IN CASH BALANCE

FROM JULY 1, 1989 thru DECEMBER 11, 1989

CASH BALANCE: July 1, 1989		\$46,685.08
RECEIPTS:		
Colorado	\$12,000.00	
Kansas	8,000.00	
Interest Earned since July	<u>1,605.92</u>	
TOTAL RECEIPTS		\$21,605.92
DISBURSEMENTS:		
Treasurer's Bond	\$ 100.00	
U. S. Geological Survey	6,990.00	
Printing 1986 Annual Report	3,678.28	
Salaries	1,000.00	
Telephone	303.99	
Office Rent	300.00	
Postage & Supplies	80.00	
Operations Secretary Account	2,589.24	
Bank Charge-Checks	<u>33.04</u>	
TOTAL DISBURSEMENTS		<u>\$15,074.55</u>
EXCESS RECEIPTS OVER DISBURSEMENTS		<u>6,531.37</u>
CASH BALANCE: DECEMBER 11, 1989		<u><u>\$53,216.45</u></u>
FUNDS ON HAND:		
Checking Account	\$ 210.08	
Money Market Account	<u>53,006.37</u>	
TOTAL		<u><u>\$53,216.45</u></u>

Exhibit
B

Exhibit B

ARKANSAS RIVER COMPACT ADMINISTRATION

307 South Fifth Street
LAMAR, COLORADO 81052

COLORADO
J. WILLIAM McDONALD, Denver
CARL GENOVA, Pueblo
JAMES G. ROGERS, Lamar
Treasurer

FRANK G. COOLEY
Chairman and Federal Representative
P.O. Box 98
Meeker, Colorado 81841

KANSAS
DAVID L. POPE, Topeka
CARL E. BENTRUP, Deerfield
Vice Chairman
RON OLOMON, Garden City

CHECKS WRITTEN SINCE JUNE 30, 1989

<u>DATE</u>	<u>NO.</u>	<u>PAYABLE TO:</u>	<u>FOR</u>	<u>AMOUNT</u>
July 12	1	U S West	Monthly phone-336-2422	S 61.21
" 12	2	Lower Arkansas Water Mgmt.	Office rent	50.00
" 12	3	James G. Rogers	One-half annual salary	500.00
"	4	Bernice R. Carr	One-half annual salary	500.00
" 12	5	Colorado Mobile	Operation's Sec.-Phone	110.21
" 12	6	Best Buy Computer, Inc.	1 Hard Drive	375.00
July 12	7	First Federal Bank	Postage & petty cash	40.00
Aug. 9	101	U S West	Monthly phone 336-2422	54.80
" 9	102	Lower Arkansas Water Mgmt.	Office rent	50.00
" 9	103	Lamar Daily News	Printing 1986 Annual Report	3,678.28
" 11	104	Digitcom Electronics	Remove phone & install another vehicle	238.50
Aug. 11	105	Colorado Mobile	Operation's Sec.-Phone	110.72
Sept. 11	106	LAWMA	Office rent	50.00
" 11	107	U S West	Monthly phone-336-2422	49.04
" 11	108	AT&T	Phone rental-quarterly	17.66
" 11	109	Best Buy Computers, Inc.	1 Floppy Drive	100.00
" 13	110	Guaranty Abstract Co.	Bond Position Schedule	100.00
" 19	111	Charles Roberts	Software-John Martin Account	181.50
" 19	112	Midwest Micro Peripherals	2 Computer Printers	670.56
" 19	113	Colorado Mobile	Operation's Sec.-Phone	134.41
" 19	114	Charles Roberts	Computer Shopper catalog	21.97
Oct. 16	115	LAWMA	Office rent	50.00
" 16	116	U S West	Monthly phone-336-2422	48.08
" 16	117	Best Buy Computers, Inc.	Cable & cover for Printer	91.40
" 16	118	Charles G. Roberts	Computer disks, sleeve & etc.	33.08
" 16	119	Colorado Mobile	Operation's Sec.-Phone	119.20
" 16	120	U S Dept. Interior-Geological Survey	Operation 6 stream gaging stations Agreement C08902800	6,990.00
Nov. 9	121	LAWMA	Office rent	50.00
" 9	122	U S West	Monthly phone-336-2422	42.10
" 9	123	Charles G. Roberts	Graph Card & XT Power Supply	88.88
" 9	124	Colorado Mobile	Operation Sec.-Phone & lost pager	288.86
" 9	125	First Federal Bank	Postage & petty cash	40.00
Dec. 11	126	LAWMA	Office rent	50.00
" 11	127	U S West	Monthly phone-336-2422	13.44
" 11	128	AT&T	Phone rental-Quarterly	17.66
" 11	129	Best Buy Computers, Inc.	1 Bx. hi-density Disks	24.95
				\$15,041.51
Aug. 7		Bank charge for checks		33.04
Dec. 11, 1989		Total Expenses Paid		\$15,074.55

Exhibit C

Exhibit C

ARKANSAS RIVER COMPACT ADMINISTRATION

307 South Fifth Street
LAMAR, COLORADO 81052

COLORADO
J. WILLIAM McDONALD, Denver
CARL GENOVA, Pueblo
JAMES G. ROGERS, Lamar
Treasurer

FRANK G. COOLEY
Chairman and Federal Representative
P.O. Box 98
Meeker, Colorado 81641

KANSAS
DAVID L. POPE, Topeka
CARL E. BENTRUP, Deerfield
Vice Chairman
RON OLOMON, Garden City

DECEMBER 12, 1989

Bills Due and Pending:

Farmer & Renken Accountants (Audit & Copying)

\$1,000.00

Stagecoach Motor Inn (Annual Meeting Expense)

LAW OFFICES
GEDDES, MacDOUGALL & WORLEY, P.C.
530 SOUTH NEVADA AVENUE
COLORADO SPRINGS, COLORADO 80903

KENNETH W. GEDDES
M.E. MacDOUGALL
HENRY D. WORLEY
TRISTAN BONN

TELEPHONE
(719) 475-7090

December 13, 1989

Mr. Donald F. Peterlin
Court Reporter
69 University Circle
Pueblo, CO 81005

Mr. J. William McDonald, Chairman
Colorado Water Conservation Board
721 State Centennial Building
1313 Sherman Street
Denver, CO 80203

Gentlemen:

Pursuant to the instructions of Chairman Cooley, I have created and am tendering copies of Exhibit D (letter dated November 2, 1989, to Frank G. Cooley from M.E. MacDougall with enclosures), Exhibit E (letter dated November 17, 1989, to Frank G. Cooley from David L. Pope), Exhibit F (letter dated November 28, 1989, to Frank G. Cooley from M.E. MacDougall with enclosures), Exhibit G (letter dated November 20, 1989 to M.E. MacDougall from J. William McDonald), Exhibit H (letter dated December 9, 1989 to Frank G. Cooley from M.E. MacDougall with enclosures) and Exhibit I (letter dated November 22, 1989, to Roger K. Patterson from Mike Hayden, Governor of Kansas) admitted to the record of the hearing of the Arkansas River Compact Administration held Tuesday, December 12, 1989 in Lamar, Colorado.

I am sending the copies as you instructed to Bill McDonald to be appended to the record.

Very truly yours,



M.E. MacDougall

MEM:slj
Enclosures

cc: Frank Cooley w/Exhibit I
Purgatoire River Water Conservancy District w/Exhibit I
Dennis Montgomery w/Exhibit I
Steve Clark w/Exhibit I

LAW OFFICES
GEDDES & MacDOUGALL, P.C.
530 SOUTH NEVADA AVENUE
COLORADO SPRINGS, COLORADO 80903

TELEPHONE
(719) 478-7000
FAX
(719) 478-7004

KENNETH W. GEDDES
M. E. MacDOUGALL
TRISTAN BONK

November 2, 1989

(D)

Frank G. Cooley, Esq.
Chairman and Federal Representative
Arkansas River Compact Administration
Post Office Box 98
Meeker, Colorado 81641

Re: Proposed Amended Operating Principles - Trinidad Project
Administration Agenda December 12, 1989

Dear Mr. Cooley:

I understand the Arkansas River Compact Administration is meeting in Lamar, Colorado, on December 12, 1989.

This office represents the Purgatoire River Water Conservancy District.

We ask that the December 12, 1989 agenda include Compact Administration review and approval of the proposed amended Operating Principles for the Trinidad Project.

Enclosed is a copy of part of the Administration Minutes of June 6, 1967, when the original Principles were reviewed and approved.

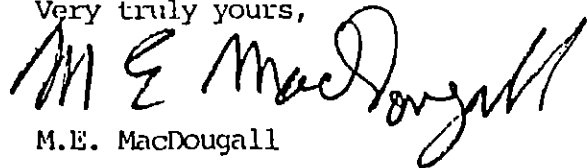
I enclose a copy of a letter to me from Steven R. Clark, dated October 30, 1989, enclosing Director Patterson's letter of October 18, 1989, to Kansas Governor Hayden, and the proposed amended Operating Principles.

The Trinidad Project Operating Principles Final Report of December, 1988, by the Bureau of Reclamation was presented to the Compact Administration in December, 1988.

I request that the Arkansas River Compact Administration review and approve the proposed amended Operating Principles.

Copies of this request and its enclosures are being mailed today as shown below to facilitate review.

Very truly yours,



M.E. MacDougall

MEM:slj
Enclosures

Exhibit D

Frank G. Cooley, Esq.
November 2, 1989
Page Two

cc: J. William McDonald
Director, Colorado Water Conservation Board
721 State Centennial Building
1313 Sherman Street
Denver, Colorado 80203

Carl G. Genova
33032 South Road
Pueblo, Colorado 81006

James G. Rogers
32259 County Road 13
Route 2
Lamar, Colorado 81052

David L. Pope, P.E.
Chief Engineer - Director
Division of Water Resources
Kansas State Board of Agriculture
109 SW 9th Street, Suite 202
Topeka, Kansas 66612-1283

Carl E. Bentrup
Deerfield, Kansas 67838

Ronald Olomon
Post Office Box 673
Garden City, Kansas 67846

Wendy C. Weiss, Esq.
Assistant Attorney General
3rd Floor State Services Building
1525 Sherman Street
Denver, Colorado 80203

Leland E. Rolfs, Esq.
Kansas Division of Water Resources
Kansas State Board of Agriculture
109 SW 9th Street
Topeka, Kansas 66612

Frank G. Cooley, Esq.

November 2, 1989

Page Three

cc: Steve Witte
Division Engineer, Water Division No. 2
Division of Water Resources
Post Office Box 5728
Pueblo, Colorado 81003

Henry D. "Danny" Marques
Water Commissioner
Former Water District No. 19
Route 1, Box 119
Trinidad, Colorado 81082

Purgatoire River Water Conservancy District
314 West Main Street
Trinidad, Colorado 81082

Dr. Ted Zorich
Post Office Box 681
Colorado City, Colorado 81019

Steven R. Clark
Project Manager
Eastern Colorado Project Office
Bureau of Reclamation
Post Office Box 449
Loveland, Colorado 80539-0449

Lt. Col. Kent R. Gonser
District Engineer
Albuquerque District Corps of Engineers
Post Office Box 1580
Albuquerque, New Mexico 87103

And to Counsel for parties to Case 88CW21, Water Division No. 2:

Wendy C. Weiss, Esq.
First Assistant Attorney General
Natural Resources Section
1525 Sherman Street, 3rd Floor
Denver, Colorado 80203

Frank G. Cooley, Esq.
November 2, 1989
Page Four

cc: Kevin B. Pratt, Esq.
Fairfield & Woods, P.C.
One United Bank Center #2400
1700 Lincoln Street
Denver, Colorado 80203

David L. Harrison, Esq.
Moses, Wittenyer, Harrison & Woodruff, P.C.
Post Office Box 1440
Boulder, Colorado 80306

John S. Jefferdink, Esq.
Jefferdink & Bullock
409 South Main Street
Post Office Box 110
Lamar, Colorado 81052

Rexford L. Mitchell, Esq.
Post Office Box 471
Rocky Ford, Colorado 81067

Carl M. Shinn, Esq.
Shinn Lawyers
Post Office Box 390
Lamar, Colorado 81052

And to the Clerk of District Court, Water Division No. 2, State of
Colorado (for information in Case 88CW21):

Mardell R. Cline, Acting Clerk
Water Division No. 2
308 Judicial Building
Pueblo, Colorado 81003

MINUTES OF
ARKANSAS RIVER COMPACT ADMINISTRATION

SPECIAL MEETING

Court House

Lamar, Colorado
June 6, 1967

Attendance:

For Colorado:

Felix L. Sparks, Denver
Ernest Hofmeister, Lamar
George F. Reyher, McClave

For Kansas:

Robert V. Smrha, Topeka
Carl E. Bentrup, Dearfield
Logan N. Green, Garden City

For the United States:

Wilbur L. Heckler, Albuquerque, New Mexico

Others Attending:

G. D. Steward
Wayna Campbell
Earl Beagles
Everette Marshall
Glenn G. Saunders
E. A. Thaxton
C. E. Kimble
Harry J. Figge
Robert A. Buchhagen
Ross W. Moor
Howard C. Corrigan
Leo J. Olson
Geo. T. O'Malley, Jr.
Bernie Bovee
LeRoy Nickelson
C. L. Nickelson
Wm. Howland
Sisto Guidotti
Carter Hutchinson

Otero Co.
La Junta Chamber of Com.
Otero Co. Comms.
Cutlin Ditch Board
Purgatoire W. C. Dist.
SECRA Chairman
Holbrook Lake Spans. Club
Colo. Game, Fish & Parks
Corps of Engineers
U.S.G.S.
Div. of Water Res.
C.F.I. Corp.
Colo. Game, Fish & Parks
Colo. Game, Fish & Parks
Fort Bent
Fort Bent
Amity Mutual Canal
Amity Mutual Canal
C.W.C.B.

Rocky Ford, Colo.
La Junta, Colo.
La Junta, Colo.
La Junta, Colo.
Denver, Colo.
Las Animas, Colo.
Swink, Colo.
Denver, Colo.
John Martin Res.
Lamar, Colo.
Garden City, Kans.
Pueblo, Colo.
Denver, Colo.
Colo. Spgs., Colo.
Lamar, Colo.
Lamar, Colo.
Holly, Colo.
Bristol, Colo.
Denver, Colo.

call was made by your secretary to close the gates at John Martin at 2100 and was informed they had been closed at 2045 on a call from Mr. George Reyher. Considerable flooding was experienced in McClave and Big Bend drainages. Caddoa and Mud Creeks flows were nil by daylight May 31. The Amity, Buffalo and XY Canals had some damage as a result of the flooding.

To meet Colorado's demand, 250 cfs. was ordered for release at 0830 June 5, 1967.

Return flows and problems at measuring stations have required trips to the state line and to tributaries to the river. The U.S.G.S. has worked hard setting up new stations and furnishing data to assist in the measurements for Compact operation. The telemark station just below the reservoir messed up and created some problems for release measurements.

Storage has increased about 12,000 acre-feet since the low of 74,500 acre-feet midnight May 26.

Storage midnight 6/5/67
Decrease since 4/1/67

87,026 acre-feet
111,164 acre-feet

Respectfully submitted,

Ernest Hofmeister

Some discussion followed on the demands by Colorado and Kansas.

Mr. Green then moved that the Operations Committee Report be received and approved and placed in the record. Mr. Sparks seconded the motion and the motion was passed by vote of the states.

OLD AND NEW BUSINESS

Mr. Heckler then asked if there was any unfinished business. There being none, he passed on to new business and suggested consideration of the Trinidad Project as the first item.

Mr. Sparks was asked to present the Trinidad Project for consideration. He said the project had been before the Administration for a long time and he asked if Kansas had any further questions on the project.

Mr. Smrha said that the revised operating principles had not been submitted to the Administration as such.

Mr. Sparks then submitted the revised operating principles along with a letter written to the ditch companies in Kansas. He said this material had been previously submitted to the State of Kansas. After

some discussion Mr. Sparks said that these were the same principles that were submitted originally to the Administration and in addition contained the five points requested by the State of Kansas.

Mr. Bentrup said there seemed to be some conflict in Article VI whether there should be a ten-year review or a five-year review and Mr. Ogilvie was called upon to explain it.

Mr. Ogilvie said the amendments specify a five-year review shall be made instead of a ten.

After some discussion Mr. Saunders said that the amendments to the document supersede the original document.

Mr. Sparks said that in all documents such as this, the amendments supersede the original document.

Mr. Smrha then asked Mr. Ogilvie if the operating principles as amended had been sent to the ditch companies and if there had been any response to these.

Mr. Ogilvie said there had been no response from the ditch companies.

Mr. Sparks then asked if Kansas wanted anything further done with respect to the operating principles.

Mr. Smrha replied that if the question of approval was submitted to the Administration then Kansas will act.

Mr. Sparks then moved and Mr. Hofmeister seconded a motion that the Administration approve the operating principles with the understanding that the amendments take precedent over the original operating principles as presented.

Mr. Green said that he thought that it would be less clumsy to redraw the principles and incorporate the amendments into a single document. He said that as of now there were two documents to approve. He suggested that if everything were incorporated into one document then everyone would know what it means.

Mr. Sparks then asked Mr. Ogilvie to explain the operating principles and amendments.

Mr. Ogilvie said the amendments do take precedent over the original item and that the items included make one document. Mr. Ogilvie further said that at the first review the operating principles would be revised and amended as deemed necessary.

Mr. Smrha then asked for a recess of five minutes to which Mr. Heckler agreed.

Mr. Heckler reconvened the recessed meeting and Mr. Green said that the Kansas Delegates had caucused and thought that if the letter of March 20, 1967, from H. P. Dugan to the Governor of Kansas and countersigned by the Purgatoire Conservancy District was referred to in an amended motion then Kansas could act upon that.

Mr. Sparks said that he would like to withdraw his original motion and make a new motion, which he did as follows:

Moved that the document of March 20, 1967 submitted to Governor Docking and signed by H. P. Dugan and countersigned by Dr. Donnelly be approved by the Arkansas River Compact Administration. Mr. Green seconded the motion and after some discussion the motion was carried by vote of the states. The documents are attached as Appendix A.

Mr. Hofmeister presented a proposed budget for 1968-1969 and said that it provided for a \$200 increase for gage reports and a \$25 per month raise for the secretary. He also said that an additional Kansas relay station might be necessary, so \$1,500 was included for that.

Mr. Tripp was then called upon to explain the relay situation. He said that there may be need for an additional relay besides the ones at Syracuse and Hartland. Mr. Tripp explained that the \$7,500 in last year's budget for the relay stations and Garden City recorder was put in the budget without the prospect of matching funds from U.S.G.S. At the present time there are matching funds available so there is a surplus of funds in this category. He said that the receiver at Garden City had not been decided upon as yet, but that the U.S.G.S. preferred that this receiver be purchased either by Kansas or the Compact Administration since the U.S.G.S. did not want to keep it on their inventory account.

Mr. Surha then asked what choices there were on receiving equipment.

Mr. Tripp explained that if someone is on duty for Kansas most of the time there is no need for a print-out tape.

Mr. Bell said any manual receiver will get the signal if it is designed or converted to receive the proper frequency.

Mr. Corrigan was asked what he thought and explained that he could see no need for a tape recorder type receiver.

Mr. Surha agreed that Mr. Corrigan's idea for a receiver without a tape recorder would satisfy Kansas' purpose.

Mr. Buchhagen said that the receiver at John Martin Reservoir has some trouble receiving the zeros and ones. After some discussion it was apparent that this was a common trouble.



United States Department of the Interior
BUREAU OF RECLAMATION
Great Plains Region
EASTERN COLORADO PROJECTS OFFICE
P.O. Box 449
Loveland, Colorado 80539-0449
OCT 30 1989



IN REPLY
REFER TO:
E-400

Mr. M. E. MacDougall
Geddes, MacDougall and Worley
530 South Nevada Avenue
Colorado Springs CO 80903

RECEIVED OCT 31 1989

Subject: Amendment - Operating Principles - Trinidad Project, Colorado
(Operating Criteria and Procedures)

Dear Mr. MacDougall:

As requested by telephone call with Thomas Gibbens, enclosed is a copy of the letter to the Governor of Kansas transmitting the proposed amended Operating Principles for review, comments and approval.

If you have questions concerning this letter, contact Thomas Gibbens at 303-667-4410.

Sincerely,

Steven R. Clark
Project Manager

Enclosure

concluded that if the water rights had been administered according to the Operating Principles, reduced flows to John Martin Reservoir would result.

Based on these and other conclusions, Reclamation recommended the Operating Principles be amended to secure greater benefits from the available water supply in the Trinidad Project area and still protect downstream nonproject rights.

The District, in cooperation with Reclamation, has prepared a draft of the proposed amended Operating Principles. Condition number two provides any subsequent amendments to the Operating Principles be subject to review and approval by the same interests as provided for in the original procedure. We have enclosed a copy of the draft for your review.

We would appreciate your review, comments, and approval of the proposed amended Operating Principles at the earliest possible date. If you have any questions or need any additional information concerning this draft, write or call Reclamation's Eastern Colorado Projects Office, P.O. Box 449, Loveland, Colorado 80539, telephone number (303) 667-4410.

Sincerely yours,

151 Terry P. Patterson

Roger K. Patterson
Regional Director

Enclosure

bc: Project Manager, Loveland, CO
GP-450
(w/encl to each)

PROPOSED

AMENDED OPERATING PRINCIPLES

TRINIDAD DAM AND RESERVOIR PROJECT

Preamble

The Trinidad Dam and Reservoir Project as reported in House Document No. 325, 84th Congress, 2d Session, and as authorized by the Flood Control Act of 1958, will be operated in such a manner as to secure the greatest practicable benefits from the regulation and use of the flows of the Purgatoire River consistent with the laws and policies of the State of Colorado and of the United States including the Arkansas River Compact. The objectives and principles governing the operation of the Trinidad Dam and Reservoir Project to secure such benefits are contained within the following articles.

Article I	-	OBJECTIVES
Article II	-	DEFINITION OF TERMS
Article III	-	FLOOD CONTROL
Article IV	-	IRRIGATION
Article V	-	FISHERY AND RECREATION
Article VI	-	REVIEW AND AMENDMENT

Article I - OBJECTIVES

The operation of the Trinidad Dam and Reservoir involves the regulation of the flows of the Purgatoire River for flood control, irrigation use, and recreation including a permanent fishery pool. The project plan provides for:

1. Control of floods originating above the reservoir for benefit of the city of Trinidad and downstream reaches.
2. Optimum beneficial use of the available water for irrigation within the project area consistent with the protection of downstream non-project rights as set forth in House Document No. 325, 84th Congress, 2d Session, which provides:

- (a) Transfer of the storage decree of the Model Land and Irrigation Company for 20,000 acre-feet annually from the present site to the proposed Trinidad Reservoir.
- (b) Storage in the Trinidad Reservoir of flood flows originating on the Purgatoire River above the dam site which would otherwise spill from John Martin Reservoir.
- (c) Storage in Trinidad Reservoir of the winter flows of the Purgatoire River historically diverted for winter irrigation of project lands.

Because the effects are indeterminate, the following conditions (d) and (e) are not specified, but are left until such time as the feasibility of operating thereunder can be proven, to-wit:

- (d) By regulation in Trinidad Reservoir of summer flows historically diverted to project lands provided that future streamflow records disclose such further regulation would not materially increase depletions or that any material increase in depletions be compensated by suitable replacement to lands served by John Martin Reservoir.
 - (e) By storage in Trinidad Reservoir of all flood flows originating on the Purgatoire River above the reservoir of other than those specified in condition (b), provided that suitable replacement is made to John Martin Reservoir to the extent that such storage in Trinidad Reservoir would result in material depletion of the inflow from the Purgatoire River into John Martin Reservoir and interfere with its operation as established by the Arkansas River compact.
3. The maintenance of a minimum pool for enhancement of recreation and fishery values.

