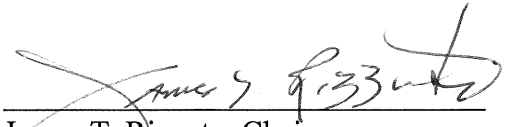


MINUTES OF SPECIAL MEETING
OF THE
ARKANSAS RIVER COMPACT ADMINISTRATION

VIA
TELEPHONIC CONFERENCE CALL
FRIDAY, JUNE 10, 1994
AT 10:15 A.M. MDT (11:15 A.M. CDT)

The following is the written summary of the Arkansas River Compact Administration's June 10, 1994 Special Meeting, as signified by the signature of the Chairman of the Administration, pursuant to Administration approval given on December 17, 2014 at its Annual Meeting held in Lamar, Colorado.


James T. Rizzuto, Chairman
Arkansas River Compact Administration

Note: The following summary of the Administration's June 10, 1994 Special Meeting was prepared from notes of the participants and reviewed by officials from the States of Kansas and Colorado. The telephonic conference was to have been recorded and the tape used to prepare a summary of the meeting, however the conference call service provider inadvertently lost or destroyed the tape before delivery to the Administration.

Commencing at approximately 10:15 A.M. (MDT) on Friday June 10, 1994.

Chairman Cooley called the Special Meeting of the Arkansas River Compact Administration to order pursuant to the Notice attached hereto as Exhibit "A." He asked all parties on the conference call to introduce themselves. The following locations and parties participated in the conference call:

<u>LOCATION</u>	<u>ATTENDEES</u>
Meeker, Colorado	Frank Cooley, ARCA federal chair
Denver, Colorado	Chuck Lile, Colorado Compact Representative & CWCB Director Hal Simpson, Colorado State Engineer Steve Miller, CWCB staff Dennis Montgomery, Hill and Robbins David Robbins, Hill and Robbins Wendy Weiss, office of the Colorado Attorney General David Harrison, Attorney for LAWMA Duane Helton, Fort Lyon
Pueblo, Colorado	Carl Genova, Colorado Compact Representative
Pueblo, Colorado	Steve Witte, Operations Secretary & Colorado Division 2 Engineer
Lamar, Colorado	Jim Rogers, Colorado Compact Representative
Lamar, Colorado	Don Higbee, LAWMA Carl Shinn, Attorney for Amity and Buffalo Canals Colin Thompson, Amity Paul Pierson, Amity Ed Bates, Amity and Buffalo Canals
Albuquerque, N.M.	John Draper, Montgomery & Andrews Dale Book, Spronk Water Engineers
Topeka, Kansas	David Pope, Kansas Compact Representative & Kansas Chief Engineer Lee Rolfs, Attorney, Kansas Division of Water Resources Bob Lytle, Kansas Division of Water Resources Jim Bagley, Kansas Division of Water Resources
Syracuse, Kansas	Lola Fox, Kansas Compact Representative
Lakin, Kansas	Randy Hayzlett, Kansas Compact Representative
Garden City, Kansas	Mark Rude, Kansas Division of Water Resources Al Knoll, Garden City Ditch; Irwin Caldwell, Farmers Ditch; David Brenn, Great Eastern Ditch; Henry Gillan, President of the Associated Ditches

Parties were informed that the call was being recorded for purposes of preparing minutes of the meeting, but it was agreed that a written summary of the meeting and not a verbatim transcript would be sufficient for the minutes.

Chairman Cooley stated that the purpose of the Special Meeting was to consider Colorado's request for a special account in John Martin Reservoir (JMR) to store water to offset depletions caused by post-compact well pumping in Colorado. Mr. Cooley asked Chuck Lile to further explain Colorado's proposal, and he began by reviewing the contents of a June 2, 1994 letter that he and Hal Simpson, the Colorado State Engineer, had sent to David Pope. The letter is attached hereto as Exhibit "B". Mr. Lile explained that Colorado's proposal was a result of the findings presented in the Special Master's Draft Report, and the account was intended as a method of delivering water to the Stateline to offset depletions to usable flows caused by post-compact well pumping. He discussed potential sources of water for the account and possible operation and release scenarios, but indicated Colorado's willingness to refine these details after hearing Kansas' initial reactions to the proposal.