4. The construction of the Trinidad Dam and Reservoir with the following allocated capacities:

Flood control.....	51,000 acre-feet
Irrigation.....	20,000 acre-feet
Permanent fishery pool.....	4,500 acre-feet
Joint use*.....	<u>39,300</u> acre-feet
Total capacity	114,800 acre-feet**

*For irrigation and sediment accumulation

** It appears from the Corps of Engineers November, 1987 Area-Capacity study that the actual capacity of Trinidad Reservoir on the date of the survey was 121,438 acre-feet. The capacity above 114,800 acre-feet will be allocated as agreed by the Bureau, the Corps, and the District.

Article II - DEFINITION OF TERMS

Definition of terms as used herein:

1. "Reservoir" means the Reservoir constructed on the Purgatoire River above the city of Trinidad, Colorado.
2. "District" means the Purgatoire River Water Conservancy District, that entity created and existing under laws of the State of Colorado to contract for repayment to the United States of an appropriate share of the project costs allocated to the irrigation use. The District shall also be the agency responsible for the regulation of irrigation or other water supplies within the District boundaries in the manner set forth therein.
3. "Unused Sediment Capacity" means that portion of the 39,300 acre-feet of reservoir capacity allocated to joint use but unoccupied by sediment at any given time.

4. "Irrigation Capacity" means the 20,000 acre-feet of reservoir capacity allocated to irrigation plus the un sedimented portion of the joint use capacity.
5. "Permanent Fishery Pool Capacity" means the 4,500 acre-feet of reservoir capacity allocated to fishery and recreation.
6. "Permanent Fishery Pool" means the quantity of water stored in the permanent fishery pool capacity.
7. "Flood Control" means the temporary storage of flood waters at any reservoir pool level as necessary to alleviate flood damages through the city of Trinidad and downstream reaches.
8. "Flood Control Capacity" means the 51,000 acre-feet of capacity exclusively allocated to flood control lying above m.s.l. reservoir elevation 6,223.06 as of the survey published by the Corps in November, 1987.
9. "Reservoir Inflow" is to be expressed in mean daily cubic feet per second of time and means that total flow of water entering the reservoir, comprising measured flows at the inflow gauging stations and other unmeasured inflows entering the reservoir, less such flow of water as may be acquired by the State of Colorado for filling and maintaining the permanent fishery pool.
10. "District Irrigable Area" means only 19,439 acres of irrigable lands to be served lying within District boundaries.
11. "Irrigation Season" means that period of the year, as determined annually by the District, during which water may be beneficially applied to the District irrigable area, provided the irrigation season will not begin earlier than April 1 or end later than October 15, except as modified by the District with the consent of the Secretary of Interior.
12. "Nonirrigation Season" means that period of the year other than the irrigation season.

13. "District Storage Right" means those rights under which the District may store water in the irrigation capacity for use on the District irrigable area.
14. "District Water Supply" means that water supply of the Purgatoire River subject to District administration for irrigation use within the District irrigable area.
15. "Colorado State Engineer" means the Colorado State Engineer or such other administrative agency having jurisdiction and control over the distribution of the waters of the State of Colorado.
16. "Operating Agency" means the U.S. Army Engineer District, Albuquerque, New Mexico, Corps of Engineers.
17. "Winter water under the direct flow rights" means that the direct flow priorities set forth on page 7 of these Operating Principles may hereafter be stored in the Irrigation Capacity (initially about 59,000 acre-feet) and shall not be hereafter charged against, or deducted from, the 1908 Priority to store 20,000 acre-feet.
18. "W-130 Storage Right" means that Colorado water right owned by the District, as set forth in decrees entered in cases in District Court, Water Division No. 2, including Case W-130 and any other decrees relating thereto, to store 39,300 acre-feet, for domestic, irrigation, and municipal uses, with an appropriation date of May 31, 1950.
19. "Flow", whether stated in cubic feet per second (c.f.s.) or not, means a measurement in acre-feet per day. One c.f.s. flowing for one day will create 1.9835 acre-feet. The District shall account for water daily, in acre-feet.

Article III - FLOOD CONTROL

Trinidad Reservoir shall be operated for flood control benefits in accordance with regulations prescribed by the Secretary of the Army and the following operating principles:

1. All potentially damaging flood inflows shall be temporarily detained as necessary to limit the flow insofar as possible to a nondamaging flow, currently estimated to be 5,000 c.f.s., downstream from the Trinidad Reservoir.
2. All flood waters stored in the flood control capacity shall be released at the maximum nondamaging rate insofar as practicable.
3. Any inflow, other than that stored for irrigation use, temporarily retained below the bottom of the flood control capacity for flood control purposes, shall be released by the operating agency at such a rate, time, and quantity as may be ordered by the Colorado State Engineer, but within nondamaging flow in the channels below the reservoir.

Article IV - IRRIGATION

Administration of the irrigation capacity in Trinidad Reservoir and the distribution of water to the District irrigable area will be made by the District in accordance with House Document No. 325, 84th Congress, 2d Session, and these operating principles. Agreements, satisfactory to the Secretary of the Interior, have been entered into between the District and the ditch companies and other owners of affected water rights to insure that these principles and the operation described herein shall be adopted.

The principles and provisions under which the District will administer water supplies to the District irrigable area are contained in the following four parts of this Article. "Water Rights", "Limits of Land and Water Use", "District Water Supply", and "Operation and Exercise of Water Rights".

A. Water Rights

Accomplishment of the following conditions is necessary under the laws of the State of Colorado to provide the District with the right to regulate the flows of the Purgatoire River in the manner described herein:

1. Water users within the District have assigned the right to the exercise of the following (page 7) decreed direct flow water rights all in former Water District No. 19, and within the District boundaries to the District for administration by the District at such times and to the degree outlined in these principles.

Direct Flow Rights
Water Division No. 2, Colorado

<u>Number</u>	<u>Priority Date</u>	<u>Amount (c.f.s.)</u>	<u>Name of Ditch</u>
3	11/30/1861	6.00	Baca
5	03/20/1862	4.00	Johns Flood
7	04/30/1862	7.00	Chilili
8	11/15/1862	2.82	Baca
8	11/15/1862	1.18	El Moro
9	01/01/1863	1.28	Johns Flood
9	01/01/1863	4.72	Hoehne
12	06/30/1863	0.50	South Side
13	01/01/1864	1.25	Johns Flood
13	01/01/1864	3.75	Lewelling & McCormick
15	04/10/1864	5.10	Johns Flood
15	04/10/1864	0.80	Hoehne
15	04/10/1864	0.847	Salas
19	06/01/1865	4.00	Lewelling & McCormick
20	10/07/1865	7.35	Johns Flood
20	10/07/1865	16.65	Hoehne
21	01/01/1866	3.25	Burns & Duncan
22	02/01/1866	1.34	Salas
27	05/31/1866	2.25	Johns Flood
27	05/31/1866	0.75	Salas
40	04/30/1868	1.40	South Side
64	04/01/1873	2.40	Johns Flood
73	11/01/1875	6.00	South Side
74	02/17/1876	34.00	South Side
75	12/25/1876	4.00	South Side
77	03/11/1877	1.30	El Moro
77	03/11/1877	2.70	Baca
80	04/07/1877	18.60	South Side
93	12/15/1882	4.00	South Side
95	11/04/1883	14.38	Baca
96	11/23/1883	16.84	South Side
98	04/30/1884	60.00	South Side
103	06/21/1886	14.73	Baca
104	10/21/1886	10.00	Lewelling & McCormick
106	03/12/1887	15.00	Baca
108	02/15/1888	9.70	South Side
109	03/01/1888	8.00	South Side
145	10/20/1902	100.00	Johns Flood
168	01/22/1908	200.00	Model Ditch
242½	06/12/1920	45.56	Baca

2. Waters of the Purgatoire River shall be stored by the District in the irrigation capacity (initially about 59,000 acre-feet) of Trinidad Reservoir under rights created under Colorado law; said rights, defined as the District storage right, include:

(a) The Model storage right, being the right to store 20,000 acre-feet of water from the flows of the Purgatoire River, under reservoir priority No. 10 in Water District No. 19 at a rate of flow not exceeding 700 cubic feet per second of time under date of appropriation of January 22, 1908, as decreed by the District Court of Las Animas County, Colorado, on January 12, 1925, and by Decree in Civil Action No. 19793, District Court, Las Animas County, Colorado, of April 15, 1965, transferred from the place of storage as originally decreed to the site of the reservoir; and

(b) Such other rights to store water in the reservoir as the District may lawfully acquire by appropriation or purchase, including the right to store winter water under the direct flow rights, (appropriation dates as listed) and the W-130 storage right (appropriation date May 31, 1950).

(c) Subject to appropriate Colorado statutory proceedings the District may make administrative transfers, from time to time, of water lawfully stored in the irrigation capacity under the District Storage right from one pool, account, or capacity, to another pool, account or capacity, including the transfer of water stored under the 1908 priority of the Model storage right into the Unused sediment capacity, as if such other pool, account or capacity were a separate vessel, thereby allowing storage and use of the administratively emptied pool, account or capacity for all purposes. Until such time as the Bureau agrees otherwise, by further amendment of these principles, the District shall limit administrative transfers to the lesser of:

(i) 19,500 acre-feet per year to transfer; or

(ii) The amount required to place 39,500 into the irrigation capacity of the reservoir.

B. Limits of Land and Water Use

In order that the Trinidad Dam and Reservoir Project may provide an optimum beneficial use of water for irrigation within the District, the following limitations on land and water use shall apply:

1. The acreage irrigated by the District water supply shall be limited to 19,439 acres of irrigable land lying within the District boundaries. These 19,439 acres of the District irrigable area shall be composed as nearly as practicable of the acreages under contracts:

(Picketwire: includes Chicosa, Lujan, Northside and El Moro Water Users):

Picketwire	2,414.7
Baca	319.6
Chilili	300.3
El Moro	179.6
Johns Flood	2,170.7
Model	7,078.3
South Side	6,299.6
Hoehne	1,200.0
Burns & Duncan	229.7
Jewelling & McConaick	361.1
Salas	56.8

The contracts total more than 19,439, and as recognized by the contracts, some acreages are "double counted". The District shall insure that the acreage irrigated in any year shall be limited to not more than 19,439 acres of District irrigable area.

2. All water deliveries to the 19,439 acres of the District irrigable area will be limited during the irrigation season to the irrigation requirements at the farm headgate as determined by the District. Allowance for canal and lateral losses on the individual ditch systems will also be determined by the District.
3. No water deliveries for irrigation of the 19,439 acres of the District irrigable area will be made during the nonirrigation season.

C. District Water Supply

1. That water supply of the Purgatoire River subject to District administration for irrigation use within the District irrigable area, defined as the District water supply, consists of:
 - (a) The water stored under the District storage right in the irrigation capacity, (initially about 59,000 acre-feet).
 - (b) The stream gains to the Purgatoire River below Trinidad Dam that are divertible to the District irrigable area by the direct flow rights.
 - (c) That portion of the reservoir inflow bypassed to the river below Trinidad Dam which is subject to diversion by the direct flow rights.
2. The District water supply will be allocated by the District to the ditches within the District to provide each acre of the District irrigable area an equitable share of the District water supply after allowance has been made for individual ditch transportation losses, provided such allocation will not exceed the irrigation requirements at the farm headgate, subject to the special provisions of the Hoehne and Model contracts.

D. Operation and Exercise of Water Rights

The principles governing operation of the irrigation capacity and the District's exercise of the direct flow water rights and the District storage right are hereinafter set forth as they apply to operations during the entire year as well as to operations during either the nonirrigation season or irrigation season.

1. Non-interference with Downstream Water Rights

- (a) Bypasses to the river shall be made at any time during the year to satisfy downstream senior rights as ordered by the Colorado State Engineer to the extent that such demands are not met by stream gains or otherwise satisfied but are limited to the extent as determined by the Colorado State Engineer to actually benefit such rights without unnecessary waste through channel losses.

(b) Reservoir inflow in excess of 1,388.1 acre-feet per day may be detained in the reservoir at such times as John Martin Reservoir is reasonably expected to spill; to the extent that John Martin Reservoir would have spilled, such detained water shall be considered to have been stored under the District storage right (including the W-130 storage right) and become part of the District water supply. Such detained water which does not become a part of the District water supply shall be released as called for by the Colorado State Engineer in the amounts and at such times as he shall determine that such releases may be required to avoid a material depletion of the water of the Arkansas River as defined in Article 3 of the Arkansas River Compact, C.R.S., §37-69-101. et seq.

(c) Except as provided by paragraph (b) above, any water temporarily detained in the reservoir as a result of the reservoir inflow exceeding the design outlet capacity of the reservoir shall be released as soon as possible.

(d) All bypasses set forth in (a) above, and all releases of temporarily detained water from the reservoir, as set forth in (b) and (c) above, shall be passed down the Purgatoire River without interference by water users in the District irrigable area.

E. Other Storage.

It shall be appropriate to store trans-basin water, trans-mountain water, and other types of water, by exchange or otherwise, subject to Colorado law. Such water need not be allocated as set forth herein.

2. District Operation, Non-irrigation Season

(a) During the non-irrigation season the District will provide an allowance for stock watering purposes of not more than a daily mean flow of five second-feet or its volume equivalent measured at a gauge to be located near and above the Baca River headgate. If the stream gains from the Trinidad Dam to the said gauge are insufficient to fulfill the allowance, an equivalent volume of reservoir inflow may be released in the discretion of the District to satisfy stock water demands within the allowance.

(b) During the non-irrigation season the District will exercise the direct flow water rights and the District storage right only at such times and to the degree as necessary to assure:

- (1) That the maximum possible storage of reservoir inflow is accrued.
- (2) The stock water allowance is distributed in a manner determined equitable by the District.
- (3) Winter water under the direct flow rights shall be accounted separately from the 20,000 acre-feet Model storage right, shall be stored in the irrigation capacity (initially about 59,000 acre-feet) and shall not be diminished by any water stored under the 1908 priority for the 20,000 acre-feet "Model storage right", nor shall the 1908 priority for 20,000 acre-feet be diminished by any amount of water stored in winter water under the direct flow rights.

3. District Operation - Irrigation Season

(a) During the irrigation season, except at such times as provided for in IV.D.3.(c) below, the District shall exercise the direct flow water rights and the District storage right only at such times and to the degree necessary to assure:

- (1) That stream gains to the river below Trinidad Dam which are divertible to the District irrigable area and such reservoir inflow which is bypassed to the river for District irrigation use will be equitably distributed to the District irrigable area as part of the allocated District water supply, as provided by the contracts.
- (2) That the District storage rights can be fully exercised to store reservoir inflow in excess of that bypass to the river as may be required under D.1.(a) and D.3.(a)(1) above.

(b) During the irrigation season water stored in the irrigation capacity will be released as needed to fulfill or partially fulfill the irrigation requirements of the District irrigable area as part of the allocated District water supply.

(c) Subject to the special provisions of the Model and Hoelne contracts, during the irrigation season, when the irrigation capacity is empty as determined by the District, the District will relinquish its exercise of the direct flow water rights provided that if the reservoir inflow and stream gains below Trinidad Dam which are divertible to the District irrigable area exceed the irrigation requirement and such excess is storable under the District storage right, the District will resume the exercise of the direct flow rights and exercise of the District storage right as in D.3. (a) (2) above.

4. Evaporation and Seepage Losses

In the accounting for water in storage, evaporation and seepage losses due to water stored in the irrigation capacity shall be determined using the most recent data available by the Colorado State Engineer and the District with the cooperation of the operating agency.

Article V - FISHERY AND RECREATION

The permanent fishery pool shall be operated in accordance with the following principles:

1. Water for any required re-fillings and for replacing evaporation and seepage losses will be acquired by the State of Colorado without interference to the District water supply or without additional cost to the District or the United States for the Trinidad Project as envisioned in House Document No. 325.
2. In the accounting for water in storage, evaporation and seepage losses due to the permanent fishery pool shall be determined using the most recent data available by the Colorado State Engineer and the District with the cooperation of the operating agency.
3. There shall never be any release of water from the permanent fishery pool except upon the request of the Colorado Game, Fish, and Parks Commission to the Colorado State Engineer.

Article VI - REVIEW AND AMENDMENT

These operating principles may be subject to review and amendment not more than once a year at the request of any of the parties' signatory; provided, that at least one review shall be accomplished within the first 10 years following completion of the Trinidad Dam and at least one review be accomplished every 10 years thereafter. The primary object of such reviews will be obtaining optimum beneficial use of water as conditions change, operating experience is gained, and more technical data become available.

FIVE CONDITIONS

State of Kansas

To avoid any misunderstanding as to intent and purpose, in addition to the Operating Principles set forth above, set forth below are the five conditions from Kansas Governor Avery's letter of December 30, 1965.

1. All inflows over established Colorado water rights (1,156.05 c.f.s.) be designated flood flows and released as promptly as downstream conditions permit. The only time water so designated may be stored in the conservation pool will be when John Martin Reservoir does not have the capacity to store additional water.

2. Any subsequent amendment of the operating principles should be subject to review and approval of the same interests as provided for in the original procedure.

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

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

5. All operating records be open for inspection by any qualified representative of the Arkansas River Compact Administration.



KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES
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SAM BROWNBACK
Secretary



November 17, 1989

RECEIVED

Frank G. Cooley
Chairman and Federal Representative
Arkansas River Compact Administration
P.O. Box 98
Meeker, Colorado 81641

RE: Proposed Amended Operating Principles
for Trinidad Dam and Reservoir
Project

Dear Mr. Cooley:

I am writing to comment on Mr. M. E. MacDougall's letter of November 2, 1989, in which he requested that the Arkansas River Compact Administration review and approve the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project.

Although I certainly have no objection to the subject of the proposed amendment of the Operating Principles for the Trinidad Dam and Reservoir Project being placed on the agenda for the December 12, 1989 Compact meeting, I do object to it being put on the agenda for action.

The issues raised by the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project are going to be addressed in the litigation in Kansas v. Colorado, Original No. 105. Until the conclusion of that litigation, it is inappropriate to place the matter on the agenda of the Compact Administration for action.

Sincerely,

David L. Pope, P.E.
Chief Engineer-Director

DLP:LER:cr

①

Frank G. Cooley
November 17, 1989
Page Two

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November 28, 1989

Frank G. Cooley, Esq.
Chairman and Federal Representative
Arkansas River Compact Administration
Post Office Box 98
Meeker, Colorado 81641

F

Re: Proposed Amended Operating Principles - Trinidad
Project Administration Agenda December 12, 1989

Dear Mr. Cooley:

I am surprised and disappointed by the contents of Mr. Pope's letter to you dated November 17, 1989, copy enclosed.

I enclose herewith copies of:

A) Decision of Special Master October 21, 1988, in Kansas v. Colorado;

B) Pages 1-33, Appendix, referred to on page 2 of Item A), above;

C) Face page and pages 1-8 of the Final Report (December, 1988) Trinidad Project; and

D) Pages 1, 8, 9, 10, 11 and 16, Minutes of Administration Meeting of December 11, 1984.

By enclosing the above, I do not intend to ignore, and hereby specifically request that any record include, the entire Final Report, December, 1988, by the Bureau, presented to the Compact Administration a year ago (in December, 1988) by the Bureau.

My surprise results from the fact that four years ago the Compact Administration asked the Bureau to conduct a 5-year review with participation of both states. Kansas "reserved the right to conduct its own independent review", and in my opinion did so. Kansas, Colorado, the Bureau of Reclamation, the Purgatoire River Water Conservancy District, and others, spent three years, huge sums of money, and no small amount of time and trouble, in studies. There were public meetings February 5, 1987, February 16, 1988 and April 27, 1988, attended by many persons, including Administration members. Jokes were made about the huge amounts of paper being consumed.

Exhibit F

Frank G. Cooley, Esq.
November 28, 1989
Page Two

Kansas Condition 2, quoted on page 3 of the Final Report, clearly contemplates action by the Compact Administration at the end of the review required by Kansas Condition 4 ("principles amended as necessary"). That review ended a year ago.

Kansas has never (before November 17, 1989) asserted that amendments to the Operating Principles needed to be reviewed and approved by the Supreme Court. This is also a suprise.

I am disappointed at the Kansas posture because it had been my hope, as evidenced by the Purgatoire River Water Conservancy District's prior positions, our obvious willingness to negotiate and by the District's obvious agreement (obvious in the proposed Amended Operating Principles) with the recommendations of the Bureau, that Kansas would reciprocate.

I am left to ask the Compact Administration to consider the following:

A) The Bureau has done what it was asked to do at the meeting of December 11, 1984 and by Kansas Conditions 4 and 2;

B) Colorado has acknowledged the Bureau's recommendations in Dr. Danielson's letter to the District dated April 27, 1989 (copy enclosed);

C) The District and the Bureau have agreed upon the Proposed Amended Operating Principles which fulfill the recommendations of the Bureau's Final Report of December, 1988;

D) The Proposed Amended Operating Principles were forwarded to Kansas Governor Hayden by the Regional Director's letter dated October 18, 1989, which was included in my letter to you (and copies to all others) of November 2, 1989;

E) The Purgatoire River Water Conservancy District is seeking approval of the Proposed Amended Operating Principles in Case No. 88CW21, District Court, Water Division No. 2. This case is set for Pre-Trial Conference

Frank G. Cooley, Esq.

November 28, 1989

Page Three

in Pueblo at 2:00 P.M. on March 13, 1990. I enclose a copy of the 12-page Application (without attachments);

F) In the event the Administration tables our request for review and approval of the proposed Amended Operating Principles until the Supreme Court litigation is concluded, what is to happen then? I do not believe the Supreme Court will review or approve the proposed Principles. That is the job of the Administration which Kansas imposed as a condition; and

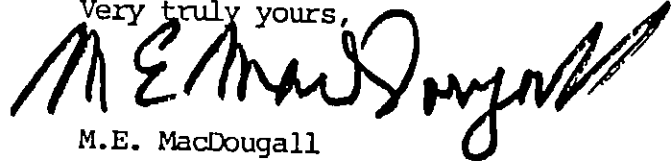
G) In his letter of November 17, 1989, Mr. Pope states that the issues raised by the Proposed Amended Operating Principles for the Trinidad Dam and Reservoir Project are going to be addressed in the litigation in Kansas v. Colorado, No. 105, Original. I disagree. In Kansas v. Colorado, Kansas has alleged that the past failure to operate Trinidad Reservoir within the approved Operating Principles has materially depleted the usable and available flows of the Arkansas River to water users in Kansas. The United States Supreme Court has not been asked to determine whether the Proposed Amended Operating Principles will materially deplete such flows.

I realize that Mr. Pope speaks for the Executive Branch of the State of Kansas. I realize that the Compact Administration can deadlock and sometimes does so. The matter should be clearly decided as soon as possible. To allow Kansas a "stay" will severely prejudice the Trinidad Project. As you know, we are also seeking "review and approval" in Colorado in District Court, Water Division No. 2, Case 88CW21, and the Bureau is seeking "review and approval" of the Governor of Kansas. I am sure everyone would like to "wait" for someone else. That's not fair to the Trinidad Project.

Frank G. Cooley, Esq.
November 28, 1989
Page Four

I urge that the Administration fulfill the task it undertook December 11, 1984, or that it declare that Kansas has waived Kansas Condition No. 2 to the Trinidad Project Operating Principles.

Very truly yours,



M.E. MacDougall

MEM:slj
Enclosures

cc: J. William McDonald
Carl G. Genova
James G. Rogers
David L. Pope, P.E.
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Secretary

November 17, 1989

RECEIVED 11/17/89

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RE: Proposed Amended Operating Principles
for Trinidad Dam and Reservoir
Project

Dear Mr. Cooley:

I am writing to comment on Mr. M. E. MacDougall's letter of November 2, 1989, in which he requested that the Arkansas River Compact Administration review and approve the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project.

Although I certainly have no objection to the subject of the proposed amendment of the Operating Principles for the Trinidad Dam and Reservoir Project being placed on the agenda for the December 12, 1989 Compact meeting, I do object to it being put on the agenda for action.

The issues raised by the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project are going to be addressed in the litigation in Kansas v. Colorado, Original No. 105. Until the conclusion of that litigation, it is inappropriate to place the matter on the agenda of the Compact Administration for action.

Sincerely,

David L. Pope, P.E.
Chief Engineer-Director

DLP:LER:cr

157-1
IN THE SUPREME COURT OF THE UNITED STATES

STATE OF KANSAS,)
)
 Petitioner,) No. 105, Original
) October Term, 1985
 v.)
)
 STATE OF COLORADO,)
)
 Respondent.)

FILED

OCT 21 1988

DECISION OF SPECIAL MASTER
ON COLORADO MOTION TO STAY

SPECIAL MASTER
U.S. SUPREME COURT

Colorado filed a Motion to Stay Based on Kansas' Failure to Exhaust Its Administrative Remedies. The Motion dealt with two of the several issues in the Complaint: i.e., post-Compact well development in Colorado, and the operation of Trinidad Reservoir. The Motion was fully briefed, and oral argument was held in the Federal Court of Appeal in Pasadena, California on September 28, 1988. David W. Robbins, Esq. argued the Motion for Colorado, and Richard A. Simms responded for Kansas.

Kansas acknowledges that it has an obligation, before seeking judicial relief, to exhaust its administrative remedies under the Arkansas River Compact. The Compact was ratified by the respective legislatures of each state, and approved by Congress in 1949. (Act of May 31, 1949, 63 Stat. 145) The Compact

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HALL & ROBBINS, P.C.

Administration is similar to that discussed in State of Texas vs. State of New Mexico (1983) 462 U.S. 554, 77 L.Ed.2d 1; 103 S.Ct. 2558. The Administration consists of three representatives from each state, but each state ". . . shall have but one vote in the Administration and every decision, authorization or other action shall require unanimous vote." (Article VIII-D) While a representative of the United States chairs the Administration, he has no vote. (Article VIII-C)

Only two specific remedies for alleged Compact violations are provided for in the Compact. It provides that violations shall be "promptly investigated" by the Administration, although the procedure for the investigation and any remedies still require agreement between the states. (Article VIII-B) In addition, disputes "may," by unanimous vote, be referred for arbitration. (Article VIII-D) Both parties agree that the exhaustion test under the circumstances involved here is whether a state has made a "reasonable effort" to proceed first through the Compact Administration. Colorado also acknowledges that it is proper to seek judicial relief if an investigation by the Administration reaches an impasse. (Colo. Br., p. 21) Colorado, as part of its Motion, filed four large volumes of Appendix documents, going back several years, which appear to include the Compact Administration record with respect to post-Compact well development and the operations of Trinidad Reservoir. Both parties relied upon this record in their briefs and arguments.

Kansas argues first that the exhaustion issue was actually decided by the United States Supreme Court when it authorized the filing of Kansas' Complaint. Kansas moved to file its Complaint on December 16, 1985, alleging that the State of Colorado and its water users had materially depleted the usable and available stateline flows of the Arkansas River in violation of the Compact. Kansas further alleged that Colorado had blocked Kansas' efforts to have the Compact Administration investigate its complaints.

On February 18, 1986, Colorado filed a brief in opposition to Kansas' Motion for Leave to File Complaint. The thrust of that brief was that Kansas had not made a "reasonable effort" to resolve its complaints through the Compact Administration, and that absent such an effort, the Supreme Court should decline to hear the matter. (p. 1) Colorado stated that the question presented was whether Kansas had met its burden ". . . to demonstrate that a pending investigation of the Arkansas River Compact Administration is not an adequate means to vindicate its allegations of Compact violations." (p. 3) In its brief, citing certain documentary evidence, Colorado alleged that there was a "pending investigation" by the Compact Administration, that the Administration was not deadlocked or unable to act, and that Colorado had not refused to investigate Kansas' allegations. (pp. 8-9) However, Colorado did not file with the Supreme Court the same voluminous administrative record used to support its Motion before the Special Master.

In response to Colorado's brief, Kansas on March 3, 1986 filed a new motion in the alternative, either for leave to file its complaint, or to compel an investigation by the Compact Administration pursuant to Article VIII-H. In its supporting brief, Kansas outlined in further detail its view of efforts taken within the Compact Administration, and the alleged frustration of the administrative procedure. Thus, the question of whether the administrative process had been properly exhausted was clearly an issue in the pleadings before the Supreme Court.

The Supreme Court's Order stated simply:

"The motion for leave to file a bill of complaint is granted. Defendant is allowed sixty days within which to file an answer."

Kansas contends that the Court made a choice between the alternatives presented in its Motion, and thereby disposed of the exhaustion issue. Colorado, on the other hand, argues that the Court's silence is not a basis for inferring intent, and had the Court intended to decide the exhaustion issue, it would have ordered argument and decided the issue explicitly.

The requirement of a motion for leave to file a complaint and the requirement of a brief in opposition do enable the Supreme Court to dispose of matters at a preliminary stage.

Ohio v. Kentucky (1973) 410 U.S. 641, 644) As the Court has explicitly recognized, its objective in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presents. (Id.) To this end, the Court has strongly suggested that granting an original plaintiff's motion for leave to file complaint amounts to a rejection of arguments that the case should be dismissed. (Maryland, et al. v. State of Louisiana (1981) 451 U.S. 725, 740, fn. 16) Further, in the analogous case of Texas v. New Mexico (1983) 462 U.S. 554, the Court intimated that "fundamental structural considerations," such as an interstate compact that accords each signatory state the power to veto authoritative commission action, may abbreviate inquiry into the question of whether an available remedy exists at the administrative level. (462 U.S. 54, 568-570)

It is not necessary, however, to decide Colorado's present Motion on the basis of the Supreme Court order. The Special Master is convinced that Kansas did make a reasonable effort to pursue its complaints through the Compact Administration, but because of the inherent limitations in that procedure, the parties reached an impasse. Indeed, the briefs and oral argument on the Motion dealt primarily with the substance of the efforts before and by the Compact Administration, and not upon the Supreme Court order.

First, with respect to post-Compact well development, Kansas cites numerous law reviews and other secondary sources to

show that unregulated well development, and its impact on surface water users, has been a problem for many years. (Kan. Br., pp. 30-31) By 1983 Kansas began its own study of the decline in flows of the Arkansas River, and the development of upstream wells in Colorado as a possible cause. Completed in 1984, that study concluded that for the period 1974 to 1981 a conservative estimate of the stateline depletions due to post-Compact wells in Colorado was 40,000 to 50,000 acre-feet per year. (Appendix Exh. 21, p. iii) Colorado and the Compact Administration were aware of that study. Nonetheless, Colorado contends that Kansas did not formally seek a Compact investigation of this issue until February of 1985. (Colo. Closing Br., pp. 21, 27) Assuming that to be true for purposes of this Motion, there is no question that on March 28, 1985 the Compact Administration directed a formal investigation of the depletion of stateline flows. A number of potential causes were to be investigated, including specifically "well development of the waters of the Arkansas River in Colorado," as well as "the operation of the Trinidad Dam and Reservoir project." (Appendix Exh. 28, attached Exh. L)

The Compact Administration Resolution directed that the investigation be undertaken by a committee consisting of the Director of the Colorado Water Conservation Board and the Chief Engineer of Kansas, or their respective designees. Thus, the same unanimity requirements that limited the Administration itself were carried over into the structure of this investigation. Finally,

The March 28 Resolution called for the investigation to be completed by the next annual meeting of the Compact Administration on December 10, 1985.

The engineers for the two states met promptly, but were unable initially to agree upon a scope of work for the investigation. (Appendix Exh. 29) At their next meeting they agreed to defer consideration of a complete scope of work, and defined instead a preliminary scope that included the compilation of certain data and construction of a series of mass diagrams. (Appendix Exh. 30, p. 2) The mass diagrams were presented at their meeting on July 12, 1985, but again the two engineers were unable to agree "about what the diagrams did or did not show." (Appendix Exh. 32, p. 4) Finally they decided to prepare and exchange separate reports analyzing the mass curves, and recommended that the Compact Administration hold a special meeting on October 8, 1985 to receive such report as the committee might be ready to make. (Ibid.) The committee met once again on September 17, ". . . but was unable to agree on the conclusions to be drawn from the single and double mass diagrams and on what further investigation, if any, should be undertaken." (Appendix Exh. 34, pp. 4) J. William McDonald, the Colorado representative on the committee, reported to the Compact Administration that the committee had "reached an impasse" at its September 17 meeting. (Appendix Exh. 36, p. 2)

Against this background, the Compact Administration met on October 8, 1985. The Colorado representative acknowledged that there had been a "substantial decline in usable stateline flows starting in 1974." (Appendix Exh. 36, p. 4) However, he did not see post-Compact well development as the cause. He stated:

"It seems to me that all the engineering shows thus far is that there has been a decline in usable stateline flows starting in 1974, which corresponds it appears to me, to a decline in tributary inflow rather than to well development or any other beneficial development in the Arkansas River basin in Colorado." (Appendix Exh. 37, p. 32)

Colorado therefore took the position that the investigation should first examine neither the well issue nor the operations of Trinidad Reservoir, but (1) reduced diversions by ditches in Colorado Water District 67; (2) the operating plan for John Martin Reservoir; (3) decreased plains precipitation; and (4) soil conservation measures. (Appendix Exh. 37, p. 35)

With respect to well development, the Colorado representative stated:

"In that context I do not believe it is appropriate to launch an investigation of well pumping in Colorado as David (David Pope, Kansas State Engineer) has urged in his second report until we have determined whether the declines in usable stateline flows might be the result of other causes, which I believe to be more likely than the causes which David has addressed. . . . And it has been my position therefore that the investigation should indeed continue, but it should start first with those factors which at this point in time appear to be most likely explanations for the decline in usable stateline flows." (Appendix Exh. 37, pp. 31-32)

Kansas, on the other hand, urged that the investigation proceed to examine ten possible causes for the decline in stateline flows, including all those suggested by Colorado, and including well development and the operations of Trinidad Reservoir. (Appendix Exh. 37, pp. 35-36) The Compact Administration finally adopted a Resolution that the committee continue its investigation only of those matters mutually agreed upon, that is, the four items suggested by Colorado. (Appendix Exh. 37, pp. 37-38)

Colorado now argues that it did not "rule out" an investigation of the impact of post-Compact wells on stateline flows, but neither did it commit that Kansas' complaints would ever be investigated. (Colo. Closing Br., p. 28; Appendix Exh. 37, p. 33) The facts are that in March the Compact Administration directed an investigation of post-Compact well development and the operations of Trinidad Reservoir, as possible causes among others for the decline in stateline flows. The investigation was to have been completed within the year. Yet by October, at Colorado's insistence, those two matters had been dropped from the committee's investigation agenda. Kansas had a right to have its complaints "promptly investigated" and not sidetracked by Colorado's belief that other factors might have more likely caused the decline in stateline flows. (Article VIII-H)

The well issue came up again at the Compact Administration's annual meeting on December 10, 1985. Kansas asked Colorado directly whether it would be ". . . willing to immediately begin a prompt and expeditious investigation of post-Compact alluvial well development in the Arkansas River Basin in Colorado. (Appendix Exh. 39, p. 107) Kansas never received an affirmative reply.

At that meeting, Kansas also presented a report from the nationally known consulting firm of S. S. Papadopoulos & Associates. The report concluded that the investigation methodology proposed by Colorado, namely, focusing first on

separate factors like climatic conditions, would not "produce meaningful conclusions regarding the alleged violations"; that the various possible factors must be examined contemporaneously, "regardless of preconceived notions as to the relative effects of any one factor"; and that studies had demonstrated that groundwater development and reservoir regulation "impact significantly the streamflow conditions within the river system," and "must be included" in order properly to investigate Kansas' allegation. (Appendix Exh. 39, Exh. E, pp. 5-6)

Kansas filed its motion with the Supreme Court six days later on December 16, 1985, having previously announced after the October 8 meeting that the States were at an impasse, and that such an action was being prepared. (Appendix Exh. 38)

Turning now to the operations of Trinidad Reservoir, Colorado concedes that Kansas first complained about this issue in 1980. (Colo. Br. pp. 9, 24) Through an administrative practice known as "rollover," Kansas alleged that additional water was stored in Trinidad Reservoir, in violation of the Compact. The Administration found that the amount involved for 1979 was 18,290 acre-feet. (Appendix Exh. 13) At a Compact Administration meeting in 1980, Kansas sought to have the Administration recommend that the State Engineer of Colorado order the release of such stored water, but Colorado voted "no." (Appendix Exh. 13, Colo. Br. p. 9) The rollover practice was continued, and Kansas contends that by 1982 some 58,514 acre-feet of water had been

illegally stored. (Kansas' Response, p. 27) Admittedly, Kansas sought arbitration of this issue in 1982, in 1983 and again in 1985. (Appendix Exh. 16, pp. 78, 87; Exh. 28, pp. 168-170) Colorado declined, due to the "failure of the State of Kansas to identify the underlying factual basis for its claims." (Appendix Exh. 16, pp. 88, 85)

In 1983, therefore, Kansas undertook its own study, hiring Simons, Li & Associates, Inc. That study was completed in February, 1984 and concluded in part:

"Since 1979, the Trinidad Project has been operated in a manner different than that envisioned by the Bureau of Reclamation and that approved by the Compact Administration. It is estimated that these deviations in the Trinidad Project operation have caused an additional 26,000 to 35,000 acre-feet of depletions to downstream water users." (Appendix Exh. 21, p. iii)

As previously indicated, the Trinidad issue was finally included as part of the investigation authorized by the Compact Administration on March 28, 1985. However, like the well development issue, Trinidad was dropped on October 8, 1985.

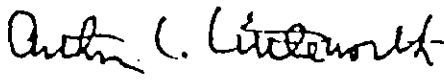
Colorado's principal argument with respect to Trinidad Reservoir is that reservoir operations are currently being reviewed and analyzed by the United States Bureau of Reclamation. Colorado claims that the Bureau's study, which was begun in 1984, embraces all of Kansas' complaints. The study was requested by the Compact Administration following the Simons, Li report, but was also independently required as part of a five-year review procedure. The Bureau's final report is expected at any time. Two draft reports have been issued earlier, and Kansas maintains that there are both "methodological and legal objections" to the last draft. (Kansas Response, p. 29) However, the scope and efficacy of the Bureau's study are not the issue. There is nothing to show that a routine, though timely, study by the Bureau constitutes a Compact investigation. Indeed, the Compact administration presumably would not have included the operations of Trinidad Reservoir within its March 28, 1985 investigation if the Bureau's study had been intended to serve that function. The Bureau's study may provide valuable data on the issue, but it is not a substitute for action by the Compact Administration to investigate Kansas' complaints.

The decline of Arkansas River flows into Kansas appears to be admitted. At issue are the cause or causes, and whether Compact violations are involved. Kansas has made good faith allegations of such violations, and has presented preliminary studies to support its position. Certainly the future

effectiveness of the Compact Administration requires timely resolution of these allegations. However, the Administration structure is such that even a preliminary investigation of the allegations has not proceeded. By exercising its veto on the Commission, though done in good faith, Colorado has effectively prevented "authoritative Commission action." (cf. Texas v. New Mexico, supra, 462 U.S. 554, 568)

The Special Master believes that Kansas has met its obligations under the law, and that returning these issues to the Compact Administration would not prove effective, nor would further delay be fair. Accordingly, Colorado's Motion is hereby denied.

DATED: October 21, 1988



Arthur L. Littleworth
Special Master

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action, my business address is:

BEST, BEST & KRIEGER, 3750 University Avenue, 400 Mission Square
P.O. Box 1028, Riverside, CA 92502

On October 21, 1988, I served the within DECISION OF SPECIAL
MASTER ON COLORADO MOTION TO STAY

on the interested parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as follows:

Richard A. Simms, Esq.
Attorney at Law
P.O. Box 280
Santa Fe, NM 87504

David W. Robbins, Esq.
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100 Blake Street Building
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Patricia Weiss, Esq.
U. S. Department of Justice
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P.O. Box 663
Washington, D.C. 20044

Andrew F. Walch, Esq.
U. S. Department of Justice
Land & Natural Resources Division
3305 Federal Building
650 Capitol Mall
Sacramento, CA 95814

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on October 21, 1988 at Riverside, California

Sandra L. Simmons
Signature

Sandra L. Simmons

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SUPREME COURT OF THE UNITED STATES
NO. 105, Original
October Term 1985

STATE OF KANSAS,

Plaintiff,

v.

STATE OF COLORADO,

Defendant.

COLORADO'S MOTION TO STAY BASED ON KANSAS' FAILURE TO
EXHAUST ITS ADMINISTRATIVE REMEDIES

APPENDIX A

STATEMENT OF MATERIAL FACTS

Filed May 12, 1988

APPENDIX A:

STATEMENT OF MATERIAL FACTS

This Appendix presents a detailed history of the Kansas complaints about transfers of water in Trinidad Reservoir and post-compact well development in Colorado. We start with the facts relevant to transfers of water in Trinidad Reservoir first because Kansas' complaint about such transfers occurred first in time.

A. Trinidad Dam and Reservoir Project, Colorado

1. Trinidad Dam is located on the Purgatoire River in southeastern Colorado, approximately four miles upstream from the City of Trinidad, Colorado. Exh. 1 at 2-1. The Purgatoire River is a southern tributary of the Arkansas River in Colorado. Id. Trinidad Dam is located approximately 160 miles upstream from the confluence of the Purgatoire and Arkansas Rivers. Id. The location of the dam is shown on Plates 1-1 and 2-1 of Exhibit 1.

2. The Trinidad Dam and Reservoir Project, Colorado, is a multi-use flood control, reclamation, and recreation project which was authorized for construction by the U.S. Army Corps of Engineers in the Flood Control Act of 1958, Pub.L. No. 85-500, Sec. 203, 72 Stat. 297, 309 (1958) (Exh. 2), amended by Flood Control Act of 1965, Pub.L. No. 89-298, Sec. 204, 79 Stat. 1073, 1079 (Exh. 3). The Flood Control Act of 1958 authorized the construction of the project substantially in accordance with the recommendations

of the Chief of Engineers in House Document No. 325, 84th Congress, 2d Sess. (1956). The Chief of Engineers' recommendations were based in substantial part on recommendations by the U.S. Bureau of Reclamation. Exh. 4 at 1, 42-46.

3. Consistent with Reclamation law, the Bureau of Reclamation recommended that contracts be negotiated by the Secretary of Interior, on behalf of the United States, with a district representing the project water users to repay the costs allocated to irrigation. Id. at 45, ¶162(g). The Bureau of Reclamation also recommended that the irrigation capacity of the reservoir be operated in accordance with three of five operating conditions until the feasibility of operating under all five conditions had been demonstrated. Id. at 45, ¶162(c). The three operating conditions were as follows:

(a) Transfer of the storage decree of the Model Land & Irrigation Co. for 20,000 acre-feet annually from the present site to the site of the proposed Trinidad Reservoir.

(b) Storage in the Trinidad Reservoir of flood flows originating on the Purgatoire River above the dam site which would otherwise spill from John Martin Reservoir.

(c) Storage in the Trinidad Reservoir of the winter flows of the Purgatoire River now diverted for winter irrigation of project lands.

Id. at 29. The Chief Engineer concurred in these recommendations. Id. at 1, 45, ¶162.

4. Following authorization of the Trinidad Project in 1958, the Purgatoire River Water Conservancy District was formed to negotiate a repayment contract with

the United States, Exh. 5 at ii, vi, and an action was filed in the District Court for Las Animas County, Colorado, to transfer the storage right of the Model Land and Irrigation Company to Trinidad Reservoir. Exh. 6. In connection with the negotiation of the repayment contract, the Bureau of Reclamation prepared operation studies and a set of Operating Principles for the project. Exh. 5 at 1. The transfer of the Model storage right was approved by the Colorado District Court in 1965, Exh. 6; and the Purgatoire River Water Conservancy District signed a repayment contract with the United States in 1967. Exh. 7.

5. In 1966, the Bureau of Reclamation submitted the Operating Principles for the project to the State of Kansas for review. Exh. 8. The State of Kansas requested that the Bureau of Reclamation and the Purgatoire River Water Conservancy District adopt five conditions to the Operating Principles. Id. The Governor of Kansas said that if the five conditions were adopted, Kansas would approve the Operating Principles and support construction of the project. Id. One of the five conditions was that "5 years after beginning operation of the Trinidad Reservoir for irrigation purposes, the operating principles be reviewed to determine the effect, if any, the operation has had on other Colorado and Kansas water users and the principles amended as necessary." Id. at 2. The District and the Bureau accepted these conditions and construction began in May 1968. Exh. 9; Exh. 1 at 3-2.

6. Trinidad Dam was completed and the reservoir was declared available for storage of water on January 1, 1977. See Purgatoire River Water Conservancy Dist. v. Highland Irrigation Co., 194 Colo. 510, 574 P.2d 83, 86 (1978) (Exh. 10).

7. In December 1976, the Division Engineer for Water Division 2, in consultation with the Colorado State Engineer, issued an order forbidding storage in the reservoir under the Model storage right based on a "call" for water by the Highland Irrigation Company and the Nine Mile Canal Co., which divert water from the Purgatoire River more than 75 miles downstream from Trinidad Dam. Purgatoire River Water Conservancy Dist. v. Kuiper, 197 Colo. 200, 593 P.2d 333, 336 (1979) (Exh. 11). On January 3, 1977, the Purgatoire River Water Conservancy District brought an action in state court against the Colorado water officials to enjoin them from honoring the Highland/Nine Mile "call." Id. at 336. The Colorado Water Judge for Water Division No. 2 issued a temporary restraining order enjoining storage in the reservoir at times when Highland and Nine Mile were calling for water and their "call" was unsatisfied. Id. at 337. After a trial, the Water Judge entered a permanent injunction and the case was appealed to the Colorado Supreme Court. Id. In March 1979, the Colorado Supreme Court reversed the Water Judge's decision with directions to dismiss the action without prejudice. Id. at 341. Shortly

thereafter, the injunction was lifted and Trinidad Reservoir began storing water under the Model storage right. Exh. 12 at 15.

B. History Of Kansas Complaints
About Transfers Of Water In
Trinidad Reservoir.

8. The current dispute between Kansas and Colorado dates from 1980, when the Kansas representatives to the Compact Administration complained about a transfer of water stored under the Model storage right to the joint use pool in Trinidad Reservoir. Exh. 12 at 12. On June 16, 1980, a special telephonic meeting of the Administration was held at the request of the Kansas representatives and a special meeting was arranged to discuss storage in Trinidad Reservoir. Id.