Wendy Weiss from the Colorado Attorney General's Office stated that granting the requested account would not constitute an admission as to liability by Colorado, nor as an admission as to the proper amount and timing of augmentation required at the Stateline by Kansas. The current proposal was merely an opportunity to store water that Colorado well-users now had available to offset depletions that their well pumping might cause later in the 1994 irrigation season.

Chairman Cooley asked for questions from Kansas. Mr. Pope stated that he felt this matter was directly related to the *Kansas v. Colorado* litigation and introduced John Draper, the attorney representing Kansas in the U.S. Supreme Court case. Mr. Draper indicated that Kansas appreciated any genuine efforts by Colorado to bring well pumping into compact compliance. However, it is Kansas' belief, upon consideration, that it would not be proper for ARCA to discuss, much less approve, the Colorado proposal for an agreement or resolution establishing an account in JMR to be used by Colorado to offset the effects of well pumping.

Mr. Draper continued, this issue is pending before the U.S. Supreme Court, which has referred that matter to Special Master Littleworth, who in turn has suggested that he will ask for submittals from each of the States (RT Vol. 143 at 102-03). When an issue has been submitted to the Supreme Court it is not proper from the parties to take up the issue in another forum, such as the Arkansas River Compact Administration. In the case of *Oklahoma & Texas v. New Mexico*, No. 109, Orig., the Special Master himself recommended remanding an issue to the Canadian River Commission. The Supreme Court rejected that recommendation. It said:

Where the States themselves are before this Court for the determination of a controversy between them, neither can determine their rights *inter sese*, and this Court must pass upon every question essential to such a determination.

111 S. Ct. 2281, 2292. Here, the Special Master has not even made such a recommendation. Much less has the Supreme Court approved it.

Mr. Draper further stated that the remedies for violations of the Compact are certainly among the issues with regard to which the Supreme Court's original jurisdiction has been invoked. This is clear from the Complaint of the State of Kansas with regard to which the Supreme Court granted Kansas' Motion for Leave to File Complaint (3/24/86). Also, the Special Master's Order Re Kansas Motion to Bifurcate Proceedings (1/2/90) shows the Special Master's understanding that the remedies issues are properly before him. His remarks on this subject at the end of oral argument in Pasadena on April 15, 1994 are the latest confirmation of this understanding. Colorado has never suggested otherwise. Under these circumstances, ARCA cannot take up remedies issues.

Mr. Draper then indicated that the Special Meeting should be adjourned and that Colorado would need to take whatever unilateral actions might be available to it to prevent further Compact violations. There simply could be no other way for the States to agree since the Administration, in Kansas' view, was disqualified from considering remedies.

Chairman Cooley inquired whether there was anything that could be done with "wet" water in an informal way, or by stipulation, that would not affect the Supreme Court proceedings. David Pope replied that Colorado has other options for complying with the Compact and a duty to comply with the Compact. To invoke the ARCA forum and to effectuate an agreement is not possible. Colorado's proposal goes to the center of the litigation. Wendy Weiss then commented that Colorado was not asking for a remedy. She recognized that the Special Master has jurisdiction over remedies. She said Colorado is just asking for an account in John Martin which could be used to mitigate the damages.

Chairman Cooley then asked whether there were further questions or other matters that needed to be considered by the Administration. Hearing none, he thanked the participants and adjourned the Special Meeting at approximately 10:30 A.M.