9. At a special meeting held on June 30, 1980, the Kansas representatives questioned whether the storage in Trinidad Reservoir was in conformity with the Operating Principles for Trinidad Reservoir and the Administration agreed to an investigation to be accomplished by the Colorado Water Conservation Board and the Kansas Division of Water Resources. Exh. 12 at 47. The staffs of the two agencies made an investigation and submitted recommended findings of fact to the Administration, which were adopted by the Administration at a special meeting on September 25, 1980. Exh. 13. The key findings were as follows:

A. That 18,290 acre-feet of water was stored by the Purgatoire River Water Conservancy District under the Model Storage Right in Trinidad Reservoir in priority between April 15, 1979, and September 23, 1979; that the Purgatoire River

Water Conservancy District Board transferred this amount of water into the joint use pool of Trinidad Reservoir by resolution on September 28, 1979, thereby leaving the Model storage account empty; and that this water was still physically located behind Trinidad Dam on June 30, 1980.

B. That 20,000 acre-feet of water was stored by the District under the Model Storage Right in Trinidad Reservoir in priority during the period April 16, 1980, through May 17, 1980. This water was physically stored behind Trinidad Dam and in the Model Storage account as of June 30, 1980.

Exh. 13 at Exh. A.

10. Following the adoption of these findings of fact, Carl Bentrup, a Kansas water right owner who is a member of the Administration, presented a list of proposed statements and recommendation concerning the storage of water in Trinidad Reservoir. Exh. 13 at 2. These statements and recommendations were in the nature of a proposed resolution that the transfer of water stored in Trinidad Reservoir during 1979 and the storage of water in 1980 had been in violation of Article IV.D of the Compact and had violated "Condition No. 3 of the Kansas amendments" to the Operating Principles for Trinidad Reservoir. Exh. 13 at Exh. B.^{1/} The proposed statement concluded with the following recommendation:

In accordance with Article VIII Paragraph H of the Compact; if the above opinions are true, the Administration recommends that the State Engineer of Colorado order the release of all

1/ Condition 3 of the five Kansas conditions provided as follows:

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

waters impounded in Trinidad Reservoir in excess of 20,000 acre-feet which is now stored under the Model Right, or has at any other time been stored under a Model Right, which amount, as of July 1, 1980, equals 18,290 acre-feet, and further that the State Engineer shall protect such releases from diversion until the water is impounded in John Martin Reservoir.

Id.

11. The Colorado representatives refused to adopt this recommendation. Exh. 13 at 2. Instead, J. William McDonald, Director of the Colorado Water Conservation Board and one of the Colorado representatives to the Administration, moved the adoption of a resolution which stated that the findings of fact by the Administration had raised a question as to whether the waters of the Arkansas River has been materially depleted in violation of Article IV.D of the Compact and recommended that the Kansas Chief Engineer and the Colorado State Engineer make further inquiries into this question as expeditiously as possible. Exh. 13 at 2 and Exh. C. This resolution was approved by the Administration at the September 25, 1980 meeting. Id. at 2.

12. Due to complications, the Kansas Chief Engineer and the Colorado State Engineer were unable to meet until July 1, 1981, in Topeka, Kansas. In a letter dated July 29, 1981, the Colorado State Engineer said that it was his understanding, based on statements by the Kansas Chief Engineer during the meeting on July 1, 1981, that if Colorado could demonstrate that the Model Reservoir and Ditch right had historically diverted more than 38,000 acre-feet in any two-year period that the concern by Kansas over

the 1979 and 1980 operations would be satisfactorily addressed and the issue would be dropped. Exh. 14 at 55. The Colorado State Engineer provided a summary of records demonstrating that the Model Reservoir and Ditch right had diverted more than 38,000 acre-feet in several two-year periods. Id.

13. At a special meeting of the Administration on August 6, 1981, the Kansas Chief Engineer acknowledged receipt of the information from the Colorado State Engineer but said that the issue had not been resolved by that information and had his deputy report on his review of the data. Exh. 14 at 49-50. Mr. Bentrup of Kansas then asked if the Colorado State Engineer had also provided a report. Id. at 50. Mr. McDonald of Colorado said that the Colorado State Engineer's letter to the Kansas Chief Engineer constituted his report on the matter. Id. Mr. Bentrup then stated that the Kansas ditches "were anxious to have the Administration's deliberations concluded if no further steps under Article VIII, paragraph H of the compact were to be taken." Id.

14. The U.S. representative to the Administration, Frank G. Cooley, then reviewed the chronology of the Administration's actions and the exchange of information between the states. Exh. 14 at 50. He commented that it appeared to him that the Colorado State Engineer's response "disposed of the questions thus far raised by Kansas." Id. The Kansas Chief Engineer, however, responded that he did

not believe that all relevant information had yet been addressed. Id. Mr. Bentrup reiterated his concern that the Administration not prolong or delay its disposition of this matter. Id. He said that "he had expected Mr. Danielson [the Colorado State Engineer] to report to the Administration at this meeting." Id. Mr. McDonald restated his observation that the letter from Dr. Danielson constituted his report and "further stated that Colorado had responded to every request for information made to date by Kansas ..., that the Administration, by resolution, had asked only that the Kansas chief engineer confer with the Colorado state engineer," that "[t]he Administration had not formed a committee nor asked the state engineers to prepare a report," and that "he considered the initiative to be with Kansas to decide whether they were or were not satisfied with the information thus far provided to them." Id.

15. Later in the meeting, Mr. Bentrup offered a proposed resolution which recommended that the Chief Engineer of Kansas and the State Engineer be directed to meet and prepare a joint report regarding their investigation of the transfer of water in Trinidad Reservoir. Exh. 14 at 51. However, Mr. Bentrup later indicated that the Kansas representatives no longer wished to offer the proposed motion on Trinidad Reservoir. Id. at 52. Instead, he said that Kansas would ask the Colorado State Engineer for additional information and data concerning the operation of

Trinidad Reservoir. Id. It was agreed that the Trinidad matter would be placed on the agenda for the 1981 annual meeting. Id.

16. At the annual meeting of the Administration on January 4, 1982, Mr. Bentrup offered a proposed resolution which recommended that the Colorado State Engineer immediately release all water in excess of 6,200 acre-feet stored in the Model Account in Trinidad Reservoir.^{2/} Exh. 15 at 38, 57. After the motion was seconded by another Kansas representative, the Colorado representatives voted against the resolution. Id. at 38.

17. Later that year, Robert T. Stephen, Attorney General of Kansas, requested a meeting with J.D. MacFarlane, Attorney General of Colorado, and a meeting was held on August 31, 1982, in Denver, Colorado. Exh. 16 at 76-77. Following the meeting, Attorney General Stephan sent a letter to Attorney General MacFarlane dated October 12, 1982, in which he presented various requests with regard to operation at Trinidad Reservoir. Exh. 16 at 77-78. We set forth these requests substantially in full because we want the Special Master to understand why these requests were unhelpful in trying to resolve the dispute:

1. Prior to the implementation of any future sale, change, transfer, or regulation of the waters of the Arkansas River, as defined in Article III, Section B

2/ This proposal was apparently based on the claim that of the 20,000 acre-foot Model storage right, 13,800 acre-feet had been abandoned and the storage right reduced to 6,200 acre-feet. This was an argument rejected by the Colorado Supreme Court in Purgatoire River Water Conservancy Dist. v. Highland Irrigation Co., 194 Colo. 510, 574 P.2d 83 (1978) (Exh. 10).

of the Arkansas Compact that may affect the flow of water into the John Martin Reservoir, the Arkansas River Compact Administration, established under Article VIII of the Arkansas River Compact, shall be consulted and their approval shall be obtained for said sale, exchange, transfer, or regulation.

2. The State of Colorado will agree that the emptying of water from "irrigation capacity" in Trinidad Reservoir, defined in Article I, Section 4, of the operating principles of Trinidad Dam and Reservoir Project, by making a paper transfer of the water in 1979 to the "joint use capacity" in Trinidad Reservoir as defined in Article I, Section 4, of the Operating Principles and allowing more than ... 20,000 acre-feet of water to be stored under the Model Reservoir right, in Trinidad Reservoir deprives Kansas water users of their equitable share of the waters of the Arkansas River, and, therefore, violates Article IV, Section D of the Arkansas River Compact....

3. The State of Colorado will agree that storage of more than 20,000 acre-feet in Trinidad Reservoir under the Model Reservoir right is in violation of the court decree of the District Court in and for the County of Las Animas, Colorado,...

4. The State of Colorado will agree that the joint use capacity in Trinidad Reservoir was never intended by the Congress of the United States nor the State of Kansas to provide additional storage space under the Model Reservoir right and, in practice, has been turned into such, in violation of the laws of the United States, the Arkansas River Compact, the District Court of Las Animas County, Colorado's, order of April 15, 1965, in Case No. 19793, the conditions of operations of the Trinidad Dam and Reservoir Project prescribed by House Document No. 325, 84th Congress, Second Session, January 30, 1956, as implemented by Article IV of the "Operating Principles of Trinidad Dam and Reservoir Project" ..., as well as the five operating principles approved by the State of Kansas and attached to the Operating Principles, Trinidad Dam and Reservoir Project.

5. The State of Colorado will agree that the water laws of the State of Colorado are subordinate to the provisions of the Arkansas River Compact.

6. The State of Colorado will agree that the questions of law and fact concerning the waters of the Arkansas River as defined in Article III,

Section B of the Arkansas River Compact are the proper subject of arbitration, pursuant to Article VIII, Section D of the Arkansas River Compact.

Exh. 12 at 77-78.

18. On November 3, 1982, Attorney General MacFarlane acknowledged receipt of this letter and said that he would respond in detail in the near future. Exh. 16 at 79.

19. At the annual meeting of the Administration held on December 14, 1982, Mr. Bentrup offered yet another proposed resolution concerning Trinidad Reservoir. Exh. 16 at 44. This proposed resolution recommended that the Colorado State Engineer issue an order for the release of 18,290 acre-feet of water from Trinidad Reservoir that was stored under the Model storage right. Id. at 62-64. The resolution further recommended that "prior to the implementation of any future sale, change, transfer, or regulation of the waters of the Arkansas River ... that may affect the flow of water into the John Martin Reservoir, the [Administration] shall be consulted and the approval shall be obtained for said sale, exchange, transfer, or regulation." (Emphasis added). Id. at 64.

20. Rather than respond directly to the motion, Mr. McDonald of Colorado read a substitute motion, which proposed that the Administration not consider further the allegations concerning Trinidad Reservoir because the State of Kansas has failed to provide any factual evidence in

support of its claims. Exh. 16 at 44. During the discussion which followed, Mr. Bentrup stated "that Kansas' fundamental concern with the operation of Trinidad Reservoir since 1979 had been that it violated the Five Kansas Conditions of 1967 in that no more than 20,000 acre-feet of water could be stored under the Model Decree in Trinidad Reservoir at any given time." Id.^{3/} Mr. McDonald responded "by noting that there had been no showing by Kansas that the waters of the Arkansas River had at any time been materially depleted in usable quantity or availability for use to the water users in Colorado and Kansas," that "Kansas had thus far presented no facts which contradicted any of the information which Colorado officials had provided to the Administration or to Kansas state officials, and "that to the extent the proposed Kansas resolution purported to reach conclusions about a decree of a Colorado water court, the Administration had no authority to reach conclusions about such a decree." Id. at 44-45.

21. Mr. McDonald then stated that it was his understanding that when the proposed resolution concerning Trinidad Reservoir had failed to pass at the January 4, 1982 meeting, Kansas considered the matter to be in the hands of the Attorneys General of Kansas and Colorado. Exh. 16 at 45. The U.S. representative, Mr. Cooley, asked where the

3/ None of the five conditions states that no more than 20,000 acre-feet of water could be stored under the Model Decree in Trinidad Reservoir at any given time. See Exh. 3 at 2.

exchange of correspondence between the Attorneys General stood. Exh. 16 at 45. It was noted that the Colorado Attorney General had not responded because he wished to consult with his successor. Id. After considerable discussion, Mr. McDonald's substitute resolution and Mr. Bentrup's original resolution both failed to pass. Id. The Administration then adopted a resolution instructing the U.S. representative to write to the Attorneys General of both states to ask them to communicate with each other on the issues concerning the operation of Trinidad Reservoir and to report their discussions at a special meeting of the Administration to be held on February 1, 1983. Exh. 16 at 45. Following the meeting, Mr. Cooley sent such a letter as directed by the Administration. Id. at 67.

22. On January 10, 1983, Attorney General MacFarlane of Colorado wrote a detailed response to the demands in Attorney General Stephan's letters of October 12, 1982, and December 15, 1982. Exh. 16 at 80-86. Attorney General MacFarlane summarized the discussions at the meeting on August 31, 1982, and noted that he did not find "a letter of six demands on the State of Colorado containing only conclusory factual and legal justifications conducive to amicable dispute resolution." Id. at 82. However, in an attempt to move the discussion in a more productive direction, he provided a detailed response, stating:

It is my hope that through this process you will be able to more precisely identify the basis of the concerns of the State of Kansas and we can then jointly work toward the amicable resolution we both desire.

Id.

23. With regard to Attorney General Stephan's request that Compact Administration approval be obtained prior to any future sale, change, transfer, or regulation that may affect the flow of water into John Martin Reservoir, Attorney General MacFarlane stated that he could not agree to this request because it was contrary to Article VI.A(2) of the Compact, which provides as follows:

Except as otherwise provided, nothing in this Compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas River in said state as decreed to said appropriators by the courts of Colorado, nor as interfering with the distribution among said appropriators by Colorado, nor as curtailing the diversion and use for irrigation and other beneficial purposes in Colorado of the waters of the Arkansas River.

Exh. 16 at 82-83.

24. With regard to the request that Colorado agree that transfers of water to the joint use pool in Trinidad Reservoir violated Article IV.D of the Compact, Attorney General MacFarlane stated that such transfers would only violate Article IV.D if the waters of the Arkansas River were materially depleted in usable quantity or availability for use to water users in Colorado and Kansas under the Compact, which was a factual question. Exh. 16 at 83. He pointed out that Kansas had "failed to come forward with any factual basis to support its claims." Id.

25. With regard to Attorney General Stephan's request that Colorado agree that the water laws of the State of Colorado are subordinate to the provisions of the Arkansas River Compact, Attorney General MacFarlane stated that this request was overly broad because the Compact did not make Colorado water laws subordinate to all its provisions, as shown by Art. VI.A(2). Exh. 16 at 85.

26. With regard to Attorney General Stephan's request to arbitrate any areas of disagreement, Attorney General MacFarlane stated that "there must first be something to arbitrate. At this point Kansas has simply failed to establish any factual basis supporting a claim of material depletion of the waters of the Arkansas River by the operation of Trinidad Reservoir." Exh. 16 at 85.

27. The special meeting of the Compact Administration scheduled for February 1, 1983, was cancelled due to inclement weather. Exh. 16 at 70. There followed a further exchange of correspondence between Attorney General Stephan and Mr. MacFarlane's successor, Duane Woodard, in which Attorney General Stephan again urged arbitration of the Trinidad controversy. Id. at 86-87. The Kansas Attorney General furnished no further factual basis for the request but instead asked Colorado to agree to arbitration because:

Persons of good faith and conscious [sic], both in government and the farm community, believe the Trinidad Reservoir at Trinidad, Colorado, has been operated in such a manner as to deprive the downstream users, both in Kansas and Colorado, of their rightful share of water.

Id. at 87. Attorney General Woodard declined, stating that until Kansas had identified the underlying factual basis for its claims, he was unable to determine whether arbitration was an appropriate method for resolution of the dispute. Id. at 88-89.

28. Attorney General Stephan then wrote to Commissioner Robert N. Broadbent of the U.S. Bureau of Reclamation and Lt.Gen. John K. Bratton of the U.S. Army Corps of Engineers to complain about the operation of the Trinidad Reservoir. Exhs. 17 and 18. These letters did not achieve their desired purpose, Exh. 16 at 12-22, and on August 19, 1983, Attorney General Stephan informed Attorney General Woodard that he had petitioned the Kansas legislature for funds to commence a study of the Arkansas River. Exh. 19. In this letter Attorney General Stephan stated:

The funding has been granted, and a study of the River will begin in September of this year. I hope that when this study is completed, the information provided will enable our two states to resolve the Trinidad Reservoir dispute, as well as the management of the Arkansas River as a whole.

Id. (Emphasis added.)

29. On August 26, 1983, the U.S. representative to the Compact Administration arranged a special meeting of the Administration at the Denver Federal Center to discuss the operation of Trinidad Reservoir and Pueblo Reservoir with Federal agencies. Exh. 20 at 2. The Kansas complaints

about the operation of these reservoirs were discussed, but the meeting did not result in any change in operation of Trinidad Reservoir. Exh. 16 at 97-103.

D. Preliminary Assessment.

30. On September 26, 1983, the Kansas Attorney General contracted with the engineering firm of Simons, Li & Associates, Inc., to analyze the operation of the Trinidad Project and other matters of concern to Kansas. Exh. 21.

31. In April of 1984, Attorney General Woodard wrote to Attorney General Stephan to inquire about the status of the study initiated by Kansas. Exh. 22. He said that Colorado had not rejected the option of binding arbitration but would insist that Kansas first come forward with a detailed factual statement of the basis for its claims before any meaningful discussion could take place. Id. at 1. He noted that he was encouraged by Attorney General Stephan's letter of August 19, 1983, and hoped the results of the investigation would provide a sound basis for discussion. Id. He pointed out that the Colorado Water Conservation Board and the Colorado State Engineer had cooperated fully with the engineers retained by Kansas in conducting their investigation. Id. at 2. He then stated that it had been reported to him that Attorney General Stephan had requested an additional appropriation of funds to conduct additional studies in preparation for commencing a lawsuit against Colorado and asked whether Kansas still

desired an amicable resolution to its claims. If so, he requested to be advised on the status of the Kansas studies. Id. at 2.

32. On June 5, 1984, Assistant Attorney General John W. Campbell of Kansas wrote to Attorney General Woodard stating that Kansas was in the process of retaining special counsel concerning this matter, that he planned to meet with the special counsel in June, and that he would be writing in July to address questions he was unable to answer at that time. Exh. 23. He said that Kansas was still interested in an amicable out-of-court settlement and enclosed a copy of the Preliminary Assessment prepared by Simons, Li & Associates, Inc. in February 1984. Id.

33. This report presented the results of analyses "which compare pre-and post-compact streamflows for various strategic locations in the basin," including "a compilation of basic data, correlation analyses and double mass curve analyses, in order to identify and quantify changes in flows and their causes since the signing of the compact." Exh. 21 at ii. Based on this preliminary analysis, the report concluded that "[s]ince 1974 ... usable [stateline] flows have declined to about 45 percent of pre-compact values," and that "[i]t is likely that depletion associated with Colorado well development is a major cause of decline in usable stateline flows." Id. at iv. The report acknowledged, however, that Simons, Li & Associates, Inc., had made no independent effort to quantify post-compact well depletions

in Colorado. Id. at 4-30. With respect to the Trinidad Project, the report concluded that the project had been operated in a manner different than that envisioned by the Bureau and that an "appraisal-level" comparison of the differences in operation between the actual method of operating Trinidad Reservoir and what would have occurred using the Bureau's operation studies showed approximately 35,000 acre-feet of additional storage in Trinidad Reservoir and that this additional storage had resulted in an additional 26,000 to 35,000 acre-feet of depletions to downstream water users. Id. at iii, v; 5.6 to 5.8. The report acknowledged that these conclusions were preliminary and recommended that the findings be verified by further studies and that the operation of the Trinidad Project be analyzed in more detail. Id. at v. Specifically, the report recommended:

6. The Trinidad Project should be thoroughly reviewed by the Compact Administration as provided for in the amendments to the Operating Principles approved by the Compact Administration in 1967. The five year period since start of actual operation in 1977 has expired. Specific concerns of Kansas on project operation should be addressed in such a review.

Id. at 5.7.4/

34. On November 14, 1984, Assistant Attorney General William H. Bassett of Colorado wrote to Assistant Attorney General Campbell of Kansas to say that Colorado had

4/ Because of the injunction limiting storage in Trinidad Reservoir, the Purgatoire River Water Conservancy District and the Bureau of Reclamation did not agree that 1977 was an appropriate date for the start of the five-year review of the operation of the Project.

not received any further response as indicated in Mr. Campbell's letter. Exh. 24. On December 13, 1984, Mr. Campbell responded that "the problems associated with properly analyzing the Arkansas River matter, as well as the implementation of the Arkansas River Compact, are complex in nature." Exh. 25. Mr. Campbell stated that Kansas was "engaged in the process of compiling and documenting many of its concerns regarding the River" and hoped to present those concerns at a special meeting of the Administration on March 28, 1985. Id. Prior to the meeting, he said that a written document would be presented to Colorado officials. Id.

E. The Compact Administration's
Request That The Bureau Of
Reclamation Conduct A Five-
Year Review Of Trinidad
Reservoir.

35. At the annual meeting of the Administration on December 11, 1984, the Administration asked the Bureau of Reclamation to conduct "a five year review of Trinidad Reservoir operations with participation of both states and other interested parties and with the results of that review to be made available to the Administration by April 1, 1985, or as expeditiously thereafter as possible." Exh. 26 at 10. The Bureau of Reclamation thereafter initiated a review of the Trinidad Project Operating Principles in which the specific concerns of Kansas have been addressed and in which both states have actively participated.

F. Compact Administration
Investigation in 1985.

36. On February 26, 1985, Attorney General Stephan sent Attorney General Woodard a letter detailing Kansas' concerns about various administrative practices in Colorado, including the operation of Trinidad Reservoir and post-compact well development in Colorado. Exh. 27.

37. On March 28, 1985, at the request of Kansas and Colorado, the Administration adopted a resolution to investigate allegations of violations of the Compact, including the operation of the Trinidad Dam and Reservoir and post-compact well development in both states. Exh. 28, at Exh. L. The resolution established a committee consisting of the director of the Colorado Water Conservation Board or his designee and the Chief Engineer of Kansas or his designee to conduct the investigation. Id. The Administration requested the cooperation of state agencies and officials, including consultants to them, 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 information required for the investigation. Id. The Administration directed the committee to report to the Compact Administration members on a monthly basis on the status of the investigation, scheduled a special meeting for July 1985 to discuss the progress of the investigation, and established a deadline of the 1985 annual meeting of the

Administration for completion of the investigation insofar as the violations alleged by Kansas were concerned, unless extended for good cause. Id.

38. Prior to the first meeting of the Investigation Committee, it was agreed that Mr. McDonald, the director of the Colorado Water Conservation Board, would provide a draft scope of work for the allegations made by Colorado and Mr. Pope, the Kansas Chief Engineer, would provide a draft scope of work for the allegations made by Kansas. Exh. 29 at 2. The Investigation Committee then met for the first time on May 7, 1985, to consider a scope of work for the investigation. Id. The proposed scope of work submitted by Mr. Pope concerning the Trinidad Project was discussed at the meeting. Id. Mr. McDonald stated that he did not believe that two of the items in the proposed scope of work addressed the proper question. Id. at 3. He noted: "the scope of work called for a comparison between depletions as they in fact occurred and depletions as they would have occurred had the project been operated in accordance with Kansas' interpretation of the project's operating criteria." Id. Mr. McDonald said that this was not, in his opinion, the proper comparison to make for the purposes of Article IV.D of the Compact. Id. Mr. McDonald said that in his opinion the appropriate comparison to make under Article IV.D of the Compact was between pre-and post-project flows into John Martin Reservoir. Id.

39. Substantial discussion then ensued as to whether operation of the project in a manner that was inconsistent with the Operating Principles, in and of itself, would constitute a violation of Article IV.D of the Compact. Exh. 29 at 3-4. The minutes of the meeting state:

Given Kansas' allegation concerning the operation of Trinidad Dam and Reservoir Project and its interpretation of Article IV.D, Mr. Pope and Mr. McDonald did not agree on what factual investigation should be performed by the Committee. As a result, no conclusion was reached as to whether or how to proceed.

Id. at 4. At the conclusion of the meeting, it was agreed that Mr. McDonald would prepare a proposed scope of work for the allegations made by Kansas for discussion at the next meeting. Id.

40. At the next meeting of the Investigation Committee on June 3, 1985, the proposed scope of work prepared by Mr. McDonald was discussed. Exh. 30 at 1. This proposed scope of work included a work plan to study the operation of the Trinidad Project based on Mr. McDonald's opinion about the appropriate comparison to be made under Article IV.D. Id. at 1-2. After considerable discussion, it was agreed that it would be more productive to defer a complete scope of work at that time and to define a preliminary scope of work to include the completion of data and construction of mass diagrams which could be used to analyze changes in river flow and trends without committing either

state to a final scope of work. Id. at 2. The Committee agreed to construct the following series of eight mass diagrams:

1. Single mass diagram of usable stateline flows.
2. Double mass diagram of usable stateline flows vs. John Martin outflow.
3. Double mass diagram of usable stateline flows vs. the sum of the Las Animas gages on the Arkansas River and Purgatoire River.
4. Double mass diagram of the Arkansas River at Las Animas vs. the Arkansas River at Canon City.
5. Double mass diagram of usable stateline flows vs. index flows.
6. Single mass diagram of of the Arkansas River at Las Animas.
7. Single mass diagram of the Purgatoire River at Las Animas.
8. Single mass diagram of the Arkansas River at Canon City.

Id. at 3. It was further agreed that the Committee would keep open the issue of the need for more detailed data or analysis after it had had an opportunity to examine the results of the mass diagrams. Id. at 4.

41. Thereafter, the Committee, with the assistance of the staff of the Colorado State Engineer and engineering consultants retained by Kansas, devoted substantial efforts to establishing a data base and preparing the mass diagrams to determine if there had been any changes in the relationship between streamflows at selected locations in the Arkansas River Basin. Exh. 31 at 2. This mass diagram analysis was similar to the double-mass curve analysis done

by Simons, Li & Associates, Inc., in its Preliminary Assessment, but the Investigation Committee agreed to adjust the streamflow data to reflect known changes in streamflow data and to select additional points in the basin for analysis. Exh. 30 at 3.

42. On July 12, 1985, the Investigation Committee held a third meeting in Denver, Colorado. Exh. 32. After preliminary discussions failed to produce a concensus regarding the conclusions that could be drawn from the mass diagrams, it was agreed that both members of the Committee would prepare a report interpreting the data and mass diagrams. Id. at 4.

43. Following the Investigation Committee meeting, the Compact Administration held a special meeting. Exh. 33. At the request of the Kansas representatives, the Administration agreed to amend the March 28, 1985 resolution to include an investigation of whether Colorado had complied with the provisions of Article V.F of the Compact concerning the administration of decreed rights in Colorado on the basis of relative priorities. Id. at 31-45. It was agreed that this allegation required no new factual investigation, but merely added another possible allegation of a Compact violation in connection with the on-going investigation. Id. at 38-39.

44. On September 17, 1985, the Committee met to review the respective reports prepared by Mr. Pope and Mr. McDonald. Exh. 34 at 4. During the discussion, the Committee agreed on the following matters:

1. That the 1908-1984 monthly and annual gage data used by both states in their respective reports are the best data currently available for those gages. Both states also agreed to the appropriate gage adjustments for each of the gages except the Canon City gage. Both states agreed that the differences in the adjustments to the Canon City gage would not significantly affect the conclusions of either of the reports;
2. That the theory and utility of a double mass diagram curve is as described in the U.S.G.S. Survey Manual of Hydrology, Part I, Geological Survey Water-Supply Paper 1541-B;
3. That the Least Squares technique used by both states is one appropriate way to evaluate the data, but it is not the only appropriate technique; and
4. That breaks in some of the curves in the mass diagrams in 1949 can be explained by the implementation of the Arkansas River Compact in that year.

Id.

The Committee discussed the conclusions in the respective reports but was unable to agree on conclusions to be drawn from the single- and double-mass diagrams and on what further investigation should be undertaken. Id. The Director of the Colorado Water Conservation Board agreed that a decline in stateline flows had occurred beginning in 1974 and recommended that the Committee first examine four likely causes for the decline in stateline flows. Exh. 37 at 30. He did not rule out the possibility of further investigation if the examination of these causes did not explain the decline in stateline flows beginning in 1974.

Id. at 32. The Kansas Chief Engineer recommended that the Committee investigate ten possible causes for the decline, including those recommended by the Director of the Colorado Water Conservation Board. Exh. 35 at 35. Because the Director of the Colorado Water Conservation Board did not agree with this recommendation, the Kansas Chief Engineer advised that Kansas intended "to continue unilaterally with the further engineering analyses it deems appropriate." Id. at 36. The Committee did agree that Mr. Pope and Mr. McDonald would submit separate reports to the Administration at a special meeting on the status of the investigation to be held on October 8, 1985. Exh. 34 at 4.

46. On October 8, 1985, after reports had been submitted by both committee members on the status of the investigation and matters which they recommended for further investigation, Exhs. 35 and 36, the Administration adopted a resolution which expressly directed that the Committee "shall continue with its investigation of the matters upon which the Committee has mutually agreed that further investigation should be undertaken." Exh. 37 at 36.

47. During this time, the Bureau of Reclamation was working on its review of the Trinidad Project Operating Principles and reported to the Compact Administration on the status of its review at the October 8, 1985 meeting. Exh. 37 at 39-41.

48. Approximately two weeks later, on October 25, 1985, the Kansas Attorney General announced to an interim committee of the Kansas legislature that effective relief was not available through the Compact Administration and that he had directed his staff to initiate litigation against Colorado to be filed on December 16, 1985. Exh. 38. In his announcement, the Kansas Attorney General stated that

Separate reports have been compiled by each state and filed with the committee and Administration. A key portion of the Kansas report concludes that the flow of the water of the Arkansas River, both as it enters into John Martin Reservoir and at the stateline, has declined. This decrease in the flow of the Arkansas is of such a magnitude to indicate it could not possibly be the result of variations in weather alone. Colorado has refused to accept the Kansas report. The states now are, in fact, at an impasse.

Id. at 4. The Kansas Attorney General also stated that there had been three years of efforts to attempt to negotiate, arbitrate or investigate Kansas' concerns with Colorado, but without success. Id. at 5.

49. At the annual meeting of the Administration on December 10, 1985, the Kansas representatives presented a motion which asserted, among other things:

WHEREAS, the State of Colorado has refused to abide by the Arkansas River Compact Administration's Resolution of July 24, 1951;

WHEREAS, the State of Colorado has refused "at this time, ... to undertake a bilateral investigation into well development in Colorado ...," as directed by the administration's [sic] resolution of March 28, 1985;

WHEREAS, the State of Colorado has refused to consider the investigation of the State of Kansas' allegations of violation in regard to the operation of Trinidad Reservoir,

Exh. 39 at 83. The proposed resolution then proposed that the Administration take various actions, including the following:

(3) recommend to the Colorado State Engineer that he terminate all postcompact well uses in the Arkansas River Basin of Colorado during the pendency of the Compact Administration's investigation of postcompact well development;

Exh. 39 at 84. This resolution was rejected by the Colorado representatives. The Director of the Colorado Water Conservation Board stated "with due respect, I do not find the motion to be reasonably calculated to advance the purposes and role of the Administration's investigation nor does it seem to me to be responsive to the differences which have admittedly been identified in the course of the investigation." Id. at 89.

50. At the same meeting, after the vote on the resolution, Kansas submitted a report by S.S. Papadopoulos & Associates, Inc., regarding the investigation by the Administration. Exh. 39 at 96, and Exh. E. The report stated that the Papadopoulos firm had reviewed the committee reports and various written reports, including those prepared more than ten years before for the Colorado State Engineer and the Colorado Water Conservation Board, and concluded:

Because the analyses of the mass diagrams have not resulted in a determination of the causes of observed trends and changes, further investigations must concentrate on the relative impacts of various possible causes or factors. Clearly, those factors that are specified in the allegations, such as ground water development and reservoir operation, must be included to investigate properly the allegations. The various possible factors must be examined contemporaneously, regardless of preconceived notions as to

the relative effects of any one factor.... Given the complexity of water distribution and use in the Arkansas River Valley, it is imperative that additional investigations consider all factors that may have affected historical streamflow patterns.

Exh. 39, Exh. E at 5-6.

51. Following the rejection of the Kansas resolution, the director of the Colorado Water Conservation Board offered a resolution to continue the investigation in accordance with the October 8, 1985 resolution. Id. at 100, 106. The Kansas representatives voted against this resolution. Id. at 108.

52. On December 16, 1985, Kansas filed its motion for leave to file its complaint. Four days later, on December 20, 1985, the U.S. Bureau of Reclamation released its initial draft of its review of the Trinidad Project Operating Principles. Exh. 40 at 13. Thereafter, the initial draft drew extensive comments from both Kansas and Colorado. Id. The Purgatoire River Water Conservancy District also became actively involved in the review. Id.

G. Review Of The Trinidad Reservoir Operating Principles

53. On February 5, 1987, interested parties met in Denver, Colorado, at the invitation of the Bureau of Reclamation to discuss the draft report. Exh. 40 at 13. At the meeting it was agreed that the Bureau of Reclamation would evaluate the effects of the transfer of water to the joint use pool by adjusting the 1964 operation study prepared by the Bureau of Reclamation to reflect such transfers

and would then compare the results. Id. at 13-14. Following the February 5, 1987 meeting, the Bureau of Reclamation staff developed a computer model incorporating the operating criteria and procedures used in the 1964 operation study. Id. at 14. Following development and calibration of the model, the criteria were adjusted to effect other simulations for comparative purposes. Id. at 20-21.

54. In December 1987, the Bureau of Reclamation issued a second draft report. Exh. 40. In the December 1987 draft report, the Bureau of Reclamation acknowledged that the Operating Principles did not specifically state how the Model storage right was to be administered, id. at 17, but concluded that "the transfer of water from the Model [storage] right ... differs from the intent of the operating principles." Id. at 18. Having concluded that the transfer was a departure from the Operating Principles, the Bureau went on to determine what impact such transfers had on inflow to John Martin Reservoir. Id. Based on the results of the computer model, the Bureau of Reclamation concluded that this practice "did not cause a material depletion to the inflows into John Martin Reservoir." Id. at 23. The Bureau recommended that if such transfers were to continue, the Operating Principles should be amended to specifically recognize such transfers. Id. at 47, VI.A.

55. On February 16, 1988, at the request of the Compact Administration, the Bureau agreed to hold a meeting in Denver, Colorado, to review the computer model and the

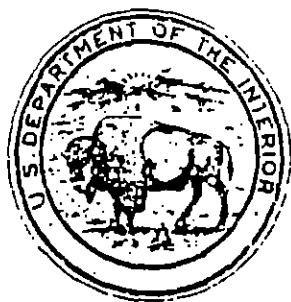
simulation runs. Exh. 41. At the meeting, at which Colorado and Kansas both participated, the Bureau of Reclamation was requested to run additional simulations. Exhs. 42 and 43. These additional computer runs were released to interested persons in March and April 1988, Exhs. 42 and 43, and the Bureau of Reclamation held another meeting on April 27, 1988, to review the conclusions and recommendations in its December 1987 draft report. Exh. 44. At the meeting, the Bureau of Reclamation reviewed the results of the additional computer runs and the conclusions and recommendations in the draft report. Id. The Bureau agreed to give interested parties 60 days to submit comments on the draft report and 30 days thereafter to respond to comment by other parties. Id. The Bureau of Reclamation stated that it intends to prepare a final report on its review of the Trinidad Project Operating Principles, which it hopes to have prepared by the end of this summer. Id.

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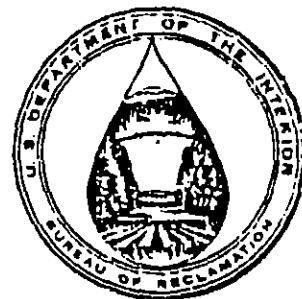
TRINIDAD PROJECT COLORADO

REVIEW OF OPERATING PRINCIPLES

FINAL REPORT



U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION



December 1988

I. INTRODUCTION

The purpose of this review is to carry out the provisions of the State of Kansas Condition 4, of the Trinidad Project Operating Principles which reads.

"4. That 5 years after beginning operation of the Trinidad Reservoir for irrigation purposes, the Operating Principles be reviewed to determine the effect, if any, the operation has had on other Colorado and Kansas water users and the principles amended as necessary."

The state of Kansas has alleged that the project has not been operated in accordance with the operating principles. (see page 4)

The Bureau (Bureau of Reclamation) was requested by the Compact Administration (Arkansas River Compact Administration) to initiate such a review at their December 11, 1984 meeting. It is the Bureau's intent to objectively report the facts and present meaningful projections of the effects of Project (Trinidad Project) operations.

While the purpose of this review is to satisfy the requirement of Kansas' condition 4, the analysis of downstream effects cannot be separated from an analysis of project water supply. Considering the extensive analysis of project operation conducted during this review, we propose that this review also serves to meet the requirements of Article VI of the operating principles.

The representatives of the State of Colorado, the State of Kansas, and the Purgatoire River Water Conservancy District, have each asserted legal theories and legal conclusions, including case law and legislative history, in the course of this review. All parties have agreed that "legal questions" would not be resolved by the Bureau, and such questions are not addressed herein.

II. BACKGROUND

The Project was authorized for construction by the Corps (Corps of Engineers) under Public Law 85-500 (85th Congress S-3910 July 3, 1958, as described in H. Doc. 325 84th, Congress, 2d session, January 1956). The multipurpose project was developed jointly by the Bureau and the Corps.

Trinidad Dam and Reservoir located about 3 miles southwest of the city of Trinidad, Colorado, provides for storage and regulation of Purgatoire River flows for Project purposes. The reservoir controls flood flows originating above the reservoir for the benefit of the city of Trinidad and downstream ranches. It also provides for the use of the available water supply for irrigation and maintenance of a minimum pool for enhancement of recreation and fishery values. The Project was justified primarily on the basis of flood control with regulation of other storable flows for irrigation as an additional benefit. The District (Purgatoire River Water Conservancy District) was organized for the purpose of contracting for repayment and for management of the project water supply.

The lands within the Project area have been irrigated since the 1860's. However, the erratic nature of the unregulated Purgatoire River flow has not been conducive to effective irrigation. As a result, the need for conservation storage for irrigation was realized and incorporated into Trinidad Project. The Project lands are located in the valley along the Purgatoire River and on uplands north of the valley extending downstream about 25 miles below the city of Trinidad.

Except for limited storage in the off channel Model Reservoir, (owned by Model Land and Irrigation Company) which served 6,177 acres of the irrigated area prior to completion of the Project, no significant storage or regulation was available for the flows of the Purgatoire River. The Model Reservoir had a 20,000 acre-foot storage decree, but a reservoir survey in 1946 indicated that usable capacity had declined to only 6,200 acre-feet due to sediment deposition. Except for this limited storage, the project area of about 19,700 acres was served by direct flow diversions through eleven (11) different ditches.

The Bureau performed hydrologic and economic analyses of the irrigation function of the Project. The results of this study was completed and presented in Appendix A Water Supply and Utilization Report of April 1961, hereafter referred to as the "1961 Study".

The 1961 Study proposed that in order to accomplish storage, regulation, and improvement of the water supply for the Project area the following conditions would need to be met:

1. Transfer the 20,000 acre-foot storage decree of the Model Reservoir from the present site to the proposed Trinidad Reservoir.
2. Store in Trinidad Reservoir, in addition to storage under the Model right (transferred Model storage right), any flood flows originating on the Purgatoire River above the damsite which would be otherwise spill from John Martin Reservoir.
3. Store in Trinidad Reservoir under Model right (maximum rate of 700 cubic feet per second and 20,000 acre-foot filling) winter (November through March) flows of the Purgatoire River historically diverted for winter irrigation of project lands which are in excess of flows required to meet the lesser of either the historical diversions or the decreed rights of the Ninemile and Highland Canals and 5 cubic feet per second passed through the reservoir for livestock or domestic watering purposes. Useable project computed return flow was to be considered available to meet the downstream rights.
4. Store in Trinidad Reservoir under the Model right (maximum rate of 700 cubic feet per second and 20,000 acre-feet of filling) summer (April through October) flows of the Purgatoire River in excess of immediate requirements of the Project area and flows required to meet the lesser of either the historical diversions or decreed rights of the Ninemile and Highland Canals. Useable

Project computed return flow is to be considered available to meet the above operating condition.

The 1961 water supply study contemplated, and was heavily dependent upon, transfer of the 20,000 acre-foot Model Reservoir storage decree to Trinidad Reservoir. In addition, the individual ditch direct flow rights of the existing independent irrigations system that would participate in the Project were to be integrated into the project and administered by the District. Also, the study assumed that all project participants would share equally in the project water supply.

The concept of equal sharing of project water was unacceptable to the District Board and they requested that the project operation study be modified to recognize and give some advantage to those individuals holding the most senior water rights and the Model Land and Irrigation Company who was providing the storage right.^{1/}

The Bureau modified the 1961 Operation Study and redrafted the operating principles as a result of the District's concern. This modified operation study was developed showing water supply available to each ditch with Model Land and Irrigation Company having priority to certain storage and use of project water. Results of this study were presented in Appendix A Supplement, revised Water Supply and Utilization, April 1964, hereafter referred to as the "1964 Study."

Following a review by others of the 1964 Study and proposed operating principles, the Bureau received a letter from the Governor of Kansas (dated December 30, 1966) stating approval of the operating principles providing five additional conditions were added as follows:

1. All inflows over established Colorado water rights (1156.05 cfs) be designated flood flows and released as promptly as downstream conditions permit. The only time water so designated may be stored in the conservation pool will be when John Martin Reservoir does not have the capacity to store additional water.
2. Any subsequent amendment of the operating principles should be subject to review and approval of the same interests as provided for in the original procedure.
3. Assurances that there will be no significant increase in water use which would result in a depletion of water yield to other Colorado and Kansas water users.
4. That 5 years after beginning operation of the Trinidad Reservoir for irrigation purposes, the operating principles be reviewed to determine the effect, if any, the operation has had on other Colorado and Kansas water users and the principles amended as necessary. Each 10 year thereafter reviews should be provided with amendments as needed.

^{1/}In late 1966, the District contracted with one participant - Hoehne Ditch Company - to deliver 95% of irrigation requirements of 1,200 specified acres.

5. All operating records be open for inspection by any qualified representative of the Arkansas River Compact Administration.

The District approved the addition of these conditions to the Operating Principles by resolution adopted by the Board of Directors on January 26, 1967. The Bureau in a letter to Governor Docking of Kansas (dated March 20, 1967) clearly set forth the "operating principles" and the five conditions in one document so as to avoid any misunderstanding in the future as to their intent and purpose. The operating principles which were included as exhibits to the repayment contract and the model decree transfer were already in place prior to the letter and did not address these conditions. The June 6, 1967, minutes of the Compact Administration indicate their approval of the amended operating principles.

In 1976, prior to the supplementary decree of December 3, 1976, Highland Irrigation Company intervened in the transfer of the Model decree proceedings in an attempt to modify the April 15, 1965 Model right to limit the storage transferred under that decree to 6,000 acre-feet or less. The Colorado Supreme Court (C.S.C. No. 27492) ruled that the Model right transferred 20,000 acre-feet of storage.

Trinidad Reservoir was declared ready to impound water on January 1, 1977, by the Corps. The Colorado District No. 19 water court declared that storage of irrigation water could commence January 1, 1977. However, storage of water under the transferred Model right did not begin until August 1977 and then only to store a maximum of 2,140 acre-feet before storage was stopped due to downstream users in Colorado enjoining to prevent storage of winter inflows. The case was brought before the Colorado Supreme Court (No. 27962), and an opinion was issued on March 5, 1979 in favor of the District. Full project operation commenced immediately.

Since May 1979 most of the Project canals have operated using water regulated at Trinidad Reservoir. However, between 1979 and 1982, the Model lands were not irrigated due to distribution system rehabilitation. From 1982 through 1984 the amount of Model acreage steadily increased, with all Model lands irrigated by 1985.

Concerns about Trinidad Reservoir operation were first discussed at a special meeting of the Arkansas River Compact Administration called by Kansas officials on June 30, 1980. The meeting was called to discuss the practice of transferring water among the storage pools of Trinidad Reservoir. Kansas' position was that storage had occurred in violation of the Operating Principles for the Trinidad Project. This issue was investigated by the Compact Administration and further discussed at subsequent meetings without resolution. Additional concerns over storage of water in Trinidad Reservoir during 1981 and 1982 were raised by Kansas at the March 25, 1983 Compact Administration meeting. At this meeting, in addition to the transfer of water between accounts, Kansas raised questions regarding storage water accounting procedures, over diversion by ditches within the Purgatoire River Water Conservancy District and flood flow release from the reservoir. A resolution regarding the Kansas allegations was presented, discussed and tabled.

The issues raised by Kansas continued to be a topic of discussion at Compact Administration meetings. At the December 11, 1984 meeting the Compact

Administration passed a resolution requesting the Bureau of Reclamation to commence with a review of the operating principles in accordance with Kansas' Condition 4.

III. DEFINITIONS

A list of definitions of terms used in the operating principles, the report, and the appendices is as follows:

1. District. - The Purgatoire River Water Conservancy District. This entity was created and exists under laws of the State of Colorado to contract for repayment to the United States of an appropriate share of the project costs allocated to irrigation use. The District shall also be the agency responsible for the regulation of irrigation water supplies within the district boundaries.
2. Irrigation Capacity. - The 20,000 acre-feet of reservoir capacity allocated to irrigation plus the unsedimented portion of the joint-use capacity.
3. Model Right. - The original Model reservoir right to store 20,000 acre-feet of water from the flows of the Purgatoire River, under reservoir priority No. 10 in Water District No. 19 at a rate of flow not exceeding 700 cubic feet per second of time under date of appropriation of January 22, 1908, as decreed by the District Court of Las Animas County, Colorado, on January 12, 1925. The decree was transferred to Trinidad Reservoir and the District, made part of the District, and referred to now as the "Transferred Model Storage Right".
4. Joint-Use Decree. - A decree (April 27, 1972, Water Division No. 2, District Court, Case No. W-130) which allows for the storage in Trinidad Reservoir in addition to storage under the transferred Model right, any flood flows originating on the Purgatoire River above Trinidad Dam which would otherwise spill from John Martin Reservoir. Storage is limited to the portion of the 39,000 acre-feet of reservoir capacity allocated to joint use unoccupied by sediment at any given time.
5. 1961 Study. - The original "Appendix A - Water Supply and Utilization, April 1961." Studies were on a water year basis and assumed equal sharing with all entities in the project. All flows based on monthly analysis.
6. 1964 Study. - The "Appendix A Supplement - Revised Water Supply and Utilization, April 1964." A revision of the 1961 Appendix A which modified Trinidad Project operations to recognize and give some advantage to those individuals holding the most senior water rights and the Model Land and Irrigation Company which had provided the storage right. Studies were placed on a calendar year basis.
7. Historical Model Reservoir Operation. - Historical operation in the area with the Model Reservoir of 6,000 acre-feet capacity at its historical location.
8. Rehabilitated Model Reservoir Operation. - Operation which would have occurred if the Model Reservoir had been rehabilitated with the full 20,000 acre-feet of storage capacity available at its historical location and with the present ditches administered on a priority basis throughout the 1925-1957 study period of 1961 and 1964 Studies.