ARKANSAS RIVER COMPACT ADMINISTRATION

307 South Fifth Street
LAMAR, COLORADO 81052

COLORADO
DARIES C. LILE, Denver
CARL GENOVA, Pueblo
JAMES G. ROGERS, Lamar

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

KANSAS
DAVID L. POPE, Topeka
RANDY HAYZLETT, Lakin
LOLA FOX, Syracuse

NOTICE OF SPECIAL MEETING

Arkansas River Compact Administration

10:00 a.m. (MDT), Friday, June 10, 1994

A Special Meeting of the Administration will be held by telephonic conference call at the time noted above. The meeting will be convened for consideration of Colorado's request for establishment of a special account in John Martin Reservoir to store water to offset depletions caused by post-compact well pumping in Colorado, and such other matters as may come before the Administration. Any person wanting to monitor or participate in the telephonic meeting should contact Steve Miller at the Colorado Water Conservation Board, 303-866-3441, or Don Higbee at the Arkansas River Compact Administration, 719-336-2422.

EXHIBIT "A" 6-10-94 Minutes

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
FAX (303) 866-4474



Roy Romer
Governor

James S. Lochhead
Executive Director, DNR

Daries C. Lile, P.E.
Director, CWCB

June 2, 1994

Mr. David Pope, P.E.
Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture
901 S. Kansas Avenue, Second Floor
Topeka, KS 66612-1283

VIA FAX

Re: ARCA, Colorado Request for Special Account at JMR

Dear David:

Because of the finding in the draft Report of Special Master Arthur L. Littleworth in Kansas v. Colorado, No. 105, Original (U.S. Supreme Court), that post-compact well pumping in Colorado has depleted usable Stateline flows in violation of Article IV-D of the Arkansas River Compact, Colorado requests a special account in John Martin Reservoir to store water to offset depletions caused by post-compact pumping in Colorado. Water to be stored in the account will be acquired by well owners and will be used by the Colorado State Engineer to replace depletions to usable Stateline flows. Sources of water to be stored in the account may include transmountain water or consumptive use water.

Colorado proposes that this account would be separate from and in addition to the permanent recreation pool in John Martin Reservoir and the accounts established under the 1980 Operating Plan for John Martin Reservoir. Colorado will agree that water stored in this account will spill before any water stored in other accounts in John Martin Reservoir, including the permanent recreation pool, and before the conservation pool water. This account will be used to reduce depletions for which Colorado may be liable. Colorado is not asking the Compact Administration to determine the amount of any depletions caused by post-compact well pumping in Colorado or the amount of any credit for replacement of such depletions to which Colorado may be entitled as the result of releases from this account. All Colorado is requesting is the approval of the Compact Administration to store water in such an account and to make releases

Exhibit "B" 6-10-94 Minutes

from the account at such times as the Colorado State Engineer determines such releases would be usable in Kansas to offset depletions to usable stateline flows. The Colorado Division Engineer will agree to make an accounting of this water at the same time he makes an accounting of the operation under the 1980 Operating Plan.

Colorado is willing to discuss with Kansas the timing and amount of releases from this account. It is Colorado's intention that the water be released at a time when it is usable in Kansas and during reasonable and favorable river conditions.

The delivery of water to this account by Colorado would not constitute an admission by Colorado of liability to Kansas. Acceptance of the water by Kansas would not constitute an admission by Kansas of the amount of depletions to usable Stateline flows in that year, nor would it in any respect affect Kansas' claims for other years. The sole purpose of the account would be to replace depletions to usable Stateline flows for which Colorado may be liable.

Several sources of water may be available to Colorado to store in this account in the immediate future. If this water cannot be stored in John Martin Reservoir, it is unlikely that it would be released in circumstances that would result in additional conservation storage in John Martin. Therefore, we request your earliest possible consideration of this proposal. We further request that ARCA hold a special meeting as soon as possible to consider a resolution establishing such an account. We would propose that the special meeting occur during the week of June 6th, 1994. If you have any questions, please feel free to call either of us.

Sincerely,

/s/
Chuck Lile, Director
Colorado Water Conservation Board

/s/
Hal Simpson
State Engineer

cc: Frank Cooley
Carl Genova
Jim Rogers
Lola Fox
Randy Hayzlett
Steve Witte

bj1361.ltr