9. Headgate Irrigation Requirement. - When a computed headgate irrigation requirement was used for analysis it was based on the Lowry-Johnson (Lowry and Johnson - April 1941. Consumptive Use of Water for Agriculture, Proc. A.S.C.E. (pp. 595-616)) method for crop consumptive use. Also, a farm loss of 30 percent of farm delivery and a transportation loss of 30 percent of the headgate irrigation requirement was assumed. This was the same as that used in the 1961 Study.

IV. EVALUATION OF PROJECT OPERATION

During the first few months of the review of the operating principles, discussions were held with the States of Kansas and Colorado to identify the issues that needed investigation. From these discussions, the initial thrust of the study focused on the following topics:

1. Is the transfer of water stored under the Model right to the joint use pool at the end of the irrigation season consistent with the operating principles and, if not, what effect does it have on downstream water users?
2. Is the storage of water during the nonirrigation season under the priorities of the direct flow rights of the project ditches consistent with the operating principles and, if not, what effect does it have on downstream water users?
3. Was the temporary storage of inflow below the bottom of the flood control capacity for flood control purposes consistent with the operating principles and Kansas Condition No. 1 and was the release of this water carried out in a manner such that the water supply available to downstream users was not reduced?
4. Were the exchanges of transmountain water from the mainstream of the Arkansas River into Trinidad Reservoir consistent with the operating principles and were the exchanges carried out in a manner that did not reduce the water supply available to downstream water users?
5. Did the total area of lands irrigated by the project exceed the maximum permitted by the operating principles?
6. Were headgate diversions by project ditches consistent with the operating principles?

An initial draft of the report was released to the interested parties on December 20, 1985. This draft report and its appendices documented the data, analysis and conclusions reached during the investigations performed in 1985. The investigations dealt predominantly with the six topics mentioned above and their impacts during the years of the review period (1979-1984). The impacts were presented in terms of changes of storages and flow in the project area, but were not translated to impacts to the inflow to John Martin Reservoir.

The project lands that were irrigated during the review period were substantially reduced because the irrigation facilities serving the model land were being rehabilitated. Therefore, the conditions and impacts experienced are not considered to be representative of those that would occur when all project lands are being irrigated.

The initial draft report drew extensive comments from both the States of Kansas and Colorado (significant letters of comment are contained in Appendix V).

The Purgatoire River Water Conservancy District also became actively involved in the review process following the issuing of the initial draft report.

On February 5, 1987, the interested parties met in Denver to discuss the direction of the review. The Bureau of Reclamation representatives left this meeting believing that the following general consensus had been reached:

1. A new draft report would be issued.
2. A tabulation of operational data for the years of the review period would be developed including a reconstruction, as necessary, to account for abnormalities such as the July 1, 1981 change in the Trinidad Reservoir area capacity table.
3. The impacts of a transfer of water from the model right to the joint use pool and the storage of winter water under the direct flow rights would be determined by adjusting the operation study shown in the 1964 Study to reflect this administration of water rights and comparing the results.
4. The effects of the District not acquiring certain water rights initially assumed to be part of the project water supply would be analyzed.
5. The State of Colorado would develop and submit for review a criteria and procedure for storing and releasing flood flows.
6. The District would develop, and submit for review, procedures for assuring that only appropriate lands are irrigated and that only a reasonable amount of water was diverted to project lands.

During the course of the February 5, 1987 meeting, the State of Kansas questioned whether the operating principles permit project water to be used on lands other than those specifically stipulated in the operating principles, even if the total irrigated acreage did not exceed the maximum permitted by the principles.

Following the February 5, 1987 meeting, extensive studies were done in accordance with the Bureau's understanding of the consensus reached during the February 5, 1987 meeting. Results of these studies were shown in the second draft report of the Trinidad Project Principle Review, dated December 1987.

The interested parties met in Denver on February 16, 1988 to discuss the technical aspects of the second draft report and again on April 27, 1988 to discuss policy issues. During the course of these meetings, Kansas officials claimed that they had not agreed in the February 5, 1987 meeting to evaluate the transfer of water out of the Model Right and the storage of winter water under the direct flow decrees over the 1925 through 1957 period using the 1964 study as the basis. Kansas particularly objected to the exclusion of an in-depth analysis of these water rights administration practices over the 1979 through 1984 review period. Kansas questioned the use of a 19,500 acre-foot^{2/}

^{2/}The 39,000 acre-foot joint-use pool is expected to fill with sediment over the life of the project. The 1961 and 1964 Studies used 19,500 acre-feet as average joint-use pool.

joint-use pool in the studies run over the 1925 through 1957 period instead of the 39,000 acre-foot joint-use pool actually constructed. Kansas also questioned showing bypasses for Ninemile and Highland Ditch Companies when no such bypasses had actually been made.

In response to Kansas concerns, additional analyses were done for the 1979-84 review period. Also, studies of the 1925-57 period were made with a 39,000 acre-foot joint-use pool and with no bypass for Ninemile and Highland.

Following the April 27, 1988 meeting, both states and the District provided written comments on the second draft report. Copies of the comment letters are included in Appendix V.

While extensive comments were again received, this round of comments dealt almost exclusively with the interpretation of the study results, the conclusions and the recommendations. The methodology, data or other technical aspects of the studies contained in the second draft report were not seriously challenged by either state or the District in either the meetings or the written comments.

During the April 27, 1988 meeting, the Bureau agreed to redraft the chapter on the administration of water rights and provide the redraft to the interested parties prior to issuing the final report. The redraft was mailed on October 28, 1988.

In preparing the final report, the Bureau of Reclamation has carefully considered all comments received since the review was initiated. The interpretation of the study results, the conclusions and the recommendations include our consideration of the comments.

A. Basic Data

Basic data used in this report were compiled from many sources. Streamflow records of Purgatoire River flow at Madrid, below Trinidad Lake, at Trinidad and at Thatcher Gauges were obtained from U.S. Geological Survey published records or Division 2 Engineer records. These records were judged good except for winter periods.

Trinidad Reservoir daily operation data summarized on a monthly basis were obtained from the Corps of Engineers. These data include reservoir water surface elevation, storage content, computed evaporation, release, and computed inflow.

It was noted at the February 5, 1987 meeting in Denver that the records prior to July 1981 did not reflect the most recent area/capacity tables and were in need of modification. As agreed, the Bureau reconstructed the reservoir storage content, surface area, evaporation and inflow for the October 1979 thru June 1981 period to provide a consistent record based on the current area/capacity table. The reconstructed values are shown in Appendix II. Data after June 1981 were used as reported and considered to be of good quality.

Certified copies of Trinidad Reservoir daily water accounting and diversion records for ditches under the District's administration were received from the Colorado State Engineer's Office. The reservoir water accounting records prior

MINUTES OF THE ARKANSAS RIVER COMPACT ADMINISTRATION
REGULAR ANNUAL MEETING

December 11, 1984
Cow Palace Inn, Lamar, Colorado

The regular annual meeting of the Arkansas River Compact Administration was held at the Cow Palace Inn in Lamar, Colorado, on December 11, 1984. The meeting was called to order at 10 a.m. by Mr. Frank Cooley, Chairman and United States representative. The following members of the Administration were in attendance:

For Kansas:

Carl E. Bentrup	Deerfield, Kansas
Ronald Olomon	Garden City, Kansas
David Pope	Topeka, Kansas

For Colorado:

Carl Genova	Pueblo, Colorado
Leo Idler	Lamar, Colorado
J. William McDonald	Denver, Colorado

Mr. Pope introduced the Kansas members of the Administration, members of his staff, and others from Kansas. Mr. McDonald introduced the Colorado members of the Administration, members of his staff, members of the Attorney General's staff, and members of the Division Engineer's staff.

adoption of the proposed budget with the annual report and the office telephone items increased to \$3,000 each and the contingency item increased to \$2,000, with the total assessments set at \$28,000, and with budgeted expenditures in excess of assessments to come out of surplus. The proposed budget, as revised, was unanimously adopted and is included as Attachment H.

At this time the chairman recessed the meeting, during which recess the U.S. Geological Survey presented a program to the audience on its quality/quantity model of the Arkansas River Basin (agenda item 13). The meeting was reconvened following the lunch hour.

Upon re-convening, the Administration took up agenda item 12a, the proposed storage account for the Highland Irrigation Company and the Ninemile Ditch Company in John Martin Reservoir. Mr. McDonald briefly reviewed the events surrounding the Highland-Ninemile request and stated that Colorado and Kansas had been unable to agree on the means by which to compute how much water would be available for storage by the ditch companies. Mr. McDonald stated that the Colorado ditches wanted this matter presented for the record, whereupon he moved the adoption of Colorado's revised draft resolution of December 10, 1984, said resolution to be included in the minutes. Mr. Genova seconded the motion. Mr. Pope responded that Kansas had worked diligently with Colorado on this matter and that he wished to have included in the minutes a proposal made by Kansas that was presented to the companies' consulting engineer, Mr. Duane Helton. The motion failed, with Colorado voting yes and Kansas voting no.

Mr. Cooley directed that the minutes include the two above items. The Colorado resolution is included as Attachment I and the Kansas proposal as Attachment J.

The next agenda item taken up was 12e, the five year review of Trinidad Reservoir operations. Mr. McDonald stated that he thought the issue was resolved since the Bureau had already agreed to prepare the review. Mr. Bentrup stated that it was Kansas' position that a representative of the Colorado State Engineer and the Kansas Division of Water Resources should make a study of the past five years of operation and present a report to the Administration. Mr. McDonald responded that while he was sure that Kansas, Colorado, and the Purgatoire Water Conservancy District would participate, it was the Bureau of Reclamation's responsibility to prepare the review. Mr. Cooley then asked Mr. Wilms to comment on how the Bureau planned to proceed.

Mr. Wilms stated that the Bureau would indeed conduct the five year review. He indicated that the Bureau would hold a number of public scoping meetings to determine the extent of the review that needs to be conducted. There followed a discussion on the responsibilities of Kansas, Colorado, the District, and the Bureau with respect to the review. It was Kansas' view that the review should be conducted by the Administration. Colorado was of the opinion that since the Bureau and the District were the signatories to the operating principles, the review should be carried out by the Bureau.

Mr. Cooley called a brief recess at this time.

After the recess, Mr. Pope moved, seconded by Mr. Olomon,
that:

The engineering committee of the Administration conduct a five-year review of the operations of the Trinidad project, as originally contemplated by one of the five Kansas conditions, that the review be done with the aid, assistance, and cooperation of the Bureau of Reclamation, and that the committee report back to the Administration prior to April 1, 1985 with findings and recommendations as to the results of its review.

Mr. McDonald indicated that Colorado disagreed that such a procedure was appropriate for the Administration to take under the compact. The question being called, Colorado voted no and Kansas voted yes, whereupon the motion was declared lost.

After further discussion, Mr. McDonald moved that:

The Administration ask the Bureau of Reclamation to conduct a five year review of Trinidad Reservoir operations with participation of both states and other interested parties and with the results of that review to be made available to the Administration by April 1, 1985, or as expeditiously thereafter as possible.

Mr. Genova seconded the motion. Mr. Pope restated Kansas' position that the motion he had made was appropriate and that the Administration had the authority under the Compact to make such studies. He noted that while Kansas would vote in favor of this motion, it reserved the right to conduct its own independent review and to fully participate in the review conducted by the Bureau. The Chairman then called for the question, whereupon Colorado voted yes, and Kansas voted yes. The motion was declared passed.

The next item discussed was Colorado's proposal for amending the 1980 Operating Plan for John Martin Reservoir as it relates to the transit loss account for Kansas. Mr. McDonald stated that this matter did not need to be resolved at this meeting. A long discussion ensued, with no specific decisions being reached. It was agreed to take up the matter again at a special meeting in March.

Mr. Cooley stated that the next item of discussion would be a request for an engineering report from the Keesee Ditch on its proposed transfer of water rights from District 67 to above John Martin Reservoir, said report to be submitted to the Administration. Mr. Pope stated that Kansas was in agreement with the draft letter proposed by Colorado. Mr. McDonald then moved that the Administration direct the chairman to send the letter. Mr. Pope seconded the motion and added that a copy should go to the Water Court and all the parties to the litigation. Mr. McDonald said he concurred. The motion was unanimously adopted. The letter was subsequently sent by the Vice-Chairman (due to Mr. Cooley's illness) and is included as Attachment K.

The next item on the agenda was the proposed storage account for the Las Animas-Bent County Golf Course, Inc., in John Martin Reservoir. Mr. McDonald briefly outlined the history of the Las Animas Golf Course account. He stated that the Administration, through the Operations Committee, had made arrangements for a temporary account for the past summer for 175 a.f. in John Martin Reservoir, the source of water being the purchase of trans-mountain water. The "Decision of the Operations Committee" with

The foregoing minutes were approved by the Administration at
a ~~special~~ ^{general} meeting held in ~~Garden City, Kansas,~~ ^{Pueblo, Colo.} on ~~October 8,~~ ^{Dec 10}
1985.

Leo Idler
Leo Idler, Recording Secretary

Frank Cooley
Frank Cooley, Chairman



OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RESOURCES

1313 Sherman Street-Room 818
Denver, Colorado 80203
(303) 866-3581

April 27, 1989

RECEIVED MAY 01 1989

Mr. Charles D. Latuda, President
Purgatoire River Water Conservancy District
314 West Main Street
Trinidad, CO 81082

Re: Administration of Water Rights Stored in Trinidad Reservoir

Dear Mr. Latuda:

In its Final Report on the review of the Trinidad Project Operating Principles dated December 1988, the Bureau of Reclamation reached the following conclusions:

- A. Transfer of water from the (M)odel storage right to the Joint-Use Pool is a departure from the intent of the Operating Principles.
- B. The storage of winter water under direct flow right priorities is also a departure from the intent of the Operating Principles.

Based on these conclusions, the Bureau of Reclamation has recommended that these practices be discontinued until such time as the Operating Principles have been amended to recognize these practices.

The Bureau of Reclamation's conclusions differ from the interpretation of the Operating Principles by the Purgatoire River Water Conservancy District, which the State of Colorado has accepted in administering the Project water rights since 1979.

I have been advised by legal counsel for the State of Colorado that the Bureau of Reclamation's new interpretation of the Operating Principles is likely to be viewed as persuasive with regard to these practices. Therefore, although the Operating Principles do not explicitly adopt the criteria used in the operation studies performed by the Bureau of Reclamation, I have been advised that until such time as the Operating Principles are amended or a court of competent jurisdiction determines that these practices are not a departure from the intent of the Operating Principles, I should administer the Project water rights consistent with the Bureau of Reclamation's most recent

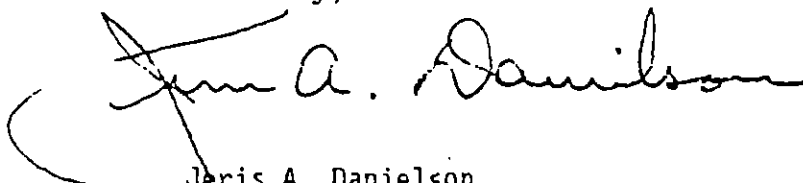
interpretation of the Operating Principles. Therefore, effective November 1, 1988, the storage in Trinidad Reservoir will be administered as follows:

1. Water stored in Trinidad Reservoir under the Model Storage Right which is carried over into the next irrigation season shall be charged as part of the filling of the Model Storage Right in the following year.
2. Water stored in Trinidad Reservoir during the winter shall be accounted for as if it were stored under the Model Storage Right and shall be charged as part of the filling of the Model Storage Right unless the water is stored at such times as John Martin Reservoir is reasonably expected to spill in accordance with Art. IV.D.1(b) of the Operating Principles, or is stored pursuant to such other rights to store water as the District lawfully acquires by appropriation or purchase, such as the transmountain water which the District has purchased in the past, as provided for in Art. IV.A.2(b) of the Operating Principles.

I recognize that these changes in administration, although previously accepted by the Bureau and this office, may affect the water supply available to the Project water users during the coming irrigation season and that the Bureau of Reclamation has concluded that these practices will not cause the future usable inflow to John Martin Reservoir to be less with the Trinidad Project in operation than it would have been without the Project. However, in view of the Bureau of Reclamation's recommendations that these practices be discontinued until the Operating Principles have been amended to recognize these practices, I feel constrained to accept the Bureau's recommendations.

The District is, of course, free to proceed to amend the Operating Principles as recommended by the Bureau of Reclamation in its Final Report.

Sincerely,


Jeris A. Danielson
State Engineer

JAD/pjl

cc: M. E. MacDougall
Hal D. Simpson
Steven J. Witte
Henry D. Marques
Frank G. Cooley
J. William McDonald

Mr. Charles D. Latuda
April 27, 1989

Page 3

Carl G. Genova
James Rogers
David L. Pope
Carl E. Bentrup
Ronald Olomun
Leland E. Rolfs
Richard A. Simms
Raymond H. Willms
Andrew F. Walch
Patricia L. Weiss
Wendy C. Weiss
David W. Robbins
Dennis M. Montgomery
Carl M. Shinn
Rexford L. Mitchell
John S. Lefferdink, Jr.
Howard Holme
Wayne B. Schroeder

20611

COPY
MAR 30 1988

DISTRICT COURT, WATER DIVISION 2, COLORADO

Case No. 88CW21

APPLICATION FOR CHANGES OF WATER RIGHTS

CONCERNING THE APPLICATION FOR WATER RIGHTS OF:

PURGATOIRE RIVER WATER CONSERVANCY DISTRICT, in its own right, and pursuant to contracts with BACA IRRIGATING DITCH COMPANY, CHICOSA IRRIGATING DITCH COMPANY, CHILILI DITCH COMPANY, EL MORO DITCH COMPANY, ENLARGED SOUTH SIDE DITCH COMPANY, HOELINE DITCH COMPANY, JOHN FLOOD DITCH COMPANY, LUJAN IRRIGATING DITCH COMPANY, MODEL LAND AND IRRIGATION COMPANY (Model Ditch Rights), MODEL LAND AND IRRIGATION (John Flood Rights), NORTH SIDE IRRIGATING DITCH COMPANY, EL MORO WATER USERS, JOHN FLOOD DITCH WATER USERS, R. LACY, INCORPORATED (River Canyon Ranch), THE CITY OF TRINIDAD, and their successors and assigns, IN LAS ANIMAS COUNTY.

1. Name, address, telephone number of applicant:

Purgatoire River Water Conservancy District
314 West Main Street
Trinidad, Colorado 81082
Telephone: (719) 846-7285

(herein called "the District"), which has contracts with the following entities, dated as set forth below, granting the District certain rights to manage Project water rights, to-wit:

DITCH COMPANY CONTRACTS

CONTRACT DATE

Baca Irrigating Ditch Company	September 27, 1966
Chicosa Irrigating Ditch Company	June 14, 1966
Chilili Ditch Company	August 8, 1966
El Moro Ditch Company	June 15, 1966
Enlarged South Side Ditch Company	June 2, 1966
Hoelne Ditch Company	November 26, 1966
John Flood Ditch Company	January 21, 1967
Lujan Irrigating Ditch Company	June 14, 1966
Model Land and Irrigation Company (Model Ditch Rights)	May 28, 1966
Model Land and Irrigation Company (John Flood Rights)	May 28, 1966
North Side Irrigating Ditch Company	June 14, 1966

WATER USERS ASSOCIATION CONTRACTS

CONTRACT DATE

El Moro Water Users
John Flood Ditch Water Users

January 18, 1967
January 27, 1967

CORPORATE WATER SUPPLY CONTRACT

CONTRACT DATE

R. Lacy, Incorporated
(River Canyon Ranch)

January 19, 1967

CITY CONTRACT

CONTRACT DATE

The City of Trinidad
(Ordinance No. 894, Series of
1966, adopted April 4, 1966)

April 20, 1966

2. Decreed name of structures for which change is sought:

Project Water Rights of the Trinidad Project - specifically
as follows:

OWNED BY DISTRICT

<u>Priority</u>	<u>Date</u>	<u>Amount</u>	<u>Name</u>
10	1/22/08	20,000.00 acre-	Model Reservoir
none	5/31/1950	feet 39,300.00 acre-	Silt Control Section Trinidad Reservoir
		feet	

MANAGED BY DISTRICT

<u>Priority</u>	<u>Date</u>	<u>Amount</u>	<u>Name</u>
3	11/30/61	6.00	Baca
5	3/20/62	4.00	John Flood
7	4/30/62	7.00	Chilili
8	11/15/62	2.82	Baca
8	11/15/62	1.18	El Moro
9	1/1/63	1.28	John Flood
9	1/1/63	4.72	Hoelme

Priority Number	Date	Amount (c.f.s.)	Name
12	6/30/63	0.50	South Side
13	1/1/64	1.25	John Flood
13	1/1/64	3.75	Lewelling & McCormick
15	4/10/64	5.10	John Flood
15	4/10/64	0.80	Hoehne
15	4/10/64	0.847	Salas
19	6/1/65	4.00	Lewelling & McCormick
20	10/7/65	7.35	John Flood
20	10/7/65	16.65	Hoehne
21	1/1/66	3.250	Burns & Duncan
22	2/1/66	1.340	Salas
27	5/31/66	2.25	John Flood
27	5/31/66	.750	Salas
40	4/30/68	1.40	South Side
64	4/1/73	2.40	John Flood
73	11/1/75	6.00	South Side
74	2/17/76	34.00	South Side
75	12/25/76	4.00	South Side
77	3/11/77	1.30	El Moro
77	3/11/77	2.70	Baca
80	4/7/77	18.60	South Side
93	12/15/82	4.00	South Side
95	11/4/83	14.38	Baca
96	11/23/83	16.84	South Side
98	4/30/84	60.00	South Side
103	6/21/86	14.73	Baca
104	10/21/86	10.00	Lewelling & McCormick
106	3/12/87	15.00	Baca
108	2/15/88	9.70	South Side
109	3/1/88	8.00	South Side
145	10/20/02	100.00	John Flood
168	1/22/08	200.00	Model
242	6/12/20	45.56	Baca

3.A. The most recent Decrees were entered: in Civil Action No. 19793, District Court, Las Animas County, Colorado, April 15, 1965, which was subsequently a subject of Case No. 27962, Colorado Supreme Court (Opinion in Purgatoire River Water Conservancy District, et al., v. Kuiper, et al., decided March 5, 1979, 197 Colo. 200, 593 P.2d 333,

'herein called "Case 19793"; and for the Silt Control Section decree (conditional) entered February 24, 1988, in Case No. 87CW45 (W-130), District Court, Water Division No. 2, Colorado;

3.B. The Project Water Rights of the Trinidad Project are stored in Trinidad Reservoir, in Sections 21, 27, 28, 29, 30, 31, 32, 33 and 34, T 33 S, R 64 W, 6th P.M., Las Animas County, Colorado, and/or are diverted at the respective ditches named above;

3.C. The Project Water Rights of the Trinidad Project have their source in the Purgatoire (Las Animas) River and its tributaries.

3.D. The appropriation dates of the Project Water Rights of the Trinidad Project are set forth under "Priority Date" above;

3.E. The uses of the Project Water Rights of the Trinidad Project are domestic, irrigation stock watering, and (conditional) municipal uses.

4. Proposed changes are as follows:

A) AMEND OPERATING PRINCIPLES

a) The District is participating in a Review of the Trinidad Project Operating Principles being conducted by the U.S. Department of Interior, Bureau of Reclamation, as provided in Condition No. 4 proposed by the State of Kansas and approved by Resolution of the Purgatoire River Water Conservancy District dated January 26, 1967, and by the Director, Region 7, U.S. Bureau of Reclamation, February 1, 1967. A copy of the March 20, 1967, letter of said

Director, setting forth the "Operating Principles, Trinidad Dam and Reservoir Project", and the "Five Conditions, State of Kansas" is attached to the Application filed herein with the Clerk of Water Division No. 2;

b) In the course of the Review, the Bureau of Reclamation has recommended amendments to the Operating Principles;

c) In paragraph 10(f) of the Decree in Case 19793 (pages 7 and 8 and the final paragraph on pages 14 and 15), the Court retained jurisdiction to (among other things) make the Decree in Case 19793 "conform to such future modifications, deletions, or additions as may be made to said operating principles", upon notice thereof to all parties to said Case 19793. A copy of the Decree in Case 19793 is attached to the Application filed herein with the Clerk of Water Division No. 2;

d) The persons or entities who were parties to Case 19793, or who are, upon information and belief, their successors, are:

Purgatoire River Water Conservancy District, The Model Land and Irrigation Company, The Fort Lyon Canal Company, The Wyoming Fuel Company (successor to The Colorado Fuel & Iron Corporation), The Amity Mutual Irrigation Company, Holbrook Mutual Irrigating Company, Catlin Canal Company,

The Highline Canal Company, Arkansas Valley Ditch Association, and Southeastern Colorado Water Conservancy District;

e) In a December, 1987, Draft Report, the Bureau of Reclamation, U.S. Department of Interior, has recommended certain amendments to the Operating Principles. These amendments have not been agreed to or approved by the State of Colorado, the State of Kansas, or the District, but which for the purpose of notice to the owners and users of vested water rights or decreed conditional water rights, are listed herein, to-wit:

"IV. RECOMMENDATIONS

A. If the practice of transferring water from the model storage right at the end of the water year is going to be continued, then amend the operating principles to specifically recognize this practice.

B. If storage of winter water under any right other than the model storage right is going to be continued, then amend the operating principles to specifically recognize this practice.

C. Amend the operating principles to permit irrigation of the Class 6W lands and to permit more flexibility in shifting irrigated lands among the ditches.

D. Amend the operating principles to reduce the maximum irrigated acreage to 19,439 acres."

A copy of the Bureau's December, 1987, Draft Report is on file with the Clerk of the Water Court and may be examined by any interested party.

.B) DELETE CONDITION 10 (e), on pages 6 and 7, and 5, pages 11 and 12,
OF DECREE IN CASE 19793.

a) One of the conditions of the Decree awarded in Case 19793 is as follows:

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

(herein referred to for convenience as the "10-year average");

b) It has not been possible to find a satisfactory method to determine the "10-year average" as required by the condition;

c) The "10-year average" is not required by the Operating Principles;

d) The condition should be deleted.

C) CLARIFY DECREE TO CONFORM TO SUPREME COURT RULING.

a) In Purgatoire River Water Conservancy District v. Kuiper, referred to in paragraph 3.A. above, the Colorado Supreme Court ruled, in part, as follows (from page 207 of 197 Colo.) (NOTE: the "1965 transfer decree" is the Decree in Case 19793):

Highland has contended that the 1965 transfer decree merely changed the place of storage of the Model Storage Right to Trinidad Reservoir and did not change to storage the winter direct flow use of the Project ditches. This change of use was set forth as a part of the plan in House Document 325 and the Operating Principles, both of which were incorporated by reference in the decree. The clear effect of the transfer decree was to make the change as set forth in those documents. So far as the persons who are bound by that transfer decree are concerned, the effect was to change both the place of storage and the use of winter direct flow.

(herein referred to as "storage of direct flow");

b) The "storage of direct flow" is the subject of the Bureau recommendation B, to amend Operating Principles, set forth above;

c) Clarifying the Decree in Case 19793 to conform to the Supreme Court ruling will reduce confusion caused by the several documents involved;

5. The Trinidad Reservoir is owned and operated by the United States Army Corps of Engineers under authority of Congress, and the irrigation aspects are operated by the Purgatoire River Water Conservancy District under contract with the United States Department of Interior, Bureau of Reclamation, and contracts with the respective Project Ditch Companies and water users named in the caption above. Attached to the Application on file with the Clerk of the Water Court are maps showing the general project area and irrigated lands, ditches, and the Trinidad Reservoir.

6. POSSIBLE (FUTURE) AMENDMENTS. The information provided below in a) "City of Trinidad" and b) "House Document 325" is intended to further inform the Court and any person or entity interested that there are other possible amendments to the Operating Principles under consideration. If other cases are filed, as anticipated, they may be the subject of Motions to Consolidate.

a) City of Trinidad. The District is informed and believes that the City of Trinidad intends to file applications in Water Court to change certain rights, including Project irrigation rights owned by Trinidad under the John Flood Ditch system and certain rights under the Model System, all pursuant to the separation Agreement between Trinidad and Model (dated August 1, 1981), (for convenience called the "JFD" rights) to the purpose of maintenance of the Permanent Pool and municipal and industrial uses. The JFD rights were acquired by Trinidad from Model, and the District agrees they are the same rights referred to in Paragraph 14 of the contract between the District and the United States dated February 10, 1967, and the District acknowledges that Trinidad has the rights and privileges set forth in Paragraph 14 thereof. Certain of the changes intended by the City of Trinidad may require further amendments to the Operating Principles, and the District and the City of Trinidad have reached agreement on

certain issues as set forth in a Stipulation on file with and approved by the District Court, Water Division No. 2, Case 86CW39.

(b) House Document 325. In the original letter from the Secretary of the Army to Congress regarding the Trinidad Project (House Document No. 325, 84th Congress, 2nd Session, 1956), the District Engineer suggested, in part, in his 1953 Review Report (House Document No. 325, paragraph 159, page 43), to-wit (paraphrased):

The maximum utilization of this capacity can be achieved by operation in accordance with the following five basic conditions:

(d) By regulation in Trinidad Reservoir of summer flows historically diverted to project lands provided that future streamflow records disclose such further regulation would not materially increase depletions or that any material increase in depletions be compensated by suitable replacement to lands served by John Martin Reservoir.

(e) By storage in Trinidad Reservoir of all flood flows originating on the Purgatoire River above the reservoir other than those specified in condition (b), provided that suitable replacement is made to John Martin Reservoir to the extent that such storage in Trinidad Reservoir would result in material depletion of the inflow from the Purgatoire River into John Martin Reservoir and interfere with its operation as established by the Arkansas River compact.

The effects of the operation of the conservation capacity of Trinidad Reservoir, in accordance with conditions (d) and (e), on the utilization of John Martin Reservoir for irrigation under the terms of the Arkansas River compact, are indeterminate from existing streamflow records.

Operation under the 4th and 5th conditions (d and e above) was held in abeyance pending the accumulation of additional data. The District believes that the 4th and 5th conditions remain desirable objectives, and although they are not now recommended by the Bureau of Reclamation, the District wishes to continue to assert them as desirable possibilities for future implementation as the data and/or methodologies are determined.

WHEREFORE, Applicant prays that the Court:

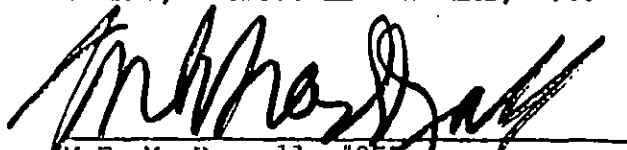
A) Determine that the changes resulting from amendments to the Operating Principles set forth in Paragraph 4 A) e) above will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right;

B) Determine that the change proposed as set forth in Paragraph 4 B) above will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right;

C) Clarify the Decree in Case 19793 as set forth in Paragraph 4 C) above; and

D) Award such other or further relief as may be lawful and just.

GEDDES, MACDOUGALL & WORLEY, P.C.



M.E. MacDougall #955
530 South Nevada Avenue
Colorado Springs, CO 80903
Telephone: (303) 475-7090

STATE OF COLORADO)
) ss.
COUNTY OF LAS ANIMAS)

I, Charles D. Latuda, Chairman of the Board of Purgatoire River Water Conservancy District, state under oath that I have read this application and verify its content.

Charles D. Latuda
Charles D. Latuda, Chairman
Purgatoire River Water Conservancy
District

Subscribed under oath before me on March 28, 1988.

WITNESS my hand and official seal.

My Commission expires:

June 2, 1988
Melva Lujan
Notary Public

STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD
Department of Natural Resources
721 State Centennial Building
1313 Sherman Street
Denver, Colorado 80203
Phone: (303) 866-3441



Roy Romer
Governor
J. William McDonald
Director
David W. Walker
Deputy Director

November 20, 1989

Mr. M. E. MacDougall
Geddes & MacDougall, P.C.
530 South Nevada Avenue
Colorado Springs, CO 80903

G

Dear Sandy:

I am writing on behalf of Carl Genova, Jim Rogers, and myself in our capacities as Colorado's representatives to the Arkansas River Compact Administration. We are in receipt of your November 2 letter to Frank Cooley, chairman of the Administration, requesting that the Administration act on the proposed revisions to the Operating Principles for the Trinidad Reservoir Project.

Please be advised that this matter will be on the agenda for the Administration's December 12 annual meeting in Lamar. We would ask that the Purgatoire River Water Conservancy District make a presentation on what revisions to the Operating Principles are sought and what the bases for the proposed revisions are. We would also like the District to explain to the Administration what water rights application(s) are pending in Colorado water court that relate to the proposed revisions in the Operating Principles. Finally, comments from interested water users will be in order.

We are not prepared to seek action on the proposed revisions at the Administration's annual meeting. Rather, we will ask for a special meeting of the Administration to be held not later than April 15, 1990, for the purpose of affording the Administration the opportunity to ask questions of the District after having had time to review the proposed revisions, to receive further comments from interested water users, and to deliberate about and act on the District's request.

1269E*

Exhibit G

Mr. M. E. MacDougall
November 20, 1989
Page two

We should get to this agenda item during the morning.
Would you please inform all members of the Administration as to
who will be making the requested presentation on the District's
behalf at the annual meeting.

Sincerely,



J. William McDonald
Director

JWM/gl

cc: Chairman and Members
Arkansas River Compact Administration
Water User mailing list for ARCA meeting notices

LAW OFFICES
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530 SOUTH NEVADA AVENUE
COLORADO SPRINGS, COLORADO 80903

WETH W. GEDDES
M.E. MacDOUGALL
HENRY D. WORLEY
TRISTAN BONN

TELEPHONE
(719) 475-7090

December 9, 1989

Frank G. Cooley, Esq.
Chairman and Federal Representative
Arkansas River Compact Administration
Post Office Box 98
Meeker, Colorado 81641

H

Re: Proposed Amended Operating Principles - Trinidad
Project Administration Agenda December 12, 1989

Dear Mr. Cooley:

I am in receipt of a letter dated November 20, 1989 from J. William McDonald, which he has copied to you and other interested parties. I just got a copy on December 6, and that is why I did not respond sooner.

Messrs. Harold Winter, Reuben Gutierrez, Cannel Garlutzo, M.E. MacDougall and possibly others, will be present on behalf of the Purgatoire River Water Conservancy District at the annual meeting.

The water rights application pending in Colorado Water Court (Division 2 - Pueblo) is 88CW21 - the 12-page Application which was included in my letter to you dated November 28, 1989. Statements of Opposition have been filed in that case by Carl Shinn, John Lefferdink, Wayne Schroeder, Rex Mitchell, Howard Holme, Wendy Weiss and David Harrison, on behalf of District 67 Irrigating Canals Association, Fort Lyon Canal Company, The Highland Irrigation Company, Arkansas Valley Ditch Association, Southeastern Colorado Water Conservancy District, State of Colorado and City of Trinidad, respectively.

I enclose, for each delegate to the Administration, copies of the Proposed Principles with the changes highlighted (to Messrs. Cooley, McDonald, Pope, Bentrup, Rogers, Olmon, and Genova). The basis for these changes are the Recommendations and Conclusions of the Bureau of Reclamation in its 1988 Final Report, pages 55, 56 and 57, copies enclosed for convenience.

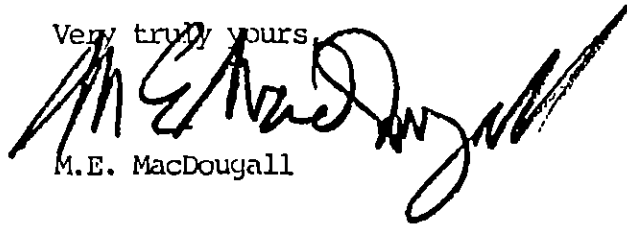
Many persons associated with the Purgatoire River Water Conservancy District perceive that the operations it has conducted are quite similar to the 1980 (?) Operating Plan for John Martin Reservoir. We feel the same standards should be applied at Trinidad

Exhibit 14

Frank G. Cooley, Esq.
December 9, 1989
Page Two

Reservoir and John Martin Reservoir. Many persons also perceive that the growth of irrigation wells, and acreage irrigated thereby, is much larger in areas other than the Trinidad Project, and by orders of magnitude greater in some areas (like Kearny and Finney Counties, Kansas. See pages 12 and 18 of U.S.G.S. Paper 2253, enclosed). It is difficult to explain to Las Animas County farmers why the Trinidad Project must now be reduced from 19,717 irrigated acres to 19,439 irrigated acres, when irrigated acreages elsewhere have increased by the tens and hundreds of thousands of acres. We ask for fair and equitable consideration.

Very truly yours,



M.E. MacDougall

MEM:slj
Enclosures

cc: J. William McDonald
Carl G. Genova
James G. Rogers
David L. Pope, P.E.
Carl E. Bentrup
Ronald Olomon
Wendy C. Weiss, Esq.
Leland E. Rolfs, Esq.
Steve Witte
Henry D. "Danny" Marques
Purgatoire River Water Conservancy District
Dr. Ted Zorich
Steven R. Clark
Lt. Col. Kent R. Gonser
Kevin B. Pratt, Esq.
David L. Harrison, Esq.
John S. Jefferdink, Esq.
Rexford L. Mitchell, Esq.
Carl M. Shinn, Esq.
Mardell R. Cline, Clerk, Water Division No. 2
David W. Robbins, Esq.
Richard A. Simms, Esq.

V. CONCLUSIONS

- A. The transfer of water from the model storage right to the joint-use pool is a departure from the intent of the Operating Principles.
- B. The storage of winter water under the direct flow rights is also a departure from the intent of the Operating Principles.
- C. The transfer of water from the Model Right and the storage of winter water under the direct flow rights during the 1979-84 review period has depleted the usable inflow to John Martin Reservoir when compared to the inflow that would have occurred had the Trinidad Project been in accordance with the intent of the Operating Principles.
- D. The transfer of water from the Model Right and the storage of winter water under the direct flow decrees, either singularly or collectively, will not cause the future usable inflow to John Martin Reservoir to be less with Trinidad Project in operation than it would have been without the Project. These practices will, however, result in less inflow to John Martin Reservoir than would occur if the water rights were administered in accordance with the intent of the Operating Principles.
- E. The Operating Principles provide for less than the optimum beneficial use of the available water for irrigation within the Trinidad Project area, but do protect the downstream non-project rights.
- F. The total acreage irrigated with project water during any year of the review period did not exceed the maximum permitted acreage of 19,717 acres.
- G. Neither the District nor the State of Colorado have developed adequate procedures for verifying that the maximum irrigated acreage will not be exceeded in the future.
- H. Class 6W lands are being irrigated in violation of the provisions of the Operating Principles. There is no evidence that this violation has any impact on downstream users. There is no purpose in continuing prohibition on irrigation of Class 6W lands.
- I. The maximum irrigated acreage should be reduced by 278 acres to compensate for water rights that were not acquired by the District.
- J. The 1985 headgate diversions exceeded the amount needed to satisfy irrigation requirement used in the 1964 Irrigation Report. The District has not made an effort to limit the headgate diversions to that necessary to meet the irrigation requirement nor has the District established a suitable procedure for doing so in the future. Excess diversions reduce the inflow to John Martin Reservoir and cause additional shortages of irrigation water for use on project lands. Under some circumstances, excess diversion will cause the inflow to John Martin Reservoir to be less than would have occurred had the Trinidad Project not been built.
- K. The storage of water under the auspices of flood control has not been recognized as flood storage by the Corps. At least some of this storage of flood flows did occur under conditions that without the storage there would have been potentially damaging rates of flow. The stored flood flows were released

to the Purgatoire River, but in only two of the five release periods could we determine that the flood water releases passed through the project without depletion. It was not possible to determine if there were depletions to the flood releases during the other three release periods. The State of Colorado has developed a criteria for managing future releases of stored flood flows. This criteria does not address the rate of release nor provide a criteria for storing flood flows.

L. The delivery of transmountain water to Trinidad Reservoir through exchange is not prohibited by the operating principles and was carried out in a manner that did not deplete the inflow to John Martin Reservoir.

M. The gauging stations required by the transferred model right decree were not installed at the locations designated but were installed at sites that would better carry out the purpose of the requirement.

VI. RECOMMENDATIONS

- A. Discontinue the practice of transferring water from the model storage right, to the joint-use pool at the end of the water year, until such time as the Operating Principles are amended to recognize this practice.
- B. Discontinue the storage of winter water under any right other than the model storage right, until such time as the Operating Principles are amended to recognize this practice.
- C. The Purgatoire River Water Conservancy District, the States of Kansas and Colorado and the Bureau of Reclamation work together constructively to amend the Operating Principles to provide the optimum beneficial use of the available water for irrigation within the project area consistent with the protection of downstream non-project rights.
- D. Amend the Operating Principles to permit irrigation of the Class 6W lands and to permit more flexibility in shifting irrigated lands among the ditches.
- E. Amend the Operating Principles to reduce the maximum irrigated acreage to 19,439 acres.
- F. Proposed amendments to the Operating Principles be submitted to the State of Kansas for review and approval pursuant to Kansas' Condition 2 provided the amended Operating Principles will not result in less inflow to John Martin Reservoir than would have occurred had the Trinidad Project not been built.
- G. Implement procedures for positive verification that no more than the maximum irrigated acreage is actually irrigated.
- H. Develop and implement procedures for limiting the diversions to the ideal irrigation requirement.
- I. If storage of flood flows in flow ranges outside those specified in the Corps flood control manual is continued, then develop a specific criteria designating the conditions in which such flood flow will be stored and revise proposed criteria for the release of stored flood flow to address the rate of release.

Geohydrology and Model Analysis of
Stream-Aquifer System Along the
Arkansas River in Kearny and
Finney Counties, Southwestern Kansas

By L. E. DUNLAP, R. J. LINDGREN, *and* C. G. SAUER

Prepared in cooperation
with the Kansas State
Board of Agriculture,
Division of Water
Resources

U.S. GEOLOGICAL SURVEY WATER-SUPPLY PAPER 2253

streambed materials occur during periods of flow, changing the permeability and, therefore, affecting infiltration and seepage losses. At the beginning of a short period of flow, such as a reservoir release, infiltration is probably small because fine materials (silt and clay) left by preceding flows reduce the size and number of pore spaces in the coarse material and develop a thin, inhibiting (to infiltration) layer on the streambed. However, as the fine materials are dislodged and begin to move during the ascending limb of the flow period, infiltration and seepage losses increase. During the recession of the flow, the fine materials in suspension settle out, and infiltration and seepage losses decrease. For streams that are perched above the water table, a decline in infiltration rate and seepage losses also occurs as a result of the filling of the pores in the zone near the streambed by water as infiltration continues.

Irrigation-Canal Seepage

Water losses also occur as canals transport water from their headgates to irrigated crops. Because irrigation canals have a more silty and clayey bed than the Arkansas River, seepage losses are smaller. In addition, irrigation-canal employees clear debris from the canal to reduce the seepage losses. Debris increases the transport time of the water from the headgates to the irrigated crops, resulting in greater seepage (and evaporation) losses. Also, debris moving along the canal bottom may scour the canal bed, stirring up fine materials and making the bed more porous.

Two seepage-loss measurements were conducted on the Farmers Canal. On July 18, 1980, 125 ft³/s of water were measured at the Division of Water Resources gage (point 1, fig. 7). Eight miles east of the gage (point 2), 110 ft³/s of water were measured. In between the two measuring points, 5 ft³/s of water were being diverted for irrigation. Similarly on July 21, 1980, 144 ft³/s of water were measured at point 1, and 129 ft³/s were measured at point 2. In between the measurements, 2 ft³/s of water were being diverted for irrigation. This is an average loss of 1.4 (ft³/s)/mi due to seepage.

Subsurface Inflow

Subsurface inflow enters the study area from the west and north. The amount of ground water moving into the area is dependent on the cross-sectional area through which the flow is occurring, the hydraulic gradient, and the hydraulic conductivity. As given by the transient-model mass-balance computations, 17,300 acre-feet of water entered the lower aquifer along the northern boundary of the study area during 1980. The distance from the Arkansas River valley to the northern boundary of the study area was ascertained by determining the radius of influence of a well field pumping at a discharge rate typi-

cal for the area and located near the river (see "Model Boundaries"). Subsurface inflow to the upper aquifer during 1980 was simulated in the transient model to be 12,000 acre-feet, as given by mass-balance computations. All of the inflow to the upper aquifer comes from the alluvium in the phase-1 study area.

Discharge

Principal sources of discharge from the aquifer system are (1) ground-water pumpage and (2) subsurface outflow at the boundaries of the study area. Discharge from ground-water evapotranspiration and streamflow was very small during the 1970's.

Pumpage

Pumpage of ground water for irrigation, municipal, and industrial water use is the largest source of discharge in the study area. Most of the water is used to irrigate crops, such as corn, alfalfa, grain sorghum, and wheat.

Relatively few irrigation wells were present in the study area prior to the 1940's; therefore, pumpage was small. At this time, the unconsolidated aquifer system was in equilibrium or in a steady-state condition (recharge equal to discharge), and hydraulic heads varied little over time. But from 1945-67, the number of well applications to appropriate ground water increased from about 300 to over 1,300 (fig. 10). With the corresponding increase in pumpage, recharge no longer was equal to discharge, and water levels in wells began to decline. During 1980, about 2,900 irrigation wells pumped an estimated 738,000 acre-feet of ground water to irrigate approximately 320,000 acres (Lindgren, 1982). The location of the irrigation wells during 1980 is shown in figure 9.

Subsurface Outflow

Subsurface outflow occurs along the eastern and southern boundaries. Similar to inflow, the outflow is dependent on the cross-sectional area through which the flow is occurring, the hydraulic gradient, and the hydraulic conductivity. As given by the transient-model mass-balance computations, 28,700 acre-feet of water discharged from the lower aquifer along the eastern and southern boundaries during 1980. Outflow from the upper aquifer along the eastern and southern boundaries during 1980 was simulated in the transient model to be 28,900 acre-feet, as given by mass-balance computations.

The eastern and southern boundaries of the study area coincide with political boundaries (county lines). These boundaries are also outside the radius of influence of a well field pumping at a discharge rate typical for the area and located near the center of the study area in the Arkansas River valley (see "Model Boundaries").

PROPOSED

AMENDED OPERATING PRINCIPLES

TRINIDAD DAM AND RESERVOIR PROJECT

Preamble

The Trinidad Dam and Reservoir Project as reported in House Document No. 325, 84th Congress, 2d Session, and as authorized by the Flood Control Act of 1958, will be operated in such a manner as to secure the greatest practicable benefits from the regulation and use of the flows of the Purgatoire River consistent with the laws and policies of the State of Colorado and of the United States including the Arkansas River Compact. The objectives and principles governing the operation of the Trinidad Dam and Reservoir Project to secure such benefits are contained within the following articles.

Article I	-	OBJECTIVES
Article II	-	DEFINITION OF TERMS
Article III	-	FLOOD CONTROL
Article IV	-	IRRIGATION
Article V	-	FISHERY AND RECREATION
Article VI	-	REVIEW AND AMENDMENT

Article I - OBJECTIVES

The operation of the Trinidad Dam and Reservoir involves the regulation of the flows of the Purgatoire River for flood control, irrigation use, and recreation including a permanent fishery pool. The project plan provides for:

1. Control of floods originating above the reservoir for benefit of the city of Trinidad and downstream reaches.
2. Optimum beneficial use of the available water for irrigation within the project area consistent with the protection of downstream non-project rights as set forth in House Document No. 325, 84th Congress, 2d Session, which provides:

- (a) Transfer of the storage decree of the Model Land and Irrigation Company for 20,000 acre-feet annually from the present site to the proposed Trinidad Reservoir.
- (b) Storage in the Trinidad Reservoir of flood flows originating on the Purgatoire River above the dam site which would otherwise spill from John Martin Reservoir.
- (c) Storage in Trinidad Reservoir of the winter flows of the Purgatoire River historically diverted for winter irrigation of project lands.

~~Because the effects are indeterminate, the following conditions (d) and (e) are not specified, but are left until such time as the feasibility of operating thereunder can be proven to wit:~~

~~(d) By regulation in Trinidad Reservoir of summer flows historically diverted to project lands provided that future streamflow records disclose such further regulation would not materially increase depletions or that any material increase in depletions be compensated by suitable replacement for lands served by John Martin Reservoir.~~

~~(e) By storage in Trinidad Reservoir of all flood flows originating on the Purgatoire River above the reservoir other than those specified in condition (b), provided that suitable replacement be made to John Martin Reservoir to the extent that such storage in the Trinidad Reservoir would result in material depletion of the inflow from the Purgatoire River into John Martin Reservoir and interfere with its operation as established by the Arkansas River compact.~~

- 3. The maintenance of a minimum pool for enhancement of recreation and fishery values.

4. The construction of the Trinidad Dam and Reservoir with the following allocated capacities:

Flood control.....51,000 acre-feet

Irrigation.....20,000 acre-feet

Permanent fishery pool.....4,500 acre-feet

Joint use*.....~~89,500 acre-feet~~

Total capacity ~~124,800 acre-feet~~

*For irrigation and sediment accumulation

~~It appears from the Corps of Engineers November, 1987 Area Capacity Study that the actual capacity of Trinidad Reservoir on the date of the survey was 124,800 acre-feet. The capacity above 124,800 acre-feet will be allocated as agreed by the Bureau, the Corps, and the District.~~

Article II - DEFINITION OF TERMS

Definition of terms as used herein:

1. ~~"Reservoir" means a new reservoir constructed on the Purgatoire River above the city of Trinidad, Colorado.~~
2. "District" means the Purgatoire River Water Conservancy District, that entity created and existing under laws of the State of Colorado to contract for repayment to the United States of an appropriate share of the project costs allocated to the irrigation use. The District shall also be the agency responsible for the regulation of irrigation or other water supplies within the District boundaries in the manner set forth therein.
3. "Unused Sediment Capacity" means that portion of the ~~89,500 acre-feet~~ of reservoir capacity allocated to joint use but unoccupied by sediment at any given time.

4. "Irrigation Capacity" means the 20,000 acre-feet of reservoir capacity allocated to irrigation plus the unsedimented portion of the joint use capacity.
5. "Permanent Fishery Pool Capacity" means the 4,500 acre-feet of reservoir capacity allocated to fishery and recreation.
6. "Permanent Fishery Pool" means the quantity of water stored in the permanent fishery pool capacity.
7. "Flood Control" means the temporary storage of flood waters at any reservoir pool level as necessary to alleviate flood damages through the city of Trinidad and downstream reaches.
8. "Flood Control Capacity" means the 51,000 acre-feet of capacity exclusively allocated to flood control lying above the reservoir elevation of 221.06 as of the survey published by the Corps in November, 1987.
9. "Reservoir Inflow" is to be expressed in mean daily cubic feet per second of time and means that total flow of water entering the reservoir, comprising measured flows at the inflow gauging stations and other unmeasured inflows entering the reservoir, less such flow of water as may be acquired by the State of Colorado for filling and maintaining the permanent fishery pool.
10. "District Irrigable Area" means only 19,439 acres of irrigable lands now reserved lying within District boundaries.
11. "Irrigation Season" means that period of the year, as determined annually by the District, during which water may be beneficially applied to the District irrigable area, provided the irrigation season will not begin earlier than April 1 or end later than October 15, except as modified by the District with the consent of the Secretary of Interior.
12. "Nonirrigation Season" means that period of the year other than the irrigation season.

13. "District Storage Right" means those rights under which the District may store water in the irrigation capacity for use on the District irrigable area.
14. "District Water Supply" means that water supply of the Purgatoire River subject to District administration for irrigation use within the District irrigable area.
15. "Colorado State Engineer" means the Colorado State Engineer or such other administrative agency having jurisdiction and control over the distribution of the waters of the State of Colorado.
16. "Operating Agency" means the U.S. Army Engineer District, Albuquerque, New Mexico, Corps of Engineers.
17. "Winter water under the direct flow rights" means that ~~the direct flow rights set forth on page 7 of these Operating Principles may hereafter be stored in the irrigation capacity (initially about 59,000 acre-feet) and shall not be hereafter charged against or deducted from the 1900 priority to store 20,000 acre-feet.~~

18. ~~"W-130 Storage Right" means that Colorado water right owned by the District as set forth in decrees entered in cases in District Court, Water Division No. 2, including Case W-130 and any other decrees relating thereto to store 49,300 acre-feet for domestic, irrigation, and municipal uses, with an appropriation date of May 31, 1950.~~

19. ~~"Flow" (whether stated in cubic feet per second (cfs) or not) means a measurement in acre-feet per day. One c.f.s. flowing for one day will create 1.9835 acre-feet. The District shall account for water daily in acre-feet.~~

Article III - FLOOD CONTROL

Trinidad Reservoir shall be operated for flood control benefits in accordance with regulations prescribed by the Secretary of the Army and the following operating principles:

1. All potentially damaging flood inflows shall be temporarily detained as necessary to limit the flow insofar as possible to a nondamaging flow, currently estimated to be 5,000 c.f.s., downstream from the Trinidad Reservoir.
2. All flood waters stored in the flood control capacity shall be released at the maximum nondamaging rate insofar as practicable.
3. Any inflow, other than that stored for irrigation use, temporarily retained below the bottom of the flood control capacity for flood control purposes, shall be released by the operating agency at such a rate, time, and quantity as may be ordered by the Colorado State Engineer, but within nondamaging flow in the channels below the reservoir.

Article IV - IRRIGATION

Administration of the irrigation capacity in Trinidad Reservoir and the distribution of water to the District irrigable area will be made by the District in accordance with House Document No. 325, 84th Congress, 2d Session, and these operating principles. Agreements, satisfactory to the Secretary of the Interior, ~~have been~~ entered into between the District and the ditch companies and other owners of affected water rights to insure that these principles and the operation described herein shall be adopted.

The principles and provisions under which the District will administer water supplies to the District irrigable area are contained in the following four parts of this Article. "Water Rights", "Limits of Land and Water Use", "District Water Supply", and "Operation and Exercise of Water Rights".

A. Water Rights

Accomplishment of the following conditions is necessary under the laws of the State of Colorado to provide the District with the right to regulate the flows of the Purgatoire River in the manner described herein:

1. ~~Water users within the District have assigned the right to the exercise of the following (page 7) decreed direct flow water rights in former Water District No. 19, and within the District boundaries to the District for administration by the District at such times and to the degree outlined in these principles.~~

~~Direct Flow Rights~~
~~Water Division No. 7, Colorado~~

<u>Priority Number</u>	<u>Date</u>	<u>Amount (c.f.s.)</u>	<u>Name of Ditch</u>
3	11/30/1861	6.00	Baca
5	03/20/1862	4.00	Johns Flood
7	04/30/1862	7.00	Chilili
8	11/15/1862	2.82	Baca
8	11/15/1862	1.18	El Moro
9	01/01/1863	1.28	Johns Flood
9	01/01/1863	4.72	Hoelne
12	06/30/1863	0.50	South Side
13	01/01/1864	1.25	Johns Flood
13	01/01/1864	3.75	Lewelling & McCormick
15	04/10/1864	5.10	Johns Flood
15	04/10/1864	0.80	Hoelne
15	04/10/1864	0.80	Salas
19	06/01/1865	4.00	Lewelling & McCormick
20	10/07/1865	7.35	Johns Flood
20	10/07/1865	16.65	Hoelne
21	01/01/1866	3.25	Burns & Duncan
22	02/01/1866	1.34	Salas
27	05/31/1866	2.25	Johns Flood
27	05/31/1866	0.75	Salas
40	04/30/1868	1.40	South Side
64	04/01/1873	2.40	Johns Flood
73	11/01/1875	6.00	South Side
74	02/17/1876	34.00	South Side
75	12/25/1876	4.00	South Side
77	03/11/1877	1.30	El Moro
77	03/11/1877	2.70	Baca
80	04/07/1877	18.60	South Side
93	12/15/1882	4.00	South Side
95	11/04/1883	14.38	Baca
96	11/23/1883	16.84	South Side
98	04/30/1884	60.00	South Side
103	06/21/1886	14.73	Baca
104	10/21/1886	10.00	Lewelling & McCormick
106	03/12/1887	15.00	Baca
108	02/15/1888	9.70	South Side
109	03/01/1888	8.00	South Side
145	10/20/1902	100.00	Johns Flood
168	01/22/1908	200.00	Model Ditch
242	06/12/1920	45.56	Baca

137 out
 137 out
 152 out

ADDITION

2. Waters of the Purgatoire River shall be stored by the District in the irrigation capacity (~~initially about 59,000 acre-feet~~) of Trinidad Reservoir under rights created under Colorado law; said rights, defined as the District storage right, include:

(a) The Model storage right, being the right to store 20,000 acre-feet of water from the flows of the Purgatoire River, under reservoir priority No. 10 in Water District No. 19 at a rate of flow not exceeding 700 cubic feet per second of time under date of appropriation of January 22, 1908, as decreed by the District Court of Las Animas County, Colorado, on January 12, 1925, and ~~by Decree in CIVIL ACTION No. 19793, District Court, Las Animas County, Colorado, for April 16, 1965, transferred from the place of storage as originally decreed to the site of the reservoir; and~~

(b) Such other rights to store water in the reservoir as the District may lawfully acquire by appropriation or purchase, ~~including the right to store winter water under the direct flow rights (appropriation date as listed) and the 1908 storage right (appropriation date May 31, 1950).~~

(c) ~~Subject to appropriate Colorado statutory proceedings the District may make administrative transfers from time to time, of water lawfully stored in the irrigation capacity under the District Storage right from one pool, account, or capacity, to another pool, account or capacity, including the transfer of water stored under the 1908 priority of the Model storage right into the Unused sediment capacity, as if such other pool, account or capacity were a separate vessel, thereby allowing storage and use of the administratively emptied pool, account or capacity for all purposes. Until such time as the Bureau agrees otherwise, by further amendment of these principles, the District shall limit administrative transfers to the lesser of:~~

(i) ~~19,500 acre-feet per year to transfer; or~~

~~the amount required to place 39,500 into the irrigation capacity of the reservoir.~~

B. Limits of Land and Water Use

In order that the Trinidad Dam and Reservoir Project may provide an optimum beneficial use of water for irrigation within the District, the following limitations on land and water use shall apply:

1. The acreage irrigated by the District water supply shall be limited to 19,439 acres of irrigable land lying within the District boundaries. These 19,439 acres of the District irrigable area shall be composed as nearly as practicable of the acreages under contracts:

(Picketwire includes Chicosa, Suran, Northside and El Moro Water Users):

Picketwire	2,414.7
Baca	319.6
Chilili	300.3
El Moro	179.6
Jolus Flood	2,170.7
Model	7,078.3
South Side	6,299.6
Hoelme	1,200.0
Burns & Duncan	229.7
Jewelling & McConnick	361.1
Salas	56.8

~~The contracts total more than 19,439 and as recognized by the contracts, these acreages are "double counted". The District shall insure that the acreage irrigated in any year shall be limited to not more than 19,439 acres of District irrigable area.~~

2. All water deliveries to the 19,439 acres of the District irrigable area will be limited during the irrigation season to the irrigation requirements at the farm headgate as determined by the District. Allowance for canal and lateral losses on the individual ditch systems will also be determined by the District.
3. No water deliveries for irrigation of the 19,439 acres of the District irrigable area will be made during the nonirrigation season.

C. District Water Supply

1. That water supply of the Purgatoire River subject to District administration for irrigation use within the District Irrigable area, defined as the District water supply, consists of:
 - (a) The water stored under the District storage right in the irrigation capacity, ~~initially about 59,000 acres feet.~~
 - (b) The stream gains to the Purgatoire River below Trinidad Dam that are divertible to the District irrigable area ~~by the direct flow rights.~~
 - (c) That portion of the reservoir inflow bypassed to the river below Trinidad Dam which is subject to diversion ~~by the direct flow rights.~~
2. The District water supply will be allocated by the District to the ditches within the District to provide each acre of the District irrigable area an equitable share of the District water supply after allowance has been made for individual ditch transportation losses, provided such allocation will not exceed the irrigation requirements at the farm headgate, ~~subject to the special provisions of the Lochne and Model contracts.~~

D. Operation and Exercise of Water Rights

The principles governing operation of the irrigation capacity and the District's exercise of ~~the direct flow water rights and the District storage right~~ are hereinafter set forth as they apply to operations during the entire year as well as to operations during either the nonirrigation season or irrigation season.

1. Non-interference with Downstream Water Rights

- (a) Bypasses to the river shall be made at any time during the year to satisfy downstream senior rights as ordered by the Colorado State Engineer to the extent that such demands are not met by stream gains or otherwise satisfied but are limited to the extent as determined by the Colorado State Engineer to actually benefit such rights without unnecessary waste through channel losses.

(b) Reservoir inflow in excess of ~~11,388.1 acre-feet per day~~ may be detained in the reservoir at such times as John Martin Reservoir is reasonably expected to spill; to the extent that John Martin Reservoir would have spilled, such detained water shall be considered to have been stored under the District storage right ~~(including the W-130 storage right)~~ and become part of the District water supply. Such detained water which does not become a part of the District water supply shall be released as called for by the Colorado State Engineer in the amounts and at such times as he shall determine that such releases may be required to avoid a material depletion of the water of the Arkansas River as defined in Article 3 of the Arkansas River Compact, ~~C.R.S. 25-97-69-101, et seq.~~

(c) Except as provided by paragraph (b) above, any water temporarily detained in the reservoir as a result of the reservoir inflow exceeding the design outlet capacity of the reservoir shall be released as soon as possible.

(d) ~~All bypasses set forth in (a) above and all releases of temporarily detained water from the reservoir, as set forth in (b) and (c) above, shall be passed down the Purgatoire River without interference by water users in the District irrigable area.~~

E. Other Storage.

~~It shall be appropriate to store trans-basin water, trans-mountain water, and other types of water, by exchange or otherwise, subject to Colorado law. Such water need not be allocated as set forth herein.~~

2. District Operation, Non-irrigation Season

(a) During the non-irrigation season the District will provide an allowance for stock watering purposes of not more than a daily mean flow of five second-feet or its volume equivalent measured at a gauge to be located near and above the Baca River headgate. If the stream gains from the Trinidad Dam to the said gauge are insufficient to fulfill the allowance, an equivalent volume of reservoir inflow ~~may be released in the discretion of the District to satisfy stock water demands within the allowance.~~

(b) During the non-irrigation season the District will exercise the direct flow water rights and the District storage right only at such times and to the degree as necessary to assure:

(1) That the maximum possible storage of reservoir inflow is accrued.

(2) The stock water allowance is distributed in a manner determined equitable by the District.

~~(3) Winter water under the direct flow rights shall be accounted separately from the 20,000 acre-foot Model storage right, shall be stored in the irrigation capacity (initially, about 59,000 acre-feet) and shall not be diminished by any water stored under the 1908 priority for the 20,000-acre-foot Model storage right, nor shall the 1908 priority for 20,000 acre-feet be diminished by any amount of water stored in winter water under the direct flow rights.~~

3. District Operation - Irrigation Season

(a) During the irrigation season, except at such times as provided for in IV.D.3.(c) below, the District shall exercise the direct flow water rights and the District storage right only at such times and to the degree necessary to assure:

(1) That stream gains to the river below Trinidad Dam which are divertible to the District irrigable area and such reservoir inflow which is bypassed to the river for District irrigation use will be equitably distributed to the District irrigable area as part of the allocated District water supply, ~~as provided by the contracts.~~

(2) That the District storage rights can be fully exercised to store reservoir inflow in excess of that bypass to the river as may be required under D.1.(a) and D.3.(a)(1) above.

(b) During the irrigation season water stored in the irrigation capacity will be released as needed to fulfill or partially fulfill the irrigation requirements of the District irrigable area as part of the allocated District water supply.

(c) ~~Subject to the special provisions of the Model and~~
~~Model contracts, during the irrigation season, when~~
~~the irrigation capacity is empty as determined by~~
~~the District, the District will, through its~~
~~exercise of the direct flow water rights provided~~
~~that the reservoir inflow and stream flows below~~
~~the dam which are divertible to the District~~
~~irrigable area, exercise the irrigation requirement and~~
~~shall have first priority under the District storage~~
~~right, unless the District requires the exercise of the~~
~~direct flow water rights and exercise of the District~~
~~storage right as provided in (1) above.~~

4. Evaporation and Seepage Losses

In the accounting for water in storage, evaporation and seepage losses due to water stored in the irrigation capacity shall be determined using the most recent data available by the Colorado State Engineer and the District with the cooperation of the operating agency.

Article V - FISHERY AND RECREATION

The permanent fishery pool shall be operated in accordance with the following principles:

1. ~~Water for any required re-fillings and for replacing~~
~~evaporation and seepage losses will be acquired by the~~
~~State of Colorado without interference to the District~~
~~water supply or without additional cost to the District~~
~~of the United States for the Trinidad Project, as~~
~~envisaged in House Document No. 325.~~
2. In the accounting for water in storage, evaporation and seepage losses due to the permanent fishery pool shall be determined using the most recent data available by the Colorado State Engineer and the District with the cooperation of the operating agency.
3. There shall never be any release of water from the permanent fishery pool except upon the request of the Colorado Game, Fish, and Parks Commission to the Colorado State Engineer.

Article VI - REVIEW AND AMENDMENT

These operating principles may be subject to review and amendment not more than once a year at the request of any of the parties' signatory; provided, that at least one review shall be accomplished within the first 10 years following completion of the Trinidad Dam and at least one review be accomplished every 10 years thereafter. The primary object of such reviews will be obtaining optimum beneficial use of water as conditions change, operating experience is gained, and more technical data become available.

FIVE CONDITIONS

State of Kansas

To avoid any misunderstanding as to intent and purpose, in addition to the operating principles set forth above, set forth below are the five conditions from Kansas Governor Avery's letter of December 30, 1965.

1. All inflows over established Colorado water rights (1,156,050 c.f.s.) be designated flood flows and released as promptly as downstream conditions permit. The only time water so designated may be stored in the conservation pool will be when John Martin Reservoir does not have the capacity to store additional water.

2. Any subsequent amendment of the operating principles should be subject to review and approval of the same interests as provided for in the original procedure.

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

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

5. All operating principles open for inspection by any qualified representative of the Arkansas River Compact Administration.

STATE OF KANSAS



I

OFFICE OF THE GOVERNOR

State Capitol
Topeka 66612-1590
(913) 296-3232

Mike Hayden Governor

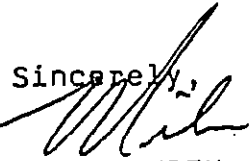
November 22, 1989

Roger K. Patterson
Regional Director
United State Department of Interior
Bureau of Reclamation
Great Plains Region
P.O. Box 36900
Billings, Montana 59107-6900

Dear Roger:

I am hereby acknowledging receipt of your letter dated October 18, 1989 requesting my review, comments and approval of the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project, Colorado.

The issues raised by the proposed amended Operating Principles for the Trinidad Dam and Reservoir Project are framed in the pleadings in Kansas v. Colorado, Original No. 105, and will be addressed in the course of that litigation. Therefore, the State of Kansas formally objects to any amendment of the Operating Principles for the Trinidad Dam and Reservoir Project prior to the completion of the litigation in Kansas v. Colorado, No. 105.

Sincerely,

MIKE HAYDEN
Governor



MH:GH:np

cc: David Pope ✓
Richard Simms

copy to JOB, GCFO, JC, TD, BS, LER

Exhibit I

Exhibit J

EXPENDITURES

A. SALARIES AND CONTRACTUAL SERVICES:

1. Treasurer	\$ 1,000	
2. Recording Secretary	1,000	
3. Operations Secretary	6,100	
4. Auditor's Fees	500	
5. Court Reporter's Fees	500	
6. Payroll Taxes	<u>0</u>	
		\$ 9,100

B. GAGING STATIONS:

1. U.S. Geological Survey Cooperative Agreements for federal FY 1990	\$11,830	
2. St. of Colo. Satellite System	<u>8,000</u>	
		\$19,830

C. OPERATING EXPENSES:

1. Treasurer's Bond	\$ 100	
2. 1989 Annual Report (Printing)	3,500	
3. Telephone	1,000	
4. Office Supplies/Postage	400	
5. Printing/Copying	300	
6. Meetings	150	
7. Travel	0	
8. Rent	<u>600</u>	
		\$ 6,050

D. EQUIPMENT: \$ 0

E. CONTINGENCY: 1,000

\$35,980

INCOME

A. ASSESSMENTS:

1. Colorado (60%)	\$15,000	
2. Kansas (40%)	<u>10,000</u>	
		\$25,000

B. INTEREST EARNINGS: 1,500

C. MISCELLANEOUS: 0
\$26,500

EXPENDITURES FROM SURPLUS \$11,230

Adopted by the Arkansas River Compact Administration at its
 December 13, 1988, Annual Meeting.

[Signature]

 Treasurer

1878E

Exhibit J

12/30/92

DRAFT FY 1991-92 BUDGET
(July 1, 1991 - June 30, 1992)

EXPENDITURES

Exhibit K

A. SALARIES AND CONTRACTUAL SERVICES:

1. Treasurer	\$ 1,000	
2. Recording Secretary	1,000	
3. Operations Secretary	6,100	
4. Auditor's Fees	700	
5. Court Reporter's Fees	600	
6. Payroll Taxes	<u>0</u>	
		\$ 9,400

B. GAGING STATIONS:

1. U.S. Geological Survey Cooperative Agreements for federal FY 1990	\$12,600	
2. St. of Colo. Satellite System	<u>8,000</u>	
		\$20,600

C. OPERATING EXPENSES:

1. Treasurer's Bond	\$ 100	
2. 1989 Annual Report (Printing)	4,000	
3. Telephone	1,000	
4. Office Supplies/Postage	400	
5. Printing/Copying	300	
6. Meetings	150	
7. Travel	0	
8. Rent	<u>600</u>	
		\$ 6,550

D. EQUIPMENT: \$ 0

E. CONTINGENCY: 1,000

\$37,550

INCOME

A. ASSESSMENTS:

1. Colorado (60%)	\$15,750	
2. Kansas (40%)	<u>10,500</u>	
		\$26,250

B. INTEREST EARNINGS: 3,000

C. MISCELLANEOUS: 0
\$29,250

EXPENDITURES FROM SURPLUS

\$ 8,300

Adopted by the Arkansas River Compact Administration at its
December 12, 1989, Annual Meeting.

Treasurer

1878E-2

Exhibit K